

GAHC030007122023



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

Case No. : RFA/53/2023

Union of India and Anr.
R/b The Secretary to the Govt. of India, Ministry of Defence, South Block, New
Delhi - 110011 2: The Chief Engineer
Project Pushpak
BR

VERSUS

Smt. Saithangpuii Sailo and 5 Ors.
D/o Biakthuama (L)
R/o Tuikual North, Aizawl 2:Sh. Thanzauva (L)

3:The State of Mizoram r/b The Secretary to the Govt. of Mizoram

4:The Director
Land Revenue and Settlement Department

5:Sh. D. Lalrintluanga

6:Sh. Bialzauva (L) r/b his wife and Legal Representative Smt. Lalzamliani Sail

Advocate for the Petitioner : Ms Zairemsangpuii, CGC

Advocate for the Respondent : Mr C Lalramzauva Sr. Adv. for R1

BEFORE

HON'BLE MRS. JUSTICE MARLI VANKUNG

Advocate for the appellants : Ms. Zairemsangpuii, CGC
Advocates for respondent No. 1 : Mr. C. Lalramzauva, Sr. Adv
Mr. Zoramchhana, Adv.
Advocates for respondent No. 2 : Mr. L.H.Lianhrima, Sr. Adv.
Ms. Ruth Lalruatfeli, Adv
Advocate for respondent Nos. 3 & 4 : Ms. Lalnunhlui, GA

Date on which judgment is reserved : 22.09.2025

Date of pronouncement of judgment : 19.02.2026

**Whether the pronouncement is of the
operative part of the judgment? : N/A**

**Whether the full judgment has been
Pronounced ? : Yes**

JUDGMENT & ORDER (CAV)

Heard Ms. Zairemsangpuii, learned CGC for the appellants. Also heard Mr. C. Lalramzauva, learned Senior Counsel for respondent No. 1, assisted by Mr. Zoramchhana, learned counsel and Mr. L.H. Lianhrima, learned Senior Counsel for respondent No. 2, assisted by Ms. Ruth Lalruatfeli and Ms. Lalnunhlui, learned Government advocate for the State respondents.

2. This is an appeal filed against the judgment and order dated 17.05.2023 passed by the Senior Civil Judge-I in Civil Suit No. 59/2016, wherein, the learned Trial Court had decreed for the appellants to hand over vacant and peaceful possession of the disputed land to the respondent No. 1. The appellants were also directed to deposit a rental compensation amounting to Rs. 8,70,1699/- for a period from 01.06.1963 to 31.12.2008 as already assessed by the State Government and make further assessment from 01.01.2009 till date, by setting aside the Order dated 24.11.2015 issued by the State Government.

3. The brief facts of the case is that the present respondent No. 1, being the plaintiff in Civil Suit No. 59/2016, had filed the suit by initially arraying the present respondent No. 2 (Thanzauva) as defendant No. 1 and the present State respondent Nos. 3 & 4 as State defendants Nos. 2 & 3 and Sh. D. Lalrintluanga and Sh. Bialzauva (L) represented by his wife Lalzamliani Sailo present Proforma Respondent Nos. 5 & 6 as Proforma Defendant Nos. 4 & 5, by challenging the order of cancellation of Permit No. 191/1974 by the defendant No. 2 (Revenue Department) vide impugned Order dated 24.11.2015.

4. The plaintiffs' (present respondent No. 1) case in Civil Suit No. 59/2016, was that Shri Liantudaia (L) was allotted landed property at Zemabawk, initially covered by Permit No. 682/1963, which he had bifurcated into two Permits viz.,

Permit No. 190/1974 and Permit No. 191/1974. The dispute is over the landed property covered by Permit No. 191/1974. Shri. Bialzauva, proforma defendant Nos. 5, had purchased a portion of the land covered by Permit No. 191/1974 and transfer of the land was effected on 10.06.1977. After the death of Liantudaia, on 20.02.1986, his son the Defendant No.1/ present respondent No. 2 (Thanzauva) had obtained Heirship Certificate in respect of all the properties left behind by his late father. After obtaining the said Heirship Certificate, the Defendant No. 1 (Thanzauva) had sold a portion of his land lying outside the BRTF fencing Aizawl to Lunglei road covered by Permit No. 191/1974 to the Plaintiff (present respondent No. 1) vide "Inremna Thuthlung" dated 12.04.2002. At the same time, the rest of the land covered by Permit No. 191/1974 was under the occupation of the BRTF and as the Defendant No. 1 was unable to take physical possession of the said land, he had submitted a letter dated 06.06.2002 to the Chief Secretary, Mizoram, Aizawl wherein he prayed for issuance of new land Pass in respect of Permit No. 191/1974 as per the boundaries which are reflected in the said Permit. In the mean time, the Defendant No. 3 had forwarded a letter dated 10.05.2002 to the Defendant No. 2 wherein it was stated inter alia that "*as per the report submitted on 11.09.1989, it was stated that Pu Liantudaia was allotted Garden Pass under Permit No. 682/63 by the defunct District Council Authority which was bifurcated*

into 2 passes vide Permit No. 190/1974 covering an area 4 1/2 Bighas and Permit 191/74 covering 2 Bighas of land. The report further stated that Liantudaia sold his Periodic Patta No. 191/1974 to Pu.Bialzauva and transfer of the land was effected on 10.06.1977. Since, Liantudaia sold his Periodic Patta No. 191/1974, he has no more claim as ownership right goes to Pu Bialzauva. With regards to connection of area of land under Permit No. 191/1974 from Bighas to 24.98 Bighas, it was decided vide Office Memorandum No. /B-84/Pt-II(A)/20 (A) dated 26.08.1991 (copy enclosed) that henceforth, only the area allotted as shown in the original paper be allowed for conversion into permanent settlement even if the boundary description covers the area. In compliance with the above instruction, claim of land for which Revenue Taxes are paid only can be considered by the Government. In this case also, claim of land for compensation in favor of Pu. Bialzauva was considered for which taxes are paid by the land owner. In view of above, as per the Land Revenue Acts and Rules pointed out above, claim of Pu H.Thanzauva S/o Liantudaia(L) may be treated as closed chapter."

