

GAHC030006212024



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

Case No. : WP(C)/105/2024

Yogaraja and 4 Ors.
H.No. T-86, Tuikhuahtlang, Aizawl

2: Shanti Devi

3: Bishnu Maya

4: Aneeta Lalrinzuali

5: Aseem Lalfakawm

VERSUS

The State of Mizoram and 3 Ors.
Aizawl2:Secretary to Govt. of Mizoram
Land Revenue and Settlement Dept.

3:Director
Land Revenue and Settlement Dept.

4:D.I.G
23 Sector
Assam Riffl

Advocate for the Petitioner : Mr C Lalramzauva Sr. Adv.

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1-3

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT & ORDER (CAV)

Date : 09-12-2024

(Michael Zothankhuma, J)

Heard Mr. C. Lalramzauva, learned Senior Counsel for the petitioners assisted by Mr. L. Lalnunsiam, learned counsel. Also heard Ms. Zairemsangpuii, learned CGC for respondent no.4 and Ms. Caroline K. Lungawipuii, learned Government Advocate for respondent nos.1 to 3.

2]. The petitioners have put to challenge Sections 3, 4 and 5 of the Mizoram (Restriction on Use of Transferred Land) Act, 2002 (*hereinafter referred to as the Act*), in so far as it covers land under Pass No. 333 of 18.11.1929 and the Land Settlement Certificate (LSC) No. Azl. 873/1977 in the name of Shri Ramprasad Upadhyaya, covering an area of approximately 3.63 Bighas, which was subsequently converted into 5 LSCs, which are:-

- (i) LSC No. Azl. 873/1977 in the name of Shri Ramprasad Upadhyaya.
- (ii) LSC No. Azl. 977/1986 in the name of Shri Yogaraja,
S/o Shri Ramprasad Upadhyaya.
- (iii) LSC No. Azl. 978/1986 in the name of Shri Buddhi Raja, S/o Shri Ramprasad Upadhyaya.
- (iv) LSC No. Azl. 979/1986 in the name of Smt. Laxmi Kanta, D/o Shri Ramprasad Upadhyaya and
- (v) LSC No. Azl. 980/1986 in the name of Major Surjya,
located at Bethlehem Veng, S/o Shri Ramprasad Upadhyaya.

3] The petitioners' case is that the Assistant Superintendent Lushai Hills, vide Pass No. 333 of 18.11.1929, formally allotted land measuring approximately 20 bighas to one Hemlal Upadhya S/o Late Bhagirath Upadhya, Battalion Priest (Pujari) of A.R. Married Lines, Aijal.

4] The learned Senior Counsel for the petitioners submits that though Pass No. 333 of 18.11.1929 was an allotment of land, the word 'allotment' is not used in the said Pass. Instead the Pass states "allowed to remain where he is at present". He also submits that the boundary description of the land covered by Pass No. 333 of 18.11.1929, is provided in another document which is written in Hindi by the same authority, who had issued Pass No. 333 of 18.11.1929.

5] The learned Senior Counsel submits that Hemlal Upadhya is the brother of Ramprasad Upadhyaya, the father of the petitioner no.1. The petitioner no.2 & 3 are the daughters-in-law of Ramprasad Upadhyaya, while the petitioner nos.4 & 5 are the grandchildren of Ramprasad Upadhyaya.

6] The petitioners' case is that as per Annexure-2 to the writ petition, the area of the land covered by Pass No. 333 of 18.11.1929 is approximately 20 bighas. The land of Hemlal Upadhya was however encroached upon and occupied by the Assam Rifles in the year 1966.

7] Pursuant to the promulgation of the Lushai Hills District (House Site) Act, 1953, Ramprasad Upadhyaya submitted an application in 1969 for settlement of the land covered by Pass No.333 of 1929. Thereafter, the petitioner No.1 submitted an application on 16.02.1973, for issuance of land holding pass in respect of the entire land which had been allotted under Pass No. 333 of

18.11.1929.

8] Pursuant to the applications made, House Pass No. B-5/1974 in the name of the petitioner no.1's father Ramprasad Upadhyaya was issued on 09.09.1974, by the Directorate of Settlement and Land Records, Government of Mizoram, wherein the total area of the land was recorded as 49148 square feet (3.63 bighas), which was divided into Block-I having area of 23180 square feet, while Block II had an area of 25968 square feet.

