



This order is corrected in view of the speaking to minutes of order dated 23.01.2025.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 9846 OF 2024

1. Manisha d/o Madhavrao Wantekar
Age 30 years, Occ. Student.
2. Mahesh s/o Madhavrao Wantekar
Age 31 years, Occ. Student,
3. Omkar s/o Rajkumar Wantekar
Age 21 years, Occ. Student,
4. Sanjeevani d/o Gangadhar Wantekar
Age 23 years, Occ. Student,

All R/o. Ashoknagar, Mukhed
Tq. Mukhed, District Nanded

...Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural and Tribal Development
Department, **Mumbai**
2. The Scheduled Tribe Certificate
Scrutiny Committee,
Kinwat Division at Aurangabad
Add. Near Cidco Bus Stand
N-2, CIDCO, Aurangabad
Through its Joint Commissioner

...Respondents

.....
Mr. Mohanish V. Thorat, advocate for the petitioners
Mr. P.S. Patil, A.G.P. for respondents
.....

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

**DATE OF RESERVING : 23.10.2024
THE ORDER**

**DATE OF : 11.11.2024
PRONOUNCING ORDER**

O R D E R (MANGESH S. PATIL, J.) :-

By invoking the powers under Article 226 of the Constitution of India, the petitioners are challenging the common judgment and order passed by respondent No.2 - scrutiny committee, in a proceeding under section 7 of the Maharashtra Act No. XXIII of 2001, dated 04.09.2024, refusing to validate their 'Koli Mahadev' scheduled tribe certificates.

2. We have heard both the sides finally at the stage of admission, in the light of the urgency being demonstrated.

3. Mr. Thorat, the learned advocate for the petitioners would submit that the petitioners have been heavily relying upon the court record in the form of CC No. 131 of second *Maher* 1356 *Fasli* of erstwhile Gulbarga Court from the State of Karnataka, wherein, the name of the petitioners' grand-father - Hanamant Gyanoba Wantekar was recorded in the array of accused at Sr. No.5, described therein as belonging to the caste 'Koli Mahadev'. They were also relying upon the school record of their grand-father – Hanamant, wherein while admitting to the school on 16.06.1937, he was described as 'Koli Mahadev' in the caste column. He would also submit that apart from these pre-constitutional documents, there was entry in the revenue record in respect of lands possessed by the family treating those as tribal lands and especially incorporating prohibition in

transfer of such lands under Sections 36 and 36-A of the Maharashtra Land Revenue Code, 1966 (for short “**the Code of 1966**”).

4. Mr. Thorat would submit that the petitioners had already suffered a similar invalidation and had approached this Court in writ petition No. 13162 of 2023. Since the Gulbarga Court’s record was not verified by the committee, by the judgment and order dated 15.01.2024, the judgment and order of the committee was set aside and the matter was remanded back to it for verifying and considering the Gulbarga Court record. He would submit that after remand, the committee refused to believe the certified copy produced by the petitioners issued in the ordinary course under the seal and signature of Gulbarga Court official, only on the ground that the concerned Court, in response to the communication made by the committee informed about 1356 *Fasli* record having been destroyed in the year 1999, thereby overlooking the fact that the petitioners had obtained the certified copy in the year 1998. It could have cross-checked with the concerned Court, as to if the certified copy produced by the petitioners itself was a genuine document or not. Without undertaking such exercise, the committee has wrongly and illegally discarded the certified copy of a public record coming from proper custody.

5. Mr. Thorat would further submit that the whole approach of the committee is demonstrative of utter prejudice against the petitioners. It proceeded on the premise that reliance of the petitioners on the pre-constitutional record of Gulbarga Court was a case similar to one in respect of Udgir Court record regarding which this Court had entertained a doubt in its order dated 19.12.2011 in writ petition No. 7297 of 2007, wherein seal and stamp of the Court or the police station itself was turned out to be forged one. This being not the case in the petitioners' matter, the committee ought not to have applied the analogy and ought not to have discarded the certified copy of the court record issued in the ordinary course.

6. Mr. Thorat would then submit that ignoring specific denial by the petitioners about having any relationship, contrary record of persons stranger to the petitioners' family has been relied upon which the committee could not have legally done.

