

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

WRIT PETITION NO. 3756 OF 2017

Terraform Magnum Limited ... Petitioner.

V/s.

Dinesh Kisan Komb and Others. ... Respondents.

Mr.G. S. Godbole, Advocate i/by Mr. Kaustubh Thipsay
a/w. Ms. Ulka Saranjame for the Petitioner.

Mr. A. D. Yadav. Advocate for Respondent No. 1.

Dr. Mrs. K. R. Kulkarni, AGP for Respondent Nos. 2 to 4.

CORAM : R.M. BORDE & N.J. JAMADAR, JJ.

DATE : JULY 10, 2019.

PC :

1 Rule. By consent of the parties, the Rule is made returnable forthwith and heard finally.

2 The Petitioner is objecting to the validation certificate issued to Respondent No.1 by the Scheduled Tribe Certificate Scrutiny Committee, Kokan Division, Thane. Respondent No. 1 claims that he belongs to "Varli Scheduled Tribe" which is recognized as Scheduled Tribe in the State of Maharashtra. The objection raised in regard to issuance of validation certificate in favour of Respondent No. 1 is that, same

has been issued without conducting vigilance cell enquiry. The Scrutiny Committee while directing issuance of validation certificate to Respondent No. 1 has proceeded to record finding in its order that the concerned Respondent has produced sufficient material to conclude that he belongs "Varli Scheduled Tribe". On perusal of the order passed by the Scheduled Tribe Certificate Scrutiny Committee dated 03rd July, 2012, it is not clear as to whether the tribe certificate was referred to the vigilance cell for conducting enquiry and submitting the report and as to whether the report was received. The Petitioner has placed on record a copy of the statement of Respondent No.1 recorded by the vigilance cell. It also appears that the police official, during continuance of the vigilance cell enquiry, had called for information from the office of the Tahsildar in respect of the revenue record produced by Respondent No.1. There is sufficient material placed on record to conclude that the Scrutiny Committee had referred the matter to the vigilance cell for conducting the enquiry and tendering the report. However, neither it is reflected in the order of the Scrutiny Committee nor the report of vigilance cell has been placed on record. The learned counsel appearing for the Respondent No. 1, on instructions of his client, also agrees that the report of the vigilance

cell was not a part of the original proceedings examined by him and as such a reasonable conclusion shall be drawn and that though the matter was referred to the vigilance cell enquiry, no report was received by the Committee and as such there arises no question of consideration of the report by the Committee.

3 It thus appears that neither the report of the vigilance cell has been received by the Committee nor the same appears to have been considered. As such there appears to be procedural lapse in granting validation certificate. There is also no consideration to the documentary evidence placed on the record by the Respondent No.1 before the Scrutiny Committee, in the order. The documents placed on record are the extract of Gaon Namuna No. 7, 7-A & 12 in respect of the applicant's grand father, uncle issued by Talathi, Akruli, Tal. Boriwali, Dist. Thane, wherein there is mention of a entry in respect of tribe and also the school leaving certificate of the applicant, wherein it is recorded that he belongs to "Hindu Adiwasi Varli" and the date of the admission is stated to be 02nd July,1975. At this stage, it may not be necessary to consider sufficiency or otherwise of the material placed on record by Respondent No. 1 before the

Scrutiny Committee; however, it would have been more prudent for the Scrutiny Committee to direct a vigilance cell enquiry and to record the order only on consideration of report of vigilance cell.

4 In the circumstances, we deem it appropriate to remit the matter back to the Scrutiny Committee with a further direction to the Committee to ensure receipt of the report of the Vigilance Cell and after observing the procedure prescribed under Rule 12 of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003, proceed to verify the status claim of the Respondent No. 1 and to pass order. The impugned order passed by the Scrutiny Committee is quashed and set aside and the matter is remitted back to the Scrutiny Committee for reconsideration, in view of the directions as recorded above. The Scrutiny Committee shall in observance of the procedure prescribed in that behalf, take decision in the matter as expeditiously as possible and preferably within six months from the date of the appearance of Respondent No.1 before the Committee. The Respondent No.1 undertakes to appear before the Scrutiny Committee on 13th August, 2019 and as such

no separate notice, requiring his presence before the Committee, shall be necessary.

5 The order passed in the instant matter, directing the remand of the matter back to the Scrutiny Committee for reconsideration, shall not be construed as an expression of opinion by this court, persuading the concerned Respondents to take any adverse decision. Appropriate steps may be taken depending upon the decision that would be rendered by the Scrutiny Committee.

6 Rule is made absolute in the above terms. There shall be no order as to costs.

(N.J. JAMADAR, J.)

(R.M. BORDE,J.)

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