

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3868 OF 2012

Ashok Shinwar Mali
of Dahanu, District - Thane
Indian Inhabitant, Age - 61 years,
Occupation - Agriculture,
Residing at Naralwadi, Dahanu,
District - Thane.

.. Petitioner

V/s.

- (1) Smt.Indira Digvijaysinghrao Mukane
Age - 61 yrs, Occupation - Business;
- (2) Mahendrasingh Digvijaysinghrao
Mukane, Adult, Occupation - Business;
- (3) Ms.Padminiraje Digvijaysinghrao
Mukane, Adult,
All Indian Inhabitant,
Residing at 3, Motibaug,
Ganesh Khind Road, Pune,
At Present all Residing at
"Chandrama", 76, Koregaon Park,
Pune - 411 001;
- (4) Vice Chairman
Scheduled Tribe Certificates
Scrutiny Committee,
Konkan Vibhag, Thane,
At Vedanta Complex,
Vartak Nagar, Thane (West);
- (5) Chairman,
Scheduled Tribe Certificates
Scrutiny Committee,
Maharashtra State Pune - 1;

- (6) Executive Magistrate,
Jawhar, Office of the Tahasildar,
Jawhar, District - Thane;
- (7) The State of Maharashtra,
Through the Government Pleader,
High Court, Writ Cell,
Appellate Side, Mumbai. .. Respondents

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Mr.Dilip B. Bagwe a/w. Mr.Kantilal Kanojia, Advocate for the
Petitioner.

Mr. Abhishek Pungaliya, Advocate for Respondent Nos.1 to 3.

Ms.Neha Bhide, AGP" for Respondent Nos.4 to 7.

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**CORAM : S.C. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

**JUDGMENT RESERVED ON : SEPTEMBER 13, 2017
JUDGMENT PRONOUNCED ON : NOVEMBER 17, 2017**

JUDGMENT (Per PRAKASH D. NAIK, J.) :

The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India and prayed for issuance of writ of certiorari or any other appropriate writ, order or directions for setting aside the impugned caste certificates and caste validity certificates issued to respondent nos.2 and 3. In the alternative, it is also prayed that respondent nos.4 and 5 be directed to hold an inquiry into the claim made by the respondent nos.1 to 3 of belonging to Mahadev Koli caste, a

Scheduled Tribe and thereupon confiscate and cancel the impugned caste certificate and caste validity certificates, in the event, the same are found to have been illegally obtained by respondent nos.1 to 3.

2 The facts and circumstances narrated by the petitioner in this petition are as follows:

- (a) The petitioner and his relatives Smt.Jayanti Pandurang Mali, Shri Mohan S.Mali, Smt.Sujata Mohan Mali and Smt.Arti Mali are in occupation and possession of the land bearing Survey No.133/Hissa No.1A, admeasuring about 90.55 R Potkharaba 7.33 R and land bearing survey no.152, Hissa No.3A admeasuring about 7.10 R situated at Dahanu Fort Road, popularly known as Naralwadi.
- (b) Respondent nos.1 to 3 are the heirs of the original owners of the said lands. They are claiming to belonging to Mahadeo Koli tribe, a scheduled tribe recognized under The Scheduled Caste and Scheduled Tribe order 1950.
- (c) The petitioner and his said relatives are the successor in

title of one Shinvar Mali who was the tenant of the said land since 1952. At all material times, the predecessors in title of the respondent nos.1 to 3 were the landlords in respect of the said lands. The said land is uncultivable and filled with sand being proximate to the beach. The said land consist of coconut trees. The petitioner has his residential house in the said land which is situated at Survey No.133/1A. The land is situated within the limits of Dahanu Municipal Corporation. The respondent nos.1 to 3 or their predecessors in title have never cultivated the said land. On the other hand, the petitioner and his relatives were holding Navratri Utsav and permitting the holding of marriage receptions in the said land. The petitioners predecessor in title, during his lifetime and thereafter the petitioner and his said relatives have been in exclusive possession of the said land which is to the knowledge of the respondent nos.1 to 3. The said respondents or their predecessors in title have never adopted any legal proceedings in the civil court against the petitioner and his relatives. The petitioner and his relatives had, thereafter, become owners of the said land by adverse possession.

