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wp3206.13

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3206 OF 2013

1. Uttam s/o. Trimbak Sable, .. Petitioners
Since deceased through legal representative,

1-A) Sanjay Uttam Sable,
Age. 52 years, Occ. Private Service,
R/o. Dak Pimpalgaon, Taluka Vaijapur,
District Chhatrapati Sambhajinagar.

2. Gitaram s/o. Trimbak Sable,
Since deceased through legal representative,

2-A) Raju Gitaram Sable,
Age. 53 years, Occ. Service,
R/o. House No. 70, Chawal No. 9,
New Hudco, Pipeline Road, Ahmednagar.
Ahmednagar.

3. Astik Sitaram Sable
Since deceased through legal representative,

3-A) Ganesh Astik Sable
Age. 34 years, Occ. Service,
R/o. Biregaon Road, Kalika Nagar,
At Post Shirdi, Tq. Rahta,
Dist. Ahmednagar.

4. Dattu Kacharu Taru,
Age. 45 years, Occ. Labour,
R/o. Shirdi, Taluka Rahata,
Dist. Ahmednagar.

All petitioners
Through Special Power of Attorney Holder
Shri Rajendra Harishchandra Sawant,
Age. 59 years, Occ. Business,
R/o. C/o. Gitaram Trimbak Sable,

House No. E-70, Navin Hudco,
Pipeline Road, Savedi,
Ahmednagar.

VERSUS

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| <ol style="list-style-type: none"> 1. The Scheduled Tribes Certificate Scrutiny Committee, Aurangabad Division, Aurangabad, Through its Member Secretary. 2. Prakash Jayram Shelke, Age. 43 years, Occ. Business, R/o. Swapnil Lodge, Pimpalwadi Road, Shirdi, Tal. Rahta, Dist. Ahmednagar. 3. Sampat Nivrutti Gondkar, Died through LRs. <ol style="list-style-type: none"> 3A. Padmawati Sampat Gondkar Age. 74 years, Occ. Nil, 3B. Mahendra Sampat Gondkar Age. 56 years, 3C. Umesh Sampat Gondkar <ol style="list-style-type: none"> 3C-1 Alka Umesh Gondkar Age. 46 years, Occ. Household, 3C-2 Akshay Umesh Gondkar Age. 27 years, Occ. Agri., 3C-3 Gauri Umesh Gondkar, Age. 23 years, Occ. Education 3D. Ramesh Sampat Gondkar, Age. 54 years, Occ. Agri | <p>..</p> | <p>Respondents</p> |
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- All are R/o. Pimpalwadi Road,
Shirdi, Tq. Rahta, Dist. Ahilyanagar.

3E. Achrana Mukund More,
Age. 52 years, Occ.Agr.,
R/o. Kokangaon, Post. Shirasgaon,
Tq. Niphad, Dist. Nashik.

Mr. Mahesh Deshmukh h/f. Mr. D.S. Patil, Advocate for the petitioners.
Mr. A.R. Kale, AGP for respondent No.1.
Mr. V.D. Hon, Sr. Advocate i/b. Mr. A.V. Hon, Advocate for respondent No.2.
Mr. V.D. Sapkal, Sr. Advocate i/b. Mr. Yuvraj S. Choudhari, Advocate for respondent No.3.

**CORAM : KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.**
RESERVED ON : 23.07.2026
PRONOUNCED ON : 16.09.2026

JUDGMENT : [PER : KISHORE C. SANT,J.] :-

01. Heard learned Advocate Mr. Mahesh Deshmukh h/f. Mr. D.S. Patil for the petitioners, Mr. A.R. Kale, learned AGP for respondent No.1, Mr. V.D. Hon, learned Sr. Advocate i/b. Mr. A.V. Hon, Advocate for respondent No.2 and Mr. V.D. Sapkal, learned Sr. Advocate i/b. Mr. Y.S. Choudhari, Advocate for respondent No.3.

