

# Need of Expert Determination before A.D.R.(Lok Adalat) in Land Encroachment Civil Suits (Suggested Method)

Sanjay Rambhau Salkute

Labour Court Aurangabad Maharashtra ( India) Pin Code:- 431001

**Abstract-** In India, prior to implementation of scheme for Lok Adalat, parties used to compromise their matter as per provisions contemplated under Order 23 Rule 3 of the Civil Procedure Code, 1908 or by any other available Traditional ways. Then, the Lok Adalat mechanism was introduced, consequently, amended provisions of Civil Procedure Code, 1908, and Legal Services Authority Act, 1987, provided more provisions.

Lok Adalat is an improved mechanism for Indian Citizens because it is based on the principles of Father of Nation Mahatma Gandhi. The entire process of Lok Adalat reflects that India is a democratic Country. The credit of originating this system for speedy justice to common man goes to Hon'ble Mr. Justice P. N. Bhagwati, the former Chief Justice of the Supreme Court of India who started Lok Adalats. Then, after the passing of Legal Service Authority Act in 1987, the decisions of Lok Adalats got statutory validity and now the concept of Lok Adalats have become a powerful legal instrument. Thus Lok Adalat system is to solve the problems, it is not for declaration of winner or loser.

Hon'ble *Shri. Justice Mohit S. Shah*, Chief Justice of the Bombay High Court at the inauguration of the conference of the Judicial officer on "Enhancing Quality of Adjudication" at Judicial Academy Uttan, Thane, address that, New Methods and New Roles are necessary in the Justice Delivery System.

During my study for M.B.A.(H.R.) from Sikkim Manipal University, I prepared Live Pilot Project on "Mentor Judge, To Decrease Old Pendency And Increase Rate Of Disposal In Civil Judge Junior Division And Judicial Magistrate First Class Bhiwandi". I also studied on ADR mechanism. I compared Traditional Method, Provisions for Compromise cases as per Civil Procedure Code, 1908 and Present Lok Adalat System. I feel it necessary that there is need of effective mechanism to have expert determination in land encroachment certain cases which are to be referred before Lok Adalat. The main objective of my research was to find out new method, New roles in the Justice Delivery System. This suggested method for Lok Adalat was not included in Pilot Project.

This is a study paper for the need of expert determination, before referring the case for land encroachment to the Lok Adalat wherein I suggested new method. It is a method wherein I made combination of process of Expert determination and Conciliation for Lok Adalat, and its management.

In this paper, I expressed my personal views that there is a need of expert determination in Lok Adalat system in Maharashtra. The cases studies as discussed below are literature study only. Case study shows that, Lok Adalat system from ADR mechanisms is a very important system for Indian Citizens. The process of settlement by the parties, shows that, it is nothing but a settlement by number of person and that, it is so probable that

a prudent man ought, under the circumstances of the particular case, to act, upon the supposition that it exists. The advantages for Lok Adalat /ADR Systems are discussed in various papers, hence such literature portion is avoided.

The effect of suggested method shows that, after expert determination, the panel members of Lok Adalat and parties get ample opportunity to find out ways to settle the dispute. In my view, in certain cases, suggested method in Lok Adalat would be more inexpensive, efficacious and speedy justice accessible to the public.

**Index Terms-** Lok Adalat, encroachment map, land surveying, expert determination, ADR mechanisms

## I. BACKGROUND STUDY

Agriculture is a main profession of most of the Indian. Now a days, due to increase in population & Industrial Development, residential areas are increasing by converting agricultural land into Non-agricultural purpose therefore, the transaction to sale /purchase of land/ plot, is also inevitably increasing. In a sale-purchase transactions the title of land should be clear. If such title is defective then it gives cause to the law suits.

These civil suits are based on land survey map wherein it is observed that the defendant merely denies title of the plaintiff without specific pleading.

Such dispute are under following title :

- *Suit for removal of an encroachment,*
- *Suit for Injunction,*
- *Suit for possession.*

In most of certain cases, it is noticed that, the parties were ready to satisfy their claims, if the land is measured / located properly. This is one of the probability to overcome from the allegations of making an encroachment over the land. Then in such circumstances only question remains,

*Whether an encroachment is committed or not?.*

While proving land encroachment, the map drawn for cause of action plays major role. In old days there was traditional system to settle dispute by Mukhiya (Head of Village). Following is a short story may explains background for my studies :

In a village a dispute arose due to use of improper ball pen while writing/ taking subsequent entries in Revenue crop statement in a Marathi Language digit seven (Sat) ( 7 ) and

eight (Aath) (8), where only half circle and if drawn long line then it will look like a digit eight (Aath).

An old man aged about 79 years from a remote village, by applying common sense used to solve disputes in a legal form. He was well known as "Aaba." He was also an agriculturist.

In the village, since last 10 years, two brothers were cultivating their field. Their father in his life time effected partition of a field by erecting/constructing small boundary (Dhura) in the middle portion of the field. After the death of father, both brothers effected oral family arrangement.

