

GAHC030004032024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/22/2024

Smt. Lalnunsangi and Anr.
D/o Lalramliana (L) and K.C. Remmawii, R/o Chhing Veng, Aizawl 2: Sh.
Lalchhuansang

VERSUS

Sh. Zomuanpuia
S/o Lalsangliana (L), R/o Bawngkawn Chhimveng, Aizawl

Advocate for the Petitioner : Ms. Jacinta Zothanmawii

Advocate for the Respondent : Mr. J H Ramneihmawia

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (ORAL)

Date : 26-08-2024

Heard Ms. Jacinta Zothanmawii, learned counsel for the appellants. Also heard Mr. Reuben L. Tochwawng, learned counsel appearing for the sole respondent.

2. The present appeal has been so instituted by the appellants presenting a challenge to an order dated 10.02.2023, passed by the learned Senior Civil

Judge-II, Aizawl, in Heirship Certificate Case No. 146/2023; instituted by the sole respondent, granting heirship to the sole respondent in respect of LSC No. Azl-968/1983.

3. As projected in the appeal, the plot of land covered by LSC No. Azl-968/1983 situated at Bawngkawn Chhimveng, Aizawl, which was issued in the name of the Grandfather of the present appellants was transferred on his death in the name of Lalsangliana and Lalrosanga, jointly, on 13.10.2004.

4. It is to be noted that the appellants, herein, are the siblings of both Lalsangliana and Lalsoranga. The respondent, herein, is the son of Lalsangliana. The father of the respondent died on 19.12.2022. Thereafter, the respondent had proceeded to submit an application under the provisions of Section 30 (3) of the **Mizo Marriage, Divorce & Inheritance of Property Act, 2014** (hereinafter referred to as "the Act of 2014") before the Court of the learned Senior Civil Judge-II, Aizawl, praying for grant of Heirship Certificate in respect of the land covered by LSC No. Azl-968/1983. The said application on being received came to be registered as Heirship Certificate Case No. 146/2023. Thereafter, the learned Senior Civil Judge-II, Aizawl, on consideration of the matter, proceeded to allow the said application vide an order dated 10.02.2023 and granted Heirship Certificate in respect of LSC No. Azl-968/1983 located at Bawngkawn Chhimveng, Aizawl, in the name of Late Lalsangliana in favour of the respondent, herein. In terms of the order dated 10.02.2023, the learned Senior Civil Judge-II, Aizawl, proceeded to issue a Heirship Certificate in the format as prescribed in Schedule 4 to the said Act of 2014 in favour of the respondent, in respect of LSC No. Azl-968/1983.

5. In terms of the Heirship Certificate as issued by the learned Senior Civil Judge-II, Aizawl, the Assistant Settlement Officer, Land Revenue & Settlement Department, Mizoram, on 22.01.2024; proceeded to correct the Register of

Record of rights and granted Residential Land Settlement Certificate, under Section 32 of the **Mizoram (Land and Revenue) Act, 2013** by recording the LSC No. Azl-968/1983 in favour of the respondent, herein. It was further noted in the Residential Land Settlement Certificate so issued, that same would supersede the previous certificate, issued in favour of Late Lalsangliana and Late Lalrosanga both sons of Late Lalramliana.

6. The appellants contend that while the said certificate was so issued by the learned Senior Civil Judge-II, Aizawl and also the follow up steps taken thereon, by the Assistant Settlement Officer, Land Revenue & Settlement Department, Mizoram, in favour of the respondent and issuance of Residential Land Settlement Certificate in his name, Lalrosanga was never made a party to such proceedings, although at that relevant point of time, he was very much alive. It is contended by the appellants that Late Lalrosanga had died on 20.02.2024 i.e., after the date when the said Heirship Certificate was so issued in respect of the respondent.

7. The appellants, being aggrieved by the impugned order dated 10.02.2023, passed by the learned Senior Civil Judge-II, Aizawl in Heirship Certificate Application No. 146/2023 and the consequential steps taken in pursuance thereof, has instituted the present proceeding.

