

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2278 OF 2018

(RAMA DURGA PACHARE & 2 OTH..VS.. DHARMARAJ TUKDOJI TOTE & 2 OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.R.Agrawal, Adv. a/w. Ms Astha Sharma, Adv. for Petitioners.
Shri H.D.Dubey, AGP for Respondent Nos.2 and 3.

CORAM : ANIL S. KILOR, J.

DATED : JUNE 14, 2023.

1. The present matter pertains to Section 5 of the Mamalatdars' Courts Act, 1906 (hereinafter referred to as "the Act of 1906").

2. The petitioner is original non-applicant, who succeeded before the Tahsildar who rejected the application filed by the respondent No.1 under Section 5 of the Act of 1906. However, in an appeal before the Sub-Divisional Officer the respondent succeeded and therefore, this petition.

3. This Court, in the case of *Gorakshan Sansthan, Murtizapur ..vs.. State of Maharashtra*, reported in **2019(3) ALL MR 849** has held that the compliance of Sections 7 and 9 of the Act of 1906 is mandatory.

4. Bare perusal of the application filed by the respondent No.1 under Section 5 of the Act of 1906 it is evident that there is no compliance of Sections 7 and 9 of

the Act of 1906 and accordingly, I am of the opinion that the matter needs to be remanded back to the Tahsildar to decide the same afresh, after ensuring compliance of Sections 7 and 9 of the Act of 1906. Since there is no compliance of Sections 7 and 9 of the Act of 1906, I am not inclined to go into the merits of the matter.

5. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.
- ii) The impugned order dated 14/02/2017 passed by Sub-Divisional Officer is hereby quashed and set aside.
- ii) The matter is remanded back to the respondent No.2-Tahsildar, Achalpur to decide the same afresh, taking into consideration the observations made by this Court in the case of *Gorakshan Sansthan, Murtizapur ..vs.. State of Maharashtra*, reported in **2019(3) ALL MR 849**.

The Writ Petition is **disposed of** accordingly. No order as to costs.