



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

WRIT PETITION NO. 2441 OF 2024

PRABHABAI W/o RAJU BHOYAR

VERSUS

KUNAL W/o HARISH RAUT, THRU. HARISH VITTHALRAO RAUT AND OTHERS.

Office Notes, Office Memoranda of Coram,
appearances, Court's Orders or directions and
Registrar's order

Court's or Judge's Order

Mr. Shahir S. Ansari, Advocate for the petitioner.
Mr. Amol V. Chirde, Advocate for respondent no.1
Mrs. H. N. Prabhu, A.G.P. for respondent nos.2 and 3.

CORAM : M. W. CHANDWANI, J.

DATE : FEBRUARY 03, 2026.

1. Heard Mr. S. S. Ansari, learned counsel appearing on behalf of the petitioner, Mr. Amol V. Chirde, learned counsel appearing on behalf of respondent no.1 and Mrs. Prabhu, learned A.G.P. appearing on behalf of respondent nos.2 and 3.
2. This petition challenges the order dated 08.02.2024 passed by respondent no.3 – Sub Divisional Officer, Darwha, thereby rejecting the review application filed by the petitioner and confirming the order dated 28.04.2023 passed by respondent no.2 – Tahsildar, Darwha under Section 5 of the Mamlatdar's Courts Act, 1906 (hereinafter referred to as "the Act of 1906") directing the petitioner to provide way to respondent no.1 from her land bearing Gat No. 107.
3. The petitioner is the owner of land bearing Gat No. 107 whereas, respondent no.1 is the owner of land bearing Gat No. 106/2 situated at Mouza Sendri(Bu).

Respondent no.1 purchased the land bearing Gat No. 106/2 from the brother of the petitioner namely Haribhau Dnyanobaji Wankhede. Respondent no.1 on 17.06.2022 had applied before respondent no.2 for directing the petitioner to remove the obstruction created by her to the right of way of respondent no.1 in Gat no. 107 owned by her.

4. Respondent no.2 after considering the application filed by respondent no.1, the registered sale deed of Gat No. 106/2, the reply of the petitioner and the spot inspection report opined that the land bearing Gat no. 106/2 owned by respondent no.1 and the land bearing Gat no. 107 owned by the petitioner were originally owned by Dnyanobaji Wankhede. It is also observed that in the Sale Deed of land bearing Gat no. 106/2 there is a mention that the right of way from the land of the petitioner i.e. Gat No. 107 from Western Dhura will continue to be used by respondent no.1 to reach land bearing Gat no. 106/2. Respondent no.2 further observed that the spot inspection report reveals that there is way for respondent no.1 only through Gat No. 107 and accordingly passed the impugned order. The said observations of respondent no.2 were considered by respondent no.3 in review while confirming the order dated 24.04.2024.

5. The contention is that the application filed by respondent no.1 before respondent no.2 was not on solemn affirmation and therefore, does not comply with

the requirements of Section 7 of the Act of 1906. According to the petitioner, respondent no.2 ought to have examined respondent no.1 on oath.

6. With the able assistance of the learned counsel for the petitioner, I have gone through Section 7 of the Act of 1906. However, perusal of Section 7 reveals that there is no such requirement of filing the application on oath. Section 9 of the Act of 1906 speaks that if the application does not fulfill the requirements of Section 7, then the Tahsildar shall examine the applicant on oath.

7. However, the petitioner has failed to demonstrate the non-compliance with the requirements of Section 7 of the Act of 1906 by respondent no.1 while filing application before respondent no.2. The sale deed of land bearing Gat no. 106/2 as well as the spot inspection report clearly demonstrates the right of way for respondent no.1 from the land bearing Gat no. 107 owned by the petitioner. Rather, the said way from the land bearing Gat no. 107 was being used by the predecessor-in-title of the petitioner to reach land bearing Gat No. 106/2, which was later on purchased by respondent no.1. Both the authorities have considered this aspect.

8. There is no perversity in the orders impugned. The petition has no merit. Accordingly, the writ petition is dismissed.

(M.W.Chandwani, J.)