

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 3370 OF 2018**

Shri Anandra Vithoba Adsul  
Age -71 years, Occu: Social Work,  
R/o-5-B, Kadamgiri Apartment,  
Ashok Nagar, Chakravarti Ashok Rd,  
Kandivali (E), Bombay- 400001.

... Petitioner

V/s.

1. State of Maharashtra, through its  
Department of Social Justice and  
Social Welfare, Mantralaya, Mumbai-32.

2. District Caste Scrutiny Committee,  
Mumbai Sub Urban, Mumbai.

3. Miss. Navneet Kaur Harbhajansing  
Kundles @ Mrs. Navneet Kaur Ravi Rana,  
Presently residing at Room No. 600/C,  
Marathwada Chawl, Hill No.2, Narayan  
Nagar, Ghatkopar (W), Mumbai -400 086.

... Respondents

**WITH  
WRIT PETITION NO. 2675 OF 2019**

Shri Raju Shamrao Mankar  
Age -49 years, Occu: Social Work,  
R/o-Boda Nagar, Near Arjun Nagar,  
Amravati, Dist. Amravati.

... Petitioner

V/s.

1. State of Maharashtra, through its  
Department of Social Justice and  
Social Welfare, Mantralaya, Mumbai-32.

2. District Caste Scrutiny Committee,  
Mumbai Sub Urban, Mumbai.  
5<sup>th</sup> Floor, New Administrative Building,

Bandra, Mumbai.

3. Miss. Navneet Kaur Harbhajansing  
Kundles @ Mrs. Navneet Kaur Ravi Rana,  
Presently residing at Room No. 600/C,  
Marathwada Chawl, Hill No.2, Narayan  
Nagar, Ghatkopar (W), Mumbai -400 086. ... Respondents

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**WITH  
WRIT PETITION (LDG.) NO. 9426 OF 2020**

Miss. Navneet Kaur Harbhajansing Kundles  
@ Mrs. Navneet Kaur Ravi Rana, Age-35 years,  
Occu. Social Work. R/at Room No. 600/C,  
Marathwada Chawl, Hill No.2, Narayan Nagar,  
Ghatkopar (W), Mumbai -400 086  
At present residing at - Ganga Savitri Banglow,  
Plot No. 50, Shankar Nagar, Rajapeth,  
Amravati – 444-605. ... Petitioner

V/s.

1. State of Maharashtra, through its  
Department of Social Justice and  
Social Welfare, Mantralaya, Mumbai-32.
2. District Caste Scrutiny Committee,  
Mumbai Sub Urban, Mumbai.  
Office at 5<sup>th</sup> Floor, New Administrative  
Building, Bandra, Mumbai.
3. Shri Anandrao Adsul,  
Daffodil Kalpataru Garden, Ashok Nagar,  
Kandivali (E), Mumbai -400 101.
4. Raju Shamrao Mankar, Age : 55 years,  
Occu. Social Worker, R/o. Boda Nagar,  
Near Arjun Nagar, Amravati,  
Dist. Amravati. ... Respondents

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Mr. C. M. Korde, Senior Advocate along with Mr. Sachin Thorat, Mr. Shyamsunder Solanki, Ms. Komal Mestri, Advocates for the Petitioner in WP/3370/2018 and Respondent No.3 in WPL/9426/2020.

Mr. Pramod Patil along with Mr. Sachin Thorat, Mr. Shyamsunder Solanki, Mr. Ajit Hon, Ms. Komal Mestri, Advocates for the Petitioner in WP/2675/2019 and Respondent No.4 in WPL/9426/2020.

Mr. P. K. Dhakephalkar, Senior Advocate along with Mr. Ashok T. Gade, Mr. Sagar R. Jadhav, Mr. Navin B. Rathod, Advocates for the Petitioner in WPL/9426/2020 and Respondent No.3 in WPL/3370.2918 and WP/2625/2018.

Mr. Sukanta Karmakar, Asst. Government Pleader, State, Advocate for the Respondent Nos. 1 and 2 in WP/3370/2018.

Mr. Kedar Dighe, Asst. Government Pleader, state, Advocate for the Respondent Nos. 1 and 2 in WP/2675/2019.

Mr. S.B. Gore, Asst. Government Pleader, state, Advocate for the Respondent Nos. 1 and 2 in WPL/9426/2020.