Tukaram made complaint oral complaint at Aaba that the brother Ramesh committed an encroachment over half acre of land. Aaba made inquiries, Ramesh denied committing any encroachment. Then brother Tukaram disclosed that, before two days, his son Namdeo brought private land measurer/surveyor. Said measurer measured the field, accordingly, an encroachment found. Then he had been to Lawyer to take legal action who advice him to issue notice and then to file suit for removal of an encroachment.

Aaba asked both brothers to show crop-statement and record-of-right and map drawn by private surveyor. Then he asked both brother to come on spot with all documents. They were also asked to call their family member, relatives and private measurer who drawn map.

Aaba called Surpanch (village Head) and village members, Police-Patil, Patwari (Talathi-Revenue officer- with relevant all record about the field in dispute), adjoining landholders of the said area and other respectable persons from village.

They went at the disputed field. They saw boundaries of entire field were not damaged. A small dhura (boundary) between the fields was maintained with more precautions. Then Aaba asked to the private measurer to measure both portions. Each portion found with area three acres and about twenty gunthas. It means both brothers were in possession of equal share. Aaba asked the Talathi (Revenue Officer) to show the survey map of the field. As per Government Survey map the area of the field was only Seven acres.

In the old revenue record, the area of the field was also shown seven acres but in meantime due to the use of ball pen or might be by mistake, the length of digit seven (Marathi language digit) was longer than ordinary course and half circle was not clearly impressed/drawn. So that, the digit (seven) Sat in Marathi Language was really appearing like Aath (eight), and said entry was continued in the subsequent record.

Thus, the Dispute between brothers was settled.

In Maharashtra State, there are two departments for Land Records. They covers under Maharashtra Land Revenue Code, 1966, its rules and Manual. There is separate Department for the land measurement. Both departments have separate powers, duties but they are correlated to each other. In Maharashtra Land Revenue Code, 1966, there are provisions are for removal of an encroachment over Government Land or Local Authority. There is no provision to settle the dispute for private land holders. Civil Court is the only forum for such causes.

Such civil suits are individuals disputes. I studied to determine the causes of land disputes and mechanisms for settling those dispute through Alternate Resolution Dispute mechanisms. I noticed that a new method is necessary to settle such conflicts.

I found frequent causes for such dispute as :-

- *Dispute for boundary conflicts.*
- *Dispute due to incorrect description of land.*
- *Dispute due to holding incorrect portion of land.*

Under section 110 of the Indian Evidence Act, 1872, Burden of Proof as to ownership. Such possession should be over the exact position of the land, that was drawn from the title. Therefore I also studied Land surveying to find out position of land.

To prove encroachment over land, the map is material document. Under Order VII Rule 3 of Code of Civil Procedure 1908, in case of a boundary dispute or where there is any possible doubt about the identity of the land in dispute, it is essential that a good plan of the land should be put in. As per Bombay amendment dated 1 November 1966, in cases of encroachment an accurate plan shall also filed along with the plaint. As per Bombay amendment dated 1-10-1983, In case of encroachment, sketch showing as approximately as possible the location and extent of the encroachment shall also be filed along with the plaint. Section 83 of the Evidence Act, 1872, lays down that the court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made and are accurate. However, maps or plans made for the purpose of any cause must be proved accurate. Thus the onus proving that such a map in accurate lies on the party who produces it.

To ascertain the description of the title deed or relevant documents, I studied Maharashtra Land Revenue Code, 1966 and related laws for Registration of sale transaction. In fact, basic concept of such Lok Adalats is not new for Indian Citizens. In India there was traditional well known Panch Committee system. However, in such Panch committee there was less probability to compromise the matter in the legal form. Then the Lok Adalat mechanisms was introduced. In amended civil Procedure Code, 1908 and Legal Services Authority Act, 1987, material provisions are provided.

The name "Lok Adalat", means, People's Court. "Lok" stands for "people" and the vernacular meaning of the term "Adalat" is the court. It is a system that comes under ADR mechanism. The purpose of the Legal Services Authorities Act, 1987 is to promote justice on the basis of equal opportunity. Lok Adalats are playing very important role to advance and strengthen "equal access to justice", the heart of the Constitution of India. Disputes can be settled in a simpler, quicker and cost-effective way at all the three stages i.e. pre-litigation, pending-litigation and post-litigation. Thus, disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat. There is no court fee and even if the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat.

Lok Adalat may take cognizance of cases, as per Section 20 of the Legal Services Authority Act where: (I) (a) the parties thereof agree; or (b) one of the parties thereof makes an application to the court for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or (II) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the

Lok Adalat, the court shall refer the case to the Lok Adalat : Provided that no case shall be referred to the Lok Adalat by such court except after giving a reasonable opportunity of being heard to the parties.