9] The petitioners' counsel submits that though the area of Pass No. 333 of 18.11.1929 was 20 bighas approximately, Ramprasad Upadhyaya had been given House Pass No. B-5/1974 for 49148 square feet only, which was approximately 3.63 bighas.

10] Thereafter, on the application of Ramprasad Upadhyaya for conversion of the House Pass into a Land Settlement Certificate (LSC), House Pass No. B-5/1974 was converted in the year 1977 into LSC No. 873 of 1977, having an area of 3.63 bighas.

11] On 04.01.1986, Sh. Ramprasad Upadhyaya again applied to the respondent No. 3, for partition of LSC No. 873 of 1977 into 5 LSCs/plots. Allowing the said application, the State Government partitioned LSC No. 873 of 1977 into the following 5 LSCs:-

(i) Shri Ramprasad Upadhyaya - LSC No. Azl 873/1977 - (1.40 bigha).

(ii) Shri Yogaraja - LSC No. Azl 977/1986 - (0.55 bigha).

(iii) Shri Buddhi Raja - LSC No. Azl 978/1986 - (0.55 bigha).

(iv) Smt. Laxmi Kanta - LSC No. Azl 979/1986 - (0.55 bigha).

(v) Major Surgya - LSC No. Azl 980/1986 - (0.58 bigha).

12] The petitioners' counsel submits that when the petitioner No. 1 was planning to develop the land covered by LSC No. 873/1977 and LSC: Azl. 977/1986, by constructing a building in the year 1986, the same was obstructed by the Assam Rifles, by posting their Armed personnel within the said land.

13] On a complaint being submitted by the petitioner No.1 to the Revenue Department, Government of Mizoram, the Assistant Settlement Officer-I wrote a letter dated 29.05.1986 to the petitioner No. 1, with a copy to the Commandant 1st Assam Rifles Battalion, informing him that the land covered by LSC Nos. Azl 873/1977 and Azl. 977 of 1986 was beyond the area of the 1st Assam Rifles. The office of the Deputy Commissioner, Aizawl also wrote a letter to the 1st Assam Rifles Battalion Commandant, instructing him not to obstruct the construction works being carried out on LSC No. Azl. 977 of 1986.

14] Being aggrieved, the Union of India filed Title Suit No. 8/1986, "Union of India vs. (i) Ram Prasad and (2) Yogaraja" stating that the land covered by LSC No. 873 of 1977 and Azl. 977 of 1986 fell within the land belonging to the Union of India and as such, constructions which started in the year 1986 should not be allowed within those lands.

15] The case of the Union of India in Title Suit No. 8/1986 was that the Headquarter of 1st Assam Rifles Battallion was located at Aizawl, Mizoram from the year 1863 and had various units at different places in Mizoram. The land of the Assam Rifles included the land described in Schedule-I, which contained an

area of approximately 44 acres and was fully described with boundaries published in Assam Gazette dated 08.08.1952. The uncle of the petitioner no.1 Hemlal Upadhyaya was engaged by the Assam Rifles unit as a private employee of the Battallion to work as a pujari of the said unit Mandir and was paid cash allowance by way of contribution by various units of the Battallion. To facilitate the performance of puja, the pujari Hemlal Upadhyaya was allowed to stay in a hut built by the unit adjacent to the unit Mandir. Subsequently, in the year 1954, the unit Mandir was shifted to a different location on the other land of Assam Rifles at Aizawl. But the Pujari continued to live in the hut of the Mahadev Compound and performed the duties of pujari in the unit Mandir, which was shifted to a distance of approximately 1 km from the old place. In 1969, the Pujari expressed his inability to continue as a pujari any further because of his ill health etc. and the Battallion employed another pujari for the unit Mandir. Hemlal Upadhyaya had no land where he could go to and he approached the then Commandant to allow him to stay in the hut promising that he would vacate the same, whenever the Commandant asked him to do so. He was accordingly temporarily allowed to stay in the land. That in the last part of May, 1986 it came to the notice of the Plaintiff No.3, that some construction works had been started in the lands of Schedule 2 described in Schedule I." The Assam Rifles also came to know from letter dated 10.06.1986 issued by the Directorate of Land, Revenue and Settlement, Government of Mizoram that the petitioner no.1 and his father were holding lands on the basis of LSCs No.873 of 1977 and LSC No.AZL 977 of 1986, which was on Assam Rifles land.

