

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) 11/2020

EXECUTIVE ENGINEER AND ORS. ...Appellant(s)/Petitioner(s)
(ROADS AND BUILDINGS)

Through: Mr. Jehangir A Dar, GA

Vs.

GHULAM MOHIDEEN TANTRAY ...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
03.03.2025

1. Respondent has already been served as is reported by Registry inasmuch as notice had been delivered to him on 04.08.2023, but he has chosen not to appear, therefore, he is proceeded *ex parte*.
2. Quashing of Order dated 13.07.2019 passed in National Lok Adalat on File no.28 titled as *Gh Mohideen Tantray v. Executive Engineer R&B Division Handwara and others*, is sought for in the instant petition.
3. A pre-litigation application was filed by respondent herein before Chief Judicial Magistrate/Sub Judge, Handwara, (Tehsil Legal Service Authority) [for short "CJM"] in which he stated that his house in village Sunmulla was damaged due to diversion of traffic via link road. Notice was issued upon petitioners on 02.07.2019. The stand of petitioners before CJM was that house of respondent was at reasonable distance from the link road and there was no likelihood of damage to his property.

4. The order/award impugned is being primarily challenged on the ground that Lok Adalat has jurisdiction to determine an issue only when parties arrive at a settlement and the said powers can be exercised only when both the parties consciously arrive at a compromise whereas in the present case there was no settlement between the parties that too when the applicant/respondent was not present in person so impugned order is not only illegal exercise of power but also clear transgression of the powers by the authority.
5. I have heard learned counsel for parties and considered the matter.
6. I have gone through impugned order/award. It does nowhere specify, show or suggest settlement/compromise between parties. Impugned order, on the face of it, divulges that it has been passed on merits of the case by CJM.
7. Lok Adalat is meant for conciliated settlement of disputes outside Courts and it is also called as People's Court. Lok Adalat is aiming at to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any dispute or any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized. Lok Adalat can compromise and settle even criminal cases, which are compoundable under the relevant rules.
8. Section 12 in National Legal Services Authority (Lok Adalats) Regulation 2009, to which reference has been made by Mr. Jahingeer Ahmad Dar, learned GA, provides that in prelitigation matter it may be ensured that the court for which a Lok Adalat is organized has territorial jurisdiction to adjudicate in the matter. Subsection (2) of Section 12 says that before referring a prelitigation matter to Lok Adalat, the Authority

concerned or committees shall give a reasonable hearing to the parties concerned. Proviso to Subsection (2) makes it clear that version of each party shall be obtained by the Authority concerned or by the Committee for placing it before Lok Adalat.

9. Although Mr. Jahingeer, learned GA, has invited attention of this Court to the provisions of Section 13 onwards of the Regulations of 2009, yet it is imperative to peruse Section 6 as well. It mentions that composition of Lok Adalat at State Authority Level shall comprise of sitting or retired Judge of High Court or a serving or retired judicial officer and any one or two of a member of the legal profession; a reputed social worker; a professional from the field related to the subject matter of Lok Adalat, and a mediator, or a professional, or a serving or retired senior executive.
10. Insofar as composition of Lok Adalat at High Court Level is concerned, it is provided that Secretary of the High Court Legal Services Committee organizing Lok Adalat shall constitute benches of Lok Adalat. Each bench shall comprise of a sitting or retired Judge of the High Court or a serving or retired Judicial Officer and any one or two of the members of the legal profession; a reputed social worker; a professional from the field related to the subject-matter of Lok Adalat, and a mediator, or a professional, or a serving or retired senior executive.
11. As regards composition of Lok Adalat at Taluk level, Section 6 provides that the Chairman of the Taluk Legal Services Committee organizing Lok Adalat shall constitute benches of the Lok Adalat. Each bench shall comprise of a sitting or retired judicial officer and any one or two of a member of legal profession; a reputed social worker; a professional from

the field related to subject matter of Lok Adalat; and a mediator, or a professional, or a serving or retired senior executive.