5. After the Defendant No.1 (H. Thanzauva) came to learn of the said letter, he had submitted a letter dated 24.6.2002 whereby he informed the Defendant No. 2 that only a small portion of land was sold to the Defendant No.5 and that

his late father did not sell the entire land covered by Permit No. 191/1974. That this fact can be duly ascertained by comparing the boundary description of the LSC No. 103/1985 belonging to Defendant No. 5 and the boundary description of Permit No. 191/1974. Consequently, the State Defendants considered the letter dated 24.06.2002 and the Defendant No. 1 was informed vide letter dated 06.11.2002 that his application for conversion of Permit No. 191/1974 into House Site was approved by the Revenue Authorities vide letter dated 10.10.2002 to the extent of 2 bighas since the remaining area had been occupied by BRTF. As the land covered by Permit No. 191/1974, excluding the areas settled in favour of the Defendants Nos. 4 & 5, was still under the occupation of the BRTF, the Defendant No.1 had taken the help of the Plaintiff to take back possession of his land. In the meantime, on the basis of the report of a joint verification team, the area of land covered by Permit No. 191/1974 was corrected from 2 bighas to 29.48 bighas and on the approval of the Government vide Govt. Letter No.K.53011/214/00-REV/Vol-II dt.5/11/2003, Permit No. 191/1974 was re-issued with an area of 29.48 bighas vide Memo No.15013/2/98-DC(A) dt.17/11/2003.

6. The plaintiff's case was also that the Defendant No. 1 and the Plaintiff had executed Deed of Agreement dated 24.10.2003 wherein the Defendant agreed to give 17.16 bighas of land covered under Permit No. 191/1974 to the Plaintiff

if possession was taken back from the BRTF and had also executed the Irrevocable Power of Attorney dated 24.10.2003 authorizing the Plaintiff to take back possession of land from the Defendants BRTF, and Defendant No.1 again sold his land covered by Permit No. 191 of 1974 vide Sale Deed dated 19.11.2013 to the plaintiff. However, the Defendant No. 1 had served notice u/s 80 CPC to the Defendants Nos. 2&3 claiming right and title over Permit No. 191/1974 and due to the said Legal Notice, the Defendants Nos. 2 & 3, in order to verify the authenticity of the said Sale Deed dated 19.11.2013, forwarded the said Sale Deed and other documents to the Joint Director, Forensic Science Laboratory, whereby the reports of the hand-writing examination disclosed that the signature of the Defendant No. 1 in all the documents belonged to him. Thereafter, the Plaintiff No. 1 had filed W.P.(C) No. 48/2015 against the Defendant Nos. 2 & 3, which was disposed of at motion stage vide Order dated 01.05.2015 wherein the Defendant No. 3 was directed to dispose of the representation of the Plaintiff No. 1 where she had prayed for the Defendant Nos. 2 & 3 to continue processing conversion and partition of Permit No. 191/1974 into LSCs as already allowed. However, the same was not complied with, and as such, the Plaintiff No. 1 had filed a Contempt Petition No. 16 of 2015, which was disposed of when the Defendant No. 2 issued the Order dated 24.11.2015. The Order dated 24.11.2015 had relied on the letter dated

10.05.2002 issued by the Revenue department, and took the stand that the entire land covered by Permit No. 191/1974 was already converted into P.Patta No. 1/1977 and later mutated into LSC No. 103/1985 in favour of Bialzauva (the Proforma Defendant No.5) and cancelled the Permit No. 191/1974, and held that the same was the declared to be a vacant land and already allotted to BRTF. Aggrieved, the Plaintiffs had filed the Civil Suit No. 59/2016.

7. Both the parties i.e., the plaintiff and defendant Nos. 1 to 5, had adduced their evidence and Civil Suit was disposed of on dated 05.04.2019 wherein, it was held that, the Order dated 24.11.2015 was illegal and void and the cancellation of the Permit No. 191/1974 was set aside and quashed, and Permit No. 191/1974 which was re-issued on 17.11.2003 with the approval of the Govt. was revived. The Defendant No.2 &3 were directed to make necessary corrections with regard to Permit No. 191/1974 and to demarcate the land covered by the said Permit located at Zemabawk, Aizawl and to bifurcate them into two equal halves in favour of the Plaintiff No.1 and the Defendant No.1.

8. However, since the present appellants were not a party in Civil Suit No. 59/2016, this court in RFA No. 16/2020, in its order dated 16.09.2021, had remanded the matter back to the learned Trial Court with a direction to implead the present appellants as parties to the suit.

9. Accordingly, in compliance with the Judgment and Order dated 16.09.2021, the matter was considered again by the learned Trial Court by impleading the present appellants as defendant Nos. 6 & 7. The learned Trial Court, on consideration of the pleadings of both the parties framed the following issues:

1) Whether the suit is maintainable in its present form and style.

2) Whether there is any cause of action in favor of the plaintiff and against the Defendants.

3) Whether the suit barred by limitation, doctrine of estoppels and acquiescence.

4) Whether the suit has been properly valued for the court fees or not.

5) Whether the suit is bad for non-joinder/misjoinder of necessary parties.

6) Whether the plaintiff failed to comply with Section 80 of CPC or not.

7) Whether the Defendant No. 1 had inherited Permit No. SDCC/HC- 134/2000/605-7 dated 14.03.2000 or not.

