

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3170 OF 2017

Vaishali Pandharinath Thale

.. Petitioner

Vs.

The State of Maharashtra & Ors.

.. Respondents

- Mr. R.K. Mendadkar a/w. Ms. Komal Gaikwad, for the Petitioner.
- Ms. A.A. Purav, AGP for the Respondent–State.

CORAM : SUNIL B. SHUKRE &

FIRDOSH P. POONIWALLA, JJ

DATE : 9th OCTOBER, 2023.

ORAL JUDGMENT : {Per : Sunil B. Shukre, J.}

1. Heard.

2. RULE. Rule is made returnable forthwith, by consent of learned counsel for the respective parties.

3. The petitioner had obtained the caste certificate that she belonged to Scheduled Tribe Dongar Koli, but when it was scrutinized by the concerned Scrutiny Committee, the concerned Scrutiny Committee invalidated the same by its order passed on 30.03.2007. The order of invalidation was challenged by the petitioner before this Court by filing Writ Petition No.7119/2008, which was dismissed on 09.06.2009.

4. In the judgment of this Court delivered on 09.06.2009, this Court found that no substantial proof was there to hold that the petitioner belonged to Dongar Koli Scheduled Tribe. This Court then also noted the fact that similar claim of the cousin of petitioner as Dongar Koli was turned down by the another Division Bench of this Court vide its judgment dated 22.06.2017 delivered in Writ Petition No.2015/2007. This Court further noted the fact that similar claim raised by the real brother of the petitioner was under consideration of another Division Bench of this Court in Writ Petition No.9399/2007, which too was “Dismissed as withdrawn” by that Bench vide its order dated 11.03.2009. Thus, this Court found that there was no substance in the claim of this petitioner that she belongs to Dongar Koli Scheduled Tribe and accordingly this Court upheld the order of invalidation dated 30.03.2007 passed by the Scrutiny Committee at Thane. It appears that even the review petition filed by the petitioner came to be dismissed, but the petitioner was not to be defeated, and therefore, the petitioner once again made a fresh attempt to assert her claim that she belonged to Dongar Koli Scheduled Tribe, and therefore, she made an application to the concerned SDO for issuance of tribe certificate to her. The concerned SDO did show his indulgence and granted another tribe certificate to the petitioner. The second tribe certificate, of course, was to be scrutinized, and therefore, the petitioner approached the Scrutiny Committee at Thane for validation of the second tribe certificate. Again, the Thane Scrutiny Committee rejected the claim of the petitioner and this is how the petitioner is before this Court by filing this petition.

5. In a case like this, the question would arise as to whether or not this Court would have the jurisdiction to entertain same claim of a

person like the petitioner who says that she belongs to Scheduled Tribe Dongar Koli. The answer to the question would depend upon the facts and circumstances of each case. If the facts and circumstances of the case show that there is no change in them, naturally such a repeat attempt must meet with failure, but when it is based upon a fresh cause of action, repeat second attempt would have to be considered by this Court on its own merits. After all, the social status of a person is something which has a potential of making or breaking the life of such a person. It is also something which is required to be proved at the first instance by the claimant himself or herself. There may be a case where the claimant, for many reasons, is not in a position to collect sufficient documentary evidence to substantiate his or her claim. The law developed in such cases also places much emphasis upon documentary evidence of preconstitutional period and law attaches higher probative value to the oldest documents. In fact, the law has been developed to such an extent that it goes by the principle of older the document, greater is its probative value. Such old documents may date back to 40 or 50 years or more prior to the year 1950. These documents, therefore, by their very nature sometimes may not be within the knowledge of the claimant today. In such a case a claimant would not be in a position to produce them before the Scrutiny Committee in proof of his or her claim with the result that the claim is rejected; but later on, such claimant may acquire knowledge about existence of such a document through his or her some other relative but would find it difficult in seeking review of his or her claim on account of rejection of his or her earlier claim. Therefore, in such matters, this Court is required to adopt a broader approach and has to show its willingness to consider afresh the claim of such a person, if it is based upon changed

facts and circumstances of the case.

6. In the present case, according to the learned counsel for the petitioner, there is a fresh cause of action for the petitioner based upon changed circumstances in the sense that later on, the petitioner has come across at least four validities granted to her blood relatives from paternal side as they belonging to Dongar Koli and also three preconstitutional documents, all of which could not be submitted by her to the Scrutiny Committee in the earlier round of litigation. Learned counsel for the petitioner, therefore, prays for giving one more opportunity to the petitioner to prove her claim.

7. Having regard to the nature of caste or tribe claims and the possibility of the changes occurring in the facts and circumstances of a case, about which we have already discussed, we are of the view that it would be in the interest of justice that the petitioner is granted a fresh opportunity to assert her claim that she belongs to Dongar Koli Scheduled Tribe in the light of fresh documentary evidence produced by her. But, for this purpose, the petitioner would have to make a fresh beginning from the stage of applying to the concerned SDO for issuance of fresh caste certificate based upon fresh documentary evidence, which was not available with the petitioner at earlier point of time. So far as the issue of granting fresh opportunity to the petitioner is concerned, we must say that we are supported in our such view by the observations of the Apex Court made in Para 11 of the case of *Kalpana Dilip Bahirat Vs. Pune Municipal Corporation & Ors.*¹

8. Accordingly, we are of the opinion that though this petition

¹ (2014) 15 SCC 654.

cannot be entertained by us, the petitioner needs to be given a fresh opportunity in terms suggested just now.

9. The petition is, therefore, stands dismissed. However, liberty is granted to the petitioner to apply to the concerned SDO for issuance of fresh tribe certificate to her, based upon fresh documentary evidence to be submitted by her to the concerned SDO. If any such application supported by fresh documentary evidence is made by the petitioner, same shall be considered on its own merits, without being influenced by the earlier adverse orders passed against the petitioner and a decision thereupon shall be taken by the concerned SDO within a period of two weeks from the date of filing of the application.

[FIRDOSH P. POONIWALLA, J.]

[SUNIL B. SHUKRE, J.]