Mr. Santosh Ramesh Bhise, Law officer, Cast Scrutiny Committee, Mumbai Suburban present in Court.

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**CORAM : R. D. DHANUKA &  
V. G. BISHT, JJ.**

**RESERVED DATE : 9<sup>th</sup> April, 2021.  
PRONOUNCED DATE : 8<sup>th</sup> June, 2021.**

**JUDGMENT [Per : R.D. DHANUKA, J.] :-**

1. Rule, Respondents waive service. By consent of parties petitions were heard finally and are being disposed off by a common order. By Writ Petition No. 3370 of 2018 the Petitioner has impugned the order passed by the District Caste Certificate Scrutiny Committee, Mumbai Suburban, dated 03.11.2017 (Respondent No.2), validating

the caste claim of Respondent No.3 s “Mochi” - Scheduled Caste and prayed for quashing and setting side the caste certificate dated 30.08.2013 issued by the Deputy Collector, Mumbai in favour of Respondent No. 3.

2. Writ Petition No 2675 of 2019 is filed by one Raju Shamrao Mankar, interalia praying for a writ of certiorari for quashing and setting aside the order dated 03.11.2017 passed by Respondent No. 2, District Caste Certificate Scrutiny Committee, Mumbai Suburban in favour of Respondent No. 3. The reliefs claimed in this writ petition are identical to the reliefs claimed in Writ Petition No. 3370 of 2018.

3. Writ Petition (Lodging) No.9426 of 2020 is filed by Mrs. Navneet Kaur Harbhajansingh Kundles, who is Respondent No. 3 in Writ Petition Nos. 3370 of 2018 and 2675 of 2019, interalia praying for a writ of certiorari for quashing and setting aside the finding at para-4 in respect of non-consideration of Petitioner’s oldest documents of the year 1894-1895, 1920-1921, 1936-1937, 1940-1941, 1944-1945 in the impugned judgment and order dated 03.11.2017 passed by the District Caste Scrutiny Committee, Mumbai Suburban. The Petitioner has also prayed for declaration that those oldest documents also support and establish the caste claim of the Petitioner as Mochi (Schedule Caste). The Petitioner has prayed for declaration that School Leaving Certificate of the Petitioner’s Kartika High School and Junior College, Kurla also establishes the caste of Petitioner as Mochi (SC).

4. Some of the relevant facts for the purpose of deciding these three writ petitions are as under :-

5. It is the case of the Petitioner in Writ Petition No. 3370 of 2018 that he belongs to Hindu-Chambhar Caste, which is recognized as a Scheduled Caste, and had contested the parliamentary Election in the year 2014 from Amravati Constituency, which was reserved for the Scheduled Caste Category and was elected from the said reserved constituency. Respondent No. 3 had also contested the said election from the said constituency. The Petitioner was elected as a member of the parliament for the first time in the year 1996 for the 11<sup>th</sup> Lok Sabha tenure and again in the year 1999, 2004, 2009 and 2014 respectively and was elected as a Member of Parliament. The Petitioner was also the Union Minister of State Finance and Company Affairs and at present he is Member of Parliament. It is the case of the Petitioner that Respondent No. 3 with an intention to contest the Parliamentary Election -2014 from Amravati constituency, reserved for Scheduled Caste, started taking steps with the help of forged and fabricated documents.

6. According to the petitioner, the respondent No. 3 asked her father one Harbhajansingh Ramsingh Kundles to create records that could be used by her for obtaining caste validity certificate. The father of Respondent No. 3 accordingly applied to the Gram-Panchayat, Ganja -Dhekale, Tal. Palghar, Dist. Thane to include his name in the birth – register maintained by the said Grampanchayat on 02.07.2012. The father of Respondent No. 3 filed an affidavit on 10.07.2012, mentioning therein that his birth took place in the said village on 17.04.1949. It is the case of the Petitioner that date of birth of the father of the Respondent No. 3 was not 17.04.1949 but it was 17.04.1954, as per the various documents submitted by him like PAN Card and his Passport etc. and his place of birth is “Khokhara-

Punjab”. The father of the Respondent No. 3 obtained various documents fraudulently.