8) Whether the Defendant No. 1 had sold his land covered by Permit

No. 191/74 to the Plaintiffs at any point of time by executing 'Inremna Thuthlung' dated 12.04.2002 and Sale Deed dated 19.11.2013. If so, whether the said 'Inremna Thuthlung' and the said Sale Deed are valid in the eye of the law.

9) Whether Permit No. 191/74 re-issued on 17.11.2003 by the State Defendants is valid or not.

10) Whether the area and boundary of LSC No. 103/85 in the name of Shri. Bialzauva (Proforma Defendant No. 5) covers the entire area of the land covered by Permit No. 191/74.

11) Whether the Power of Attorney dated 24.10.2003 is valid or not.

12) Whether the Deed of Agreement dated 24.10.2003 is valid or not.

13) Whether the expert opinion of handwriting vide opinion No. FSL/741/D(AZL)-34/15 dated 11.09.2015 is acceptable or sustainable in the eye of law.

14) Whether the Order dated 24.11.2005 cancelling Permit No. 191/74 is illegal, null and void or not.

15) Whether the Defendant Nos. 6 & 7 occupied Permit No. 191 of 1974 without acquiring the same.

16) Whether the Defendant Nos. 6 & 7 are liable to pay rental compensation to the Plaintiff.

17) Whether the Defendant Nos. 6 & 7 should hand over vacant and peaceful possession of Permit No. 191/1974 if the same, is not acquired as per law.

18) Whether the Plaintiffs are entitled to the reliefs claimed, if so, to what extent.

10. During the course of the subsequent proceeding, the evidence of the plaintiff/present respondent No. 1 was again recorded while the State defendants/present respondent Nos. 3 to 5 preferred not to adduce any additional evidence other than what was recorded during the earlier proceedings. The defendant No. 1/present respondent No. 2 adduced further evidence and the defendant Nos. 6 & 7/present appellants had adduced their evidence by producing two defendant witnesses.

After hearing both the parties, the learned Trial Court had decided all the

issues in favour of the present respondent Nos. 1 & 2 and vide its Judgment & Order dated 17.05.2023 decreed as follows:-

i) That the Order dated 24.11.2015 passed by the Defendant No. 2 was declared as illegal, null and void and upheld the validity of the restored Permit No. 191/1974 which was re-issued on 17.11.2003 with the approval of the Government.

ii) the entire land covered by Permit No. 191/1974 with an area of 20.2 bighas as per spot verification in favour of the Plaintiff and the Defendant No. 1 bifurcating in equal halves, with a direction to the Defendants Nos. 2 & 3 to bifurcate the suit land in the names of the Plaintiff and the Defendant No. 1.

iii) The Defendants Nos. 6 & 7 were directed to hand over vacant and peaceful possession of the said land to the Plaintiff within a period of 3 months or to proceed for acquisition of the same within a further period of 3 months.

iv) Defendants Nos. 6 & 7 were directed to deposit rental compensation amounting to Rs. 8,70,01,699/- for the period and from 01.06.1963 - 31.12.2008 as already assessed by the State Govt. within a period of 3 months and to make further assessment of rental compensation to be made by the Defendants Nos. 2 & 3 for the period from 01.01.2009 till date or till the land is acquired and the same is to be deposited within a period of 90 days after

making of the assessment.

Hence, the appeal.

11. Ms. Zairemsangpuii, learned CGC submitted that the learned Trial Court had failed to taken into account the oral as well as the documentary evidences adduced by the defendants witnesses in Civil Suit No. 59/2016. She submitted that the respondent No. 1/plaintiff in the Civil Suit had submitted her re-cast plaint without filing any Misc. Application for amendment of the plaint, which was beyond the order of this court in RFA No. 16/2020 dated 16.09.2021. She stated that, in the recast plaint, the respondent No. 1 had changed almost all the stand taken by her in her previous plaint by incorporating new developments which would strengthen her case and claimed area change from 27 bighas – 25 bighas. She also submitted that the name of Lalnunnemi Sailo was left out in the recast plaint without mentioning any reason. She also submitted that the respondent No. 1 has already submitted her examination-in-chief which was based on her old plaint and the same was cross examine by the counsel for the defendant. However, later on after recast plaint was made, she submitted her examination in chief again which was based on her recast plaint. However, the learned Trial Court did not decide examination-in-chief the court would relied on, which is a violation of Order dated 16.09.2021 passed in RFA

No. 16/2020.

12. The learned CGC also submitted that the respondent No. 1/Plaintiff had 4 witnesses including herself and they have submitted the examination-in-chief based on the previous plaint of the plaintiff/ respondent No. 1. The learned Trial Court failed to clarify whether the court had relied upon the evidence already taken prior to the implement of the present appellants/ Union of India as respondent Nos. 6 & 7. The State Govt. has produced two witnesses namely, Smt. Martin Lalhlupuii, Under Secretary, Revenue Department and Shri. Rinzamlova, Joint Director of Survey, Revenue Department, who have submitted the examination-in-chief and also crossed examine. However, the said witnessed adduced the evidence based on the old plaint and the old written statement, but the learned Trial Court did not decide or passed any order regarding which part of portion of evidence taken prior to the previous plaint would be retained and relied on since the old plaint and the recast plaint differ from each other.

13. The learned CGC further submitted that the learned Trial Court had wrongly decided the issue No.3 i.e.,“whether the suit is barred by the limitation doctrine of Estoppel and Perpetuities”.

The learned CGC submitted that the learned Trial Court failed to appreciate the fact that the suit was filed by the respondent No. 1/plaintiff in Civil Suit No.

59/2016 after a lapse of 53 years from the date of occupation of the land in question by the Union of India and after 46 years from the date of Departmental Pass No. 4/1970 and also after 27 years after the Union of India had acquired the land in 1989. The suit filed by the respondent No. 1/plaintiff is therefore barred by limitation. However, this point was not considered by the learned Trial Court. The learned CGC in support of her submission cited the case of ***J. Thanzama Vs. State of Mizoram & Ors.***, wherein the Apex Court held that the Indian Limitation Act is applicable in the State of Mizoram.