16] In Title Suit No. 8/1986, which had been filed by the Union of India against the petitioner No. 1 and his father Ramprasad Upadhyaya, the Union of India had prayed for the following reliefs:-

- “a) A decree declaring title of the plaintiffs over the lands described in Schedule II.*
- b) A decree for eviction of the defendants or anybody claiming possession through the defendants and for delivery of khas possession of the said lands to the plaintiff.*
- c) A decree adjudging the purported land settlement certificate No. 873 of 1977 and No. 977 of 1986 as void.*
- d) Injunction*
- e) Other reliefs*
- f) Costs of the suit.”*

17] The petitioner No. 1 and his father filed a counter claim in Title Suit No. 8/1986, stating that the cause arose in favour of the petitioners (defendants) in Title Suit No. 8/1986 on 18.07.1986 and prayed for the following reliefs:-

“Let a decree be passed in favor of the defendant No. 2 ordering the plaintiffs to pay a sum of Rs. 80,000/- (Rupees Eighty thousand) only plus the interest at the rate of 12% per annum from 18.07.1986.

- (a) Let a decree be passed declaring that the defendants have the right, title and interest over the suit land and any other relief your Honor would deem fit.*
- (c) By way of mandatory injunction, the plaintiffs especially the Plaintiff No. 3 be restrained from interfering with peaceful possession of the land belonging to the defendants, covered under LSC No. 873 of 1977 and LSC No. Azl. 977 of 1986.*
- (d) Compensation for the fruit-bearing trees destroyed by the plaintiffs in the year 1966 as assessed by D.C., Aizawl.*
- (e) Cost of the suit be also decreed in favor of the defendants.”*

18] The following issues were framed by the learned Trial Court in Title Suit No.8/1986, which are reproduced hereunder:-

- “i. Whether the Plaintiffs have any right, title or interest over the suit land?*
- ii. Whether the defendants have any right, title or interest over the suit land?*
- iii. Whether the LSC No. 873 of 1977 and Azl. 977 of 1986 are overlapping the plaintiffs land and are liable to be declared void?*
- iv. Whether defendants are liable to be compensated and whether they are liable to be evicted.*
- v. Whether the said case is maintainable?*
- vi. Whether the suit is barred by limitation?*
- vii. Whether the suit is barred for waiver, acquiescence and estoppels?*
- viii. Whether the suit is bad for non-joinder of necessary parties?*
- ix. Whether the suit land is included in the land of the plaintiff?*
- x. Whether the pass issued vide No. 333 dated 18.11.1929 by the Asst. Superintendent of Lushai Hills and LSC No. 873/1977 issued by the Government of Mizoram is valid or not?*
- xi. Who is competent to issue pass/LSC in respect of lands in Mizoram?”*

19] The Court of the Magistrate 1st Class, Aizawl passed Order dated 29.05.1991 in Title Suit No. 8/1986 rejecting the injunction petition submitted by the Union of India, where there was a prayer for restraining the petitioner No. 1 and his father from making any construction on the disputed land. The Magistrate 1st Class also directed the Union of India not to interfere with the peaceful possession of the land covered by LSC No. 873 of 1977 and LSC No. Azl. 977/1986.

20] The Order dated 29.05.1991 passed by the Magistrate, 1st Class, Aizawl in Title Suit No. 8/1986 was put to challenge by way of Civil Revision No. 3/1991 before the Court of Addl. Deputy Commissioner/Addl. District Magistrate

(Judicial), Aizawl. The Revision Court dismissed the Civil Revision No. 3/1991, vide Order dated 08.12.1992.

21] The Union of India thereafter filed Second Appeal against Order, "SAO No. 1/1993" before this Court and the same was disposed of, vide Judgment and Order dated 25.01.2000, by setting aside and quashing the Order dated 29.05.1991 passed by the Court of Magistrate 1st Class, Aizawl in Title Suit No. 8/ 1986 and the Order dated 08.12.1992 passed by the Court of Addl. Deputy Commissioner/Addl. District Magistrate (Judicial) Aizawl in Civil Revision No. 3/1991. This Court held in SAO No. 1/1993 that the sole question to be adjudicated was whether the petitioner no.1 herein and his father, had acquired any right, title or interest of permanent nature over the disputed land. The question could be adjudicated only by the learned Trial Court after recording evidence.

