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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.284 OF 2016

Lata Nareshkumar Patel alias]
 Lata Chhaganbhai Dhodi]
 Aged years, residing at]
 B/203, Mangal Deep Cooperative]
 Housing Society, Netaji Shubhash]
 Rd., Kandivli (West), Mumbai – 400 067.] **Petitioner**

Vs.

1. State of Maharashtra through its]
 Secretary, Social Justice Department,]
 Mantralaya, Mumbai - 32.]

2. Scheduled Tribe Certificate Scrutiny]
 Committee, Konkan Division, Thane]
 through its office at Vartak Nagar]
 Ward Office, Opposite Kores Co.]
 Vartak Nagar, Thane (W),]
 Dist. Thane.]

3. A.K. Munshi Yojana, Special School]
 for Handicapped through its]
 Secretary having its office at 3rd]
 floor, Panjarapol Lane, C.P. Tank,]
 Mumbai – 400 004.] **Respondents**

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Mr. R. K. Mendadkar a/w Mr. Tanaji Jadhav, for Petitioner.

Mr. S.B. Kalel, A.G.P, for Respondents – State.

Mr. Prabhakar M. Jadhav, for Respondent No.3.

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**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 16th MARCH, 2022.

JUDGMENT: [Per Sunil B. Shukre, J.]:

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the parties.
3. The petitioner claims to be belonging to “Dhodia Tribe”. “Dhodia Tribe” has been notified as scheduled tribe in the year 1950 by issuing constitutional order. It is not in dispute that “Dhodia Tribe” is a scheduled tribe not only in the present State of Maharashtra but also in the present State of Gujarat. It is also not in dispute that “ Dhodia Tribe” was a scheduled tribe in the erstwhile State of Bombay.
4. The State of Bombay which was earlier called as Bombay Presidency was reorganized by the Bombay Re-organization Act, 1960 (for short “Act of 1960”). The reorganization took place on the appointed date which has been prescribed under the Act of 1960 as 1st May, 1960. From the appointed date and onwards. this State known as “Guajrat” comprising territories of the State of

Bombay as mentioned in section 3 of the Act of 1960 came to be formed. One of the territories mentioned in section 3 (1) (b) described as “the Villages in Umbergaon taluka of Thana District” is the relevant territory for deciding the controversy involved in the petition. So, from 1st May, 1960 and onwards, all the villages in Umbergaon Taluka of Thane District which were part of State of Bombay prior to 1st May, 1960 were merged into State called as “Gujarat” and from that date and onwards, all these villages became the part of State of Gujarat.

5. The question involved in the petition is as to whether or not the petitioner would be considered as a migrant to the State of Maharashtra for the purpose of issuance of tribe certificate and its validation by the scrutiny committee at Thane.

6. According to Mr. Kalel, learned A.G.P, the petitioner has to be considered as a migrant for the reason that the petitioner herself has mentioned in her application that her permanent place of residence is at Tumb – Belupada, Sanjan, Taluka Umbergaon, District Valsad, Gujarat and that her father had obtained a caste certificate in the year 1993 from Mamlatdar Umbergaon, Gujarat State. He invites out attention to the observations made in this regard in paragraph 4 of the impugned order and on the basis of these observations, he submits that as per Rule – 5 of Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (for short “Rules of 2003”), the petitioner would have to be considered as a migrant from the State of Gujarat and, therefore, not entitled to issuance of any tribe

certificate and its validation in his favour. On this ground, the learned A.G.P supports the impugned order.

7. The learned Counsel for the petitioner submits that whatever may have been mentioned by the petitioner, her submissions cannot change the position of law. He submits that the position of law would indicate that the petitioner never migrated to State of Maharashtra as before re-organization of the State of Maharashtra as per Act of 1960, the petitioner has been proved to be resident of erstwhile State of Bombay as village of the petitioner, Sanjan admittedly found part of Taluka Umbergaon Thane District and Thane District was part of State of Bombay as per Part (I) of the first schedule to the Act of 1960.

8. We have already stated that Sanjan was a village situated in Umbergaon Taluka of Thane District and it is so stated in part I of the first schedule to the Act of 1960. It is, therefore, clear that Village Sanjan was part of erstwhile State of Bombay till its re-organization in 1960 when all the villages in Umbergaon Taluka went to newly formed Gujarat State.