14. The learned CGC further submitted that the learned Trial Court had wrongly decided the issue that the respondent No. 2/defendant No. 1 had sold his land covered by Permit No. 191/1974 to the respondent No. 1/plaintiff by executing "Inremna thuthlung" dated 14.04.2002 and Sale Deed dated 19.11.2013. She submitted that there are contradictions in the examination-in-chief and cross examination of the respondent No. 2/defendant No. 1 which shows how unreliable the witness is, however, the learned Trial Court did not take into account the contradictory statements made by respondent No. 2/defendant No. 1-Sh. Lalthanzauva. She submitted that it is clear that he did not come to the court with clean hands.

In support of her submission, the learned CGC relied on the judgments of

the Apex Court in ***Suzuki Parasrampuriah Suitings Private Limited Vs. Official Liquidator of Mahendra Petrochemicals Limited (In Liquidation) & Ors.***, reported in ***(2018) 10 SCC 707*** and ***Union of India & Ors. Vs. N. Murugesan & Ors.***, reported in ***(2022) 2 SCC 25***, wherein the Apex Court held that a party cannot be permitted to blow hot and cold, fast and loose or appropriate and reprobate whenever they so desired. That a litigant can take different stands at different times but cannot take contradictory stand in the same case. She also relied on the judgment of the Apex Court in ***Ramjas Foundation & Anr. Vs. Union of India & Ors.***, reported in ***(2010) 14 SCC 38***, wherein the Apex Court held that the principal that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and is not entitled to any relief.

15. The learned CGC further submitted that the Trial Court had erred in deciding that the boundary of LSC No. 103/1985 in the name of Sh. Bialzauva (Proforma defendant No. 5 in the Civil Suit) does not cover the entire area of the land covered by Permit No. 191/1974. The learned CGC pointed out that when the State defendant filed their written statement, it was clearly mentioned that the LSC No. 103 /1985 in the name of Sh. Bialzauva covers the entire area of land covered by Permit No. 191/1974 and further the Heirship Certificate for the suit land issued to the plaintiff is not valid as Pu Liantudaia no longer has the

ownership right over the suit land in the year 2000. This fact was supported by the two witnesses for the State defendant namely, Smt. Martin Lalhlupuii, Under Secretary, LR&S and Sh. Rinzamlova, Joint Director of Survey Revenue Department. She also submitted that in the LSC No. 103/1985 at the last paragraph it was written that "This will supersede Periodic Patta No. 1/1977 and a house site LSC is prepared from this". The LSC itself clearly reveals that the Permit No. 191/1974 which was later on converted into Periodic Patta No. 1/1977 and again converted into LSC No. 109 of 1985 superseded Periodic Patta No. 1/1977 (arising out of Permit No. 191/1974).

16. The learned CGC thus submitted that the Permit No. 191/1974 was already converted into Periodic Patta No. 1/1977 (area 2 bighas) and Sh. Liantudaia again sold his Periodic Patta No. 1/1977 to Sh. F. Bialzauva and the mutation was accordingly done on 10.06.1977 which was again converted into LSC No. 103/1985 in favour of Sh. F. Bialzauva. Thus, the LSC No. 103/1985 of Sh. F. Bialzauva had been acquired for the purpose of Office Complex of Project Pushpak (BRTF) vide Award No. 9/1989 and he had already received the compensation for the acquisition of the said land. The learned counsel submits that the name of Sh. F. Bialzauva is reflected at Serial No. 48 of the Award No. 9/1989 as the owner of LSC 103/1985. The same fact has been highlighted in the written statement of the Union of India and also supported by the two

witnesses namely, Sh. Chalhmingthanga, Joint Director (AD&M) and Narendra Kumar Nishan, AE (Civil) HQCEP before the learned Trial Court. In the verification report for Block-III, it was written that "there is only one claimant of compensation within Block-III namely Pu F. Bialzauva, there is no dispute within Block-III".

The learned counsel for the appellant also submitted that, the deposition of the witnesses the State Government as well as the Union of India clearly shows that the area and boundary of LSC No. 103/1985 in the name of Shri F. Bialzauva/ Pro-forma defendant No. 5, covers the entire area of land covered by Permit No. 191/1974. If the Permit No. 191/1974 covered an area of 29.148 bighas there is no such space to cover such a huge area at the land in question, as such there is no possibility that some part of the Permit No. 191/1974 still existed.

17. The learned CGC further submitted that the learned Trial Court has erred in deciding that the Order dated 24.11.2015 cancelling Permit No. 191/1974 as illegal. The learned Trial Court did not fully appreciate the evidence adduced by the parties wherein the State Govt. in their written statement has clearly stated that the reason why the Order dated 24.11.2015, cancelling Permit No. 191/1974 was issued by the Secretary, Govt. of Mizoram, Land Revenue &

Settlement Department was done in compliance with the order of this court 01.05.2015 in connection with contempt Case (C) No. 16/2015. The authorities of Land Revenue & Settlement Department had enquired into the matter and had verified the relevant and original records with regard to the allotment and settlement of land which was purchased by the petitioner Smt. Saithangpui Sailo. The State Govt. in reply to the enquiry stated that the Govt. vide its letter 10.05.2002 stated that the Permit No. 191/1974 was already converted into Periodic Patta No. 1/77 (Areas = 2.00 bighas) by Pu Liantudaia which superseded the Permit No. 191/1974. The said Periodic Patta No. 1/77 was sold to Mr. F. Bialzauva and mutation was accordingly done on 10.06.1977 which was again converted into LSC No. 103/1985 in favour of Mr. F. Bialzuava. He submitted that, all the transaction was done before the dead of Mr. Liantudaia who died on 20.02.1986.