22] The Appellate/High Court further directed that status quo as on 25.01.2000 should be maintained in respect of the disputed land by both the parties. The Union of India was further directed not to evict the petitioner No. 1 and his father, except in due course of law. The Trial Court was thereafter directed to dispose of the suit within a period of three months on merit, without being influenced by the observations made in the SAO No. 1/1993.

23] Subsequent to the above facts, Title Suit No. 8/1986 was disposed of by the Court of the Civil Judge-III, Aizawl, vide Judgment and Order dated 12.12.2019, by holding that the Union of India could not prove their title over the disputed land. Further, the plaintiff Union of India, had failed to implead the necessary party, that is, the Land Revenue & Settlement Department,

Government of Mizoram. The counter claim filed by the petitioner No. 1 and his father was also dismissed by the learned Trial Court.

24] The petitioners' counsel submits that in view of the Mizoram (Restriction on Use of Transferred Land) Act, 2002 and more particularly, Section 2(e) and Section 3 of the Act, the land belonging to the petitioners in terms of Pass No. 333/1929 could now vest upon the State of Mizoram, when the Assam Rifles vacates the land of the petitioners.

25] The petitioners' counsel thus prays that the impugned provisions of Section 3, 4 and 5 of the Act, as well as the boundary description and the sketch map, in so far as the same relates to land covered by Pass No. 333/1929 alongwith the 5 LSCs of the petitioners are concerned, should be declared as illegal or inoperative. In the alternative, the petitioners have prayed that the boundary description of the main barrack area and the sketch map area of the Assam Rifles occupied land, should be excluded from being taken over by the Government of Mizoram.

26] Ms. Zairemsangpuui, learned CGC appearing for the respondent No. 4, on the other hand, submits that the claim of the petitioners over the disputed land, as per the counter claim filed in Title Suit No. 8/1986 was dismissed by the Court of the Civil Judge-II in Title Suit No. 8/1986. As such, when the claims of either of the parties has not been decreed by the learned Trial Court in Title Suit No. 8/1986, the proper procedure is to file an appeal on the parties claim to the right, title or interest over the disputed land. She submits that the prayers of the petitioners in their Counterclaim in Title Suit No. 8/1986 having been dismissed, the petitioners would have to file an appeal against the said

Judgment and Order passed in Title Suit No. 8/1986, instead of approaching this Court by way of a writ petition.

27] Ms. Caroline K. Lungawipuii, learned Government Advocate appearing for the State Government submits that the issue of settling the right, title and interest over the disputed property can be done, only with the Land Revenue and Settlement Department, Government of Mizoram being made a party in the Court proceedings. However, the Union of India, the petitioner no.1 herein and his father had not impleaded the Land Revenue & Settlement Department, Government of Mizoram as a party in Title Suit No. 8/1986. As such, she does not have any comments to make at this juncture, without receiving instructions from the State Government.

28] We have heard the learned counsels for the parties.

29] Though there is a signature of the alleged Assistant Superintendent of Lushai Hills in the photocopy of Pass No. 333 of 18.11.1929 issued by the Assistant Superintendent Lushai Hills, there is no name mentioned in Pass No. 333 of 18.11.1929. A perusal of the signature also does not indicate the name of the person who put the signature. However, in the retyped copy of Pass No. 333 of 18.11.1929, which has been typed by the petitioners, the name of Assistant Superintendent of Lushai Hills is recorded as C McGall. In our view, there is nothing to show that the signature given in Pass No.333 of 18.11.1929 is the signature of one C. McGall.

30] The boundary description which has been written in Annexure 2 of the writ petition is in Hindi and the words below the boundary description basically

states '*Mahadev Tilla Aijal*'. No person or authority has made or has signed the said boundary description (Annexure-2). Though the petitioners have also relied upon a Surveyor Map which is Annexure 3 to the writ petition, to show the area of the land allotted to Hemlal Upadhyaya, it is seen that the said Surveyor Map was made by some "Buannel Geo Solution & Services" in the year 2023. As such, it is clear that there is nothing to connect the boundary description at Annexure 2 or Annexure 3 to Pass No. 333 of 18.11.1929, which only states as follows: -

"Hemlal Upadhyaya S/o Late Bhagirath Upadhyaya, Battalion Priest of A.R. Married Lines, Aijal is allowed to remain where he is at present".