- (d) On 6th April, 2004, the said respondent nos.1 to 3 through their hirelings had attempted to dispossess the petitioner and his relatives employing by physical force from the said land which was successfully resisted by the petitioner. The complaint was lodged with Dahanu Police Station, against respondent nos.1 to 3.

- (e) The petitioner and his relatives filed a suit in the Court of Civil Judge Junior Division, Dahanu being Civil Suit No.13 of 2004 against the respondent nos.1 to 3 for a declaration that the title of the petitioner and his relatives over the said land had been perfected by doctrine of adverse possession and for consequential relief by way of permanent order and injunction restraining the said respondents from interfering with the physical possession of the petitioner and his relatives. The said respondents appeared in the said suit and filed a written statement. They also filed an application under Section 9A of the Code of Civil Procedure, challenging the jurisdiction of the Civil Court to entertain and try the suit on the ground that they belonged to the Scheduled Tribe-Mahadeo Koli and by

virtue of Section 10 of the Maharashtra Restoration of Lands to the Scheduled Tribe Act, 1974 (hereinafter referred to as "the said Restoration Act of 1974"), the Civil Court has no jurisdiction to entertain and try the same. In support of the said application the respondents relied upon caste certificate and validity certificate issued to them purportedly under the provisions of Maharashtra Scheduled Caste, Scheduled Tribes, D-Notified Tribes (Vimukta Jatis) Nomadic Tribes, other backward classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

- (f) The Civil Judge Junior Division, Dahanu by judgment and order dated 20th April, 2010, rejected the plaint under order VII Rule 11(d) of CPC. The petitioner and his relatives challenged the order dated 20th April, 2010 by preferring Appeal before the District Judge, Palghar being Civil Appeal No.25 of 2010. The said Appeal was dismissed by Judgment and order dated 5th September, 2011. The petitioner challenged the aforesaid decision by preferring Second Appeal No.17 of 2012, before this Court.

- (g) The predecessor in title of respondent nos.1 to 3 were the rulers of erstwhile State of Jawhar. According to the petitioner, the respondent nos.1 to 3 do not belong to Scheduled Tribe Mahadeo Koli or of any other Scheduled Tribe as defined under Section 2(j) of the Maharashtra Castes Certificate Act, 2000. It is the case of the petitioner that the said respondents either belong to the caste of Hindu Koli, Hindu Maratha or Rajput none of which is a Scheduled Tribe.
- (h) Mr.Marzban Jahangir Patel, a resident of Dahanu had claimed to be tenant of certain other plots of land of which predecessor in title of respondent nos.1 to 3 Shri Digvijay Singh Rao was the owner. The tenancy disputes had arisen between Mr.Patel and the aforesaid owner. Mr.Patel filed a regular civil suit no.36 of 1988 in the Court of Civil Judge Junior Division, Dahanu against Shri Digvijaysingh Rao for a declaration that he was tenant in respect of lands in his occupation and for permanent injunction consequential thereto. The respondent no.1 to 3 were brought on record after the death of the original defendant in the said suit. The said respondents contended that the suit was barred

by the provisions of Maharashtra Restoration Act, 1974. The respondent No.3 produced caste certificate and caste validity certificate issued to original defendant in support of their claim of belonging to Mahadeo Koli Scheduled Tribe. Mr.Patel challenged the legality of the said certificates. The trial Court has framed issues in the said suit including the issue whether the plaintiff proves that the respondent nos.1 to 3 herein did not belong to Hindu Mahadeo Koli (Scheduled Tribe) community and that the Maharashtra Restoration Act was not applicable for the properties mentioned in the suit and whether the plaintiff proved that the caste certificate issued to the defendant therein was illegal and contrary to its provisions of law.

- (i) The trial Court in its judgment and order dated 4th May, 2002 had held that the respondent nos. 1 to 3 did not belong to Hindu Mahadeo Koli (Scheduled Tribe) and that the Maharashtra Restoration of Lands to the Scheduled Tribes Act was not applicable to the properties which were subject matter of the suit. It was also declared that the caste certificate issued to defendant therein was illegal and was issued in violation of provisions of law.