The learned CGC thus also challenged the validity of the Heirship Certificate issued since Pu Liantudaia was not the owner of the land in the year 2000.

18. The learned CGC further submitted that the Trial Court had wrongly decided that the defendant Nos. 6 & 7 occupied Permit No. 191/1974 without acquiring the land. She stated that the respondent No. 1/Plaintiff never stated in her plaint that the land of the plaintiff had been occupied by the BRTF but had

stated in her plaint that the defendant No. 1 had hired the plaintiff to take back position of his land for which purpose power of attorney dated 19.03.2002 was executed by defendant No. 1. The learned CGC submitted that the plaintiff/respondent No. 1 had just stated that the action of the defendant Nos. 6 & 7 (Union of India) in occupying the land of the plaintiff without acquiring the land and without paying rented compensation is illegal. However, the plaintiff had failed to produce any evidence to prove the same. She also submitted that, the State Govt. had clearly stated that there is no existent of Permit No. 191/1974 in the Order dated 24.11.2015 while the written statement and cross examination of the two defendant witnesses proved that the Order dated 24.11.2015 was issued legally. She submitted that 38.2 acres of land at Zemabawk for Project Pushpak had been already allotted in the name of the Principal Secretary to the Govt. of India, Revenue, Excise & Taxation Department vide Order dated 04.12.1982. Out of 38.2 acres of land 29.6 acres belong to the Government and 8.6 acres is Private land. She also submitted that, the evidence adduced and the written statement of the Union of India corroborated with each other to prove that BRTF occupied the land in question and the plaintiff and the witnesses never rebutted the same statement.

The learned CGC thus submitted that the Civil Suit No. 59/2016 should have been dismissed by upholding the Government letter dated 24.11.2015.

19. Mr. C. Lalramzauva, learned senior counsel for respondent No. 1/Smt. Saithangpuii submitted that the instant case is pertaining to the land covered by Permit No. 191/1971. On the demise of Sh. Liantudaia, Heirship Certificate was issued to the respondent No. 2 in respect of all the properties left by the late Sh. Liantudaia. Thereafter, on 12.04.2002 the respondent No. 1 and respondent No. 2 signed an agreement "Inremna thuthlung" in respect of the land covered by Permit No. 191/1974 for a sum of Rs. 20,000/- to respondent No. 1/Smt. Saithangpuii. The agreement also stated that respondent No. 2 would be responsible for any dispute that may arise with BRTF concerning the sale of the mentioned land and if the respondent No. 2 was unable to retrieve the land, he would pay 10% interest on the Rs. 20,000/- received from compensation. Thereafter, vide an application dated 06.06.2002, the respondent No. 2 made an application to the Chief Secretary for proper measurement of the area of Permit No. 191/1974 and for issuance of a fresh past as per the boundary description. The area of the land of Permit No. 191/1974 was recorded as 2 bighas, however, on re-measurement it was found to be 29.4 bighas, but on the basis of an office memorandum dated 26.08.1991 it was wrongly decided that only the area allotted as shown in the original paper would be allowed for conversion into a permanent settlement even if the area of the Permit No. 191/1974 was only 2 bighas.

20. The learned Senior Counsel submitted that the available records show that Sh. Liantudaia had sold his land covered by Permit No. 191/1974, having an area of 2 bighas to Sh. F. Bialzauva on 10.06.1977, the remaining portion was not reflected in Block-III. While Shri. Liantudaia (late) had sold only a portion (16765 sq.ft.) of his land covered by Permit No. 191/1974 to Sh. F. Bialzauva in the year 1979 and the remaining portion was never sold to Sh. F. Bialzauva. Sh. F. Bialzauva was later issued Periodic Patta No. 1/1977, which was later converted into LSC No. AZL 103/1985. Later vide Award No. 9/1989, the LSC No. AZL 103/1985 bought by Sh. Bialzauva having an area of 16765 sq.mtrs. was acquired for the purpose of office complex of BRTF @Rs. 30/- per sq.ft. However, the remaining area of land covered by Permit No. 191/1974 was retained by Shri. Liantudaia and the same had also been converted into Periodic Patta No. 57/1995 which was reverted back to its original status as Permit No. 191/1974 vide Order dated 03.10.1997 issued by the ASO-1, LR&S as the land was within the Aizawl town area.

21. The learned senior counsel further submitted that the Government of Mizoram without knowing the full facts of the case had convened its approval for conversion of Permit No. 191/1974 into house site with 2 bighas and accordingly the Revenue Department had closed the matter by not considering the claim of Sh. H. Thanzauva. However, later Permit No. 191/1974 was corrected with the

area from 29.48 bighas to 2 bighas and consequently, Permit No. 191/1974 was re-issued on 17.11.2003. The learned Trial Court vide its Judgment & Order dated 05.04.2019 had therefore correctly decided that the Order dated 24.11.2015 was illegal.

22. The learned senior counsel submitted that this court vide order dated 16.09.2021 in RFA No. 16 of 2020 had allowed the suit to be taken up afresh. The plaintiff (present respondent No. 1) had filed a recast plaint, wherein the appellants arrayed as respondent Nos. 6 & 7 were allowed to be impleaded and the learned Trial Court had allowed the amendment of the plaint filed by the instant respondent No. 1 under Order 1 Rule 10(4) CPC on the Civil Suit No. 59/2016 being remanded back to the learned Trial Court. The respondent No. 1 (plaintiff) had inserted the relief which she had claimed against the newly impleaded defendant Nos. 6 & 7 (present appellants). He also submitted that since the claim of the plaintiff/present respondent No. 1 against the present respondent No. 2 and the State defendants had not changed, the parties had chosen to adopt the cross examination conducted earlier which is with the permission of the Trial Court. There was no question of not following the provisions of CPC by the Trial Court.