8. The learned counsel for the appellants by reiterating the facts noticed herein above, has contended that the application as submitted by the respondent and which was registered as Heirship Certificate Application No. 146/2023, was so considered and allowed by the learned Senior Civil Judge-II, Aizawl, without issuance of any notice to any other interested persons, including the appellants. The appellants contend that a mere perusal of the LSC, basing on which the said Heirship Certificate Application was so preferred by the respondent, would go to reveal that the LSC existed jointly in the names of the father of the respondent and Lalrosanga. It is further contended by the learned counsel for the appellants

that the learned Senior Civil Judge-II, Aizawl, in the order dated 10.02.2023; had recorded that the Court did not find it necessary to issue notice as practiced and had held the application to be genuine and true and accordingly, proceeded to allow the application for Heirship Certificate as submitted by the respondent.

10. The learned counsel for the appellants has further drawn the attention of this Court, to the Examination-in-Chief of the respondent submitted on affidavit in the said Heirship Certificate Application Case, to contend that the respondent, therein, had categorically contended in Paragraph-4, that since the LSC in question is jointly owned by his late father and his younger brother, the application for Heirship Certificate is submitted on behalf of the share of his father only without disturbing the joint ownership of his uncle, Lalrosanga.

11. The learned counsel for the appellants has further submitted that although in the order dated 10.02.2023, the learned Court below had allowed the prayer of the respondent, herein, for being granted Heirship Certificate in respect of LSC No. Azl-968/1983, which is in the name of his father late Lalsangliana. However, it is contended by the learned counsel for the appellants, that a perusal of the Heirship Certificate so issued, in the format as prescribed under Schedule 4 of the said Act of 2014, would go to reveal that the respondent was granted Heirship Certificate in respect of the whole property covered by LSC No. Azl-968/1983 and accordingly, submits that the Land Revenue & Settlement authorities, basing on the Heirship Certificate so issued in favour of the respondent, had issued a Residential Land Settlement Certificate in favour of the respondent, superseding the previous certificate so issued in favour of late Lalsangliana and late Lalrosanga.

14. The learned counsel for the appellants further submits that Late Lalrosanga had not married and he was looked after by the appellants, herein, and accordingly, they are entitled to inherit his share in the LSC No. Azl-968/1983.

However, on account of the Heirship Certificate so issued, without hearing them, in favour of the respondent, they have been now deprived of their rightful share of the property, which belonged to said late Lalrosanga.

16. The learned counsel for the sole respondent, by referring to the Heirship Certificate application so submitted by the respondent, has submitted that although the said land was jointly possessed under the said LSC by the father of the respondent, as well as his Uncle however, after the death of his father; the respondent along with his mother and brother were continuing to look after the above mentioned plot of land covered by the LSC in question without any intervention from others and accordingly, it is submitted that the said property being in sole possession of the father of the respondent, at the time of his death, it is his heirs i.e., the respondent, his mother and his brother who would be entitled to inherit the whole property covered by LSC No. Azl-968/1983 and accordingly, he contends that there is no error in issuance of the Heirship Certificate by the learned Court below.

17. I have heard the learned counsel for the parties and also perused the materials coming on record.

18. It is not in dispute that a land measuring 148.05 Sq mtres., was transferred in the name of Lalsangliana and Lalrosanga, jointly, on 13.10.2004. The said plot of land earlier was settled with the Grandfather of Lalsangliana and Lalrosanga vide issuance of LSC No. Azl-968/1983. On the death of Lalsangliana, his son, the present respondent had preferred an application praying for Heirship Certificate under the provisions of the said Act of 2014. The said application came to be registered as Heirship Certificate Application No. 146/2023 before the learned Court of Senior Civil Judge-II, Aizawl. The said application was so preferred by the respondent, herein, with the following prayer:-

“In the premises it is humbly prayed that the Hon’ble Court may be pleased to

allow his application thereby issued Heirship Certificate on behalf of his father in respect of LSC No. Azl-968/1983 located at Bawngkawn, Aizawl, Mizoram in favour of the applicant and/or pass any other Order(s) as the Hon'ble Court may deem fit and proper."