The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman/ Panel Judge, two other members/ Panel Members, usually a lawyer and a social worker. It involves people who are directly or indirectly affected by dispute resolution. The parties to the disputes though represented by their advocate, parties can interact with the Lok Adalat Panel, directly and explain their stand in the dispute and the reasons therefore, which is not possible in a regular court of law. Thus, the salient features of this form of dispute resolution are participation, accommodation, fairness, expectation, voluntariness, neighbourliness, transparency, efficiency and lack of animosity.

The section 22 speaks that, the procedure to be followed at a Lok Adalat is very simple. Section 20 (4) shows that, 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. The Lok Adalat does not strictly follow the procedural laws, and the Evidence Act, 1872, while assessing the merits of the claim. Parties compromise their matter which is always a bilateral and means mutual adjustment. If no compromise or settlement is or could be arrived at, no order/Award can be passed by the Lok Adalat. If both parties agree for settlement then Award has to be passed. Such Award shall be deemed to be a decree of a civil court and shall be final and binding on the parties to the dispute. No appeal lies against the order of the Lok Adalat. As per Section 22 of the Legal Services Authority Act the Powers of Lok Adalats are same powers as vested to Civil Court under Civil Procedure Code, 1908 as, (a) The summoning and enforcing the attendance of any witness and examining him on oath; (b) The discovery and production of any document; (c) The reception of evidence on affidavits; (d) The requisitioning of any public record or document or copy of such record or document from any court or office; and (e) Such other matters as may be prescribed. (2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it. Thus, it is a dispute resolution mechanism that focuses on the root cause of the dispute.

**Material Case law : State of Punjab and Anr.--Vs. Jai Singh and Ors. Reported in AIR 2008 SC 1209**

The Hon'ble Apex court pleased to discuss, "8. It is evident from the said provisions that Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades

them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by principles of justice, equity, fair play. When the LSA Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

9. But we find that many sitting or retired Judges, while participating in Lok Adalats as members, tend to conduct Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through Lok Adalats, will drive the litigants away from Lok Adalats. Lok Adalats should resist their temptation to play the part of Judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strength and weaknesses, advantages and disadvantages of their respective claims."

## II. RESEARCH STUDY

During the pilot project 'Mentor Judge, To Decrease Old Pendency And Increase Rate Of Disposal In Civil Judge Junior Division And Judicial Magistrate First Class Bhiwandi'. The aim of the project was to find out to new method to reduce backlog of cases.

On the basis of literature studies, I suggested new method for certain cases. It is useful literature study to identify opportunities to improve future process and enhance the dispute resolution capability. It ensures transparency and build confidence. To identify opportunities to enhance present Lok Adalat (ADR) mechanism.

Section 22 of the Legal Services Authority Act, 1987, provided Powers requisitioning of any public record or document or copy of such record or document from any court or office. Due such provision, Revenue Records or land survey map can be called but in my study I found that, mere calling such record is not sufficient to settle the matter before Lok Adalat. The section 22 of the Legal Services Authority Act, 1987, further speaks that, such other matters may be prescribed in the Civil Procedure Code, 1908. Provisions under Section 75 of Code Of Civil Procedure, 1908 speaks Power of Court to issue commissions. Rule 9 of Order 26 of Code of Civil Procedure, 1908 is a provision for commission to make local investigations. To prove the fact for encroachment over land. The court may appoint commissioner to locate the boundaries but commissioner can not appointed to collect the evidence. Thus due to said provisions, the lands of both parties can be measured

by appointing commissioner . By the Joint measurement of both / disputed land before the parties, the actual position of land comes through measurement map. If the joint measurement map is not disputed by the parties , then for the remaining claim, the matter can be referred before Lok Adalat.

During the Lok Adalat actual process, such Joint measurement of land activity can not be carried out. It means, prior to referring the matter before the Lok Adalat some material activities has to be carried out by the Court , it may be called as pre-lok adalat activity or Expert Determination. I studied that, if required, Expert Determination is called prior to referring certain cases before Lok Adalat ,then rest of claim of the parties can be settled before the Lok Adalat.

The object of Legal Services Authority Act is that, the compromise / settlement should be legal. It should not be imposed compromise or consent given/taken should not be due to lack of knowledge or other factors. As per Indian Evidence Act,1872, before the regular trial , for some technical or scientific points, the court may call opinion from expert person. Then , if the fact before Lok Adalat is based on scientific or technical aspects then question arose , whether the Lok Adalat Panel member or members have experience or qualifications in that field to settle the matter without taking aid of Expert Determination . I studied the Lok Adalat Panel can promote settlement such matters that are not mainly based on scientific or technical aspects.

#### ***(i) Statement of the problem***

I noticed that , major cause of the dispute was for land encroachment, boundary disputes . Some disputes were not really for land encroachment , but those disputes were filed in that fashion. In such suits there was defects in the description of title or at private map/ agreed map. In certain cases , opposite party pleads various defences. But they did not seriously contest it. Both parties desires to know exact position of their lands. In such circumstances, only question remains:

- *Whether encroachment is really committed ?*
- *Whether the Land encroachment suit can be referred before Lok Adalat, without Expert determination ? .*

#### ***(ii) Data collection***

Land Revenue Records, Survey Records, map filed for cause of action. Pleadings by the parties, documents and survey map .