31] The said Pass No. 333 of 18.11.1929, in our view, is not a formal order of allotment of land given to Hemlal Upadhyaya, who is the brother of Ramprasad Upadhyaya. It is only a Pass allowing Hemlal Upadhyaya, who is the uncle/granduncle of the present petitioners, to "remain" where he was. The word "remain" cannot be construed to be an "allotment" of land. As per the definition given to the word "remain", in various English Dictionaries, the word "*remain*" means to stay in the same place or in the same condition. We accordingly cannot give a different meaning to the word "remain". It must be given its natural meaning and significance in terms of the definition provided in the dictionaries. The very fact that the petitioners claim ownership of the land under Pass No.333 of 1929 shows that the land is Assam Rifles Land. Thus, if the petitioners are not able to prove that land had been allotted in terms of the above Pass No.333 of 1929, the land claimed by them on the basis of the House Pass & 5 LSCs cannot stand on its own legs.

32] As we have already taken a view that there is nothing to show that the

area of the land covered by Pass No. 333 of 18.11.1929 is 20 bighas, we do not agree with the stand taken by the petitioners that the area of their land was 20 bighas, as per the said Pass No. 333 of 18.11.1929.

33] As can be seen from the submission made by the learned Senior Counsel for the petitioners and the documents on record, House Pass No. B-5/1974 was issued by the Government of Mizoram, Department of Land Revenue & Settlement in favour of the petitioners' father, for land measuring 49148 square feet, which is roughly 3.63 bighas and not 20 bighas. The issuance of House Pass No. B-5/1974, with the area of 49148 square feet, was never put to challenge or objected to by Ramprasad Upadhyaya or Hemlal Upadhyaya since 1974. Further, the photocopy of House Pass No.B-5 of 1974 shows that there is no signature of any officer, who signed the House Pass. Instead of a signature, there is only Sd/- recorded in place of the officer/person who allegedly issued the House Pass. Thus, the validity of the House Pass would also have to be looked into, besides the consequential LSCs. In addition to the above, Ramprasad Upadhyaya had been issued LSC No. 873 of 1977 measuring an area 3.63 bighas, by converting the House Pass No. B-5/1974.

34] Ramprasad Upadhyaya has never challenged or objected to the issuance of House Pass No. B-5/1974 or to LSC No. 873 of 1977. The subsequent bifurcation/issuance of 5 other LSCs from the LSC No. 873 of 1977 in the name of the petitioner no.1, their husbands and parents, has also not been put to challenge by the petitioners or their predecessors at any point of time. The petitioners and Ramprasad Upadhyaya, let alone Hemlal Upadhyay, have never filed a case in a Court, claiming right, title and interest over 20 Bighas of land, on the basis of Pass No. 333 of 1929, except by way of this writ petition.

35] As such, it can be safely said that the petitioners and their predecessors have waived any right that they might have had in respect of any area pertaining to the land Pass No. 333 of 18.11.1929, beyond the area provided in the House Pass and 5 LSCs mentioned earlier. Besides the above, we find that the House Pass No.B-5/1974 was not issued on the basis of the Pass No.333 of 1929. LSC No.873/1977 was also not issued on the basis of Pass No.333 of 1929. As such, no claim for land can be made after 95 years, on the basis of an alleged Pass No.333 of 1929, beyond the limitation period.

36] The petitioners having categorically stated that the land was encroached by the Assam Rifles in 1966 and the House Pass being allegedly issued in 1974, with the subsequent LSCs issued in 1977 and 1986, the belated attempt to indirectly claim ownership of land not covered by the 5 LSCs, is to our mind, hit by the provisions of the Limitation Act, 1963, besides the petitioners' and their predecessors waiving any right they might have had over and above any area provided in the 5 LSCs.

37] In the case of ***J. Thanslama vs State of Mizoram, (2017) 11 SCC 525***, the Supreme Court held that the Limitation Act, 1963 is applicable to the State of Mizoram.