7. Mr. Thorat would also submit that even census record could have been relied upon by the committee wherein the petitioners' ancestors from paternal side were described as belonging to 'Koli Mahadev' scheduled tribe.

8. Lastly, Mr. Thorat would submit that the committee ought not to have discarded the revenue record incorporating prohibition under Sections 36 and 36-A of the Code of 1966 only on the ground that it was incorporated by way of mutation in the year 2018. The fact remains that the revenue officials must be regarded as having been satisfied that the land was a tribal land and attracting the conditions stipulated in those provisions. He would thus submit that the order under challenge is perverse, arbitrary and capricious. Reliable and genuine record of pre-constitutional period has been discarded perfunctorily and the judgment and order be quashed and set aside and the petitioners may be held entitled to have certificates of validity.

9. The learned A.G.P. would oppose the petition submitting that pursuant to the directions of this Court in the earlier round, the committee undertook the exercise and contacted Gulbarga Court. It was informed that the original Urdu record which was of *Fasli* period was destroyed pursuant to the order of the Principal District and Sessions Judge, dated 27.02.1999. Considering the observations of this Court in respect of similar Urdu Court record in the matter of Balika Dagadu Pathakrao, no fault can be found with the stand of the committee in refusing to rely upon such dubious Gulbarga Court record.

10. Similarly, the committee could notice manipulation in the school record of Madhav Hanamant Wantekar of 23.07.1970, wherein the word "Mahadev" was added subsequently in a different ink and handwriting. He would further submit that even 16.06.1937 was shown as date of admission in the school record of Hanamant Gyanoba Wantekar at Sr. No.90 and the original school record was examined and it was found that there were two school registers and both of them at Sr. No.90 contained names of some different students and not that of Hanamant Gyanoba Wantekar. Even the school itself was established in the year 1942 and the certified copy of the school register showing Hanamant to have been admitted in that school in the year 1937, was clearly bogus.

11. The learned A.G.P. would further submit that the petitioners' great grand-father - Mahadu Tukaram Koli was described in the revenue record as 'Koli' which was earlier an Other Backward Class and is currently a Special Backward Category (SBC) and which is contrary to the petitioners' claim of 'Koli Mahadev'. Even the petitioners failed to conform to the affinity test and no fault can be found in the impugned judgment and order refusing to validate their claims.

12. We have carefully considered the rival submissions,

perused the impugned judgment and order and the original files. Admittedly, this is a second round of litigation. Since the petitioners have been heavily relying upon the certified copy of court record of Gulbarga of 1356 *Fasli*, in the earlier round this Court had remanded the matter back to the scrutiny committee, with a direction to undertake verification of that record. Ignoring the fact that certified copy, relied upon by the petitioners, was issued in the year 1998, the stand of the committee in readily accepting the response from Gulbarga Court that the old Urdu record of *Fasli* time was destroyed in the year 1999, to entertain the doubt about certified copy obtained prior thereto, is clearly injudicious. Precisely, for this reason, by order in this matter, dated 25.9.2024, we had observed that even the committee could have independently ascertained the genuineness of certified copy produced by the petitioners, since it was purportedly issued in the ordinary course of business of that office and on the request by learned A.G.P., we had allowed the committee to undertake such exercise and to submit a report.

13. It appears that pursuant to such directions, the committee assigned the work to its vigilance cell alongwith covering letter addressed to the concerned court soliciting the information regarding genuineness of the certified copy. The concerned civil court by communication dated 04.10.2024 specifically informed that no such

certified copy was issued either on 20.12.1998 or 26.03.1998. Even a photocopy of the concerned register duly certified was annexed to the reply.

14. To controvert such stand of the committee based on the reply of the concerned Court, learned advocate for the petitioners filed additional affidavit together with the document and sought to produce a certified extract of copying register for the year 1998 of the Court of Principal Civil Judge and Judicial Magistrate, First Class, Kalburgi, to which the petitioners submitted an application on 30.09.2024, as was expressed in the order dated 25.09.2024 and purportedly showing entry at Sr. No. 324, about certified copy application having been submitted on 20.02.1998 in respect of CC No. 131/1356 *Fasli* through advocate Mr. M.S. Shety and purportedly delivered on 26.03.1998. Mr. Thorat would therefore, submit that when the petitioners have been able to again obtain certified copy of the register of copying application duly issued under the seal and signature with a certificate, in all probability, the concerned court while responding to the scrutiny committee and even the committee while accepting the reply, have made a mistake and the reply forwarded by the concerned Court could be of some different register.