- (j) Respondent nos.1 to 3 preferred an Appeal before the District Judge, Palghar viz Regular Civil Appeal No.59 of 2002. Thereafter, Mr.Patel and respondent nos.1 to 3 had settled the matter out of Court and filed pursis dated 11th October, 2007 in Appeal bearing No.59 of 2002, pursuant to which the said Appeal was disposed of by order dated 11th October, 2007. According to the petitioner, the findings arrived at and recorded by the trial Court in its judgment could not be reexamined or reassessed on merits by the Appellate Court. The judgment and order of the trial Court gives a clear indication that the respondent nos.1 to 3 do not belong to Mahadeo Koli and that the caste certificate as well as caste validity certificate obtained by their predecessor in title were illegal and issued contrary to provisions of law.
- (k) The petitioner preferred an Application/Appeal No.49 of 2011 before the respondent no.4 for cancellation of the caste certificates and certificate of validity issued to said respondents. The said Appeal/application was rejected vide order dated 24th January, 2012, stating that the scrutiny committee did not have power to review in respect of

certificate of validity which were issued by the said authority.

- (l) In the aforesaid circumstances, the petitioner has approached this Court by invoking Article 226 of the Constitution of India challenging the impugned caste certificate at Exhibits - C and D and certificate of validity at Exhibits - E and F, which were issued to the respondent nos.2 and 3.

3 Learned counsel for the petitioner submitted that the petitioner and his relatives were in possession and occupation of the subject land. The respondent nos.1 to 3 are claiming that they belong to Mahadeo Koli (Scheduled Tribe). The caste certificate and the certificate of validity issued by respondent nos.4, 5 and 6 to respondent nos.1 to 3 were obtained by suppressing material facts and documents and without following the procedure prescribed by law. It is submitted that the Civil Court in the suit preferred by Mr.Marzban Patel, has held that the respondent nos.1 to 3 did not belong to Hindu Mahadeo Koli and, therefore, the Maharashtra Restoration Act was not applicable to the properties which were the subject matter of the suit. The said

Court has declared that the caste certificate issued to defendant therein was illegal and was issued in complete violation of clear and express provisions of the applicable law. It is further submitted that in the said decision, the Civil Court has observed that the reports prepared by the administration of Bombay Presidency dating back to 1886 mentioned the name of king thereof as "Raja Patangeshaw of Jawhar" and in the column of caste or race or religion was given as "Koli Hindu" which is not the Scheduled Tribe. The documents dating back to the year 1952 signed by Smt. Priyamvade Raje, the mother of the said original defendant, states the name of her child as "Digvijaysingh" and as belonging to Hindu Maratha caste and which is not the scheduled caste. There are several other adverse findings which refutes the claim of the said original defendant. It is submitted that although the said order was set aside in the Appeal, it was done so in a peculiar circumstances as there was settlement between both the parties and the Court has not dealt with the merits of the case. The respondent nos.1 to 3 had agreed to transfer the subject lands in favour of Mr.Patel upon his accepting that the said respondents belong to Mahadeo Koli scheduled tribe. It is submitted that it was in these circumstances, that the said judgment and decree was set aside.

The said judgment gives a clear indication that said respondents do not belong to Mahadeo Koli tribe and the caste certificate and certificate of validity obtained by their predecessor-in-title was illegal. The findings of the Civil Court was thereby not set aside by the Appellate Court. It is submitted that the impugned documents are illegal and contrary to the provisions of law and in violation of the procedure prescribed by law. The respondents are misusing the said documents and depriving the petitioner of the said lands which he and his relatives have acquired by adverse possession. The predecessor in title of respondent nos.1 to 3 have also availed of the illegal caste certificate and certificate of validity by contesting the election for constituency reserved for Scheduled Tribe which they do not belong. The misuse of the said document is prejudicial to the right, title and interest of the petitioner and his relatives in the subject land. It is submitted that documents available, many of which are ancient public documents show that the ancestors of respondents belong to the Hindu Koli or Hindu Maratha or Hindu Rajput caste, neither of which is Scheduled Tribe. The concerned authorities, therefore, ought to have instituted proper inquiry as prescribed under the law and ascertained the caste of the respondent nos.1 to 3 before issuing the said caste certificate and certificate of validity. The