#### ***(iii) Lok Adalat Pre-Process / Expert determination***

Ordinarily, the Land measurer, measures lands as per the portion in the possession of the parties. Party shows his possession and measurer measures it.

It would be appropriate place to share my observation in respect of mentality of Indian Citizen. I often found that he only believed and blindly trust upon the land measurer who draws map in his favour. He does not accept that, there might be any other position on the land. Even , he does not trust to joint measurement map of lands, if it goes against him.

Alternative Dispute Resolution is a process of resolving disputes by arbitration, mediation, conciliation, expert determination and early neutral evaluation by a third person. Mediation and Conciliation require an independent third party . If

the subject is technical then, the expert determination requires independent experts in the subject of disagreement of the parties to decide the case. Such expert is chosen jointly by the parties and the decision is binding. It may be called as fact finding process .

Expert determination is a process in which the parties to a dispute appoint a neutral and independent expert in Land Measurement/surveying, to make a final and binding determination on a dispute . In such determination , the parties must be agree in advance that they are bound by the opinion of the expert measurer ,if he really carried out measurement as per the Law and Rules.

Therefore, in the Expert determination process before Lok Adalat, the Joint measurement of Land is required to be carried out with the consent of parties . It should be carried out , from the suggested expert land measurer or expert from Government Survey department . During joint measurement of land, Both parties should give an opportunity to bring their own measurer to watch measurement method I.e. whether the expert measurer is measuring lands correctly or not. The counsels for parties are also required to remain present at the time of such measurement . An expert measurer should explain each stage , its distance as per survey map and measured distance and then record such entries in his map, in presence of both parties, watching measurer, and counsel. Expert measurer has to apply more advance method so that the joint land measurement map should be drawn at the spot. Then to send said drawn map along with its report to the referring court.

The quality of assessment of disputes to refer before Lok Adalat is important factor. It is necessary to make proper assessment of case, location of land, litigants position to avoid the cultural barriers. A lack of access to information may also create a barrier to use of Lok Adalat. It is necessary to know litigants the type of process, how it differs from the regular court process .

As per my study, the following steps are necessary:-

#### ***Steps for suggested method ( In brief ):***

***Step 1:*** At Quarterly period , **Court owe a duty to examine all cases to find out whether they are fit cases for reference to Lok Adalat and there is a need for constant efforts on the part of the Bar.**

***Step2:*** The referring court has to refer the matter to expert determination by the consent of the parties . The parties may suggest name of land measurer or may intimate to appoint surveyor from the Government Department. Then court has to call consent from appointed/intimated measurer. In said consent, the measurer to mention fees for land measurement and what will the procedure or instrument to measure the land. Then both parties has to deposit equal amount for fees in the court. Parties to file xerox copies of documents for their claim/defence in order to send to measurer. Then send writ to measurer wherein it is necessary to mention next date to file map & report.

***Step 3:*** On receipt of Writ , the measurer to fix its schedule for measurement of the land . He should sent notices to parties by speed post or by hand . In the said notice it is necessary to mention that, the parties may come at fixed date with their counsel , family members, relatives , friends and own measurer( to watch process of expert determination). It is also necessary to

inform to parties to come with their documents, record for the land in dispute. Measurer to issue notices to adjoining land holders, village head, revenue officer of said area. In all these notices, the measurer has to mention as to what method, instrument will be used in land measurement.

**Step 4 :** Measurer has to take signature of persons to whom notices were given. Then he has to carry out measurement of land.

**Step 5:** The land should be measure as per the Survey map carried out by the Government Department and as per the provisions of Land Measurement Manuals and Maharashtra Land Revenue Code, 1966 . Measurer to find / trace out the original survey mark , that may be at any distance. By applying two points theory or any other method , then to find out / or confirm another survey mark. From the confirmed two survey mark, then reach upto the disputed lands . By this way to find out / restore , lost survey mark of the lands in dispute. May apply different tests , methods to measure land and correct mathematical formula, calculations for coming opinion.

**Step 6 :** Draw map at the spot . Take signature of all person to whom notice was given and signed by both sides, counsels, revenue officer , etc all related persons over the drawn map.( Video recording for the stages from 3 to 5 , that may help, if any controversy arises at any stage )

**Step 7 :** Prepare report of entire process and map and send to the court.

**Step 8:** Then referring court to refer the matter to Lok Adalat as per the provisions of the Civil Procedure Code, 1908.

**Step 9:-** Make provision for Video Conference, if the parties desire to participate its any relative , friend at the actual process before Lok Adalat Panel.

**Step 10:** At Lok Adalat, if the matter is settled, send report to referring court. Lok Adalat panel to send short report to District Legal Aid office, stating success , its mode and feedback any given by parties.

