
(2013) 09 BOM CK 0152
In the Bombay High Court
Case No : Writ Petition No. 1298 of 1994

Laxman and Others

APPELLANT

Vs

Jafar and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 2[b), 2[k), 3, 4, 4(2)

Citation : (2013) 6 ALLMR 198 : (2014) 1 MhLj 237

Hon'ble Judges : Ravindra V. Ghuge, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : V.T. Chaudhary, for the Appellant; S.P. Brahme, Advocate for Respondent Nos. 1-a to 1-e, 2 and 3, Mr. Pravin S. Patil, Special Counsel for Respondent No. 4 and Mr. P.P. More, Assistant Government Pleader for Respondent Nos. 5 and 6, for the Respondent

Final Decision : Partly Allowed

Judgement

Ravindra V. Ghuge, J.—Heard Adv. Mr. V.T. Chaudhary for the petitioners; Adv. Mr. S.P. Brahme for respondent nos. 1-a to 1-e and 3; Spl. Counsel Mr. P.S. Patil for respondent no. 4; and learned AGP Mr. P.P. More for respondent nos. 5 and 6. The father of the petitioners, late Shivram Mahajan, had purchased land bearing Survey No. 54/1, at the rate of Rs. 6,000/- on 29th February 1968. The remaining part of Survey No. 54/2-B was purchased by late Shivram Mahajan at the rate of Rs. 4,000/- on 20th March 1969.

2. Respondent nos. 1 to 3 had filed an application u/s 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. The said case came up to the High Court vide Writ Petition Nos. 666/1992 and 667/1992. The controversy set out therein was remanded to the Tahsildar for determination of caste of respondent nos. 1 and 3.

3. This Court had directed respondent nos. 1 to 3 to produce the caste certificates for verification. Since the said respondents failed to do so, the matter

was placed before this Court for orders and respondent nos. 1 to 3 handed over their caste certificates to the Special Counsel for the Scrutiny Committee. The petitioners submitted their documents to the Scrutiny Committee.

4. Vide order dated nil, which is at Exhibit "E" on page 67 of this petition, the Scrutiny Committee concluded that respondent nos. 1 to 3 belong to "Tadvi Bhil" community and fall in the Scheduled Tribe community.

5. The facts originating from this petition indicate that the adjudication of the caste certificates by the Committee was prior to 2nd September 1994 which is the date on which the Hon"ble Apex Court delivered its judgment in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . It was vide this judgment, that the Hon"ble Apex Court for the first time evolved a scientific and specific procedure for conducting proper verification of claims pertaining to castes and tribes. The composition of a Committee, Association of Research Officers with it and opportunity to be given to each of the claimants, after receipt of Police Vigilance Report, are some of the salient features of the said judgment. The composition of the Committee was later on slightly altered by a judgment delivered by the Hon"ble Apex Court in 1997.

6. After handing down of the said judgment and during the pendency of this petition, in the interregnum, the State of Maharashtra introduced/brought into effect, the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification Of) Caste Certificate Act, 2000 (Maharashtra Act No. XXIII of 2001). This Act is being referred to, for the sake of brevity, as Act No. XXIII of 2001 hereafter. With the aid of the guidelines set forth by the Hon"ble Apex Court and the introduction of Act No. XXIII of 2001, certain rules under the Maharashtra Scheduled Tribe (Regulation of Issuance and Verification of) Caste Certificate Rules, 2003, were framed by the State of Maharashtra, through its Tribal Development Department, on 4th June 2003. For the sake of brevity, the said Rules are being referred to as "the Rules" hereafter.

7. The petitioners in this petition have contended that respondent nos. 1 to 3 (Respondent no. 1 having passed away, the petitioners have brought the legal heirs on record) were not tribals and did not belong to "Tadvi Bhil" community, but were "Pathans". In order to buttress their submission, the genealogical tree has been placed on record and on the basis of the same, the petitioners contend that none of the respondents were tribals. According to the petitioners, the caste of these persons is mentioned as "Musalman". The sale deed is of the year 1946. At the relevant time, caste of Supadu and others is shown as "Musalman". In the said sale deed, it has nowhere been mentioned that Supadu Pathan and his sons belong to "Tadvi" community. The petitioners further state that, post sale, the part of Survey No. 54, which was divided into two parts, was mutated in the name of Raoji Keshav Patil and the remaining part of Survey No. 54/2 was mutated in the name of Supadu Anwar Pathan and others.