7. It is the case of the Petitioner that Respondent No. 3 used those forged and fabricated documents and declared herself as reserved category candidate belonging to the Scheduled Caste while contesting the said Parliamentary Election of 2014 from Amravati constituency, reserved for Scheduled Caste. The Office of the Deputy Collector, Mumbai District Suburban granted caste certificate dated 30.08.2013 of “Mochi” to Respondent No. 3. Respondent No. 3 thereafter submitted an application before the Respondent No. 2 Committee for obtaining Caste Validity Certificate. She also made an application to the Headmaster of Chetna College, Bandra and the purpose for certificate mentioned was for employment as “Junior Clerk” in the said college. Respondent No. 3 submitted various documents in support of her claim as belonging to Mochi Caste under the Scheduled Caste Category.

8. It is the case of the Petitioner that without referring to the documents submitted by Respondent No. 3 to the Vigilance Cell for enquiry, the Respondent No. 2 Committee passed an order on 11.09.2013, validating the caste claim of Respondent No. 3. It is the case of the Petitioner that Respondent No. 2 Committee had already signed the said order on 11.09.2013. The Scrutiny Committee however, mentioned in the said order that file was put up before the members of the said Committee in the meeting held on 25.09.2013. According to the Petitioner the said caste validity certificate was obtained under the influence of the husband of Respondent No. 3, namely, Mr. Ravi Rana, who was a Member of Legislative Assembly.

9. One Mr. Raju Mankar, who is the Petitioner in Writ Petition No. 2675 of 2019 and Jayant Vanjari filed the complaints before Respondent No. 2 Committee and requested to cancel the said caste validity certificate issued in favour of Respondent No. 3. Alongwith the said complaints, the said two Complainants submitted various documents. Respondent No. 2 by its order dated 29.01.2014 referred those documents submitted by the complainants to the Vigilance Cell. The complainants also submitted a letter issued by the Education Officer dated 16.12.2013 stating that the School in which the father of Respondent No. 3 had said to have studied was not in existence at the time of issuance of the said certificates.

10. On 12.02.2014 the Vigilance Cell submitted a report before Respondent No. 2 Committee and pointed out that the said School Leaving Certificate submitted by the father of Respondent No. 3 was forged and fabricated one. Respondent No. 2 Committee issued a show cause notice upon Respondent No. 3, asking her to show cause as to why the said caste validity certificate issued in her favour should not be cancelled inasmuch as the same was obtained by producing false and fabricated documents.

11. Respondent no. 3 submitted various new documents before the Respondent No. 2 Committee in response to the said show cause notice. Respondent No. 3 submitted her application before Respondent No. 2 Committee and made a grievance against the officers of Vigilance Cell and made a request to change those officers. The Scrutiny Committee appointed a new Vigilance Cell Officer at the request of Respondent No. 3. On 16.04.2014, the

Vigilance Cell Officer duly appointed by the Scrutiny Committee submitted a fresh report before Respondent No. 2 Committee. It is the case of the Petitioner that even in the said fresh report submitted by the Vigilance Cell Officer, it was accepted that the School entry of “Mochi” was made in the School Leaving Certificate issued by Kartika School little later i.e. in the year 2013. The Vigilance Cell also observed that the School in which the father of the Respondent No. 3 claimed to have studied was not in existence at the relevant time. The Authorities of Khalsa College did not show the original register to the Vigilance Cell to verify the document submitted by the father of Respondent No. 3.

12. Some time in the year 2015 Mr. Raju Mankar filed a Civil Writ Petition No 325 of 2014 in this Court, *inter-alia*, challenging the grant of caste validity certificate issued pursuant to the order dated 25.09.2013. By an order dated 28.06.2017 passed by this court, the said caste validity certificate dated 25.09.2013 issued by the Respondent No. 2 Committee came to be set aside. In the said writ petition no. 325 of 2014, this Court directed the Respondent No. 2 Committee to give an opportunity of hearings to the parties and to take decision in accordance with the law. In the meanwhile, the Respondent No. 2 Committee also rejected the complaints filed by Raju Mankar and Jayant Vanjari by observing that once validity certificate is issued the same cannot be withdrawn and /or cancelled.

13. The Complainants as well as Respondent no. 3 thereafter appeared before the Respondent No. 2 Committee. Respondent No. 3 again submitted various documents before the Respondent No. 2 Committee in support of her caste claim. The complainants also



submitted various documents to show as to how the caste claim submitted by Respondent No. 3 was based on false and fabricated documents.