**Step 11:** District Legal Aid to carry study for adopted new logic by Lok Adalat panel to settle the dispute. Such new logic may be helpful for future Lok Adalat.

It is suggested method on the basis of Laws applicable in Maharashtra State ( India ).It is important to remember that geographical condition of land and interest of the parties are different. Therefore it is expected that , if such suggested method is adopted by applying relevant laws then it should meet specific needs of the said area. Such method can be expand upon some ideas. In my study, I found that, there is no “ right way” to design a fixed program.

**Case Studies( for suggested method):** (Note :It is a brief discussion for logic applied to each cause)

**1 . Case for non-sanctioned layout that affected to the sanctioned layout**

**Facts of case :-** In a big lay out wherein near about 90% plot holders constructed their houses. When complainant measured his own plot, he found that, towards Eastern side, the an encroachment was committed by the opposite side party.

**Expert Determination :-** When the entire layout was measured it revealed that, there was another layout towards Eastern Side . It was non sanctioned layout. The holders of non sanctioned layout moved towards their Western Side for 10 feet and constructed

their houses as per their non sanction layout map. Therefore holders of non sanctioned layout moved towards Western Side portion of the layout of the plaintiff. Said cause may create many civil suits .

**Settlement :** - In this case , there was no role of defendant to make an encroachment but due to the above mistake the litigation was filed. The opposite side (Western Side ) holder shown his willingness to purchased the remaining plot of the complainant and the dispute was settled. ( Like this ,by way of pre-litigation the other holders have also settled their claims)

**2 . Case for purchasing land without verifying own title**

**Facts of case :** - One cultivator/ owner was in need of money so after converting land into non-agricultural purpose , he sold plots without the sanctioned map. The complainant purchased one of the plots. After 5 years ,when the complainant had been to the spot and found that there was a house constructed by the defendant. On making inquiry the defendant produced his sale deed. The complainant measured his plot through private surveyor and in that measurement it was shown that, the defendant committed encroachment over the entire plot. The defendant also brought his own map in which his private measurer shown that the defendant did not commit any encroachment.

**Expert determination :-** In the sale deeds of both parties only plot numbers were mentioned. Three sides of plots were with descriptions of plot numbers only. Road was shown towards Southern side. Both sale deed were without map to show its correct position. The measurer of the complainant measured the plot as per Survey map of the field. In fact there was no sanctioned layout so on basis of the boundaries shown in the sale deed of the complainant, without layout map, it was difficult for him to ascertain the location . Thereafter , the defendant brought copy of the alleged non-sanctioned layout, then on superimposition it revealed that, the entire plot of the complainant was shown in the land owned by adjoining holder.

**Settlement :-** At the pre-assessment stage, shows that, Such dispute can not be settled in Lok Adalat because , While purchasing any field or plot the purchaser has to make some inquiries to avoid such disputes as:-1.See mutation entries to verify Tenancy rights, any other right or interest, like road for other cultivators, any debt from Bank. Whether there is need of permission from any authority.2.While ascertaining the title, see whether it is an ancestral property or self acquired property, any share from other person and objection from other person ,interest of minor etc.3.Take search report from the Sub Registrar office. 4.For precautions, give public notice, if doubt about title or right or interest .5.Verify the Survey Map and confirm about the area shown in the record of right and whether there is a separate map for the alleged portion or recorded map. 6.Make inquiry about any dispute pending for encroachment.7. As far as possible, before executing the sale deed, measure the land from authorized agency to confirm the location and extent. After purchasing the property, if the share purchased is not recorded in the whole map of the said field or plot, then follow the provisions of Maharashtra Land Revenue Code and its rules to make partitions and to record entry in the survey map.8.See about compliance of provisions of Fragmentation Act, Land Acquisition Act, Tenancy

Laws, and Ceiling Act etc. While purchasing the plot from City then see:- (In addition to above relevant points) 1. Go through the title deed 2. Verify the town planning map, city survey map. 3. Verify debt from Bank 4. Verify about Slums Act 5. Take search of the property from the Sub registrar office. 6. Whether the lay out is sanctioned layout or not. 7. Whether it is duly converted land. 8. Whether it comes under any prohibited zone. 9. Whether permission from any authority is necessary.

### 3 . Case of purchasing land without making enquirers:

**Facts of the case:** A businessman/complainant purchased a field 2 Acres 2 Gunthas from his debtor (VENDER/SELLER) on the basis of 7/12 (revenue record) extract. The seller mentioned the boundaries of field. Actually, since long seller never cultivated his land. So he was not aware for actual boundaries. Complainant filed suit against defendant for encroachment of land area 1 Acre 2 Gunthas and also made party to his vendor.