02. Petitioners, claiming to be successors of one deceased Tarabai, have approached this Court challenging an order dated 17.03.2012 invalidating tribe claim of deceased Tarabai by respondent

No.1 – Scrutiny Committee, holding that she failed to prove her tribe status as belonging to Mahadeo Koli (29).

03. At the very outset, the respondents raised an objection as regards *locus standi* of the petitioners to file this petition. The objection is that the petitioners have no interest in the caste status of the deceased Tarabai.

04. It is a case of the petitioners that deceased Tarabai had executed a will in respect of her properties in favour of the petitioners. Since she happened to be a person belonging to Scheduled Tribe, she had filed proceeding for getting back possession of her land under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and it is for that reason they have every *locus* to file this petition. This Court would deal with the objection at a later stage.

05. Brief facts giving rise to the petition are as under :-

. Deceased Tarabai and her husband were having land Survey No. 48/2 and Survey No. 17 at Shirdi, Tal. Rahata, Dist. Ahmednagar. The property was said to have been wrongly transferred in favour of the respondents. The property from Survey No. 48/2 was transferred to

respondent No.2 and property from land Survey No. 17 was transferred to respondent No.3. It was case of husband of Tarabai that since he belonged to Mahadeo Koli, a scheduled tribe, the transfer was invalid and sought possession from respondent Nos.2 & 3. The deceased had filed a proceeding under the Maharashtra Restoration of Lands to Scheduled Tribe Persons Act. Said proceeding was carried till the High Court by way of Writ Petition No. 4614 of 2009. Said proceeding attained finality in this Court in judgment dated 01.02.1985. It is held that the deceased husband does not belong to scheduled tribe.

06. It is, thereafter, Tarabai again got issued a certificate as belonging to Mahadeo Koli. Respondent Nos. 2 and 3, thereafter filed complaint before the Scrutiny Committee to invalidate Tarabai's certificate.

07. In the proceeding, Tarabai produced document i.e. one complaint registered in 1356 Fasli i.e. year 1946 in the Court of JMFC, Udgir, wherein complaint was filed against paternal grandfather of Tarabai, namely, Bhagwanta Sable. In the said complaint, caste of Bhagwanta Sable is shown as Mahadeo Koli. It is on that basis Tahsildar, Vaijapur issued certificate in favour of Tarabai on 28.06.1995.

08. Since Tarabai started claiming status as belonging to Scheduled Tribe, respondent No.2 lodged a formal complaint before the Scrutiny Committee. It is, thereafter, the Sub-Divisional Officer, Vaijapur again issued Tribe Certificate to deceased Tarabai. However, as she failed to prove her tribe status, the Scrutiny Committee invalidated her claim by order dated 10.02.2009. Said order was challenged in this Court by way of Writ Petition No.4614 of 2009.

09. This Court partly allowed the writ petition and directed remand of the matter to the Scrutiny Committee for fresh adjudication.

10. After remand, Tarabai produced certificate of two nephews, namely, Nalesh Sable and Sanjay Sable, real brothers and their sister Nalini Sable. In the enquiry, the Committee called for original record from the Court of JMFC, Udgir. On refusal to send the record, the Investigating Officer was sent by the Scrutiny Committee to the Court of JMFC, Udgir for verification of the record. The record revealed that the caste entry in the name of Bhagwanta was manipulated. The words are in two different inks and there was variation in hand-writing. It is on that, the Scrutiny Committee again invalidated claim of deceased Tarabai on 17.03.2012.

11. Soon, thereafter Tarabai died on 03.04.2012. The restoration proceeding was pending before Tahsildar, Rahta. On above happenings, on 09.04.2012, the Tahsildar dismissed the restoration proceeding bearing Tribe Case No. 1/11 in respect of Survey No. 48/2 in view of invalidation of the claim.