14. On 03.11.2017, the Respondent No. 2 Committee accepted the caste claim of Respondent No. 3 only on two documents i.e. bonafide certificate issued by Khalsa College of Arts, Science and Commerce in which the caste of Respondent No. 3 was mentioned as “Sikh Chamar” and Rent Agreement which corroborates proof of residence appearing under the Khalsa College Register, which also mentioned address of forefathers of the Respondent No. 3. The Petitioner in Writ Petition No. 3370 of 2018 and Writ Petition No. 2675 of 2019 have impugned the said caste validity certificate in these Writ Petitions.

15. Mr. Korde, learned senior counsel for the petitioner in writ petition no.3370 of 2018 invited our attention to various documents annexed to the writ petitions and also in a separate compilation of documents, various provisions which would apply to the facts of this case and various judgments of the Hon’ble Supreme Court and this Court in support of his submissions. The learned senior counsel also submitted written submissions for consideration of this Court.

16. It is submitted by the learned senior counsel that respondent no.3 had obtained Caste Validity Certificate from respondent no.2-Committee by relying upon large number of fraudulent and fabricated documents. All the documents relied upon by the respondent no.3 were rejected by the respondent no.2-Committee except two documents which were also fabricated and fraudulent. He submits that the said Caste Validity Certificate dated 30<sup>th</sup> August, 2013 was

granted to the respondent no.3 on the basis of -

- (i) Application of the respondent no.3 dated 26<sup>th</sup> August, 2013.
- (ii) School Leaving / Bonafide Certificate issued by the Head Master / Principal of Kartika High School and Junior College, Kurla.
- (iii) Affidavit dated 26<sup>th</sup> August, 2013.
- (iv) Photocopy of ration card.
- (v) Caste Certificate of the father of respondent no.3 carried out dated 30<sup>th</sup> July, 2013 issued by Deputy Collector.
- (vi) Other certificates obtained by the father of the respondent no.3.
- (vii) Other affidavits relied upon by the respondent no.3 and
- (viii) Birth Certificate of the respondent no.3.

17. In so far as school leaving / bonafide certificate of respondent no.3 issued by the Head Master / Principal of Kartika High School and Junior College, Kurla is concerned, it is submitted by the learned senior counsel that the said certificate was a duplicate certificate issued on 21<sup>st</sup> August, 2013. Though the respondent no.3 had the original school leaving certificate, she did not produce the original for the perusal of the respondent no.2-Committee at the time of hearing. The husband of the respondent no.3-Mr.Ravi Rana (M.L.A.) had addressed a letter dated 7<sup>th</sup> August, 2013 to the management of the school which mentioned that the original school leaving certificate did not mention the caste of the respondent no.3. He submits that in the said letter dated 7<sup>th</sup> August, 2013, the husband of the respondent no. 3 suppressed the fact that he was married to respondent no.3. The application for admission dated 23<sup>rd</sup> April, 1991 which was signed by the mother of the respondent no.3 had the following entries :-

- (1) Caste with sub-caste and religion - "Sikh"

(2) Whether a number of scheduled caste /tribe and documentary evidence thereof – ‘Sikh N.A.B.C.’

18. It is submitted that the duplicate school leaving certificate was contrary to the statements signed by the mother of the respondent no.3. Insofar as the photocopy of the ration card no.0652295 produced by the respondent no.3 is concerned, it is submitted by the learned senior counsel that the said document would clearly show that the original words “Rajinder Kaur” had been cancelled and the words “Rajinder Kaur Harbhajan Singh Kundles Mochi” had been added subsequently. In the letter dated 18<sup>th</sup> December, 2013 the Information Officer-cum-Rationing Officer had stated that the caste “Mochi” had not been mentioned by his office in the ration card. He submits that the said ration card no.0652295 was tampered with.

19. In so far as the caste certificate of the father of respondent no.3 bearing no.1173 dated 30<sup>th</sup> July, 2013 issued by the Deputy Collector, Mumbai Sub-urban District is concerned, it is submitted by the learned senior counsel that the said certificate was obtained on the basis of the fabricated documents. The said certificate had been set aside by the Scrutiny Committee by its order dated 3<sup>rd</sup> November, 2017. He invited our attention to the said order dated 3<sup>rd</sup> November, 2017 at Ex.HH of the petition.