**Expert Determination :-** Measurer visited to spot. He collected information from Sub-Registrar of sale deed. The seller/vendor had already sold most of area from his land to adjoining land holders. Measurer measured entire land as per sale deeds. It revealed that, at the time of sale deed in favour of plaintiff, only one acre land was owned by the seller /vendor. In fact before three months ago from the sale deed of complainant, the vendor sold 5 acre land but said entry was not recorded in the revenue record . Therefore the Sub-Registrar office might have registered the sale deed of the businessman/complainant , otherwise due to fragment, the sale deed could not register. Only one acre area land was owned by the seller. He sold it to complainant. Said one acre land being fellow land was in use of adjoining landholder/defendant for keeping cattle's , bullock cart, Tractor etc. as a temporary use.

**Settlement :-** In the settlement it was decided to purchase 01 acre land by the defendant as per market rate. (The complainant could take action against the /vendor seller for cheating him, but he counted his own time, required money for the said action.).

### 4 . Case for small layout in a city

**Facts of case :** In a city, a complainant purchased a plot from newly sanctioned layout. After one year, he desired to construct his house. When he measured his plot, he found that, towards Northern Side, the defendant encroached over 1 foot by 40 feet land strip. Before constructing house the defendant also measured his own plot.

**Determination :-** When all plots in the said row were measured then it revealed that, the survey stone fixed at the Northern side was moved or disturbed by one feet towards Southern side and therefore all plot holders measured their plots from the said Northern side stone thereby all of them committed an encroachment over the plot of each others.

**Settlement :** -In settlement, both parties realized the actual fact. The complainant had given up his rights over encroached portion 1 foot by 40 feet to the defendant . The defendant agreed to construct the common compound wall at the Northern side and bear the expenses for it.

### 5 . Case for Partition of an Ancestral / Joint Family Land

**Facts of case :-** An ancestral/ joint family irrigation land ad-measuring area 5 Hectors was divided between family members. Dispute arose when five cousin were in possession of their shares . Each should be in possession of 1 Hectare land. The complainant was in possession of 2 acres and 10 Gunthas land. It means 10 gunthas land was less in his possession. Complainant started to claim against the adjoining brother because the adjoining brother was in possession of more land.

**Expert Determination :-** There was no boundary mark to show an encroachment. The grandfather of the parties had five sons. When the grandfather was cultivating the field at that time only 2 acres 10 Gunthas was under irrigation. While making partition, the irrigated portion was given to the share of father of the complainant. Rest of land 10 Gunthas was left for the purpose of road . The grandfather had effected partition privately and it was not recorded in the Revenue Department or Survey Department.

After the partition, sons (Fathers of parties) started to cultivate their shares separately. After some years they purchased land touching to their shares and started to cultivate through other convenient road from the subsequent purchased lands. They stopped to use the previous undeveloped road of 10 guntha land.

Now ,really the adjoining brother was cultivating the portion 10 Gunthas land of common road. Previously common road was owned by all five brothers. But it was useless for other three brothers because of fencing to their lands. To divide previous road land 10 guntha area means to give 2 gunthas area to each brother .

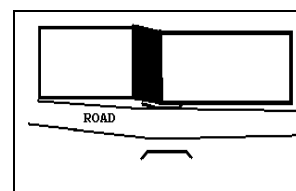
It was expected by the complainant that, the T.I.L.R / measurer should show four boundaries and alleged road land. The T.I.L.R / Taluqa Inspector of Land Measurer , can show only recorded boundaries in its register/survey map . The partition in dispute was not recorded in the survey map.

**Settlement :-** While compromising the matter ,the adjoining brother who was in possession of more land he paid market value of two gunthas land each to his four cousin.

### 6 . Case for proved encroachment but geographical position was different

**Facts of the case :-** Complainant was that, the defendant committed encroachment. The defendant contended that, since long years he is cultivating the alleged portion of land and did not commit an encroachment.

**Expert Determination :-** The actual location of the land was as: Previously the both portions of land was a Whole Survey number. The land in the possession of complainant was at lower level about 5 feet than the land of defendant.



After the measuring the entire survey number. Area one guntha land was found in possession of the defendant.

**Settlement :** -Due to the above location, understanding was given to the defendant that, his plea mere to claim adverse possession is not sufficient. The one acre land in dispute was not useful for the complainant because it was at 5 feet in height. The defendant could use it in a better way. Then the matter settled wherein in the defendant agreed to purchase one acre of disputed land. Thus while considering terms of compromise and to give end to dispute , following points were considered :The actual geographical situation. Utility of the land in dispute.

#### **7 . Case wherein the complainant was a new purchaser of part of land from whole land**

**Facts of case :-** One of the share holder of the land, sold his share to complainant. The complainant alleged that, defendant committed encroachment over the purchased land.

**Expert Determination :-** Name of Ten shares of cultivators were shown in the 7/12 (Revenue Document) extract. There was no recorded map for their share. When the entire land was measured then it revealed that, all share holders were not in possession of their actual share. The share in the name of cultivator was actually in the possession of another share holder ,but the crops entry was taken in the name of the actual share holder. The land measurer shown the portion of land of complainant but it was in the possession of another share holder/defendant. It means all holders were in fault but it was not their intention to commit trespass.

