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Smith Zadingliani Vs Shri Thanzuala and Shri Lianchhuma

Civil Revision Petition No. 10 of 2011

Court: Gauhati High Court (Aizawl Bench)

Date of Decision: May 2, 2012

Citation: (2012) 05 GAU CK 0035

Hon'ble Judges: Tinlianthang Vaiphei, J

Bench: Single Bench

Advocate: B Lalramenga, for the Appellant; Zochhuana, respdt No. 1, for the Respondent

Judgement

Hon"ble Mr. Justic T. Vaiphei

1. Both Mr. B Lalramenga, the learned counsel for the petitioner and Mr. Zochhuana, the learned counsel for the respondent No. 1 have been

heard at length. None appears for the respondent No. 2 despite proper service of notice upon him. In this civil revision, the petitioner is questioning

the legality of the judgment and order dated 07.02.2010 passed by the Village Court of Sialsuk, Mizoram holding that the disputed land belongs to

respondent No. 2 from whom the respondent No. 1 alleged to have purchased the same. The case of the petitioner is that her grandfather was the

original owner and became the settlement holder of the land covered by Certificate of Agricultural Land Settlement (LSC) bearing No.

105301/10/318 of 2009 measuring an area of 17.10 bighas or 22,883.36 sqm located at Sialsuk ram, Khiangthiang mual, which is within the

village of Sialsuk ram in the Aizawl District, Mizoram. According to the petitioner, the land was originally allotted to her grandfather under Permit

No. 101 of 1961, and the Permit standing in the name of her grand father was subsequently converted into Periodic Patta No. 148 of 2007 in her

name. It appears that the Periodic Patta No. 148 of 2007 again got converted into LSC No. 105301/10/318 of 2009 in her name. After inheriting

this land, she has been tending the same by doing cultivation works thereon.

2. It is also the case of the petitioner that sometime in the month of November, 2009, she came to learn that the respondent No. 1 unauthorisedly

excavated the said land for fish pond. As soon as she came to know about this, she petitioner asked the respondent No. 1 to cease his illegal

activities on her land and not to disturb her peaceful possession of the same. The respondent No. 1 refused to oblige her by claiming that the

portion of land where he made the excavation for a fish pond was a part of his land covered by Periodic Patta No. 148 of 1986, which he

purchased from the respondent No. 2 in 1986. This prompted her to move the Assistant Settlement Officer-1 (ASO-I), Land Revenue &

Settlement, Aizawl, Mizoram for settling the dispute between her and the respondent No. 1. The ASO thereafter detailed one Vanlalruata,

Surveyor to conduct a spot verification of the disputed lands for which parallel claims were made by the petitioner and the respondent No. 1. On

the basis of the report made by the Surveyor, the ASO-I passed the order dated 13.01.2010 settling the dispute in favour of the petitioner by

holding that the portion of the land wherein the respondent No. 1 made a fish pond and the portion which was trespassed by him fell within the

area of land covered under Garden LSC No. 318 of 2009 standing in the name of the petitioner and directed the respondent No. 1 not to disturb

her peaceful possession over the same. In the meantime, the ASO-1 had also issued the stay order dated 08.01.2010 against the respondent No.

1. Apparently, the respondent No. 1 never challenged the order of the ASO-1 before the higher forum.

3. It is the further case of the petitioner that despite the aforesaid order of the ASO-1, the respondent started felling trees and cleared the disputed

land for doing jhuming cultivation by utilizing the services of the Pentecostal Youth Department. The Village Council/Court of Sialsuk the ASO-1

that they did not accept the settlement order dated 13.01.2010, which prompted the ASO to issue another order dated 04.02.2010 informing the

respondent No. 1 and the Village Council/Court of Sialsuk to respect and comply with the settlement order dated 13.01.2010. When the

respondent No. 1 continued to occupy the land of the petitioner, she approached the Subordinate District Council Court, Aizawl District, Mizoram

in Civil Suit No. 13 of 2010 praying for restraining the respondent No. 1 from disturbing her peaceful possession of the disputed land and for

payment of adequate amount of compensation by the respondent No. 1 for damages caused to her land. The Subordinate District Council Court

on contest from the respondent No. 1 purportedly conducted a hearing on preliminary objections in Civil Suit No. 13 of 2010 and subsequently

dismissed the suit filed by her on the ground of res judicata vide its order dated 25.10.2010 by holding that the judgment and order dated

07.02.2010 passed by the Village Court of Sialsuk was in respect of the same subject matter of the suit between the same parties and has attained

the finality as no appeal was preferred by her. Aggrieved by this, this revision petition has been filed by her.

4. After giving my thoughtful consideration to the submissions made by the learned counsel for the rival parties and on perusing the impugned

judgment and order passed by the Village Court of Sialsuk, the question which calls for consideration in this revision petition is whether the Village

Court of Sialsuk has the jurisdiction to pass the order dated 07.02.2010 when the same dispute was the subject matter of the case between the

same parties before the ASO-1: the ASO-1, as already noticed, has already decided the case in favour of the petitioner. There is no dispute at the

Bar that the competent authority to issue LSC in respect of the disputed land is the Office of the Deputy Commissioner, Land Revenue and

Settlement, Aizawl District. The ASO-1, after hearing both the parties, passed the settlement order dated 13.01.2010 in favour of the petitioner by

holding that :-

Under the circumstances, verification of boundaries had been conducted to settle the dispute between Garden LSC No. 318 of 2009 owned by

Smti Zadingliani and P Patta No. 148 of 1986 owned by Shri Lianchhuma. Hence, it is found that the land which Shri Thanzuala purchased from

Shri Lianchhuma (thinking that the land he purchased was belonging to Shri Lianchhuma) is lying within the area of Smti Zadingliani"s land.

Therefore, Sri Thanzuala is hereby restrained from laying his hands or taking actions upon the said land of Smt Zadingliani covered under Garden

LSC No. 318 of 2009.

Admittedly, this order was never challenged by the respondent No. 1 before the higher forum. What the respondent No. 1 did was to bypass the

Settlement Officer and approach the Village Court of Sialsuk which did not have the inherent jurisdiction to entertain the dispute: it is coram non

judice. In my opinion, the order dated 07.02.2010 passed by the Village Court of Sialsuk is, therefore, a nullity, and is not binding upon the

petitioner. Once an order is held to be a nullity being wholly without jurisdiction, it is to be entirely ignored and need not be acted upon, and can

even be challenged in a collateral proceeding. In the view that I have taken, the order dated 07.02.2010 passed by the Village Court of Sialsuk

cannot stand and is, accordingly, set aside. The revision petition is disposed of in the above terms. It shall, however, open to the respondent No. 1

to approach a competent civil court of jurisdiction to ventilate his grievance against the petitioner. No cost.