concerned authorities were erroneously influenced by the caste certificate and certificate of validity issued to Shri Digvijaysinghrao. The said fact itself would not be conclusive in nature to bind another concerned authority while examining the case of other members of the family namely respondent nos.1 to 3, if it is proved that such caste certificate and certificate of validity was issued by mistake, or non-consideration of relevant facts and suppression of documents. It is submitted that the scrutiny committee ought to have applied the affinity test in the case of respondent nos.1 to 3 who were the descendants of the erstwhile rulers of former state of Jawhar. The scrutiny committee ought to have concluded that the said respondents did not belong to Mahadeo Koli Scheduled Tribe in view of several ancient documents as well as the traits displayed by them and ought to have cancelled and confiscated the said documents. The said certificates are issued without holding proper enquiry and following due procedure of law. The purport of Maharashtra Restoration Act is to provide for restoration of certain lands to persons belonging to the Scheduled Tribe. The said act is being misused. It is submitted that the scrutiny committee has erroneously rejected the application preferred by the petitioner seeking cancellation of the caste certificate. The authority has

rejected the application erroneously on the ground that they cannot review its earlier decision granting the said certificates. It is submitted that the authority was empowered to review its decision in the facts and circumstances of the present case and it was an error to reject the said appeal/application. It is submitted that in the alternative to the prayer for setting aside, the impugned documents, this Court may direct the respondent nos.4 and 5 to make inquiry into the claim made by the said respondents.

4 The learned counsel for the petitioner relied upon the Government Resolution dated 8th March, 1985 bearing No.CBC-1684/(392)/D/XI. The said resolution states that a separate Scrutiny Committee has been appointed by the Government for verification of caste certificates of Scheduled Tribe under Government Resolution dated 23rd January, 1985. The government directed that at the time of verification of the caste certificate, mentioned in para 2 of the Government Resolution dated 23rd January, 1985, the scrutiny committee may go into the correctness or otherwise of the certificate already issued by the competent authority by calling additional evidence/documents from the concerned candidates and conduct detailed inquiry

before arriving at the final decision even by going beyond the Government resolution referred to therein if it has reason to believe that the certificate is manipulated or fabricated or has been obtained by producing insufficient evidence etc. and that the committee is authorized to cancel and confiscate it if on full enquiry and verification the same is found to be incorrect or invalid. On the basis of the said resolution, it is submitted that the committee ought to have conducted an inquiry to find out the truth as enumerated herein and ought not to have rejected the application/appeal mechanically on the ground that the committee cannot review its earlier decision.

5 Learned counsel for the petitioner relied upon following decisions:

- (1) ***Mangesh Nivruti Kashid & Ors. Vs. District Collector and Ors.*¹;**
- (2) ***Sandip Wysal Vs. State of Maharashtra & Ors.*²;**
- (3) ***Sangita Kolse Vs. State of Maharashtra*³;**
- (4) ***Madhuri Patil and Anr. Vs. Municipal Commissioner of Tribal Development and Ors.*⁴**

1 2012(3) Bombay Cases Reporter page 716

2 2010(3) BCR 717

3 2006 ALL MR Page 565;

4 1994(6) SC Page 241

6 The learned counsel for the respondent nos.1 to 3 submitted that the petition is devoid of merits. It is submitted that the petitioner had filed a suit no.13 of 2004. In the said suit, the respondent had filed a written statement as well as an application under Section 9A of the Civil Procedure Code and submitted that the said Court has no jurisdiction to entertain the said suit. The said suit was dismissed vide order dated 20th April, 2010. The learned Civil Judge had observed in the said order that there is specific bar of jurisdiction under Section 19 of the Restoration Act to settle the claim in question raised under the provisions of the Restoration Act. The respondent had challenged the order by preferring Appeal before the District Judge, which was rejected on 5th September, 2011. Thereafter, the petitioner had preferred an appeal before this Court challenging the aforesaid order. It is submitted that the Court in the aforesaid proceedings had considered the issue relating to the validity of the caste certificate and certificate of validity which is under challenge and, therefore, the petitioner cannot challenge the validity of the said documents by preferring writ petition before this Court. It is submitted that the petitioner cannot rely upon the order dated 4th May, 2002, passed by the Civil Court in the suit preferred by Shri Marzban Patel. The said order was set aside by