**Settlement :-** In the settlement, Lok Adalat Panchas” gave understanding about actual situation as it was also not known to the vendor. Complainant and defendant executed exchange registered deed. The matter was settled.

#### **8 . Case due to wrong mathematical formula for calculation**

**Facts of case :** - The complainant measured the land from land measurer and filed civil suits against all four adjoining land holders/defendants.

**Expert Determination:** The land measurer of the complainant had only measured length and width. He applied mathematical formula to find out area of Square. When the expert measures measured land and it was cleared that the shape of the land was like a Kite( Quadrilateral).

**Settlement:** - By applying formula for Square and Formula for area to be drawn shape like Kite ( Quadrilateral) were compared. Geographical position was brought through map drawn by expert. Without any terms the matter was settled .

#### **9. Case of Partition map :**

**Facts of case :-** Three brothers orally partitioned their plot. Then after one year, they measured the plot from private surveyor. Then as per the share shown in the private map they constructed their houses over it. After constructions of houses, One of the brother /Complainant measured the entire plot through government surveyor. In the said measurement it was found that the opponent brother encroached over 2 feet by 40 feet area towards Eastern side, i.e. over the plot of the complainant.

**Expert Determination :** The Land measurer measured the entire plot as per the city survey map. All boundaries for entire plot were correct. Then he measured , internal portion as per the

partition map of the parties. The partition map of the parties was not recorded map. It was agreed map between the parties and they acted upon said agreed map.

**Settlement:-** It was fault by all brothers to partition the land without help of city survey map and to record map at government department. They agreed and acted as per private map drawn for their partition. Partition map was their agreed map. In settlement, they agreed to continue to act as per private map in future and to record partition map at the concern department.

#### **10 .Case for Reserve Forest Land:**

**Facts :** Plaintiffs filed suit against Forest department and prayed that the forest department be restrained from demolishing construction over suit land. The builder purchased land from original owner and constructed building. All members purchased their flats from builder by availing loan from Banks or State Government. It was alleged that, the plaintiffs are members of co-operative society. The defendant Forest department filed say that, it is reserve forest. It was declared as reserve forest long before. It is contended that the plaintiffs made encroachment over reserve forest land. The plaintiffs moved application to refer matter before Lok Adalat.

**Lok Adalat process:** The Revenue record (7/12 extract) shows the name of original owner. The builder purchased it from original owner by registered sale-deed . The builder applied to authority for non-agriculture purpose, then permission to construct . All authorities sanctioned the plan of the builder. The plaintiffs purchased by availing home loan from Government or Banks. Then they formed co-operative society.

The document filed by Forest department shows that, the land in dispute was private land. It was declared as reserve forest long before the sale deed of the builder. The Reserve Forest land was published long before in the Government Gazette.

**Settlement:-** The Government published Gazette for Reserve Forest. The revenue department might not have recorded entry for reserve forest. All the Public authorities or Government department who sanctioned construction, home loan might not have make inquiries for the status of land. In all probabilities, it is for the Government to take decision for such disputed land and construction . Such matter can not settle in Lok Adalat. Even such matter is not suitable for expert determination or can not be refer before Lok Adalat.

#### **11 .Case for Wrongly Identified Location / Plot**

**Facts :** The plaintiff was a clerk in government department. In the year 1970 plaintiff purchased plot no.17 (sanctioned layout). It was not developed area. Plaintiff was residing in Tenanted premises. His job was transferable job. He did not visited to the spot for a long period. After his retirement, when he visited to the plot , he found that the defendant constructed house and was residing in it. He filed suit for removal of an encroachment and possession of the plot no.17 .The defendant was a Bank Manager. The defendant contended that, in the year 1981 he purchased plot no.70 through the estate broker. He availed loan from Bank and after taking permission from the local authority & constructed house.

**Settlement:-** The sale deeds of both parties shows that, the plaintiff purchased plot no.17 that was near to the road. The plot

no.70 was at far from the road . In fact it was a last portion of the entire layout. The bank loan documents, local authority permission shows that, said loan and permission was granted for plot no.70. The defendant disclose that the estate broker shown plot no.17 as plot no.70 so he constructed house and being near to the road , he purchased it .

During settlement it was decided to execute exchange deed between parties. The plaintiff got plot no.70 and difference of market value amount for plot no.17. So that he could construct most of portion of his home. Mere on the basis of sanctioned map and other documents the matter settled. Matter was not sent for expert determination.( Dispute might have been caused due to wrong pronunciation in English language as Seventy or Seventeen).

### III. EVALUATION FOR SUGGESTED METHOD

Indian citizen has habit to live and accept opinion of his own society . He do not dare to take some decisions independently , when the matter is concern with his business or family occupation. Lok Adalat Panel ( three persons) applied their mind to find out solution. The expert determination also played role to bring actual situation of land . Two parties applied their mind. The parties were free take opinion of their counsel, relative, friends who were called by them.