23. The learned senior counsel further submitted that the Heirship Certificate

dated 14.03.2000 was issued to the present respondent No. 2 (defendant No. 1) in respect of all the properties left behind by the deceased Sh. Liantudaia. The deceased Sh. Liantudaia was the owner of Permit No. 191/1974, except the area sold to Sh. F. Bialzauva. Therefore, the land under Permit No. 191/1974 was rightly included in the Heirship Certificate dated 14.03.2000 being the landed property of the deceased Sh. Liantudaia.

24. The learned senior counsel submitted that the Permit No. 191/1974 was re-issued on 17.11.2003 with the approval of the Government vide letter dated 05.11.2003, whereby, the area of the land covered by the said permit was increase from 2 bighas to 29.48 bighas as per the joint spot verification done according to the boundary description on 24.03.2003. However, the said permit was wrongly cancelled vide the impugned letter dated 24.11.2015 by the Secretary, LR&S without issuing any notice to the land owners, and was thus challenged in the Civil Suit No. 59/2016.

25. The learned senior counsel further submitted that on a perusal of the verification report clearly shows that defendant Nos. 6 & 7 (appellants) have illegally occupied the area covered by Permit No. 191/1974 thinking that it was Government free land. The appellants (defendant Nos. 6 & 7) have now refused to acquire the said land or pay rental compensation in spite of several

communications given to them by the State respondent to pay the rental compensation. However, the State Government had issued the impugned letter dated 24.11.2015 cancelling Permit No. 191/1974 contrary to their previous order, without given a chance to the land owner of being heard and the learned Trial Court had rightly set aside the Order dated 24.11.2015 after hearing both the parties.

26. The learned senior counsel also submitted that the BRTF have admitted the fact that they do not have any land pass for Block-III of the office complex of Pushpak (BRTF) issued by Land Revenue Department. The spot verification conducted by Sh. K. Laltanpuia, Surveyor on the direction of the learned Trial Court clearly reveals that the location of Permit No. 191/1974 is the occupied area of defendant Nos. 6 & 7 (appellants) as Block-III. That since the mistake was committed by the authorities concerned while proceeding with the acquisition in connection with Award No. 9/1989 by showing the area covered by Permit No. 191/1974 as a Government free land. This mistake was corrected by the learned Trial Court vide the Judgment & Order dated 17.05.2023. The appellants have no grounds to appeal against the said judgment and order.

27. The learned senior counsel submitted that the right to private property is a human right and relied on the following authorities:- ***Vidya Devi Vs. State of***

Himachal Pradesh & Ors., reported in **(2020) 2 SCC 569** (para 12) and **State of Haryana Vs. Mukesh Kumar & Anr.**, reported in **(2011) 10 SCC 404** (para 33 & 34), wherein the Apex Court held that to forcibly dispose of a person's private property without following the due process of law would be a violation of a Human Right.

He further relied upon the Judgment of the Apex Court in **Subhaga & Ors. Vs. Shobaha & Ors.**, reported in **(2006) 5 SCC 466** (para 6), wherein it was held that a property can be identified either by boundaries or by any other specific description.

The learned counsel has also cited the Judgments of the Apex Court in **J. Pachhunga Vs. Chief Secretary to the Govt. of Mizoram & Ors.**, reported in **(2017) 4 GLT 1044** (para 13), **Smt. Malsawmi Pautu & Ors. Vs. The State of Mizoram & Ors.**, WP(C) No. 109/2009 dated 05.05.2011 and **Smt. V.L. Buki Vs. State of Mizoram & Ors.**, WP(C) No. 7/2007 dated 01.04.2009, wherein the court had ordered that the measurement of the land shall be done according to the boundaries that is described.

28. Mr. L. H. Lianhrima, learned Senior Counsel for respondent No. 2 submitted that since respondent Nos. 1 & 2 are sailing in the same boat, fighting for justice for the past few years, having a common enemy, all the

submissions made by the learned senior counsel are adopted by him. He also submitted that taking into account the documentary evidence as well as the oral evidences adduced by the rival witnesses, the appellants do not have any pass in respect of the land occupied by them illegally, for the past many years, and without any valid pass issued to them, they do not have any basis in order to file the present appeal and thus, the instant appeal is without any merits and should be dismissed with exemplary cost.

29. Ms. Lalnunhlui, learned Govt. Advocate submitted that she does not have anything to submit in the matter, since the State respondents have preferred not to file an appeal against the Judgment & Order dated 17.05.2023.

30. In rebuttal, Ms. Zairemsangpuii submitted that at the time of acquisition the appellants were given land certificate, which was exhibited as Ext D-5, having 161.5 50 bighas. This is certificate of land for the whole acquisition of land. The main reason is that in the last sentence of the certificate, the terms and conditions of the actual allotment will be governed by lease deed between the State of Mizoram, Revenue Department and BRTF. Even though that acquisition has been done in the year 1989, till date, the State Government unable to prepare a lease deed in some Blocks of acquisition proceeding, due to the lethargy and due to unfair means of the State respondents. Because the

appellants already acquired the land, they were given land certificate, however the land lease is still awaited from the State Government, even after many reminders have been sent to them.

31. This court has considered the submissions made by the learned counsels for both the parties and have also perused the documents on record.

32. This court finds that the learned trial court, while considering the issue, whether the suit was barred by limitation, had considered the evidence adduced by the parties and had rightly observed that the cause of action arose on 24.11.2015 and therefore not barred by limitation.

33. This court also finds that this court vide its' order dated 16.09.2021 in RFA No. 16/2020, had allowed the suit to be taken up afresh, by allowing the appellants to be impleaded as respondent Nos. 6 & 7. Accordingly, the plaintiff had also amended its plaint by inserting the relief claimed against the newly impleaded respondent Nos. 6 & 7. This court finds that it is not necessary for the learned Trial Court to specifically mention whether it relied upon the evidence adduced earlier by the plaintiff or the additional affidavit adduced, since the learned Trial Court has taken into consideration the evidence adduced by the parties as a whole, in deciding the issues framed in Civil Suit.