the District Court. It is submitted that although there was compromise between the parties, the District Judge was pleased to pass an order on 11th October, 2007, stating that the judgment and decree passed by the lower court to the extent of declaration as regards the caste of original defendants is set aside. It is, therefore, submitted that the petitioner thereafter cannot take advantage of the decree dated 4th May, 2002, passed by the Court in Suit filed by Shri Patel. It is further submitted that the certificate in question were issued in 1981 and 1989. After resorting to all the remedies in law, the petitioner has now chosen to invoke the writ jurisdiction of this Court. It is submitted that Mr.Marzban Patel had also challenged the certificate issued to Shri Digvijaysinghrao by preferring an Appeal before the Commissioner, Konkan Division. In the said Appeal, the said authority had scrutinized the validity of the caste certificate as well as caste validity certificate by relying upon several documents and the said Appeal was dismissed. Vide order dated 29th May, 1987, it was observed that the caste certificate dated 5th May, 1984 issued to Shri Digvijaysinghrao Mukane is valid and he belongs to Mahadeo Koli (Scheduled Tribe). Shri Patel then challenged the said order before the High Court by preferring writ petition. By order dated 14th March, 1988, the said petition

was dismissed. It is, therefore, submitted that there is no substance in the submissions advanced by the petitioner. The learned counsel relied upon the decision in the case of ***State of Tamil Nadu Vs. Guruswami***⁵.

7 An affidavit in reply dated 13th July, 2012 is filed by Shri Mukund Ghodke, Reserch Officer Scheduled Tribe Scrutiny Committee, Konkan Division, Thane on behalf of respondent nos. 4 and 5. In the said reply, it is stated that the validity certificate is issued in 1989 by the Chairman Schedule Tribe Certificate Committee and Director, Tribal Research and Training Institute, Maharashtra State, Pune. The said committee came into existence as per the resolution dated 23rd January, 1985, issued by the Government of Maharashtra. The caste certificates of respondent nos.2 and 3 were issued by the concerned competent authority. Since 1989 till today the said certificates are intact. It is further stated that as per the record, the respondent nos.2 and 3 are ordinary residents of Jawhar, District-Thane. Koli Mahado, Scheduled Tribes were residents of areas mentioned therein which includes area of Jawhar in Thane District. The caste is acquired by birth from paternal side and affinity is considered

5 AIR 1997 SC 1999

by the then committee. It is stated that as far as the certificate issued to respondent nos.2 and 3 are concerned, the committee might have issued these certificates on the basis of documentary evidence and considering the legal position prevailing at the relevant time.

8 We have perused the documents on record. The respondent nos.1 to 3 claims that they belong to Hindu Mahadeo Koli Tribe which is recognized as a "Scheduled Tribe". Shri Digvijaysinghrao Mukane is the husband of respondent no.1 and father of respondent nos.2 and 3. The respondents are relying upon the caste certificate issued by the Executive Magistrate, Jawhar on 5th May, 1984 issued in favour of Shri Digvijaysinghrao Mukane as well as the caste validity certificate dated 7th January, 1986 issued by the Scrutiny Committee in his favour. Reliance is also placed on the caste certificate issued in favour of respondent no.3 by Executive Magistrate Jawhar on 24th February, 1981 and the caste validity certificate issued by the scrutiny committee on 27th September, 1989 in her favour stating that she belongs to Hindu Mahadeo Koli caste, which is a Scheduled Tribe. Similarly, the respondent no.2 relies on the caste certificate dated 24th February, 1981 and the caste validity certificate dated 27th

September, 1989 in support of his caste.