20. In so far as the school leaving certificate of the father of respondent no.3 bearing no.11166 is concerned, it is submitted that the said document is also fabricated. The said school which is supposed to have issued the said certificate was not in existence at the relevant time. He relied upon the letter dated 16<sup>th</sup> December, 2013

issued by the Education Officer, Mumbai Municipal Corporation and would submit that from the said letter it would be clear that the said school alleged to have issued the school leaving certificate was not in existence at the relevant time. The said school leaving certificate of the father mentions that he had joined the school in 1954 and 1958. The said school had not issued the said certificate.

21. In so far as the Birth Certificate of the respondent no. 3 issued on 3<sup>rd</sup> January, 2013 is concerned, it is submitted by the learned senior counsel that the said document mentioned the name of father of respondent no. 3 as Mr.Harbhajansingh Ravisingh Kundles Mochi. He submits that the original record had been altered by adding the words “ Kundles Mochi” in the name of her father from 3<sup>rd</sup> January, 2013 and the Medical Officer, Health, “N” Word had put his signature and rubber stamp. The original birth certificate of respondent no.3 also did not mention the caste “Mochi”. He submits that the respondent no.3 had managed to get two documents namely school leaving certificate and birth certificate altered. The entry showing the caste in the ration card was fabricated. The school leaving certificate of the father was also fabricated.

22. Learned senior counsel for the petitioner invited our attention to the explanation given by respondent no.3 to the respondent no.2 – Committee in respect of the said school leaving certificate of the father of the respondent no.3. It was the case of the respondent no.3 before the respondent no.2-Committee that the said school leaving certificate of the father of the respondent no.3 was found in the old record of her house and the same was submitted in support of the claim of the respondent no.3 before the said committee as well as

before the competent office of Sub-divisional Officer while obtaining caste certificate. The respondent no.3 did not have personal information regarding issuance of the said school leaving certificate in the name of the father. Being an oldest document the same was submitted as it is, as it was requisite document of her father. It is submitted that the said explanation given by the respondent no.3 and further excuse given by her to disown her responsibility of the fabricated document produced by the father on the pretext that father had broken up relation with her after her marriage was completely false.

23. It is submitted by the learned senior counsel that some time prior to 18<sup>th</sup> July, 2013, the father of the respondent no.3 had applied for the caste certificate to Tahasildar, Palghar *inter-alia* relying on the school leaving certificate no.11046 which itself was a fabricated document and on the basis that his place of birth was Thane and date of birth was 17<sup>th</sup> April, 1949. On 18<sup>th</sup> July, 2013 the said application filed by the father of the respondent no.3 was rejected by Additional District Collector and Additional District Registrar. On 25<sup>th</sup> July, 2013 the father of respondent no.3 made another application for caste certificate to Deputy Collector, Mumbai Sub-Urban District by enclosing earlier school leaving certificate bearing no.11166 which was again a fabricated document and a copy of the ration card which was a tampered document. On 30<sup>th</sup> July, 2013 the Deputy Collector issued a caste certificate in favour of the father of the respondent no.3.

24. It is submitted by the learned senior counsel that on 30<sup>th</sup> August, 2013 the respondent no.3 made an application for a caste

certificate and annexed her father's caste certificate dated 30<sup>th</sup> July, 2013, photocopy of the school leaving certificate of her father bearing no.11166 which school leaving certificate was attached by her father to his application which was made on 25<sup>th</sup> July, 2013 and also submitted a photocopy of the ration card. He submits that the documents produced by the respondent no.3 herself would clearly indicate that respondent no.3 and her father were acting in collusion with each other and conclusively shows that the respondent no.3 had submitted the fabricated / tampered documents in support of her caste claim. These documents would also create grave doubt about the creditability of respondent no.3. He submits that the respondent no.3 is even today relying upon her duplicate school leaving certificate.

