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**(2008) 02 BOM CK 0023**

**In the Bombay High Court**

**Case No : Writ Petition No. 8511 of 2006**

Shailaja Sangvikar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision : 26-02-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2008) 3 ALLMR 638 : (2008) 2 MhLj 813

**Hon'ble Judges :** S.P. Kukday, J; P.V. Hardas, J

**Bench :** Division Bench

**Advocate :** S.R. Barlinge, for the Appellant; S.K. Tambe, A.G.P. for Respondent No. 1, B.L. Sagar Killariker, for Respondent No. 2, A.B. Dube and M.R. Jadhav, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. This Petition under Article 226 of the Constitution of India has been filed by the present petitioner challenging the Judgment/Order passed by the respondent Scrutiny Committee dated 22-11-2006 invalidating the caste claim of the petitioner as belonging to "Mala Jangam", scheduled caste.

2. Perusal of the Judgment of the respondent Scrutiny Committee would reveal that the petitioner has submitted about 22 documents in support of her caste claim. The aforesaid documents are enlisted in the Judgment of the respondent Scrutiny Committee. The respondent Scrutiny Committee found that in respect of the petitioner's real brother, there was an entry in the admission register dated 4-7-1962, in which the caste of the real brother of the petitioner was recorded as "Lingayat Jangam". Similar was the case in respect of another real brother of the petitioner, whose caste was also came to be recorded as "Hindu Jangam" in the admission register dated 9-10-1963. In respect of the relative of the petitioner, i.e. Virappa, his caste was also recorded as "Jangam" in his service book. The respondent Scrutiny Committee, therefore, found that these contrary entries have far outweigh the probative value to be attached to document No. 13, which

is a mortgage bond alleged to have been executed by the great grandfather of the petitioner.

3. Mr. Barlinge, learned Counsel appearing for the petitioner has urged before us that the respondent Scrutiny Committee has ignored the document at serial No. 13 which has been filed by the present petitioner. The aforesaid document was a mortgage deed alleged to have been executed in 1357 Fasli i.e. 1938 A.D., in which the caste of the great grand father of the petitioner has been recorded as "Mala Jangam". According to Mr. Barlinge, learned Counsel respondent Scrutiny Committee erred in refusing to place reliance on the aforesaid document on the ground that the said document was unregistered document. Mr. Barlinge, learned Counsel submitted that the Division Bench Judgment of this Court has been produced before the respondent Scrutiny Committee and the respondent Scrutiny Committee has rendered the aforesaid finding completely ignoring the ratio laid down by the Judgment of the Division Bench of this Court. According to the learned Counsel for the petitioner, the Division Bench of this Court in *Rajesh Jagdishrao Gode v. State of Maharashtra and Ors.* 2006 (4) ALL MR 131, has held that the document could not be rejected on the sole ground of its being unregistered document. Mr. Barlinge, learned Counsel for the petitioner further urged before us that this document ought to have been preferred to other documents showing contra entries and few solitary entries contrary to the caste claim set up by the petitioner ought to have been ignored by the respondent Scrutiny Committee and great weightage ought to have been given to the document at Serial Number 13 i.e. mortgage deed alleged to have been executed by the great grand father of the petitioner in 1938.

4. Mr. Killarikar, learned Counsel appearing for the respondent Scrutiny Committee has urged before us that the respondent Scrutiny Committee has not refused to place reliance on the document at Serial Number 13 which is mortgage deed on the sole ground of it being an unregistered document. Respondent Scrutiny Committee has evaluated and appreciated all the documents on record and has come to the conclusion that the school record pertaining to real brothers of the petitioner far outweighs the probative value of an unregistered document at Serial Number 13. The school record of the real brothers of the petitioner demonstrated that their caste was recorded as "Jangam" and not "Mala Jangam", and therefore the claim of the petitioner was rejected. It was also urged before us by learned Counsel Mr. Killarikar that since this Court is exercising writ jurisdiction, this Court would not in the given set of circumstances re-appreciate the evidence and record findings contrary to the findings recorded by respondent Scrutiny Committee as if this Court was Court of Appeal.

5. With the assistance of learned Counsel for the parties, we have perused the impugned order of the respondent Scrutiny Committee. The respondent Scrutiny Committee at Paragraph No. 11, has referred to the document at Serial No. 13, which is the mortgage deed alleged to have been executed by the great grand

father of the petitioner. The respondent Scrutiny Committee has recorded a finding that this document is not a registered document and though the petitioner had proved the relationship of the executant with her, in the face of contrary school record of the real brothers of the petitioner, this document would not have such high evidentiary or probative value as to supersede school record of the real brothers of the petitioner.

6. Our attention has been invited to the Division Bench Judgment of this Court in *Rajesh Jagdishrao Gode v. State of Maharashtra* (supra). It is no doubt true that in a given set of circumstances, even an unregistered document would be a document having not only just persuasive value but great probative value in establishing the claim set up by the party. Registration of document puts a seal of authenticity on the document, which is absent in the present case. Perusal of the order of the respondent Scrutiny Committee also does not indicate that the petitioner has led any evidence in establishing the authenticity or genuineness of the document. The document, no doubt is alleged to have been executed in 1938 and therefore by the sheer passage of time, it would have evidentiary value though it may not be a registered document. Even an unregistered document can be taken into consideration provided authenticity and genuineness of the document is established by proper evidence. In the present case, apart from tendering the document, no efforts have been taken by the petitioner in leading evidence for establishing authenticity and genuineness of the document apart from mere filing an affidavit. Apart from that, the school record of the real brothers of the petitioner clearly indicates that their caste was recorded as "Jangam" and not "Mala Jangam". School record of the real brothers of the petitioner certainly have greater probative value and would be far outweigh the value to be attached to an unregistered document at Serial No. 13 which is mortgage deed. In such circumstances, we do not notice any infirmity in the order of the Scrutiny Committee in not placing any reliance on an unregistered document and preferring to place reliance on the school record of the real brothers of the petitioner.

7. We do not notice any perversity in the reasoning of the respondent Scrutiny Committee to warrant any interference in the exercise of writ jurisdiction. The other documents which are of recent origins would certainly indicate that the petitioner belongs to "Mala Jangam" caste but that by itself is not sufficient to hold that the caste of the petitioner is "Mala Jangam", particularly in the face of oldest school record being available i.e. of the real brothers of the petitioner, which indicate that their caste was recorded as "Jangam". Consequently this Writ Petition fails and is dismissed.

8. At this stage, Mr. Barlinge, learned Counsel appearing for the petitioner states that the interim relief granted by this Court be continued for a period of six weeks to enable the petitioner to file appropriate proceedings before the Supreme Court. Interim relief continued as prayed for.