The case studies as discuss shows that, no two disputes are alike and no same formula /logic to settle such matter can be applied. The Revenue Record , survey map and map for cause of action should be understood. In my study I found that, such expert determination depends upon the facts and circumstances of the each case. It is limited procedure. It helps to the Lok Adalat panel to identify the goals and interest of each parties before they become deeply entrenched in their positions and litigation commences. Such joint measurement map helps the parties to evaluate the soundness of their position. It gives confidence to them to find out reasonable settlement offer. Thus, the Expert determination process provides information that due to correct measurement of land, the most of conflict can be settled. In such process neither party has a burden of proof to establish technical fact. The Lok Adalat Panel members did not determine any fault. They always tried to identify the issues, explore settlement solutions. They focus on the issues and interests and not the personalities of parties in dispute. They tries to find out possible solutions. The parties had power and authority to explore options to resolve an issue in dispute. The parties will have to implement and live with any agreement reached.

Expert determination may help for non giving birth to any such cause of action from the basis of incorrect revenue record or incorrect map, if matters are referred at Pre-litigation stage. Thus that Pre-litigation would be nothing but, "*Prevention is better than a cure*".

### IV. ODR (ONLINE DISPUTE RESOLUTION)

e-courts and ODR are the two most important uses of technology for dispute resolution and reducing backlog. The ODR is complementary system so I studied cultural factors

including customary roots, data collection, data analysis. More participation is possible so that more interest of concerns can be settled. In this system, it is possible to take opinion of third person who may be expert in that field. Parties may also consult to others. Suggested Videoconferencing and Video shutting/recording is a combination of A.D.R. and O.D.R. Electronic communication is no substitute for face-to-face conversations but it is useful for oral communication where consent of parties is needed. It is useful for limited purpose only because of the discussion before Lok Adalat panel is not confidential and it is open to all participants. The conflicts in explained examples , after expert determination, does not remain complex point , hence , there would be no chance to misunderstanding and therefore each individual party could focus purely on the relevant facts and issues - devoid of any irrelevant debate, emotions or personality clashes etc.

The parties may use telephonic call, video call till the development of efficient ODR system. In India the mobile phones and new technology is more popular and the Indians are well aware for the use of ' Phone a Friend ' facilities in Television programs.

In case of pre-litigation or fully O.D.R. System, where relevant documents could be supplied to both sides prior to seating before Lok Adalat , will require good software.

### V. CONCLUSION

To give more effect to this new system , it is necessary to set team to measure land. The Revenue Authority to decide the disputes for incorrect area shown in Revenue Records and survey record maintained by the survey department . It is necessary to make this new system more effective so that it , diagnosis, designs and implements the program, evaluates program, monitor and and suggest improvement. It is necessary to develop software for effective implementation of system.

In the Lok Adalat process many person involves .They acts, observes the fact and laws. All those minds worked to comes to the conclusion for settlement. It clearly shows that they are of one mind means they agreed . Their act to agree shows that, such settlement is nothing but , so probable that a prudent man ought, under the circumstances of the particular case, to act , upon the supposition that it exists. In the language of management it can be called as bottom-up system. Such a mechanism of Lok Adalat is beneficial for public at large. It is a dream of Father of Nation and main object of the system by Hon'ble Mr. Justice P. N. Bhagwati, the former Chief Justice of the Supreme Court of India.

Judiciary is the most trusted government body in the country. But it appears that, for the cause of land encroachment , people are reluctant to adopt Lok Adalat. In my view, it is necessary to focus on opening and maintaining clear channels of communication with them so they understand what is coming and what it means to them. For that purpose effective change management is necessary.

I appeal to litigants to take active participation in Lok Adalat . Lok Adalat is enable the people to get rid of their disputes and to reduce pendency .



I would like to quote :

*“There are moments when troubles enter our lives and we can do nothing to avoid them. But they are there for a reason. Only when we have overcome them will we understand why they were there.”*

— Paulo Coelho, The Fifth Mountain

#### ABBREVIATION

Acre = unit for land measurement  
Guntha = unit for land measurement (40 Gunthas is equal to one acre)  
Dhura = boundary between two land portion.  
T.I.L.R = Government land survey department at Taluqa place

#### REFERENCES

- [1] Manual of Land Surveying ,by R.G.Gordon , I.C.S.,Government Nagpur Press.
- [2] Maharashtra Land Revenue Code,1966
- [3] City Survey Manual , By:F.G.H.Anderson , Published under Revenue Department.
- [4] Legal Services Authorities Act,1987.
- [5] Indian Evidence Act,1872.
- [6] Civil Procedure Code, 1908.

#### AUTHORS

**First Author** – Sanjay Rambhau Salkute, Labour Court  
Aurangabad Maharashtra ( India) Pin Code:- 431001,  
sanjaysalkute@gmail.com