9 Shri Marzban Jahangir Patel had initially challenged the caste certificate dated 5th May, 1984 issued in favour of Shri Digvijaysinghrao Mukane, before the Commissioner, Konkan Division. The said authority vide its order dated 29th May, 1987 rejected the said complaint filed by Mr. Marzban Patel and held that caste certificate issued to aforesaid persons is valid and he belongs to Mahadeo Koli (Scheduled Tribe). While passing the said order, the Commissioner, Konkan Division, had adjudicated upon the contentions of the complainant Shri Patel that the caste certificate issued to Shri Digvijaysinghrao was not in prescribed form and it was granted without proper enquiry. It was prayed that the said certificate be cancelled and the Executive Magistrate be directed to conduct fresh inquiry or in the alternate the inquiry be conducted at a divisional level. In the order dated 29th May, 1987, the Commissioner has observed that on 15th November, 1985, Tahasildar Jawhar was directed to make local enquiries into the allegations made by the complainant after giving opportunity to both the parties and to submit a report in accordance with G.R. Dated 29th October, 1980. Accordingly, the Tahsildar submitted the report on 24th February, 1986. The

Commissioner heard both the parties, also considered written arguments and dealt with all the contentions of the complainant therein. The submissions were also made that the enquiry conducted by the Tahsildar is superfluous and arbitrary. The order reproduces all the contentions of the complainant. The commissioner also considered the aspect of validity of documents relied upon by the claimant of caste certificate. The Commissioner also made reference to several documents, correspondence, writings, publications while adjudicating the said issues raised in the said complaint. After analysing all aspects in detail, the Commissioner concluded that the caste certificate issued to Shri Digvijaysinghrao Mukane is valid and that he belongs to Mahadeo Koli (Scheduled Tribe). In the concluding paragraph it was also observed by the Commissioner that the most important document in favour of the opponent is the decision or validity certificate dated 7th January, 1986 of the Scheduled Tribe Scrutiny Committee holding the caste certificate dated 5th May, 1984 to be valid. This certificate shows that the caste certificate is validated in view of G.R. Tribal Development Department No.OBC-1684/2818 (219) XI dated 23rd January, 1985. The said order was challenged by Shri Marzban Patel in Writ Petition No.6010 of 1987 filed before this Court. By order

dated 14th March, 1988, the petition was dismissed on the ground that the Commissioner has appreciated the evidence and recorded the finding of fact, which cannot be disturbed in writ petition.

10 It is apparent that Mr.Marzban Patel thereafter filed the suit before the Court of Civil Judge, Dahanu wherein the respondent nos.1 to 3 were added as defendants being heirs and legal representatives of Shri Digvijaysiingh Yashwantrao Mukane. The petitioner has annexed the decree passed in the said suit to the petition. The said decree was passed on 4th May, 2002, wherein it was declared that Shri Patel is the tenant of the subject suit property and that the defendants do not belong to Hindu Mahadeo Koli (Scheduled Tribe) and hence, the provisions of Maharashtra Restoration of Lands to the Scheduled Tribe Act, 1974 is not applicable to the said properties. It was also declared that the caste certificate dated 5th May, 1984 issued to the defendant is illegal and the defendants were restrained from claiming for and on behalf of them and were prohibited by injunction from implementing caste certificate dated 5th May, 1984 and the caste certificate possessed by the defendant nos.2 and 3 (respondent Nos.2 and 3) and from acting in furtherance of

the said caste certificate. It is pertinent to note that the said decision dated 4th May, 2002 was challenged by the respondent nos.1 to 3 before the District Judge Palghar vide Civil Appeal No.59 of 2002. A compromise pursis was filed by the appellants and the original plaintiff Shri Marzban Patel. In the compromise pursis, it was stated that the parties have compromised the proceedings. It was also stated that the original plaintiff declared that he admit the caste status of the defendant as Mahadeo Koli (Scheduled Tribe) and that declaration sought in the decree in respect to caste certificate issued to Digvijaysingh Mukne dated 5th May, 1984 and order dated 29th May, 1987 is withdrawn. The District Judge vide order dated 11th October, 2007 passed an order that the parties have arrived at compromise and that the respondents has admitted that the appellants are from Mahadeo Koli caste which is a Scheduled Tribe. In view of this admission, the decree passed by the lower Court to the extent of declaration as regards the caste cannot be sustained. The judgment and decree passed by the lower court to the extent of declaration as regards the caste of original defendants is set aside.

