

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 5797 OF 2017**

Maqsuddin Badruddin Khan and others.] Petitioners

Vs.

Mohd. Bashir Nazir Khan]

(since deceased)]

Mohd. Akram Shaikh and others.] Respondents

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Mr. Rameshwar N. Gite i/b A.M. Solkar, for Petitioners.

Mr. Sanjeev Sawant a/w Balvendra Singh i/b Abhishek P. Deshmukh, for Respondents No.2 to 11.

Mr. P.P. Pujari, A.G.P, for Respondents No.12 and 13.

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CORAM : R.G. KETKAR, J.

DATE : 6th DECEMBER, 2018.

P.C:

Heard Mr. Gite, learned Counsel for the petitioners, Mr. Sawant, learned Counsel for respondents No.2 to 11 and Mr. Pujari, learned A.G.P, for respondents No.12 and 13 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Award dated 12th April, 2014 made by Maha Lok Adalat (for short 'Lok Adalat') as also the order dated 7th December, 2016 passed by the Joint Charity Commissioner-II, Maharashtra State, Mumbai (for short 'J.C.C.') in Revision Application No.510 of 2016. By Award dated 12th April, 2014, Lok Adalat disposed of the Change Report No. ACC/III/2512/2012 in respect of Bazme-E-Ittehad-E-Millat in terms of the settlement and ordered amendment of Schedule-I accordingly. By order dated 7th December, 2016, J.C.C dismissed Revision Application No.510 of 2016 filed by the petitioners herein substantially on the ground that as the Award made by Lok Adalat is not a judgment, but, is a record or statement of settlement and as such no Appeal lies against such Award.

3. Rule. Mr. Sawant waives service on behalf of respondents No.2 to 11 and Mr. Pujari, learned A.G.P, for respondents No.12 and 13-State. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Gite relied on the decision of this Court in **Rajabhau Damodar Raikar Vs. Assistant Charity Commissioner, Pune and others, 2015 (4) Mh.L.J, 275** and in particular paragraph-17 thereof. In paragraph 17, the Division Bench observed thus;

“17. Therefore, the Lok Adalat had no jurisdiction to decide the change report on merits. In this case, there was no compromise recorded before the Lok Adalat. Even otherwise, the proceedings in the nature of a change report under section 22 of the said Act of 1950 cannot be disposed of without holding an inquiry only on the basis of a consent of the parties or a settlement between the parties. Therefore, the answer to the issue formulated in paragraph 6 is in the negative”.

5. On the other hand, Mr. Sawant heavily relied on the decision of **P.T. Thomas Vs. Thomas Job, (2005) 6 Supreme Court Cases 478** and in particular paragraphs 16, 18 to 21. He submitted that the petitioners were aware of the Award made by Lok Adalat at least in February, 2015 when the learned Judge of the City Civil Court decided Notice of Motion No.3437 of 2014 in S.C. Suit No.2525 of 2014. The petitioners, however, did not challenge that Award. That apart, the petitioners filed Revision Application in the year 2016 challenging the Award made by Lok Adalat before the J.C.C. He relied upon section 72 of the Maharashtra Public Trusts Act (for short 'Act') to contend that within 60 days from the date of the decision, aggrieved person has to apply to the Court to set aside the said decision. In the instant case, Revision was filed beyond the period prescribed in section 72. He further

submitted that petitioners No.1 to 11 are not even members of the Trust. He, therefore, submitted that no case is made out for interfering with the impugned orders.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute and is rather a matter of record that the petitioners were not party in the Change Report proceedings. By Award dated 12th April, 2014, Maha Lok Adalat disposed of the Change Report in the following terms;

“ORDER/AWARD”

The matter is amicably settled before the Maha Lok Adalat held on 12th April, 2014 at Public Trusts Registration Office, Mumbai and Award is passed as follows:-

- [1] The Change Report is accepted as settled.
- [2] Schedule-I be amended accordingly.”

7. In case of **Rajabhau Damodar Raikar** (supra), Division Bench of this Court considered the Scheme of Legal Services Authorities Act, 1987 (for short '1987 Act') and in particular section 20 as also sections 21(2), 22 and Rule-7 of the Bombay Public Trusts Rules, 1951 (for short 'Rules'). The Division Bench held that Lok Adalat cannot dispose of the proceedings in the nature of change report under section 22 without holding an inquiry on the basis of consent of the parties or settlement between the parties. In the present case, no inquiry was conducted. No material is produced on record to substantiate that after holding inquiry, Award was made by Lok Adalat. Award was made by Lok Adalat only on the basis of settlement arrived at between the parties. It is not in dispute that the petitioners were not party in the Change Report proceedings.

8. Mr. Sawant relied on the decision of **P.T. Thomas** (supra). In that case, the Apex Court considered section 21 and 22 of the 1987 Act and held that when Lok Adalat passes the Award with consent of the parties, there is no need to re-consider or review the matter again and again, as Award passed by Lok Adalat is final. Even under section 96 (3) of the Code of Civil Procedure, 1908 (for short 'C.P.C') no appeal lies from a decree passed by the court with the consent of the parties. The Award of the Lok Adalat is an order by the Lok Adalat with the consent of the parties and it shall be deemed to be a decree of the Civil Court, therefore, an appeal does not lie from the Award of the Lok Adalat as under section 96 (3) of the C.P.C.

9. In the present case, the petitioners are not party either before the Authorities under the Act or before Lok Adalat. Sub-sections 3 to 7 of section 20 of the Act of 1987 read thus;

20. Cognizance of case by Lok Adalats._

(1)....

(2)...

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of **the case or matter and arrive at a compromise or settlement between the parties.**

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or **settlement between the parties** and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the Court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section

- (2), that Lok Adalat shall advice the parties to seek remedy in a Court.
- (7) Where the record of the case is returned under sub-section (5) to the Court, such Court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).]

10. A perusal of the above extracted provisions clearly shows that it is **only in the event of compromise or settlement being arrived at between the parties**, Lok Adalat is empowered to dispose of the case or matter. In the instant case, as the petitioners were not before Lok Adalat as also before the Authorities under the Act, decision in the case of **P.T. Thomas** (supra) is not applicable to the facts of the present case. In view of the decision of the Division Bench of this Court in case of **Rajabhau Damodar Raikar** (supra), Lok Adalat could not have disposed of Change Report in view of the settlement between the parties before it. The Change Report can be made only after holding requisite inquiry in terms of section 22 a/w Rule-7 of Rules. Hence, the Award dated 12th April, 2014 made by Lok Adalat deserves to be set aside and is accordingly set aside. In view of setting aside the order dated 12th April, 2014, challenge to the order dated 7th December, 2016 passed by J.C.C does not survive. Change Report No. ACC/III/2512/2012 in respect of Bazme-E-Ittehad-E-Millat is restored to the file of Assistant Charity Commissioner to its original position. The petitioners are at liberty to file application for their impleadment. Rule is made absolute in the aforesaid terms with no order as to costs.

[R.G. KETKAR, J.]