9. The petitioner had produced before the scrutiny committee leaving certificate of Esplanade High School, Kandivali (West) Bombay which showed that the petitioner had taken education in this School from 3rd May, 1988 till 31st May, 1992. This certificate shows the place of birth of the petitioner as Sanjan, Gujarat and her birth date as “3rd February, 1975”. Now, if this document is considered in isolation, an impression may be gained that the

petitioner is a migrant to State of Maharashtra from State of Gujarat, but, in our considered view, the matter does not end here. The reason being that the petitioner claims to be having her roots in the erstwhile State of Bombay and according to her, just because the boundaries of erstwhile State of Bombay have changed, her residence and residence of her forefathers including her father in the erstwhile State of Bombay would not change.

10. In this regard, the learned Counsel for the petitioner has invited our attention to another document which is a school leaving certificate of father of the petitioner, which shows that father of the petitioner having been born on 1st August, 1950 at Tumb, Taluka Umbergaon, District Valsad, was admitted to the primary school on 18th June, 1957 and was allowed to leave school on 1st July, 1961.

11. We have already seen that as per the part I of the first schedule of the Act of 1960 all villages of Taluka Umbergaon were part of the erstwhile State of Bombay till the reorganization of the State of Bombay took place with effect from 1st May, 1960. So, it would be necessary for the scrutiny committee to appreciate the issue of migration of the petitioner to the State of Maharashtra in the light of not only leaving certificate issued by Esplanade School Kandivali (West) but also leaving certificate issued by Primary School of Tumb village Taluka Umbergaon, District Valsad in favour of father of the petitioner. If leaving certificate issued to the father of the petitioner is considered, there would be a possibility of change in the final conclusions to be made on the issue of

migration of the petitioner and applicability of Rule – 5 of Rules, 2003. In view of above, we find that all these aspects of the matter including the leaving certificate issued to the father of the petitioner have not been considered by the scrutiny committee in their proper perspective and, therefore, the impugned order cannot be sustained in the eyes of law.

12. The learned Counsel for the petitioner refers to a view taken by this Court in case of **Phulrenu Harilal Chauhan Vs. State of Maharashtra and others in Writ Petition No.2632 of 2021 decided on 21st February, 2022** in order to support his contention that the petitioner, really speaking, is not a migrant to the State of Maharashtra. We are of the view that this judgment can be properly considered by the scrutiny committee.

13. Learned Counsel for the petitioner has also relied upon a view taken by Division Bench of this Court in case of **Tukaram M. Dharpawar Vs. Bombay Municipal Corporation, 2011 (1)Mh. L. J, 617** to put forward his argument that when no reply affidavit is filed by the respondent in spite of due service, averments in the petition have to be accepted and rule in the petition can be made absolute on that basis alone. Although, it is true that no reply has been filed by the respondents in this case, the view so taken has to be understood as conveying a point that the rule can be made absolute only when the averments made in the petition, when accepted as they are, would by themselves establish the case of the petitioner. But, if we see the averments in the petition and the reasons stated in the impugned order, we would find that these

averments even when they are accepted completely would not be sufficient by themselves to establish the claim of the petitioner that she belongs to Dhodia scheduled tribe. We are of the considered view that the petitioner can prove her such claim only when she can prove that she is not the migrant to the State of Maharashtra. This is for the reason that it is the fundamental principle of law that he who makes a claim must prove his case on his own strength and is not permitted to draw support from the weaknesses of the other side. In other words, the principle is that the plaintiff's or petitioner's case must stand on its own legs and not on the negative effect created by non filing of reply by the other side. Not filing the reply would certainly help the case of the petitioner but such help cannot go beyond the intrinsic quality of the case of the petitioner. Upon acceptance of the case of the petitioner, as it is, if the result is not proving of the case of the petitioner, then, the petitioner is required to prove his case by adducing requisite evidence.

14. In view of the aforesaid observations, following order is expedient;

: ORDER :

[a] The petition is allowed;

[b] The impugned order dated 12th October, 2015 is hereby quashed and set aside;

[c] The matter is remanded back to respondent No.2 – Scrutiny Committee at Thane for its decision afresh in accordance with

law;

[d] Respondent No.2 – Scrutiny Committee shall be at liberty to consider the evidence already available on record and also admit new evidence and order additional vigilance inquiry, if it deems fit;

[e] Scrutiny committee shall decide the tribe claim of the petitioner, in accordance with law, at the earliest, and in any case, within three months from the date of appearance of the petitioner before it;

[f] The petitioner shall appear before respondent No.2 – Scrutiny Committee on 21st March, 2022;

(g) All questions are kept open;

(h) Interim relief granted by this Court on 22nd January, 2016 is continued till the decision of respondent No.2 – Scrutiny Committee and also for a further period of two weeks from the date of communication of the decision, in case decision is adverse to the petitioner.

(i) Rule is made absolute in the above terms. No costs.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]