15. *Prima facie*, photocopies of the extract of copying register

(criminal) forwarded by the concerned Court, in response to the query raised by the committee pursuant to our directions, does not contain entry of Sr. No.324, as is appearing in the certified copy of the extract of the same register obtained by the petitioners on 30.09.2024 and produced along with the additional affidavit dated 22.10.2024 (*sic*). It would, therefore, have been appropriate for the committee to have forwarded the extract of the certified copy relied upon by the petitioners along with the correspondence made with the Court at Kalburgi (Gulbarga). Without undertaking such exercise, the observations and conclusion of the committee, to discard it, is clearly based on the surmises and conjectures.

16. Be that as it may, since the certified copy of the extract of copying register issued recently on 30.09.2024, being a Court record coming from the proper custody and the certified copy of a public record, it deserves to be accepted.

17. Consequently, though the original record of which the certified copies were produced by the petitioners, could not have been verified as original record has been destroyed in the year 1999, we are satisfied that the petitioners had applied for and had received a certified copy of the original record in the year 1998, which circumstances can jointly would demonstrate that the petitioners' grand-father Hanamant, against whom an arrest warrant was issued

by Gulbarga Court, was described as 'Koli Mahadev' in the array of accused at Sr. No.5 and being a pre-constitutional record, it would carry greatest probative value.

18. However, no exception can be taken to the observations of the committee on verification with the Head Master of the concerned school, extract of the school register of which, purportedly recorded in the caste column of Hanamant as 'Koli Mahadev' of 13.06.1937, since no such entry at Sr. No. 90 was found in either of the two registers and names of some different persons were appearing therein.

19. But then the conduct of the committee in treating the revenue record wherein the petitioners' forefathers were recorded as 'Koli' and treating it to be contrary to the petitioners' claim of being 'Koli Mahadev', is clearly perverse and arbitrary. There is no caste column in the revenue record referred to by the committee and in all probability, since the word 'Koli' appeared after first and middle name in the form of surname, the committee seems to have got swayed away with it. To our query, as to if there is any practice of using surname as 'Koli Mahadev', learned A.G.P. could not give us any satisfactory reply. Meaning thereby that merely because the petitioners' ancestors used 'Koli' as surname which appeared in the revenue record, the committee ought not to have treated it as

contrary entry *albeit* even it could not be treated as a favourable record as well.

20. So far as the mutation entry of the year 2018, whereby a stipulation has been incorporated for the first time in the revenue record of petitioners' land showing that those would be governed by the restrictions under sections 36 and 36-A of the Code of 1966, even if it is assumed that it has been done objectively, there is nothing before us and was not even before the committee, to demonstrate that such mutation was certified by the revenue officials without any enquiry and merely for asking.

21. One cannot proceed on the premise that the revenue officials are unmindful of the fact that it is only in respect of tribal lands which are granted to the tribals, such a restriction is imposed, so that unscrupulous elements from forward communities cannot buy such lands from tribals and require prior permission of the Collector. Incidentally, even the earlier record of some lands was describing those as 'Inam lands' subject to restriction of transfer. It is in the light of such state of affairs, the stand of the committee, in discarding the entry in the revenue record putting restrictions under Sections 36 and 36-A of the Code of 1966, merely on the ground that those have been incorporated by way of mutation in the year 2018, is clearly perverse and arbitrary.

22. In the light of above state of affairs, the petitioners have discharged burden cast on them under Section 8 of the Maharashtra Act No.XXIII of 2001. The impugned judgment and order is clearly perverse, arbitrary and capricious and enables us to reverse it in exercise of limited jurisdiction under Article 226 of the Constitution of India.

23. The writ petition is allowed.

24. The impugned judgment and order is quashed and set aside.

25. The committee shall issue tribe validity certificates to the petitioners as belonging to 'Koli Mahadev' scheduled tribe.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL , J.)

rlj/