12. Now, the petition is filed by the petitioners claiming to be successors of Tarabai. It is claimed that they are related to the deceased. They also claim that the deceased had executed a will in their favour bequeathing property standing in her name. This petition is filed through special power of attorney holder Mr. Rajendra Savant.

13. Learned Advocate Mr. Deshmukh for the petitioners on these facts vehemently argued that the learned Members of the Committee failed to appreciate the record from the Court of learned JMFC. It is of 1356 Fasli i.e. year 1946. The said document has high probative value. The Scrutiny Committee discarded the document only on visual observations as regards ink and font variation by the vigilant team. There is no finding recorded by any of the Courts that the document is forged or fabricated. The Scrutiny Committee also failed to consider the validity granted to two nephews and one niece of deceased Tarabai. It is

settled position of law that when there is validity in the blood relation, such validity would weigh in favour of a person seeking validity. The Scrutiny Committee further committed wrong by placing reliance on the so called affidavit of Tarabai, in which she had stated that she does not belong to Mahadeo Koli but belongs to Hindu Koli. The Scrutiny Committee, however, failed to consider further affidavit of Tarabai and her caretaker one Ayyappa Pillai, wherein it was explained that earlier affidavit was taken under force. There is no contradictory entries found against the deceased.

14. So far as *locus standi*, learned Advocate for the petitioners submits that the petitioners are "successors-in-interest" as per definition 2(h), "tribal" as per definition 2(j) and "tribal-transferor" as per definition 2(k) of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

15. In support of his submission, learned Advocate for the petitioners relied upon following judgments :-

- (i) **Maharashtra Adiwasi Thakur Samaj Swarakshan Samiti Vs. State of Maharashtra & Ors., 2023(3) Bom. C.R. 118.**
- (ii) **Balwant s/o. Vithal Jalgaonkar Vs. State of Maharashtra & Ors., 2004(3) Mah.L.J. 687.**
- (iii) **Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors., (2013) 4 SCC 465.**

(iv) Amarnath s/o. Madanlal Thakur Vs. The Scheduled Tribe Certificate Scrutiny Committee, Nandurbar & Anr. (WP 9625/2019) (Bombay High Court, Aurangabad Bench).

16. During the course of arguments, he also pointed out a Government Resolution dated 29.10.1980, establishing a Committee for verification of tribe status. He submits that when the finding was recorded in the year 1985 by this Court against husband of Tarabai, it was without any jurisdiction as by that time the Committee was established to look into caste/tribe claims of the persons claiming caste/tribe status.

17. Learned Senior Advocate Mr. Sapkal for respondent No.3 vehemently argued that the petitioners are brothers of deceased Tarabai. They cannot be said to be successors. After death of Tarabai, property would go to the persons from the relation of her deceased husband and not to her relatives. He relies upon section 15(2) of the Succession Act. He submits that when the property is admittedly of the husband, it is rule of succession, applicable to the husband would apply. The so called will is filed first time before this Court.

18. He further submits that the respondents are already declared as owner of the land purchased by them in the lifetime of deceased

Deoram. Though Deoram had initiated restoration proceeding, it attained finality in the year 1985, wherein this Court held that Deoram does not belong to Scheduled Tribe. This chapter is thus, closed by the said judgment. Till today, the judgment of the High Court of the year 1985 is not challenged. There was no question of Tarabai thereafter obtaining certificate as belonging to Scheduled Tribe. Deceased Tarabai herself had clearly stated that she does not belong to Scheduled Tribe by making affidavit that was considered in the judgment. Though it is objected by learned Advocate Mr. Deshmukh, the so called document is not before this Court. He submits that Tarabai had already obtained one certificate in 1995 by Tahsildar and thereafter in 2008 from the Sub-Divisional Officer.

19. In the earlier writ petition, the order was set aside with direction to decide caste claim afresh. Since deceased Tarabai is dead, she cannot be now examined. The question of disputed fact about her affidavit cannot be resolved and this Court cannot go into said issue. He further made submission that during pendency, two Civil Applications were filed in this Court; one for fixing early date of hearing bearing CA No. 9264 of 2006, even when the petitioner was no more. Another CA No. 1707 of 2025 was filed for bringing legal representatives on record.