8. The petitioners have further contended that Survey No. 54/1 having been purchased and the said purchase having been completed with the remaining part of Survey No. 54/2, there was no reason to disbelieve the documents which are practically more than 40 years old.

9. The petitioners have further stated that Supadu and his two sons mortgaged the suit property to one Shri Jagannath Wani and it was in the said mortgage deed, that the caste of Supadu as well as caste of Jafar was again mentioned as "Pathan Musalman". The said document is contended to be dating back to the year 1947 and being an old document, needs to be believed as per the contention of the petitioner. The petitioners further contend that the clinching piece of evidence would be the school leaving certificate of Subhan Supadu Pathan (Respondent no. 2 herein), who was educated up to 4th Standard, as it discloses his caste to be Pathan. According to the petitioners, therefore, none of the respondents would ever claim to be belonging to "Tadvi" or "Tadvi Bhil" community.

10. It is further contended that Subhan Supadu Pathan (Respondent no. 2 herein) filed an application to the Tahsildar, Raver, for issuance of caste certificate to the effect that he belongs to Pathan community and Pathan community is recognized as a Scheduled Tribe. The said application was rejected by the Tahsildar on 17th January 1985 on the ground that the school leaving certificate of Subhan Supadu Pathan shows his caste to be "Pathan" and "Pathan" community is not included in the Scheduled Tribes. It was for these reasons, that the Tahsildar declined to issue said caste certificate.

11. The petitioners have contended that the said land was purchased by late Shivram Mahajan from Smt. Begumbai Gambhir Tadavi, who was the earlier owner. It was a barren patch which was then converted into Bagayat land, investment having been done by late Shivram Mahajan. A well was dug in the said land in the year 1972 and that is how value of the said land had appreciated. The petitioners have specifically pleaded that the said suit land with the standing crop was in the exclusive custody and possession of the petitioners.

12. These facts, i.e. in view of the matter having reached the Scrutiny Committee, and in view of the Committee having concluded that the respondents belong to "Tadvi Bhil" community, which falls in the Scheduled Tribes category, have given rise to the instant cause of action. The petitioners being aggrieved by the conclusions drawn by the Scrutiny Committee, had preferred an appeal to the Additional Commissioner, Tribal Development, Nashik Division, Nashik, which was dismissed with the finding that the decision of the Scheduled Tribes Certificate Scrutiny Committee, dated nil, declaring the respondents belonging to "Tadvi Bhil", Scheduled Tribe, was proper. As such, the petitioners have assailed both these orders in this petition.

13. Adv. Mr. S.P. Brahme for respondent nos. 1-a to 1-e, 2 and 3, Spl. Counsel Mr. P.S. Patil for respondent no. 4, and learned AGP Mr. P.P. More for respondent

nos. 5 and 6, have opposed the petition vehemently and supported the impugned orders. Shri Brahme, learned Counsel, strenuously contended that the order (undated) passed by the Scrutiny Committee is a well reasoned order. The documentary evidence placed before the said Committee has been properly appreciated. The findings of the Committee, that the respondents belong to "Tadvi Bhil" community and that the respondents, though Muslims by religion, can belong to such a community, is a sustainable conclusion drawn by the Committee. Two old documents dated 23-10-1918, pertaining to the real sister of Jafar Supadu, namely, Fuli Supadi Anwar, and the school leaving certificate issued by the Head Master of Marathi Mulanchi Shala, Ahirwadi, Taluka Raver, District Jalgaon, in favour of Pirkha Nurkha Tadvi dated 28-12-1992, showing caste "Tadvi Bhil", who is maternal uncle of Jafar Supadu, admitted in the school on 2-7-1926, were duly taken cognizance of by the Committee. He further contended that old documents have been accorded much deserved probative value by the Committee. He vehemently contended that the conclusion drawn by the Committee and upheld by the learned Additional Commissioner, Tribal Development in appeal, are neither perverse nor erroneous and need no interference.

14. It appears from the rival contentions that the petitioners are primarily aggrieved on account of purported disregard of voluminous record in the form of documents having been placed before the Scrutiny Committee. The description of the said documents is mentioned at pages 8 to 11 of the petition and which need not be reproduced herein. The sum and substance of the contention of the petitioners is that the said documents were eye openers and the gamut of contention of the respondents claiming to be belonging to "Tadvi Bhil" community is sufficiently nullified. It is further contended that these documents have not been properly considered by the Scrutiny Committee and on account of the non-application of mind by the Scrutiny Committee and its failure to consider the said documents with due circumspection, has led to the passing of an erroneous order. It is further contended that the said error was not properly cured in appeal and as a consequence, the appeal suffers from similar legal infirmities.

