

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

WRIT PETITION NO. 12189 OF 2015

Prakash Pitambar Wagh
Aged 56 years, residing at
Betale Baba Chauk, P.V.G. College
Road, At.post. Loni Khurd, Tal.
Rahata, Dist. Ahmednagar.

... Petitioner

V/s.

1. State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-400 032.
2. Scheduled Tribe Certificate
Scrutiny Committee, Nasik
Division, Nasik through its
Member Secretary, having its
office at Adivasi Vikas Bhavan,
Old Agra Road, Nasik, Dist. Nasik.
3. Ahmednagar Irrigation Division,
Dist. Ahmednagar
4. Tahsildar, Shrirampur,
Dist. Ahmednagar

... Respondents

Mr. V.K. Bhangoji I/b R.K. Mendadkar for the Petitioner.
Mrs. R.A. Salunkhe, AGP for Respondent Nos. 1 to 4.

**CORAM : A. S. OKA, &
N.J.JAMADAR, JJ.
DATE : 21st NOVEMBER, 2018**

ORAL JUDGMENT - (PER : A.S. OKA, J.)

1. Heard learned Counsel appearing for the Petitioner and the learned AGP for the Respondents.
2. Rule. Learned AGP waives service. Forthwith taken up for final disposal.
3. The challenge in this Writ Petition is to the Judgment and Order dated 30th September 2015 passed by the Scheduled Tribes Certificate Scrutiny Committee, Nashik. The Petitioner was granted caste certificate dated 23rd October, 1978 by the Tahsildar, Shrirampur, District Ahmednagar. On the basis of the said caste certificate, caste claim of the Petitioner was adjudicated upon by the Scheduled Tribe Certificate Scrutiny Committee, Nashik (for short 'the said Scrutiny Committee'). By the impugned order, the Scrutiny Committee came to the conclusion that the caste certificate issued by the Tahsildar, Shrirampur was not in a proper format. Only on that ground, the caste certificate dated 23rd October, 1978 was held to be invalid and was ordered to be cancelled and confiscated. However, a liberty was granted to the

Petitioner to obtain a fresh caste certificate from the Competent Authority in the proper format and thereafter, to submit the same to the said Scrutiny Committee for adjudication.

4. The learned Counsel appearing for the Petitioner relied upon the decision of the Division Bench of this Court at Aurangabad in the case of ***Niraj Kamlakar More & Ors. v/s. Scheduled Tribe Certificate Scrutiny Committee and others***¹. He submitted that in view of the law laid down by this Court, without making any adjudication on the caste status of the Petitioner, the caste certificate could not have been invalidated on technical grounds. He also relied upon the order of the Apex Court dated 20th March 2018 by which Special Leave Petition preferred by the State Government against the decision in the case of Niraj Kamlakar More (Supra) was dismissed on the ground of delay. He also relied upon the order dated 21st March 2013 by the Division Bench of this Court in the case of ***Jagdish Suresh Kedare V/s. State of Maharashtra*** in Writ

1 2012(6) Bom.C.R.221

Petition No. 1729 of 2013.

5. The learned AGP supported the impugned order. However, she submitted that if this Court is inclined to remand the case, the Scrutiny Committee will decide the same within a period of six months.
6. We have considered the submissions. The law laid down by the Division Bench of this Court in the case of Niraj Kamlakar More and others (*supra*) is crystal clear.

Paragraphs 10 to 12 of the said decision read thus:

“10. As we have already pointed out, on plain reading of sub-section (2) of Section 4 of the said Act, a caste certificate is invalid only if it is issued by a person, officer or the authority other than the competent authority. In the present case, caste certificates are issued by the competent authority. However, we are also considering the question whether the caste certificate issued by the competent authority which lacks territorial jurisdiction can be said to be invalid. We may state here that the distinction between lack of inherent jurisdiction and lack of pecuniary or territorial jurisdiction is well settled. If an order is passed by an authority, court or quasi-judicial authority which lacks inherent jurisdiction to pass the same, there is no difficulty in holding that such order is nullity or is invalid. The question is whether an order passed by the authority which does not lack inherent jurisdiction but which lacks territorial jurisdiction can be said to be nullity.

11. On this aspect, we may make a reference to a decision of the Apex Court in case of *Commissioner of Income Tax, Shimla vs. Greenworld Corporation, Parwanoo* [(2009) 7 Supreme Court Cases 69] and in particular paragraph-63 thereof.

In paragraph-63 the Apex Court has held thus :

"63. In *Mantoo Sarkar vs. Oriental Insurance Co. Ltd. & Ors.* [2008 (16) SCALE 197], this Court held: (SCC pp. 248-49, paras 18-20)

"18. The Tribunal is a court subordinate to the High Court. An appeal against the Tribunal lies before the High Court. The High Court, while exercising its appellate power, would follow the provisions contained in the Code of Civil Procedure or akin thereto. In view of sub-section (1) of Section 21 of the Code of Civil Procedure, it was, therefore, obligatory on the part of the appellate court to pose unto itself the right question, viz., whether the first respondent has been able to show sufferance of any prejudice. If it has not suffered any prejudice or otherwise no failure of justice had occurred, the High Court should not have entertained the appeal on that ground alone.