Again it was filed when three of the petitioners were dead. Said application is not filed by legal representatives. No affidavit is filed that they have given power of attorney to continue with the petition. His submission is that today, the power of attorney holder cannot prosecute the petition. The will is not attested and it is doubtful document. Unless the will is proved, the petitioners cannot claim any right as successors. He expressed doubt about the power of attorney as well, which is of 01.04.2013. In the power of attorney, there is no reference of so called will. For this reason the power of attorney holder has no power to file a writ petition. He thus submits that filing of the writ petition is clearly an abuse of process of law.

20. Affidavit in rejoinder is filed on 22.01.2023 by power of attorney holder. He again harps upon affidavit executed by Tarabai stating that she does not belong to Mahadeo Koli. The petition deserves to be dismissed with costs.

21. Learned Sr. Advocate Mr. Hon submits that respondent No.2 had purchased land Survey No. 48/2 from Tarabai in 2007. After transfer of the property, sale deed is not challenged till now. The petitioners only due to lust of the property are prosecuting this petition. After death of

Tarabai, there is no requirement of validity certificate in her name. Tarabai twice lost her claim before the Scrutiny Committee. Nothing new is now produced in respect of claim of the petitioners. He relies upon judgments in the cases of **Bhagat Ram (By LRs.) Vs. Teja Singh (By Lrs.) 2002 (1) SCC 210 and V. Dandapani Chettiar Vs. Balasubramanian Chettiar (dead) by LRs. & Anr. (2003) 6 SCC 633.**

22. Learned AGP Mr. Kale supports the impugned order. He submits that Nalesh himself has filed an affidavit. He invited attention to the genealogy of Bhausahab and his certificate. He thus submits that there is no case made out to allow this petition. He submits that this Court has already held that when there is forgery or fabrication in documents, such document cannot be considered to prove caste status. He thus prays for rejection of the petition.

23. In rejoinder, learned Advocate Mr. Deshmukh submits that in the power of attorney, there is no need to state everything. He submits that assuming that caste status is not proved, under the Restoration Act, there is no obligation to get caste status validated. He submits that Tarabai had a right to bequeath property to the petitioners. There is

nothing to indicate that said will is illegal or cannot be acted upon. He maintains that the petitioners have every *locus standi*.

24. On the basis of the rival pleadings and the arguments, we proceed to deal with the matter. First we will have to see as to whether the petitioners have any locus to file the petition. Section 2(h) of the Restoration Act reads as under :-

2(h) "Successor-in-interest" means a person who acquires interest in land by testamentary disposition or devolution on death;

. In the present case, admittedly land is received by Tarabai from her husband. Present petitioners are related to Tarabai as her brothers. It is rightly submitted by learned Advocate for the respondent that when the land is received from deceased husband, after death of Tarabai, the land will devolve upon successor of deceased Deoram and in no case that would devolve upon the petitioners.

. Section 2(j) reads as under :-

2(j) "Tribal" means a person belonging to a Scheduled Tribe within the meaning of the Explanation to section 36 of the Code, and includes his successor-in-interest;

. Thus, when a person can be said to be tribal, one has to consider section 36 of the Maharashtra Land Revenue Code, and there is clearly a bar of said section.

25. In the case of **Maharashtra Adiwasi (supra)**, the issue was referred to Larger Bench. In view of decision of Full Bench of the High Court in the case of **Shilpa Vishnu Thakur Vs. State of Maharashtra, 2009(3) Bom.C.R.497**, where procedural aspects were laid down by the Hon'ble Supreme Court to be followed by the Committees. It was held in that affinity test is integral test for determination of the caste claim. Whereas in the case of **Vijaykumar Vs. State of Maharashtra, (2010) 14 SCC 489** and in the case of **Anand Vs. Committee for Scrutiny.. 2011(6) Bom.C.R. 752**, it was held that even if candidate fails in affinity test at any stage, said cannot be only criteria for deciding caste claim based on caste certificate issued by competent authority. The Hon'ble Apex Court ultimately held that Scrutiny Committee has to ascertain whether the certificate is genuine.