15. The fact situation, as it emerges from the pleadings of the parties, is squarely covered by the judgment of the Hon''ble Apex Court delivered in the case of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, . A similar situation was thus before the Apex Court pertaining to non-application of mind and failure to consider an important document placed before the Committee. In paragraph 17 of the said judgment, the Hon''ble Apex Court has held as under:-

Applying the above test to the facts of the present case, we are satisfied that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document "Sl. No. 9" which led the Committee ultimately record a finding against the appellant. By a wrongful denial of the caste certificate, the genuine candidate, he/she will be deprived of the privileges

conferred upon him/her by the Constitution. Therefore greater care must be taken before granting or rejecting any claim for caste certificate.

16. In the instant case, it is the contention of the petitioners, that about 20 documents were placed before the Committee which would have been sufficient material to convince the Committee of the falsity in the claim of the respondents. The Hon''ble Apex Court in the case of Gayatrilaxmi Bapurao Nagpure (supra), has found it appropriate to observe that the Committee ultimately needed to record a finding in view of the material before it and a wrongful denial of the caste certificate would deprive a genuine candidate, of privileges conferred upon him/her by the Constitution. In the instant case, the petitioners seem to be deeply aggrieved by the denial of their contention predominantly on account of failure of the Committee to consider relevant documents placed before it. By way of illustration, a document mentioned at Serial No. 30 on page 8 of the petition and which is placed on record as Exhibit D-30 in this petition, is sufficient to import a view that the Scrutiny Committee appears to have failed to consider the relevancy of document. This document, which is dated 17th January 1985, is issued by the Tahsildar, Raver to Shri Subhan Supadu Pathan (Respondent no. 2 herein). This was a communication rejecting claim of Shri Subhan Supadu Pathan for a caste certificate. A reference to the said letter indicates that the Tahsildar has observed the presence of caste "Pathan" in the documents provided by Shri Subhan Supadu Pathan while seeking the caste certificate. On the basis of entries in the school record of Shri Subhan Supadu Pathan, wherein the caste was mentioned as "Pathan", convinced the Tahsildar, Raver, to reject his application for seeking caste certificate. Needless to state, the said document singularly could indicate failure on the part of the Scrutiny Committee to apply its mind. In effect, according to the petitioners, all documents referred from Exhibit D-30 to 51, would individually fortify the submissions of the petitioners.

17. The notification dated 17th January 1985 has been discarded by the Scrutiny Committee after observing that there is no caste by name, "Pathan". Whether this finding is correct, or not, and whether in the light of assertion of respondent no. 2, that he belongs to "Pathan" caste, this finding or assertion is sufficient to negate the claim as belonging to "Tadvi Bhil", Scheduled Tribe, is one of the questions involved. In the light of constitution of a statutory Committee consisting of experts in the field, and having mechanism to scientifically verify such assertions, we find it proper to place even this aspect for consideration before the said Committee functioning as per Section 6 of Act No. XXIII of 2001.

18. The Nagpur Bench of this Court, in Writ Petition No. 531 of 1994 (Vijaykumar Narayanrao Kale Vs. State of Maharashtra & 2 others), has handed down judgment on 29th July 2013. The scheme of Act No. XXIII of 2001, more so, in the light of the judgment of the Hon''ble Apex Court, in the case of Kum. Madhuri Patil (supra), has been considered by this Court in the said judgment. This Court has concluded that Act No. XXIII of 2001 in itself has devised a compact scheme with the assistance of appropriate machinery to consider claims pertaining to

castes and tribes including the validities of such casts and tribes. Caste certificates issued prior to introduction of Act No. XXIII of 2001 have been considered and it is concluded that such certificates already issued by the competent authority are accepted as valid and can be submitted to verification to Scrutiny Committee as per law. Section 4, Sub-Section 2, mandates that such caste certificates issued by competent authorities would be valid only subject to their verification and grant of validity certificate by the Scrutiny Committee.

19. The above referred judgment further observes that the scheme of the Act and the Rules framed thereunder would sufficiently achieve the object of the Act and would appropriately lead to the scrutiny of caste certificates while entertaining claim for validity. We find it appropriate to refer to certain observations of the court in the said judgment which are as follows:

4. After this judgment and during the pendency of the present Writ Petition, the State of Maharashtra has from 23-5-2001 brought into force the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance & Verification of) Caste Certificates Act (Act No. 23 of 2001). The Maharashtra Scheduled Tribe (Regulation of Issuance and Verification of) Caste Certificate Rules, 2003, have been framed by the State Government through its Tribal Development Department on 4-6-2003 under this Act. Perusal of said 2001 Act and 2003 Rules is, essential.