25. In so far as the certificate dated 11<sup>th</sup> February, 2014 issued by the Principal Gurunanak Khalsa College of Arts, Science and Commerce annexed at page 333 on the basis of which the said certificate was issued, it is submitted that the entry 486 relating to Ramsingh Budhiya (aged grand-father of respondent no.3) in the Khalsa college register is a suspect and fabricated entry. He submits that perusal of the said documents would clearly indicate that the said entry is in a different ink and is in a different handwriting from entry in the serial number 485 on the same page. He relied upon Vigilance Cell Report dated 10<sup>th</sup> March, 2014 and would submit that the said Vigilance Cell Report had clearly observed that even those entries at serial nos. 485 and 486 though were made on the same day, there was difference in the handwriting and the ink of the said two entries. There was overwriting in entry no.485. New dated page of the admission register starts with entry relating to students who took admission in F.Y. Arts and starts with serial no.1.

That the said entry appears exactly at the only spot where it was possible to make a subsequent addition which was not a mere coincidence.

26. It is submitted by the learned senior counsel that the name of the “school last attended” is deliberately kept vague. The name is mentioned as “municipal school” without giving any further details of the said school such as location etc. This appears to have been done in the light of the explanations of the father of the respondent no.3 in fabricating his school leaving certificate of the school which was subsequently discovered to be not in existence at the time where he was supposed to have attended the said school.

27. It is submitted by the learned senior counsel that even though a request was made by the Vigilance Cell to the Vice-Principal of the college who allegedly produced the said register for inspection of the register, the said request was rejected by the respondent no.2-Committee. The said Vice-Principal informed the respondent no.2-Committee that he was not in a position to say anything whether the said entry was made in the year 1996 or later. In his alternate arguments, it is submitted by the learned senior counsel that the probative value of the said register is insignificant, particularly in the light of the fact that respondent no.3 had produced a clear fabricated / tampered documents in support of her caste claim.

28. In so far as the alleged Indenture of Tenancy dated 20<sup>th</sup> July, 1932 relied upon by the respondent no.3 is concerned, it is vehemently submitted by the learned senior counsel that the said alleged Indenture of Tenancy was in respect of a small space “3ft. x 4

ft.”(otla) near the staircase on the ground floor of the building belonging to the alleged landlord. He submits that it is impossible to believe that in the year 1932 any owner would have entered into a written agreement like such indenture of tenancy, if he could be a cobbler on rent of Rs.1 and 8 annas per month, a small space of 3 ft. x 4 ft. near the staircase of the ground floor of his building.

29. It is submitted by the learned senior counsel that it is unthinkable that in the year 1932 in any tenancy agreement the term “compensation” or “royalty” would ever be mentioned. These terms came into use only when a practice started giving a premises on leave or license basis or conducting basis to escape rigours of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947. The only terms which would be mentioned in a tenancy agreement executed in 1932 would be “rent. Nobody would ever think of compensation” or “royalty” in the context of a tenancy agreement in the year 1932. He submits that the fabrication took place much later that is sometime before the said document was produced by the respondent no.3 before the respondent no.2- Committee on 12<sup>th</sup> February, 2014. The person who fabricated the document used terms like “compensation”, “royalty” with which he was familiar, without realizing that such terms would never have been used in the year 1932 in the tenancy agreement.

30. It is submitted that the respondent no. 3 had not even explained as to how she had custody of the said mysterious documents. Such a written agreement in the year 1932 was only unnecessary. He placed reliance on the statement of objects and reasons dated 7<sup>th</sup> February, 1973 and would submit that the said objects and reasons would clearly



show that the concept of “leave and license” started only after 1947.

31. Learned senior counsel invited Court’s attention to the affidavit of Radha Banwarilal Adukiya which was tendered at the last hearing of the scrutiny committee on 27<sup>th</sup> October, 2017. He submits that there was no vigilance inquiry in respect of the said document. The said affidavit of Radha Banwarilal Adukiya clearly showed the extent to which the respondent no.3 had gone in fabricating a false case. He submits that the said alleged tenancy agreement was thus ex-facie fabricated document and would expose the method of fabricating documents habitually followed by the respondent no.3. He submits that the said alleged affidavit of Radhadevi Adukiya was tailor-made affidavit confirming the alleged tenancy in favour of the great grandfather of the respondent no.3.