19. We, however, while taking that fact or into consideration must place on record that we are not oblivious of the fact that a decision rendered without jurisdiction would be *coram non juris*. Objection in regard to jurisdiction may be taken at any stage. (See *Chief Engineer, Hydel Project v. Ravinder Nath* , [(2008) 2 SCC 350]) wherein *inter alia* the decision of this Court in *Kiran Singh v. Chaman Paswan*, [AIR 1954 SC 340] was followed, stating:

(*Ravinder Nath* case, SCC p.361, para 26)

'26. The Court also relied upon the decision in *Kiran Singh v. Chaman Pawan* [AIR 1954 SC 340] and quoted in (*Harshad Chiman Lal case* [(2005) 7 SCC 791], SCC pp. 804-805, para 33} therefrom: {*Kiran Singh case*, AIR p.342, para 6)

"6. ...It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, ...strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

Though in the aforementioned decision these observations were made since the defendants before raising the objection to the territorial jurisdiction had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue to be a nullity.'

20. A distinction, however, must be made between a jurisdiction with regard to subject matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be..."

(emphasis added)

The Apex Court specifically held that lack of jurisdiction as regards the subject matter of the suit will render the decision nullity but in case of lack of territorial or pecuniary jurisdiction, the decision will not be invalid. In other words, a judgment rendered by a Court which lacks territorial jurisdiction will not be a nullity. Lastly, on this aspect, a reference will have to be made to a

decision in the case of *Krishnadevi Malchand Kamathia and others vs. Bombay Environmental Action Group and others* [(2011) 3 Supreme Court Cases 363]. In paragraphs 16 to 19 the Apex Court has discussed the issue which reads thus :

"16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil* [(1996) 1 SCC 435], *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, [(1997) 3 SCC 443], *M. Meenakshi v. Metadin Agarwal* [(2006) 7 SCC 470] and *Sneh Gupta v. Devi Sarup* [(2009) 6 SCC 194)], this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

17. In *State of Punjab v. Gurdev Singh* [(1991) 4 SCC 1] this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC* [1956 ac 736, wherein Lord Radcliffe observed :

(AC pp. 769-70)

"...An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will

remain as effective for its ostensible purpose as the most impeccable of orders."

18. In *(Sultan Sadik v. Sanjay Raj Subba)* [(2004) 2 SCC 377], this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

12. Thus, a caste certificate issued by the competent authority cannot be said to be invalid or nullity only on the ground that the competent authority did not have territorial jurisdiction. Thus, it follows that in the facts of these cases, the caste certificates issued by the competent authority cannot be said to be invalid. The Scrutiny Committee cannot refuse to exercise its power on the ground that the caste certificate produced before it for

validation was issued by the competent authority having no territorial jurisdiction to issue the same. When a caste certificate issued by the competent authority is not invalid within meaning of sub-section (2) of Section 4 of the said Act, the Scrutiny Committee cannot refuse to exercise its jurisdiction of adjudication or verification of caste claim. In cases in hand, the only finding of the Scrutiny Committee is that the competent authority which issued caste certificate had no territorial jurisdiction to issue the certificate. Therefore, we hold that the caste certificates are not invalid and the Caste Scrutiny Committee was duty bound to make adjudication on the respective caste claims of the petitioners.”

7. We may note here that the attention of the Caste Scrutiny Committee was invited to the decision of this Court in the case of Niraj More (Supra). However, the said decision has been brushed aside on the ground that a Special Leave Petition preferred before the Apex Court, the said decision was stayed. Now the order dated 23rd March 2018 passed by the Apex Court in Special Leave Petition shows that the same has been dismissed on the ground of delay. Though, the question of law was kept open by the Apex Court, as far as this Court is concerned, it continues to be bound by the

decision in the case of Niraj More (supra).

8. Therefore, we are of the considered view that without adjudicating caste claim on merits, the Petitioner should not have been driven to obtain a fresh caste certificate.
9. Accordingly, petition must succeeds in part and we pass following order:-
 - i) The impugned order dated 30th September 2015 is quashed and set aside and the case of caste verification of the Petitioner is remitted to the said Scrutiny Committee;
 - ii) The Petitioner shall appear before the Scrutiny Committee at 11.00 a.m. on Tuesday, 18th December, 2018 for fixing the schedule of hearing;
 - iii) We make it clear that we have made no adjudication on merits of the caste claim of the Petitioner and all issues in that behalf are kept open to be decided by the said Caste Scrutiny Committee;
 - iv) The Caste Scrutiny Committee shall complete the adjudication of the caste claim of the Petitioner and shall pass appropriate order in accordance with law, as

expeditiously as possible and in any event, within a period of six months from the date fixed for the appearance of the Petitioner;

v) Rule is made partly absolute in above terms.

(N.J.JAMADAR, J.)

(A.S.OKA, J.)