38] In the case of ***Radhey Shyam Vs. Chhabi Nath***, reported in ***(2015) 5 SCC, 423***, the Supreme Court has held that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Articles 226 and 32. In the present case, the petitioners have sought to do away with filing any appeal against the dismissal of their counter claim in Title Suit No.8/1986, by filing this petition under Article 226. The petitioners are also

aware that a challenge has been made to the issuance of the LSCs to the petitioners and other persons by way of PIL No.31/2020, which is pending before this Court. As such, this Court is of the view that the challenge to the Rules made in this writ petition, without first succeeding in their claim for right, title and interest over their LSC lands, cannot be entertained by way of this writ petition under Article 226 of the Constitution.

39] In ***Radhey Shyam(supra)***, the Supreme Court had held at para 18 & 19 as follows:-

“18. While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Article 226 and 32.

19. Another Bench of three judges in Sadhana Lodh vs. National Insurance Co. Ltd., (2003) 3 SCC 524 considered the question whether remedy of writ will be available when remedy of appeal was on limited grounds. This Court held (SCC p. 527, para 6) :

“6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see National Insurance Co. Ltd. v. Nicolletta Rohtagi (2002) 7 SCC 456). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if

where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution."

Thus, the Supreme Court in ***Radhey Shyam(supra)*** held that judicial orders of writ Court are not amenable to the writ of certiorari under Article 226. In the present case, though the dismissal of the counter claim in Title Suit No. 8/1986 has not been put to challenge, the present writ petition under Article 226 is an attempt to circumvent/bury the judgment and order passed in Title Suit No. 8/1986.

40] Title Suit No. 8/1986 and the counter claim filed by the petitioner No. 1 and his father was dismissed vide Judgment and Order dated 12.12.2019. When no decree was issued in Title Suit No. 8/1986 by the learned Court of Civil Judge-III, Aizawl, the proper and only recourse to claim right, title and interest

over the land covered by the LSC would be to file an appeal in respect of LSC No. 873/1977 and the subsequent LSCs issued/bifurcated from LSC No.873/1977.

41] The above being said, we make it clear that the petitioners' claim with regard to right, title and interest over the land covered by Pass No. 333 of 18.11.1929, beyond what has been provided in the House Pass and LSCs mentioned earlier, cannot be gone into now. The question of right, title and interest over House Pass and the petitioners' LSCs are also not being decided by this Court and any observation made by this Court with regard to whether the House Pass and LSCs were validly issued or not should not be taken as the final observation of this Court. The issue whether Pass No.333 dated 18.11.1929 was valid or not has to be decided with reasons. Further, even if it is assumed to be valid, the Pass cannot be said to be a land allotment order due to the reasons stated earlier. The only issue that has been decided by this Court is that the petitioners cannot make a claim beyond the area that is provided in the House Pass and in the LSCs.

42] The above being said, Mizoram became a Union Territory in the year 1972 and a State in 1986. Prior to that, Mizoram was known as the Mizo District (which was earlier known as the Lushai Hills District). It was a district in the State of Assam from 1947 till 1972. The Government of Assam had in the Official Gazette dated 08.08.1952 fully described the boundary area of the Assam Rifles land. As an Official Gazette is an authorized legal document of the Government, the boundary description provided therein bears official recognition of the State Government. The Official announcement by the State Government, recognizing the boundary area of the Assam Rifles land cannot be ignored and

would have to be accepted as the boundary/area of the Assam Rifles, unless there is evidence to the contrary.

43] The "Act" came into force on 23.11.2005, with the purpose of restraining allotment and use of land at Aizawl, to be vacated by the Assam Rifles and transferred to the Government of Mizoram, to have the best use of the same for public purposes.

Sections 2(e), 3, 4 and 5 of the Mizoram (Restriction on use of Transferred Land) Act, 2002 states as follows:-

"2(e). "transferred land" means the land vacated by the Assam Rifles formations and handed over to the Government in and around Aizawl.

3. VESTING OF TRANSFERRED LAND IN THE STATE GOVERNMENT.

All land vacated by the Assam Rifles in and around Aizawl as specified in the Schedule shall vest, free from all encumbrances, in the Government, and shall be deemed to be, with all rights in or over the same appertaining thereto, the property of the Government, and all rights, title and interest of the Assam Rifles or others claiming through them or any person other than the Government, as may be claimed to be subsisting in such land on the appointed day, shall be deemed to have extinguished.

