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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5854 OF 2012**

Shri Rambhau Mahadu Bendkoli	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. M.S. Karnik, for the Petitioner.
Mr. A.B. Vagyani, Government Pleader, for the Respondent Nos.1 to 4.
Mr. Vishwajeet S. Kapse, for Respondent Nos.5 to 8.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 16th FEBRUARY, 2015

P.C.

. Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the Respondent Nos.5 to 10. The learned Government Pleader represents Respondent Nos.1 to 4. Notice for final disposal has been issued. The Petitioner, on the basis of caste certificate dated 10th April, 1995 purportedly issued by the Executive Magistrate, Nashik claimed that he belongs to “Mahadev Koli” a Scheduled Tribe. The said caste certificate appears to have been referred to the Caste Scrutiny Committee by the Tahasildar, Nashik.

2. The Caste Scrutiny Committee, by impugned order dated 15th May, 2012, issued the following directions :

- “5. The applicant vide his submission before the Scrutiny Committee on 23.12.2011 contended that he never applied before the Executive Magistrate, Nashik for issuance of caste certificate to him as belonging to Koli caste and he has not obtained any caste certificate from the Executive Magistrate, Nashik as belonging to Koli caste on 6.12.1988.
6. In the light of these facts and now the applicant is denying that he has applied for the caste certificate issued in the name of applicant by the Executive Magistrate, Nashik on 6.12.1988, the matter is remanded to Executive Magistrate, Nashik for de-novo enquiry regarding two different caste certificates issued in the name of applicant.
7. The Executive Magistrate, Nashik is also hereby directed to verify whether the applicant Shri. Rambhau Mahadu Bendkule has really applied for the caste certificate which was issued by the Executive Magistrate, Nashik on 6.12.1988 in the name of applicant.”

3. The learned counsel appearing for the Respondent Nos.5 to 10 submits that he is also not supporting the aforesaid directions on the ground that the entire material showing the fraud played by the Petitioner is before the Caste Scrutiny Committee. He submitted that the Caste Scrutiny Committee instead of directing the Executive Magistrate to make verification as to whether caste certificate dated 6th December, 1988 has been obtained by the Petitioner ought to have recorded findings on the basis of available material on record. He invited our attention to the report of the Vigilance Cell.

4. After having heard the learned counsel appearing for the parties, we find that the approach of the Caste Scrutiny Committee is erroneous. The Caste Scrutiny Committee was inquiring into the caste claim of the Petitioner on the basis of the caste certificate purportedly issued on 10th April, 1995 by the Executive Magistrate, Nashik. It was pointed out during the course of inquiry that the Petitioner has obtained another caste certificate on 6th December, 1988 from the same Executive Magistrate showing that he belongs to caste “Koli”. The contention of the Respondent Nos.5 to 10 is that in fact, the caste certificate dated 10th April, 1995 is a fabricated document and in any event, it is obtained on the basis of bogus documents. The contention of the said Respondents is that as the Petitioner applied and obtained caste certificate on 6th December, 1988 which shows that he belongs to the caste “Koli”, the case of the Petitioner will have to be thrown out. The contention of the Petitioner appears to be that the caste certificate dated 6th December, 1988 was never obtained by him.

5. Under the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and the Rules framed thereunder, the Caste Scrutiny Committee possesses power to

issue witness summonses and power to examine the witnesses on oath.

6. What the Caste Scrutiny Committee appears to have done is that an order of remand has been passed directing the Executive Magistrate, Nashik to hold a de-novo inquiry relating to two different caste certificates issued in the name of the Petitioner. It is well settled that caste certificate issued under Section 4 of the said Act is at highest a prima facie evidence of the caste claim and such a certificate is always subject to scrutiny by the Caste Scrutiny Committees. The issue before the Caste Scrutiny Committee was whether the caste certificate dated 10th April, 1995 is a fabricated document or whether it is obtained on the basis of fabricated documents. The other issue was whether the Petitioner himself had obtained the caste certificate on 6th December, 1988. These issues ought to have been decided by the Caste Scrutiny Committee on the basis of the evidence on record. The Caste Scrutiny Committee could have always called for the record in relation to the said two caste certificates from the Competent Authority and could have always summoned the concerned Competent Authority to give evidence. The order of remand for de-novo inquiry was in any case uncalled for.

7. There is a second issue which arises for our consideration. Whether the Caste Scrutiny Committee was empowered to order de-

novo inquiry in respect of the caste certificate in respect of which the caste claim was made by the Applicant. As pointed out earlier, the caste certificate issued under Section 4 of the said Act is at highest a prima facie evidence of the caste and it is for the Caste Scrutiny Committee to make final adjudication on the caste claim of the Applicant. In our view, the Caste Scrutiny Committee does not possess the power to pass an order of remand to the Executive Magistrate inasmuch as the Caste Scrutiny Committee does not have appellate jurisdiction over the Competent Authority under Section 4 in relation to the orders granting caste certificates. Only if an application for grant of caste certificate is rejected, there is an appellate power vesting in the Caste Scrutiny Committee.

8. Even on merits also, the order of remand could not have been passed.

9. We, accordingly pass the following order :-

ORDER

- (i) The directions contained in the order dated 15th May, 2012 are hereby quashed and set aside;

- (ii) The Caste Scrutiny Committee shall proceed with the inquiry pending before it in the light of the observations made by this Court in this Judgment and Order;
- (iii) We direct the parties to appear before the second Respondent Caste Scrutiny Committee on 4th March, 2015 at 11.00 am for fixing the schedule of further hearing. The Caste Scrutiny Committee shall complete the adjudication and shall pass a final order on the caste claim as expeditiously as possible and in any event, within a period of four months from 4th March, 2015;
- (iv) All questions on merits are kept open;
- (v) The Petition is disposed of on above terms;
- (vi) All concerned to act upon an authenticated copy of this order.

(A.K. MENON, J)

(A.S.OKA, J)