32. It is submitted by the learned senior counsel that the application filed by the respondent no.3 was on the basis that respondent no.3 belongs to scheduled caste known as “Mochi,” the said two documents i.e. the entry in the Khalsa college admission register and the tenancy agreement dated 28<sup>th</sup> July, 1932 are genuine and would support the said application for caste certificate for caste “Mochi”. The said two documents strongly relied upon by the respondent no.3 did not describe the alleged grand-father of the respondent no.3 as “Mochi” but as “Sikh Chamar”.

33. Learned senior counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of **Parsram and Anr. v/s. Shivchand, 1969 AIR SC 597** and more particularly on paragraph no.7 and would submit that the Supreme Court in the said judgment

had clearly held that the applicant therein was found to be “Mochi” and not a “Chamar” and therefore, his mentioned prayer was rightly rejected. He tried to prove by evidence that he was “Chamar”, but did not succeed therein. He submits that the term “Sikh Chamar” is different from the term “Chamar”. The terms “Chamar” and “Sikh Chamar” are not synonymous. The term “Chamar” is not synonymous with the term “Mochi”. In support of these submissions learned senior counsel for the petitioner placed reliance on the judgments of the Supreme Court in case of *State of Maharashtra and Anr. Vs. Keshao Vishwanath Sonone and Anr., 2020 SCC OnLine 1040* and in case of *Bharati Balkrishna Dhangade, 2012 (1) SCC 566*.

34. Learned senior counsel for the petitioner relied upon pedigree tables which are relied upon by the respondent no.3 in the writ petition (I) no. 9426 of 2020 filed by her which according to respondent no.3 described the predecessors of respondent no.3 as belonging to the caste “Ravidasiya Mochi”. He submits that even if it is assumed for the sake of arguments, the caste of respondent no.3 was “Ravidasiya Mochi”, the same is not mentioned in the scheduled to the presidential order as amended from time to time. The term “Ravidasiya Mochi” cannot be read as “Mochi”. He relied upon entry No.11 which refers to “Mochi”, “Telgu Mochi”, “Kamati Mochi.” He submits that the said entry does not specify “Ravidasiya Mochi”. The said entry provides for “Pardeshi Chamar” but does not provide for “Sikh Chamar”. The respondent no.3 has destroyed her own case by claiming “Ravidasiya Mochi”. The term “Ravidasiya Mochi” is not the same as the term “Mochi”. The learned senior counsel relied upon the Constitution (Scheduled Caste Order)

Amendment Act, 2007.

35. It is submitted by learned senior counsel that the “Jamabandi” extract of village-Khokhar , Taluka-Chankaur, District-Rupnagar, Ropar annexed at Ex. BB to the petition and the pedigree /kursinama of the year 2004 and 2009 would clearly show that respondent no.3 belongs to caste “labana–Garha” which is at the most Other Backward Caste (O.B.C.), in the state of Punjab and not recognized in the State of Maharashtra. The vigilance report dated 9<sup>th</sup> October, 2017 had verified that the said documents were as per the original records of village “Khokhar”. Learned senior counsel invited our attention to the statement of Mr.Amarsingh Magarsingh dated 3<sup>rd</sup> April, 2014, statement of Ajitsingh Ramkishan dated 3<sup>rd</sup> April, 2014 and statement of Charanjit Kaur Jagirsingh recorded by Vigilance Cell stating that Harbhajansingh Kundles was of chamar community and doing business in Mumbai. He was also recognized “Ravidasiya Mochi”.

36. Learned senior counsel placed reliance on Rule 3, Sub-rule (1) of the Maharashtra Schedule Tribes Regulation of Issuance of Verification of Certificate Rules, 2003 and would submit that the deemed date was 10<sup>th</sup> August, 1950. The certificate would be issued to the permanent residents on the deemed date. He relied upon Rule (4) which prescribes the procedure required to be followed by the competent authority for grant of certificate or rejection of application for Scheduled Tribe Certificate. The father of the respondent no.3 had falsely mentioned as 1949 as the year of his birth.

37. It is submitted by the learned senior counsel that the respondent no.3 could not be “Sikh Chamar” and also “Ravidasiya Mochi” at the same time. The schedule does not mention “Sikh Chamar” or “Ravidasiya Mochi” as scheduled caste. He submits that the inclusion of any entry in the schedule can be read as it is. The Court cannot interpret the entries in the scheduled caste and schedule tribes orders. No enquiry is permissible to be made by the Court whether ‘Ravidasiya Mochi’ falls within the caste ‘Mochi.’ The respondent no.2 committee thus could not have granted any certificate to the respondent no.3 as ‘Mochi.’