Accordingly, this court finds no grounds to interfere with the procedure followed by the learned Trial Court, while considering the matter again, upon it being remanded back for impleadment of respondent Nos. 6 & 7 (the present appellants in Civil Suit No. 59/2016).

34. This court also finds that *since the private respondent nos.1 and 2 have already come to an amicable settlement between themselves, there is no requirement to deal with the issues regarding the genuineness of the sale deeds/power of attorney executed between the private respondent Nos. 1 & 2.*

35. From the evidence adduced by the parties, the main points for determination in this appeal are;

(i) *whether the learned trial court had erred in deciding that the Order dated 24.11.2015 was illegal, null and void and erred in coming to the finding that Permit No. 191/74 has a total area of 29.48 bighas and not an area of 2 bighas which was purchased by Sh. Bialzauva (Proforma Defendant No. 5 in the Civil Suit) and later converted to LSC No. 103/85, and subsequently acquired by the appellants vide Award No .9/1989.*

(ii) *whether the learned trial court had erred in directing the appellants to pay rental compensation for the period from 01.06.1963 - 31.12.2008 as already assessed by the State Govt. and to pay further compensation till the land is*

vacated or acquired by the appellants.

36. From the submissions of both the parties, the undisputed facts are that Permit Nos. 190/1994 and 191/1974 were bifurcated from Permit No. 682/1963 belonging to Sh. Liantudaia (Late). The case pertains to the landed area of the Permit No. 191/1974. That Sh. F. Bialzauva had bought landed property having an area of 2 bighas, which was converted into Periodic Patta No. 1/1977 and which was again converted into LSC No. 103/1985 in the name of Sh. F. Bialzauva. Thereafter, the LSC No. 103/1985 was acquired for the purpose of Office Complex of Project Pushpak (BRTF) vide Award No. 9/1989 and Sh. F. Bialzauva had received the compensation amount on his named being reflected at Serial No. 48 of the Award No. 9/1989.

37. It is seen that the respondent No. 1 (plaintiff in civil suit) and respondent No. 2 (defendant No. 2 in the civil suit) have both deposed that when Sh. F. Bialzauva purchased an area of 2 bighas from the Periodic Patta No. 191/1974, it was only a portion of the land covered by Permit No. 191/1974. This version was supported by the Revenue Department, when on 24.02.2003, a spot verification of Permit No. 191/1974 was conducted by the joint team consisting of Sh. Sandeep Gupta, AEE (C) 107 RCC, Sh. Lalhmachhuana ASO 2 and Sh. Lalringliana Tongi, Surveyor-I, wherein, as per the boundary description, Permit

No. 191/1974 was found to have an area of 29.48 bighas which was approved by the Government on 14.10.2003. Accordingly, on 17.11.2003, a fresh Permit No. 191/1974 dated 17.11.2003 was issued showing an area of 29.48 bighas. The evidence of Sh. K. Laltanpuia, Surveyor, Directorate of Land Revenue & Settlement who appeared as court witness on 22.07.2022, in his cross examination had also admitted that since Permit No. 190/1974 and 191/1974 came into existence from Permit No. 682/1963, they are lying adjacent to each other, however at the time of spot verification, the BRTF personnel had produced a map which shows that the area of Permit No. 190/1974 and Permit No. 191/1974 were not lying adjacent, instead, the land adjacent to Permit No. 191/1974 was shown as Government free land. He also admitted that after it was demarcated as per the boundary description, the area covered by Permit No. 191/1974 was 29.48 bighas. He further admitted that after the court had directed him to demarcate the said permit after the exclusion of the land of Sh. F. Bialzauva and the land of Sh. D. Lalrintluanga (proforma defendant Nos. 4 & 5), the remaining area of land covered by Permit No. 191/1974 was 20.2 bighas. He also admitted that the BRTF personnel, who were present during the spot verification, had followed him throughout the demarcation and they did not raise any objection during the said period.

38. This court has also perused the evidence of the two witnesses produced

by defendant Nos. 6 & 7 (present appellants), which are similar to each other. Sh. Chalhmingthanga, Joint Director (Adm.), Nodal Officer Legal, HQCE (P), Pushpak in his examination-in-chief had supported the case of the appellants. However, on perusal of his cross examination, it is seen that he had admitted that though Permit No. 190/1974 and Permit No. 191/1974 were converted into Periodic Patta No. 4/1977 & Periodic Patta No. 1/1977 respectively by the Deputy Commissioner, Aizawl. However, since both the periodic pattas were within Aizawl town area, they were reverted back to Permit No. 190/1974 and 191/1974 in 1997. He admitted that Permit No. 191/1974 was not included in the Award No. 9/1989. He admitted that Permit No. 191/1974 was enhanced from 2 bighas to 29.48 bighas, on the basis of the joint verification report dated 24.03.2003 and further explained that he did not know the reason why the Revenue Department enhanced the area of Permit No. 191/1974 from 2 bighas to 29.48 bighas. He admitted that the land acquired for the Office Complex for Project Pushpak (BRTF) from Sh. F. Bialzauva vide LSC No. 103/85 was having an area of 16765 sq.ft. as shown in Award No. 9/1989. He also admitted that he did not know the boundary description of LSC No. 103/1985 and that he did not know whether the boundary description of Permit No. 191/1975 and LSC No. 103/1985 are similar or not. He also admitted that the Revenue Department (defendant No. 2 in the civil suit) had forwarded a letter dated 17.02.2004 to

the defendant Nos. 6 & 7 (present plaintiff) claim for rental charges for occupation of private lands at Zemabawk, Aizawl and that he did not know whether the said letter dated 17.02.2004 was challenged by the present appellants. He also admitted that the BRTF does not have any land pass for Block-III of the Office Complex of Project Pushpak (BRTF) issued by the Revenue Department, Government of Mizoram