5. Section 2[b] of the above Act defines "Competent Authority" and it also includes and envisages an Authority competent to issue caste certificate prior to coming into force of the said Act. The provisions of Section 2[k] define "Scrutiny Committee" as a Committee constituted u/s 6[1] of the said Act. In contradistinction, it is important to note that this provision does not recognize any earlier Scrutiny Committee or similar authority or even the appellate authority constituted under a government notification or any circular or other instrument and does not cover it within its sweep. Section 4 stipulates that the caste certificate needs to be issued by the competent authority only. Sub-section [2] of Section 4 mandates that such caste certificate issued by the competent authority shall be valid only subject to its verification and grant of a validity certificate by the Scrutiny Committee. Section 6 prescribes the procedure for verification of caste certificate by the Scrutiny Committee. These provisions and consequently Act 23 of 2001, therefore do not tolerate validity given by any other authority as legal and binding for any purpose.

6. These provisions, therefore, show that though a caste certificate may have been procured prior to coming into force of the Act No. 23 of 2001 and is still not verified, it must be verified by the Scrutiny Committee functioning u/s 6[1] of the said Act, and thereafter only, it can be treated as valid and binding. If the certificate is already validated by the competent Court of Law, said Section 4(2) may not have any application.

7. Though the term "validity certificate" as such is not defined by the Act 23 of 2001, however, the above mentioned 2003 Rules vide Rule 2[h] define that phrase to mean "a certificate issued by the Scheduled Tribe Certificate Scrutiny Committee validating the Scheduled Tribe Certificate issued by the competent authority". Thus, these provisions again contemplate that validity certificate, in order to be binding, must be issued by a Scrutiny Committee, constituted and functioning u/s 6 of the Act No. 23 of 2001.

20. This Court, in the said judgment, has further analyzed the powers flowing under Act No. XXIII of 2001 which have been envisaged in the Scrutiny Committee to deal with the claims for validity, inasmuch as provisions of Section 15 of the Act show that a Civil Court is denuded of jurisdiction to entertain, to continue or to decide any suit or proceeding and it cannot pass any decree or order or execute the same, if the claim involved in such suit or proceeding, or if the passing of such decree or order or its execution is, in any way, contrary to the provisions of Act No. XXIII of 2001. It was in these circumstances, that the Court in the said proceedings had referred the caste certificate for validity to the Committee in accordance with the provisions of Act No. XXIII of 2001.

21. We find from the facts emerging from the petition, that the matter was referred to the Scrutiny Committee in Writ Petition Nos. 666/1992 and 667/1992. As a consequence, the Scrutiny Committee after completing its exercise, submitted its findings in the said Writ Petitions in the form of a report submitted to the Court. In the light of our observations set out herein above, we find it appropriate to set aside the conclusions and findings drawn by the Scrutiny Committee and we accordingly set aside the same. Needless to state, since Act No. XXIII of 2001 now holds the field, it would be appropriate to relegate the parties under the said Act, to the Scrutiny Committee for proper appreciation of the rival claims of the parties. In effect, the caste claim at issue would, thus, now fall within the jurisdiction of the Scrutiny Committee under the said Act. Consequently, the judgment and order dated 8th October 1993, delivered by the appeal forum is also quashed and set aside. We are informed across the Bar, that the Scrutiny Committee for the District of Nadurbar, covering the area of Jalgaon, Dhule and Nandurbar Districts, is in existence. Parties are directed to appear before the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar, on 14th October 2013, and thereafter abide by further instructions and dates of hearing of the Committee. Parties are at liberty to rely upon material and produce documents, if any, for the proper adjudication of the caste claim. The record & proceedings received by this Court be sent back to the Scrutiny Committee. The said Scrutiny Committee is directed to complete the exercise, in accordance with the procedure laid down by law, within a period of eight months from the date of appearance of parties before it.

22. We mention here, that the observations made by us in this judgment ought not to influence the Scrutiny Committee and we have not arrived at any conclusion on the merits of the matter. The Scrutiny Committee is at liberty to

adjudicate the matter in accordance with law and by observing principles of natural justice and in its wisdom. The record and proceedings in Writ Petition Nos. 666/1992 and 667/1992 be placed back before the learned Single Judge. The petition is, thus, partly allowed. Rule is made absolute in the above terms with no order as to costs.