

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13397 OF 2016

Phulneru Hiralal Chavan

Petitioner

versus

State of Maharashtra and others

Respondents

Mr.R.K.Mendadkar for Petitioner.

Mr.VN.Sagare, AGP, for State.

CORAM : SHANTANU S. KEMKAR AND
PRAKASH D. NAIK, JJ.

DATE : 23rd March 2017

PC :

Through this petition filed under Article 226 of the Constitution of India, the Petitioner has challenged the order passed by Respondent No.3-Deputy Collector, Mumbai City (Exhibit-B to the petition) rejecting Petitioner's application for issuance of caste certificate, as also the appellate order dated 9th March 2016 passed by Respondent no.2-Divisional Caste Certificate Scrutiny Committee No.3, Mumbai Suburban (Exhibit-A to the petition).

2. According to the learned counsel for Petitioner, the Petitioner belongs to 'Mochi' caste, which is a Scheduled Caste, and her claim for grant of certificate to her children of being Scheduled Caste, has been erroneously rejected by Respondent no.3, and the said order when challenged in appeal, has wrongly been confirmed by the appellate authority-Respondent no.2 Committee.

3. According to the Petitioner, though the Petitioner had married to a Mohammedan of upper caste, but after thirteen years, she got divorced from her husband and that when her daughter was of eight years and son was of three years old, she along with her children started residing separately from her husband prior to getting divorce. In the circumstances, in view of the decision of the Supreme Court in case of **Rameshbhai Dabhai Naika Vs. State of Gujarat and others**¹, Respondent nos.3 and 2 ought to have considered the Petitioner's claim that the children's caste claim was required to be considered as per her caste.

4. Learned AGP on the other hand submits that the Petitioner did not submit any relevant material before Respondent no.3 in regard to the aforesaid submissions. Except submitting her caste certificate, no other documents relating to divorce or relating to her being living with her children separately from her husband, have been produced before Respondent no.3. In the circumstances, according to him, Respondent nos.3 and 2 have committed no error in rejecting the Petitioner's claim.

5. We have considered the submissions made by learned counsel for parties and we have also gone through the orders impugned in this petition. Having gone through the same, we find that since no documents were produced to support the contentions, which have now been advanced before us, in our considered view, Respondent nos.3 and 2 have committed no error in rejecting the Petitioner's claim. In the circumstances, we find no ground to invoke jurisdiction under Article 226 of the Constitution of India.

¹ (2012)3-SCC-400

6. However, we are of the view that the Petitioner deserves to be granted liberty to file a fresh application before Respondent no.3 Deputy Collector setting out the grounds as stated hereinabove and in the writ petition, for grant of caste certificate to her children as aforesaid. In case Petitioner submits fresh appropriate application with relevant documents, the Respondent no.3 shall consider Petitioner's claim afresh without being influenced by the order passed earlier and maintained by appellate authority-Respondent no.2, and also by this Court.

7. The fresh decision, as aforesaid, be taken as expeditiously as possible within the time as may be prescribed under Rules. While considering the matter afresh, the Respondent no.3 shall also take into consideration the judgment passed by the Supreme Court in case of Rameshbhai Dabhai Naika Vs. State of Gujarat and others (supra) and the documents as may be submitted by the Petitioner.

8. In case the Petitioner is required to file appeal, the Scrutiny Committee shall decide the appeal on its own merits as stated above, as expeditiously as possible.

9. With above directions, petition is disposed of.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)

MST