11 The petitioner had filed the suit bearing No.13 of 2004 against respondent nos.1 to 3 for a declaration that the title

of the petitioner and his relatives over the suit land had been perfected by adverse possession. The respondent nos.1 to 3 filed an application in the said suit under Section 9A of the Code of Civil Procedure challenging the jurisdiction of the Civil Court to entertain and try the suit on the ground that they belong to Scheduled Tribe Mahadeo Koli and by virtue of Section 10 of the Maharashtra Restoration of Lands to the Scheduled Tribe Act, 1974, the Civil Court had no jurisdiction to entertain and try the same. In support of the said application, the said respondents relied upon the caste certificate as well as caste validity certificate. The Civil Judge, Junior Division Dahanu rejected the plaint vide order dated 20th April, 2010. In the said order, it was observed that the defendants (respondent nos.1 to 3) had succeeded in showing that the Court has no jurisdiction to decide the subject matter as the suit is barred by the provisions of law. The Civil Court had framed preliminary issues whether the Court has jurisdiction to try the said suit. The respondent/s had relied upon the documents such as caste certificate issued by the Executive Magistrate as well as the caste validity certificate in support of their claim that they belong to Mahadeo Koli (Scheduled Tribe). The said order dated 20th April, 2010 was challenged by the Petitioner before the Court of District Judge at

Palghar by preferring an Appeal. Vide order dated 5th September, 2011, the Appeal was dismissed. While dismissing the said Appeal, the Appellate Court has observed that the trial Court has properly considered the evidence on record. The trial Court has also considered the legal provisions and rightly rejected the plaint and the Appellate Court does not find any reason to interfere with the order passed by the trial Court. The said order is not disturbed by any other Court. On the contrary, the petitioner had preferred Second Appeal No.17 of 2012 challenging the aforesaid orders before this Court. The said Appeal was dismissed at the stage of admission vide order dated 28th January, 2013. A copy of the said order has been placed on record by the respondents. In the order dated 28th January, 2013, it was observed that the respondents had taken a positive stand that they are tribals and they are protected by the said Act. The said respondents also led evidence to support their claim and the appellants therein did not lead any evidence. This would mean that though the appellants got a chance to lead evidence on the points which were to be considered by the Court, they did not do so. The judgment of the trial Court indicates that the appellants had filed evidence closure pursis. It is further observed that it is noticed that the case of the respondents that they are protected

by the Act has been accepted on the basis of evidence before it. There is concurrent finding about it. If this is so, the said concurrent finding on the basis of the evidence led before the Court need not be interfered with and that the ultimate decision arrived at by both Courts that the plaint deserves to be rejected need not be interfered with. On the basis of the aforesaid observations, the Second Appeal preferred by the petitioner was dismissed on 28th January, 2013.

12 In the case of ***Mangesh Kashid & Ors. (Supra)*** relied upon by the petitioner, it was observed that the caste certificate are required to be verified in proper perspective. This Court considered the issue whether it is mandatory for committee to call for field enquiry by vigilance cell and the legal status of certificates issued without such reports. It is observed that this relates to fundamental rights of backward classes. If a wrong person gets certificate he can use it even for other benefits and he deprives genuine persons of their rights. It is mandatory therefore for State Government to follow Act and Rules. The petitioner contends that no such procedure was followed and thus the committee ought to have allowed the application for review. We have noted that the order passed by commissioner to refers to