19. The learned Senior Civil Judge-II, Aizawl, Mizoram on consideration of the application submitted by the respondent along with the NOC brought on record of the mother of the respondent and his brother, as well as the statement of the Chairman, Bawngkawn "S Local Council, proceeded to pass the order dated 10.02.2023, without issuance of any notice to Lalrosanga. Although, a copy of the LSC No. Azl-968/1983 was available on record and therein, the names of both Lalsangliana and Lalrosanga were recorded, but ignoring the said position, the learned Court below had proceeded vide the order dated 10.02.2023, to hold that issuance of notice in the matter was not necessitated and opined that the application was genuine and true and accordingly, proceeded to allow the same. Accordingly, the Heirship Certificate in respect of LSC No. Azl-968/1983 was directed to be issued in respect of the respondent. Consequently, the learned Senior Civil Judge-II, Aizawl, proceeded to issue Heirship Certificate in respect of LSC No. Azl-968/1983 in favour of the respondent in the format so prescribed under Schedule 4 of the said Act of 2014.

21. A perusal of the Heirship Certificate as issued in connection with Heirship Certificate Case No. 146/2023, dated 10.02.2023; would go to reveal that the respondent was granted Heirship Certificate in respect of the whole property covered under LSC No. Azl-968/1983. The respondent, on receipt of the Heirship Certificate, approached the authorities of Land Revenue & Settlement Department, Mizoram, praying for transfer of the LSC in his name. Accordingly, the Assistant Settlement Officer, Land Revenue & Settlement Department, Mizoram, issued a Residential Land Settlement Certificate dated 22.01.2024, incorporating the name of the respondent against LSC No. Azl-968/1983, for a

plot of land measuring 148.05 Sq metres. The Residential Land Settlement Certificate dated 22.01.2024, was so issued in succession or supersession of the previous certificate, issued in favour of late Lalsangliana and late Lalrosanga.

22. The above discussion would go to show that the order dated 10.02.2023, so passed by the learned Senior Civil Judge-II, Aizawl, in Heirship Certificate Application No. 146/2023, as well as the Heirship Certificate so issued in respect of the respondent, has the effect of transferring the land involved in LSC No. Azl-968/1983, solely in respect of the heir of late Lalsangliana, ignoring the rights of the co-holder of the said LSC; Lalrosanga, whose share is now being claimed by the present appellants.

23. Accordingly, the order dated 10.02.2023 having the effect of devolving the lands involved under the said LSC in favour of the respondent, herein, and the same not being so done after affording an opportunity of hearing to late Lalrosanga and/or persons claiming inheritance under him, the order dated 10.02.2023, passed in Heirship Certificate Case No. 146/2023 cannot be sustained and the same stands set aside and quashed. Consequently, the Heirship Certificate as issued in favour of the respondent, on 10.02.2023 by the Senior Civil Judge-II, Aizawl, also stands interfered with.

24. The order dated 10.02.2023 and the consequential Heirship Certificate as issued in favour of the respondent, by the Senior Civil Judge-II, Aizawl, having been interfered with, the Residential Land Settlement Certificate dated 22.01.2024 so issued in favour of the respondent by the Assistant Settlement Officer, Land Revenue & Settlement Department, Mizoram, cannot also be sustained and accordingly, the same also stands set aside.

25. The LSC No. Azl-968/1983 stands restored in the name of late Lalsangliana and late Lalrosanga.

26. The present appellants, as well as the respondent, herein, are at liberty to approach the competent Court of Civil jurisdiction as provided under the provisions of said Act of 2014, for being granted Heirship Certificate in respect of the land so covered by LSC No. Azl-968/1983 to the extent of the share, permissible to each of the parties to the present proceedings.

27. With the above observations and directions, the appeal stands allowed.

JUDGE

Comparing Assistant