12. Section 13, to which reliance has also been placed by learned counsel for petitioners, provides that members of Lok Adalat have the role of statutory conciliators only and have no judicial role. Subsection (2) of Section 13 envisages that members of Lok Adalat shall not pressurize or coerce any of the parties, to compromise or settle cases or matter, either directly or indirectly. Subsection (3) of Section 13 says that in a Lok Adalat, members shall discuss subject-matter with parties so as to arrive at a just settlement or compromise and that such members of Lok Adalat shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute. Subsection (6) of Section 13 in clear cut terms provides that Lok Adalat shall not determine a reference, at its own instance, but shall determine only on the basis of a compromise or settlement between the parties by making an award in terms of the compromise or settlement arrive at. First Proviso to Subsection (6), however, stipulates that no Lok Adalat has the power to hear the parties to adjudicate their dispute as a regular court. Second Proviso to Subsection (6) envisages that the award of the Lok Adalat is neither a verdict nor an opinion arrived at by any decision-making process.

13. Section 16 of the Regulations of 2009 requires Lok Adalat to invite parties to meet it or communicate with it orally or in writing and it can meet or communicate with parties together or with each of them separately. The factual information about dispute received from a party is to be disclosed to other party in order that other party can have

opportunity to present any explanation. Subsection (2) of Section 16 says that each party may on his own initiative or at the invitation of Lok Adalat submit suggestions for settlement of dispute. Subsection (3) of Section 16 provides that when it appears to Lok Adalat that there exists elements of a settlement which may be acceptable to the parties, the terms of a possible settlement may be formulated by Lok Adalat and given to parties for their observations and modifications, if any, suggested by parties can be taken into consideration and terms of a possible settlement may be reformulated by Lok Adalat.

When impugned Award/order is looked into, it does not show or reflect that above provisions have been looked into muchless complied with in letter and spirit by CJM while passing order impugned.

14. Section 17(1) of the Regulations of 2009 says that drawing up of award is merely an administrative act by incorporating the terms of settlement or compromise agreed by parties under the guidance and assistance from Lok Adalat.

Again, compliance of Section 17(1) is missing in impugned award/ order.

15. Subsection (2) of Section 17 provides that when both parties sign or affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an award and for that matter a particular format is attached to the Regulations of 2009, viz. APPENDIX-I. It also provides that wherever parties are represented by counsel, they should also be required to sign the settlement or award before the members of Lok Adalat affix their signature.

When impugned order/award is looked into in the backdrop of provisions of Section 17, it reflects that Trial Court has, carelessly and in derogation of provisions of the Regulations of 2009, passed order impugned.

16.Lok Adalat has no jurisdiction to enter into merits of the case and decide the matter on merits if compromise/settlement is not arrived at between parties, has been held by the Supreme Court in *Estate officer v. Colonel H.V.Mankota (Retired)*, AIR 2021 SC 4894.

It has also been said by the Supreme Court that jurisdiction of Lok Adalat would be to determine and to arrive at a compromise or a settlement between the parties to a dispute and once settlement/compromise fails and no compromise or settlement is arrived between the parties, the Lok Adalat has to return the case to the court from which the reference has been received for disposal in accordance with law.

17.In the case in hand, impugned order/award has been passed by CJM on merits of the case in disrespect of the provisions of National Legal Services Authority (Lok Adalats) Regulation 2009, and law laid down by the Supreme Court, which defeats the very purpose of Lok Adalat and reflects carelessness by the court below. Hence interference is warranted.

18.Had not the order/award impugned been passed, the instant petition would not have been before this Court. It is to be seen that upon passing of the order impugned: the petitioners herein had to engage the men and machinery for obtaining the order impugned; making *inter se* communications; obtaining the legal opinion what to do further vis-à-vis order impugned; upon receiving the legal opinion for preparing/drafting the instant petition hiring the advocate(s); and thereafter vetting the

petition; and last, but not least, expending and utilizing funds from *Public Exchequer* for that matter, which could have been utilized for any '*public welfare purpose*'.

19. For the reasons discussed above, instant petition is allowed. Impugned order/award dated 13.07.2019 is set-aside.

20. Needless to say that, in order to avert the situation as has arisen in the instant case, where a Judicial Officer, holding the Lok Adalat, fails to comply with the Regulations of 2009 and/or any other laws governing the holding/conducting of Lok Adalats, and passes wrong orders as has been done in the present case, the Judicial Academy is required to conduct such programmes where Judicial Officers are imparted the training about holding and conducting of the Lok Adalats and making them aware of about the laws applicable/prevalent.

In this regard, Registrar Judicial of this Court shall place copy of this Order before Hon'ble the Chief Justice for appropriate orders.

21. Disposed of.

**(VINOD CHATTERJI KOUL)
JUDGE**

SRINAGAR

03.03.2025

"Imtiyaz"