26. The second aspect that was considered as to whether the applicant has established that the person to whom, validity certificate relied upon by him, has been issued is a blood relative. It was held that for that purpose, the applicant has to establish the precise and exact relationship with the person to whom validity certificate is granted. Considering the above, it was held that the affinity test is not sole criteria to decide the caste claim. The Scrutiny Committee has to see that the

caste validity certificate relied upon is issued after making lawful enquiry. In case of doubt the Scrutiny Committee has to refer the case for conducting enquiry through vigilance cell. Such enquiry is limited to examine relationship claimed by the applicant with such person. It is further held that if it is established that father or grand father of the applicant has been given a caste validity certificate after holding lawful enquiry in accordance with law, in such cases it is not open for the Scrutiny Committee to hold grand father or father of the applicant belonging to Scheduled Tribe but the applicant does not belong to Scheduled Tribe. Only if relationship is not established, other evidence produced by the applicant and the result of the affinity test can be taken into consideration by the Scrutiny Committee.

27. In the case of **Balwant Jalgaonkar (supra)**, this Court has held that judgment of **Dharmendra Deoram Patil Vs. Scheduled Tribes Caste Certificate Scrutiny Committee, 2004 (1) All MR 512**, is not a good law as it was found to be not in tune with the judgment of Hon'ble Apex Court in the case of **Kum. Madhuri Patil Vs. Addl. Commissioner.. AIR 1995 SC 94**. This Court took a view that the order passed in favour of near blood relation by the Competent Authority, which has attained finality cannot be brushed aside lightly but the same

will have to be considered as a piece of evidence.

28. Third judgment is of **Ayaubkhan Pathan (supra)**. It is on the point of *locus standi* of a person in objecting caste status of the person. It is held that aggrieved person is one whose right is affected or jeopardised, has a *locus standi* to object caste status. Otherwise, he does not have any right to challenge *locus* or status of the person, who claims caste status. The person who raises grievance must show that he has suffered legal injury. In the case of **Amarnath (supra)**, this Court considered as to who can be said to be successor.

29. In the present case, since respondent Nos. 2 and 3 were already before the Scrutiny Committee, who have successfully shown that if caste status of deceased Tarabai is proved that will affect their right being vendee/transferee of the lands. This Court thus holds that they have *locus standi*.

30. Respondent No.2 relied upon judgment in the case of **Bhagatram [supra]**. It was held in the said judgment that when a person receives property from father or mother, in absence of any son or daughter of such person, it would only devolve on heirs of father or mother and not on any other person. It is only in absence of such heirs,

it would go to some other heirs. The Court considered judgment in the case of **Bajaya Vs. Gopikabai, 1978(2)SCC 542**. It is held that when family receives property from the husband, said property would devolve upon heirs of the husband, in case wife dies issueless and intestate. This judgment is thus squarely applicable to the present facts.

31. In the case of **V. Dandapani Chettiar (supra)** also, the Hon'ble Apex Court considered section 15 of the Hindu Succession Act. It is held that if the family receives property from the husband, who dies issueless, the property would devolve upon his heirs. In the present case the present petitioners have claimed their right being successors in interest and secondly on the strength of will deed.

32. So far as judgment of this Court in the case of **Sandesh Thakaji Sable Vs. The State of Maharashtra (WP No.12152 of 2025 – Aurangabad Bench)** is concerned, it is seen that the Court has taken the manipulation, forgery and fabrication in the entry to be sufficient to disentitle a person to claim tribe/caste status.