4. DUTY OF PERSON TO, HAND OVER POSSESSION OF TRANSFERRED LAND.

(1) Where any transferred land vests in the Government under section 3 of this Act, any person who is in possession of such land or portion of such land at the time of such vesting shall immediately hand over possession thereof to the Collector or to any other officer authorized by the Collector in this behalf.

(2) Any person not handing over the possession as required under sub-section (1) shall be deemed to be in unauthorized occupation of such land and shall be liable to be evicted, after giving an opportunity of being heard.

(3) If the Collector or any other authorized by him is opposed or impeded by anybody in taking over possession of any such land under this Act, he may use or cause to use such force as may be necessary to barest minimum to evict such person from the land.

5. RESTRICTION OF FUTURE USE OF TRANSFERRED LAND.

The transferred land as per the Schedule so vested in the Government under the provision of this Act shall be used or utilised by the Government only for Public purposes."

44] As can be seen from the provisions of the Act, all the lands that are going to be vacated by the Assam Rifles, in and around Aizawl, which are specified in the schedule, shall vest with the Government free from all encumbrances. The issue with regard to whether the petitioners' lands covered by the 5 LSCs, would vest with the Government, in terms of the Act, would depend upon the petitioners proving their right, title and interest over the said LSC lands.

45] We are of the view that the petitioners cannot be allowed to bypass the law laid down by the Supreme Court and indirectly claim right, title and interest of the LSC lands by filing this writ petition, without making a challenge to the judgment and order passed in Title Suit No. 8/1986. It is only after they establish their right, title and interest over the lands, by way of a decree passed by the Civil Court, can there be a challenge to the provisions of the Act. Thus, without any decree of the Court regarding their claim of right, title and interest over the suit land, the challenge to the provisions of the Act cannot be made, in the manner they are attempting to do so.

46] The above being said, it may be again reiterated that the petitioners are claiming right, title and interest, not only over the area covered by 5 LSCs, but

also on the area allegedly covered by Pass No. 333 of 1929. As stated earlier, Pass No. 333 of 1929 does not allot land to Hemlal Upadhyaya, it only allows Hemlal Upadhyaya (Pujari) to remain in the land. There is no allotment of land. There is also no boundary description or area of the land mentioned in Pass No. 333 of 1929. Further, Annexure-2 & 3 of the writ petition, which the petitioners' claim is the boundary description/area of Pass No. 333 of 1929, is not relatable to Pass No.333 of 1929.

47] There is nothing to show as to how the land allegedly covered by Pass No. 333 of 1929 has been inherited by the petitioners and by Ramprasad Upadhyaya from Hemlal Upadhyaya. The basis for inheritance of the same is not reflected anywhere. The manner/method of transfer of land covered by Pass No.333 of 1929 from Hemlal Upadhyaya to the petitioners is also not known. We are of the view that the petitioners cannot make any claim that they are the owners of land on the basis of Pass No. 333 of 1929, beyond the area provided in the House Pass and LSCs, inasmuch as, the said claim has been made only now, i.e., after 95 years from the date of issuance of Pass No. 333 of 1929, without any link being proved between the alleged Pass and the alleged area of 20 bighas.

48] The above being said, there is nothing to show that House Pass issued in the year 1974 or the LSCs that had been issued subsequently, as indicated in the foregoing paragraphs, have been carved out from the land covered by Pass No. 333 of 1929. The averments made by the petitioners in various paragraphs of the writ petition show that there are disputed questions of fact, which has to be decided by the Civil Court. As the petitioners have already approached the Civil Court by way of a counter claim, which was dismissed, the petitioners

would have to pursue their claim of right, title and interest over the suit land, as per the procedure provided in the Civil Procedure Code and the applicable laws to the State.

49] In view of the above reasons, we are of the view that the present writ petition is not maintainable, as the petitioners would have to first prove their right, title and interest over the suit land, prior to making a challenge to the provisions of the Act. The writ petition is accordingly dismissed. Interim order passed earlier stands vacated.

JUDGE

JUDGE

Comparing Assistant