

GAHC030006912024



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

Case No. : FAO/10/2024

C.Lalbiakthanga
S/o Khuangthiauva, R/o Bethel Veng, Champhai, Mizoram

VERSUS

State of Mizoram and 4 Ors.
R/b Chhief Secretary to the Govt. of Mizoram, Aizawl 2:The Deputy
Commissioner

3:The District Magistrate

4:The Mizoram Rural Bank

5:Sh TBC Lallawmzual

Advocate for the Petitioner : Mr Zoramchhana

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 08-11-2024

Heard Mr. Zoramchhana, learned counsel for the appellant, who has filed the instant appeal under Section 17 (2)(b) of the Mizoram Civil Courts Act r/w Section 104 and Order 43 CPC, 1908 against the Order dated 21.10.2024 passed

by the learned Court of Civil Judge, (Senior Division), Champhai in CMA No.60/2024 A/o Civil Suit No.13/2024.

2. The learned counsel submits that the appellant is the rightful owner of the LSC No. 3091/15/01/28 of 2015 located at Bethel Veng, Champhai which was fraudulently mortgaged without his knowledge by respondent No. 5 for which there is a Civil Suit No. 13/2024 pending in the Court of Senior Civil Judge, Champhai. Thereafter, due to the non-payment of loan by the respondent No. 5, the respondent No. 3 had issued an Eviction Order dated 11.09.2024, informing the appellant to vacate the area covered by LSC No. 3091/15/01/28 of 2015 on or before 23/9/2024.

3. The learned counsel for the appellant submits that aggrieved by this order, he had approached the learned Civil Judge, (Senior Division), praying for an ex-parte interim order to stay the said eviction order. However, the learned Trial Court, in its order dated 21.10.2024 in CMA No. 60/2024, had refused to grant an ex-parte interim injunction by mentioning that the Court was not inclined to grant an ad-interim injunction without giving opportunity of hearing to the defendants. Accordingly, the learned Trial Court had issued notice to the defendants/opposite parties and had fixed 20.11.2024 for appearance and submission of written objection by the defendants/opposite parties.

4. The learned counsel for the appellant submits that since the impugned eviction order has not been stayed, there is every likelihood of the appellant being evicted from his property covered under LSC No. 3091/15/01/28 of 2015 before the said date fixed on 20.11.2024 by the learned Trial Court. He has therefore, prayed for setting aside the order dated 21.10.2024 passed by the

learned Civil Judge (Senior Division) or to pass any order found appropriate by the Court. The learned counsel for the appellant has relied on the judgment and order of the Apex Court in ***Morgan Stanley Mutual Fund Vs. Kartick Das***, reported in ***(1994) 4 SCC 225*** (para 36), wherein the Apex Court had considered the granting of ex-parte interim injunction in certain circumstances.

5. Ms. Caroline K. Lungawipuii, learned Govt. Advocate, is present and accepts notice on behalf of the State respondent Nos. 1, 2 & 3.

The learned Govt. Advocate submits that she has yet to get instructions, however she does not strongly object to the stay of the Eviction Order dated 11.09.2024 till the date fixed for submission of written objection and hearing of the parties i.e. on 20.11.2024

6. I have heard the submissions made by the learned counsel for both the parties. On considering the nature of the appeal, which is against the order of the learned Court of Civil Judge, (Senior Division), Champhai in CMA No.60/2024 A/o Civil Suit No.13/2024, in not granted an ex-parte interim stay of the eviction order dated 11.09.2024 and on considering the apprehension of the appellant that he would be evicted from his LSC No. 3091/15/01/28 of 2015 before the next date fixed by the learned Trial Court i.e. on 20.11.2024, this Court find it fit to dispose of the instant FAO by interfering with the impugned Order dated 21.10.2024 only to the extent of, staying the operation of the eviction order (Hriattirna) issued by the District Magistrate, Champhai District, Champhai/respondent No. 3 till the date fixed for consideration of the matter on 20.11.2024 by the learned Senior Civil Judge, Champhai in CMA No.60/2024.

7. The learned Senior Civil Judge may make an attempt to dispose of the CMA No. 60/2024 expeditiously considering the nature of the submissions made by the learned counsel for the appellant.

Accordingly, the instant FAO No. 10/2024 stands disposed of as above.

JUDGE

Comparing Assistant