

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

WRIT PETITION NO. 10222 OF 2014

Shaikh Shamsuddin Shaikh Hussain
Since deceased through L.Rs.
Nijamuddin Shamsuddin and others .. Petitioners

Versus

Hasan Gulab Pathan (Tadvi)
Since deceased through L.Rs.
Gafar Hasan Tadvi and others .. Respondents

Shri V. T. Choudhari, Advocate for Petitioners.
Shri A. N. Sabnis, Advocate h/f Shri S. B. Gothwal, Advocate for
Respondent Nos. 1 to 8.
Mrs. R. P. Gaur, A.G.P. for Respondent Nos. 9 to 12.

**WITH
WRIT PETITION NO. 10223 OF 2014**

Shaikh Shamsuddin Shaikh Hussain
Since deceased through L.Rs.
Nijamuddin Shamsuddin and others .. Petitioners

Versus

Hayatkha Fattru
Since deceased through L.Rs.
Zulbai Hayatkhan Tadvi and others .. Respondents

Shri V. T. Choudhari, Advocate for Petitioners.
Shri Sujit D. Joshi, Advocate for Respondent Nos. 2 and 4.
Shri P. S. Patil, Addl.G.P. for Respondent Nos. 6 and 7.

**WITH
WRIT PETITION NO. 10284 OF 2013**

Shaikh Shamsuddin Shaikh Hussain
Since deceased through L.Rs.
Nijamuddin Shamsuddin and others .. Petitioners

Versus

Maibu Mahebu Gulzar Tadv
Since deceased through L.Rs.
Bismilla and others .. Respondents

Shri V. T. Choudhari, Advocate for Petitioners.
Shri A. N. Sabnis, Advocate h/f Shri S. B. Gothwal, Advocate for
Respondent Nos. 1A to 1-I, 2A, 3A, 4 and 5.
Shri P. S. Patil, Addl.G.P. for Respondent Nos. 6 to 8.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.
DATE : 06TH DECEMBER, 2017.**

FINAL ORDER :

. In all these writ petitions petitioners assail the validity certificates issued in favour of respondents of Tadavi Bhil (Scheduled Tribe).

2. Mr. Choudhari, the learned advocate for petitioners submits that, as far as validity certificates issued in Writ Petition No. 10284 of 2013 and Writ Petition No. 10222 of 2014 are concerned, the same are issued without any vigilance enquiry. So far as validity certificate issued in Writ Petition No.

10223 of 2014 is concerned, the vigilance is conducted only in respect of documents and no home enquiry is conducted. The learned advocate further submits that, in all these cases affinity test is also not conducted by the Committee. The affinity test is mandatory, so also the vigilance report has to be obtained before validity could be issued. Mr. Choudhari, the learned advocate further submits that, the persons professing Islam religion cannot belong to Scheduled Tribe, as caste system is not prevailing in Muslim.

3. Mr. Sabnis, the learned advocate for respondents submits that, the vigilance has been conducted in respect of the validity certificate issued to the sister of Gafar in Writ Petition No. 10222 of 2014. The same vigilance would apply to Gafar also. The learned advocate further submits that, respondents reside in the notified tribal area of Jalgaon district. The committee was satisfied on the basis of documents and thereby has issued the validity certificate. No illegality has been committed.

4. The learned Additional and Assistant Government Pleaders accept that, as far as respondents in Writ Petition No. 10284 of 2013 and Writ Petition No. 10222 of 2014 are concerned, while issuing validity certificates in their favour, vigilance enquiry has not been conducted. So also while issuing validity certificate in favour of the respondent in Writ Petition No. 10223 of 2014, vigilance is conducted only in respect of documents and

home enquiry is not conducted. The learned A. G. P. further accept that, in none of the matters, wherein validity is issued the affinity test is conducted.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The Full Bench of this Court in a case of **Shilpa Vishnu Thakur Vs. State of Maharashtra and others** reported in **2009(3) Mh.L.J. 995** has observed that, affinity test is required to be conducted before issuing any validity in respect of a tribal. The Apex Court has also held that vigilance enquiry is mandatory before any validity certificate is issued. Reliance can be had to the judgment of the Apex Court in a case of **Kum. Madhuri Patil Vs. Additional Commissioner Tribal Development** reported in **(1994) 6 SCC 241**.

7. In present cases, admittedly vigilance enquiry has not been conducted before issuing validity certificates in favour of respondents in Writ Petition No. 10284 of 2013 and Writ Petition No. 10222 of 2014. So also in Writ Petition No. 10223 of 2014 vigilance in respect of documents is conducted. No home enquiry, nor affinity test is conducted. The argument of Mr. Choudhari, the learned counsel for petitioners that, scheduled tribe cannot be found in Muslim community, cannot be accepted at least in case of Tadvī tribe. The Division Bench of this Court at its

Principal seat at Bombay vide judgment and order **dated 27.09.2017** in **Writ Petition No. 10367 of 2017 (Mariya d/o Feroz Khan Vs. State of Maharashtra and others)** has held that, Tadvis are found in Muslim community. The Division Bench of this Court has also relied upon the Government instructions to that effect.

8. In the light of the above, as the procedure has not been followed while issuing validity certificates in favour of respondents. We set aside the judgment of the Scrutiny Committee issuing validity certificates in favour of respondents and as impugned in present writ petitions. The parties are relegated before the Scrutiny Committee. The parties shall appear before the Scrutiny Committee on 27th December, 2017. Considering the fact that, matters are remitted back, the Scrutiny Committee shall endeavour to decide the proceedings expeditiously and preferably within a period of six (06) months from the date of appearance of the parties. Needless to state, the Committee shall conduct the vigilance enquiry and affinity test and decide about the tribe claim of the respondents therein afresh. The writ petitions accordingly are disposed of with aforesaid observations and directions. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]