33. Now, looking to the facts of present case, it is accepted fact that the deceased Tarabai received property from her husband Deoram,

who died on 31.03.1995. Deceased Tarabai bequeathed land by will in favour of petitioner. They can be said to be successors in the interest in view of section 2(h) of the Restoration of Land Act. It is, however, a matter of record that in the year 1985 itself, this Court had held in the proceeding arising under the Restoration of Land Act initiated by deceased Deoram that Deoram failed to prove his tribe status. So far as caste status of Tarabai is concerned, her claim was invalidated by the Committee in the year 2009. In said case, the caste certificate was issued by the Tahsildar, Vaijapur dated 28.06.1995. Another caste certificate was issued by the Sub-Divisional Officer, Vaijapur dated 15.12.2008 and these both were considered in the said complaint lodged by respondent No.2. The same was set aside by this Court and the matter was remanded and it is thereafter fresh enquiry is held. There is already affidavit executed by the deceased clearly stating that she did not belong to Scheduled Caste and belonging to only Hindu Koli. This affidavit was filed before the Tahsildar, Rahta. This was specifically executed when she wanted to dispose off the properties. The affidavit is dated 16.02.2000, which now cannot be gone into as rightly submitted by learned Sr. Advocate Mr. Sapkal. Though now it is disputed by another affidavit by one Sawant, however still fact remains that now deceased Tarabai cannot be examined. There is no any other way to

ascertain as to which of the affidavits is voluntarily executed. Secondly, Court cannot believe a person who states contrary things on affidavit at different points of time. In any case, this Court cannot go into the disputed questions of fact.

34. We have gone through the original file, vigilance cell report and also gone through the file of Sandesh Sabale and Nalesh Sabale.

35. So far as judgment dated 01.02.1985 in Writ Petition No. 3189/1983 is concerned, there is clear finding recorded that brother Dhondiram and mother Nanibai of deceased Deoram were only Koli and not Mahadeo Koli. In the said petition present respondent No.3 now deceased represented by legal heirs, was a party. Said proceeding was arising out of the restoration proceeding only. So once restoration proceeding has attained finality and status of deceased Deoram is recorded as not tribal, now it is not open for the parties to go back and again agitate claim as belonging to Scheduled Tribe. It is a matter of fact that the judgment in Writ Petition No. 3189 of 1983 is intact. Thus, there is no question of Tarabai thereafter obtaining certificate from Tahsildar in 1995 and from the Sub-Divisional Officer in the year 2008. So far as power of attorney is concerned, this Court need not go into that

aspect. Main question is about caste status of deceased Tarabai.

36. As regards to the document relied upon by deceased Tarabai i.e. from the Court of JMFC, this Court finds that there is no substance in the argument of learned Advocate Mr. Deshmukh. It is seen that Vigilance Cell Officer had been to the Court of learned JMFC. From there they observed that the record is manipulated. The submission that first it will have to be proved as forged and fabricated document cannot be accepted. It is not for this Court or for the Authority to prove forgery or fabrication like in criminal proceeding. It is only to ascertain as to whether the document is original and genuine for the purpose of ascertaining caste status.

37. On the issue of the *locus standi* of the petitioners, it needs to be seen as to whether will is proved. It is not a case of the petitioners that they have obtained probate or heirship certificate being legatees of deceased Tarabai. Secondly, looking to the relation with Tarabai, it is clear that the property was received by her from her husband. Even otherwise, this Court cannot go into the question of deciding as to whether the petitioners are entitled on the basis of will. It is only the Civil Court, where will needs to be proved and to obtain probate. There

is thus no question of the petitioners being entitled to get said property. Thus, on both counts, petitioners cannot be said to be successors.

38. This Court does not find any perversity or illegality in the judgment of the committee. No case is made out calling for interference at the hands of this Court.

39. This writ petition stands dismissed. Rule discharged.

[AJIT B. KADETHANKAR, J.]

[KISHORE C. SANT, J.]