39. This court has also perused the evidence adduced on behalf of the State respondents. It is seen that two witnesses were produced on behalf of the Revenue Department (defendant Nos. 2 & 3 in the Civil Suit No. 59/2016). The examination-in-chief and the cross-examination of these two witnesses are similar. It is seen that Smt. Martin Lalhlupuii, the Under Secretary, Revenue Department, had deposed in her examination-in-chief that in compliance with the Order of this court dated 01.05.2015, passed in WP(C) No. 48/2015, the state had issued the Order dated 24.11.2015 wherein, the department did not propose to allot land to individuals within the area covered by Permit No. 191/1974, since there was no longer any valid permit No. 191/1974, and the vacant land referred to in the Order dated 24.11.2015 was the land which was already allotted to the BRTF. It is however seen that during her cross-examination, she had admitted that since the area covered by permit No.

191/1974 falls within the Aizawl Town area, the conversion of the said permit into a periodic patta was referred back to Permit No. 191/1974. She further admitted that when Shri. Thanzauva (defendant No. 2) had applied for an Heirship Certificate, the permit No. 191/1974 in respect of permit No. 191/1974 was valid. She also admitted that the Order dated 24.11.2015 relied on the letter dated 10.05.2002, which was made by the defendant No. 3/Revenue Department on the basis of the Office Memorandum dated 26.08.1991, wherein the government had decided that henceforth, only the areas allotted as shown in the original paper be allowed for conversion into permanent settlement, even if the boundary description covers the area and that the claim of land for which Revenue Taxes are paid only can be considered by the Government. Thus, the claim of land for compensation in favor of Pu. Bialzauva was considered for which taxes are paid by the land owner and that as per the Land Revenue Acts and Rules, the claim of Pu H. Thanzauva S/o Liantudaia(L) was treated as closed chapter. The witness also admitted that there was however, a joint verification done, as per the boundary description of the Permit No. 191/1974

40. Considering the deposition made by the witnesses for the appellants and the State respondents, it is clear that the landed area of Permit No. 191/1974 was increased from 2 bighas to 29.48 bighas after a spot verification was

conducted as per its boundary description on 24.02.2003. Thereafter, Permit No. 191/1974 was re-issued with an area of 29.48 bighas on 17.11.2003. It is also seen that though the State Government had accepted the area of Permit No. 191/1974 as 29.48 bighas, however, the impugned order dated 24.11.2015 had overrule its own findings by relying on its previous report submitted on 11.09.1989 vide Letter dated 10.05.2002. It is thus seen that the impugned order dated 24.11.2015 was based on old documents/letters and there is no mention of any spot verification.

41. This court also finds that the learned Trial Court has considered the evidence adduced by the parties and by relying on the judgment of the Apex Court in ***Subhaga & Ors. Vs. Shobaha & Ors. (Supra)*** had observed that a property can be identified either by boundary or by any other specific description, even if there are any discrepancies normally, the boundaries should prevail. This court also finds that the learned Trial Court had also relied upon the judgments of the Co-ordinate Bench of this Court in ***Pachhunga Vs. Chief Secretary to the Govt. of Mizoram & Ors., (supra)***, WP(C) No. 109/2009 dated 05.05.2011 and WP(C) No. 7/2007 dated 01.04.2009, wherein it was held that in the case of discrepancies between the area of past the boundary description of the past should prevail.

42. In view of the above, this court is of the considered opinion that the learned Trial Court had correctly decided that "the area of land covered by LSC No. 103/1985 which was in the name of Sh. Bialzauva covered an area of 1.95 bighas whereas the Permit No. 191/1974 covered an area of 29.48 bighas as per the boundary description. Therefore, it is clear that the LSC No. 103/1985 did not cover the entire area covered by Permit No. 191/1974. Thus, the Periodic Patta No. 1/1997 and Periodic Patta No. 57/1995 were issued from Permit No. 191/1974, wherein Periodic Patta No. 1/1977 was in favour of Sh. F. Bialzauva and Periodic Patta No. 57/1995 was in favour of Sh. Liantudaia. The Periodic Patta No. 57/1994 was reverted back to its original Permit No. 191/1974 as the land falls within Aizawl town area. Therefore, it is clear that Sh. F. Bialzauva purchase only a small portion of the area covered by Permit No. 191/1974 and the remaining area was retained by Sh. Liantudaia which was then inherited by the respondent No. 2 (defendant No. 1). The suit land presently occupied by the appellants (defendant Nos. 6 & 7) covers an area of 20.2 bighas as per the spot verification conducted. The acquired LSC of Sh. F. Bialzauva therefore cannot cover the entire area which had clearly indicated that the remaining area of land occupied by the appellants (defendant Nos. 6 & 7) is covered by Permit No. 191/1974 inherited by respondent No. 2 (defendant No. 1)"

43. This court also finds that from the evidence adduced, the appellants were also asked by the State respondents for a payment of rent by calculating the rental compensation for a period from 01.06.1963 to 31.12.3003 and from 01.01.2004 to 31.12.2008 vide letter dated 25.11.2009 and 01.09.2019. It is also seen that the appellants themselves have admitted that they do not have a land lease over the landed property/area occupied by them and that the condition imposed in the given land certificate, was that the actual allotment will be governed by lease deed between the State of Mizoram, which has not been done till date.

44. For the above reasons, this court finds no grounds to interfere with the Judgment & Order dated 17.05.2023, passed by the Senior Civil Judge-I in Civil Suit No. 59/2016.

45. Accordingly, the instant RFA No. 53/2023 stands dismissed and disposed of.

No costs.

JUDGE

Comparing Assistant