enquiry made by Tahasildar and his report qua the caste certificate of father of respondent nos.2 and 3, adjudication on the documents relied by respondent nos.1 to 3, by Court. Hence, in the facts and circumstances of the present case, we do not find that any scrutiny is required for reviewing the said documents. The other decision of this Court in the case of **Sandip Wysal (Supra)** relied upon by the petitioner, this Court has observed that the scrutiny committee is the forum who has to make an enquiry in case the complaint is lodged with the scrutiny committee that the caste validity certificate is obtained by practicing fraud upon the scrutiny committee. In the other decision in the case of **Sangita Kolse (Supra)** relied upon by the petitioner again it was observed that fraud affects the legality and regularity of the proceedings before the Court and also amounts to an abuse of the process of Court and, therefore, the court has inherent powers to set aside the orders obtained by fraud practiced upon that Court. Similarly, when the Court was misled by the parties, the Court has the power to recall its order. It was therefore observed that the order of the scrutiny committee invalidating the caste claim of the petitioner therein on the ground of fraud cannot be said to be an order without jurisdiction. We find that the said decision is wholly inapplicable

in the present case. There is nothing to indicate that the respondents have played fraud while obtaining the said certificate. Apart from that the genuineness of the said documents is already considered by Courts and authorities. The decision in the case of ***Kum.Madhuri Patil (Supra)*** was also relied upon by the counsel for the petitioner. The Apex Court had dealt with several issues in the said decision regarding the caste claim of the parties. It was observed that equity and promissory estoppel is not applicable where social status certificate showing that the person belongs to Scheduled Caste or Scheduled Tribe is obtained fraudulently to secure admission to educational institution (medical college) or employment. We do not find that even the said decision is of any use to the petitioner. The Apex Court in the case of ***State of Tamil Nadu (Supra)*** has observed that a person who plays fraud and obtains certificate cannot plead estoppel. The said principle arises only when lawful promise was made and acted upon to his detriment, the party making promise is estopped to resile from the promise. In the case before us, there is no element of fraud being established in obtaining the documents in question.

clear that the respondent nos.1 to 3 have relied upon the caste certificate and caste validity certificates issued by the authority. The caste certificate issued to the father of respondent nos.2 and 3 was challenged in the earlier proceedings which was rejected before the Commissioner, Konkan Division, which order was also confirmed by this Court. It is apparent that the issue about the genuineness of the caste certificate as well as caste validity certificate was adjudicated in legal proceedings and the validity of the said documents has attained finality. The petitioner had filed a suit which was dismissed against which Appeal was preferred, which is also dismissed. As stated above, the said orders were also confirmed by this Court. In all these proceedings, the validity of the documents in relation to the caste certificate of respondent nos.1 to 3 was under challenge and the same have been adjudicated in favour of the respondents. The petitioner cannot invoke the writ jurisdiction of this Court and pray that in exercise of powers under Article 226 of the Constitution of India, the Court should again scan the validity of the said documents or that the authority may be directed to again enquire into the genuineness of the said documents. It is pertinent to note that the documents were issued in 1981 and 1989. The authority and Court while scrutinizing the said

documents has not disturbed the legality and validity of the said documents. The petitioner is relying on the orders passed by the Civil Court in the suit filed by Mr.Marzban Patel wherein documents relied upon by respondent nos.1 to 3 were discarded. The said order dated 4th May, 2002 was challenged by preferring Appeal and on the basis of compromise, the decree in respect to the caste claim of respondents was set aside. The original plaintiff therein had admitted the caste claim of the said respondents. Since the decree to that extent has been set aside, the petitioner cannot rely upon the said judgment and order. Apart from that in the proceedings initiated by the petitioner as well as Shri Marzban Patel before the Commissioner, the authenticity of the caste certificate and the caste validity certificate issued in favour of Shri Digvijaysinghrao was dealt with by the said authority by relying upon voluminous documents and after considering all the objections which are enumerated in detail by the Commissioner in its order which was also confirmed by the High Court. In the circumstances, we do not find any reason to interfere with the caste certificate and caste validity certificate issued by the authority in favour of the respondents. It would be arbitrary to send the documents again for enquiry as prayed by the petitioner, more particularly in the facts and

circumstances of the present case. Even assuming that the authority can review the certificates, we find that this is not a fit case to accept the said submissions advanced by the advocate for the petitioner.

14 In view of the above, no case is made out for grant of any relief prayed by the petitioner in this petition and thus, the same deserves to be dismissed.

15 Hence, we pass the following order:

:: ORDER ::

- (i) Writ Petition No.3868 of 2012 is dismissed;
- (ii) No order as to costs.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)