38. Mr.Pramod Patil, learned counsel for the petitioner in Writ Petition No.2675 of 2019 adopted the submissions made by Mr. Korde, learned senior counsel for the petitioner in Writ Petition No.3370 of 2018. He tendered brief written submissions, compilation of judgments and also the documents for perusal and consideration of this Court. It is submitted by the learned counsel that the respondent no.3 and her family cannot be said to be residents of State of Maharashtra or the erstwhile Mumbai State (part of which is now in the State of Maharashtra) prior to the deemed date i.e. 10<sup>th</sup> August 1950. The so called entries in the register of Khalsa college in respect of Ramsingh in the year 1946 and the bonafide certificate issued in his favour on that basis where his date of birth is mentioned as 27<sup>th</sup> July 1928 and place of birth is mentioned as Bombay and the so called indenture of tenancy purportedly executed between Jamnadas Chunilal Adukia and Budhia Roda in the year 1932 are false and fabricated or manufactured documents.

39. Learned counsel for the petitioners invited our attention to the application dated 30<sup>th</sup> August 2013 made by the respondent no.3 to the Competent Authority for issuance of caste certificate of “Mochi” caste. The said application is required to be submitted in the statutory Form No.1 prescribed under Rule 4 (1) along with affidavit. In column No.1, it is stated that her current address is Ghatkopar, Mumbai. Current occupation is blank, traditional occupation is mentioned as Cobbler. In column 2(a) father’s name is stated Harbhajan Singh R. Kundles and address is same as in column No.1. His current occupation is blank and traditional occupation is mentioned as Cobbler. In column 3, caste claim is mentioned as “Mochi” Scheduled Caste. In column 4(a), original place of residence is mentioned as “Ghatkopar.” In column 4(e), place of birth and district is mentioned as “Ghatkopar, Mumbai.”

40. In column 6, the name of original place of residence of candidate’s parents is mentioned as Room No.600/C, Marathwada Chawl, Hill No.2, Ghatkopar which is same as mentioned in column nos.1 to 4. The said Form specifically prescribes that a candidates of Scheduled Caste who produced evidence of the residence prior to deemed date i.e. 10<sup>th</sup> August 1950. Learned counsel also pointed out various details mentioned by the respondent no.3 in the application dated 5<sup>th</sup> September 2013 made by the respondent no.3 to the respondent no.2 Committee for issuance of validity certificate.

41. It is submitted that the documents produced by the respondent no.3 including pan card, two passports would clearly falsify the story of the respondent no.3 that her family migrated from Punjab to Maharashtra before the deemed date of 10<sup>th</sup> August 1950 and that her

father's current occupation, education and place of residence mentioned in the Application forms submitted to competent authority and scrutiny committee were also false. The respondents had alleged that her family migrated from Punjab to Maharashtra in the year 1946. In the bonafide certificate dated 11<sup>th</sup> February 2014 of Ramsingh Budhia based on the purported entries in admission register of Khalsa college stating therein that his date of Birth is 27<sup>th</sup> July 1928 and place of Birth is Bombay would clearly show falsity of those documents produced by the respondent no.3.

42. It is submitted by the learned counsel that the legislation namely "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 came into force in the State of Maharashtra w.e.f. 18<sup>th</sup> October 2001 (For short the said "Caste Certificate Act"). He submits that prior to the said Act having come into force, the procedure was as per the guidelines issued by the Hon'ble Supreme Court in the case of ***Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development, (1994) 6 SCC 241.*** However, in view of the said judgment, State of Maharashtra has enacted the said Caste Certificate Act, from and after 18<sup>th</sup> October 2001, prescribing the procedure to be followed as per the said Act and the Rules framed thereunder. He relied upon Section 7 of the said Act and would submit that the respondent no.2 committee is bound to cancel and confiscate a caste certificate which is obtained fraudulently.

43. Learned counsel for the petitioner submits that even if the entries pertaining to a particular State is phonetically similar, the said entry would not be relevant for the purpose of considering the caste claim in another State. The entries in the Punjab schedule showing a particular caste as Schedule Caste is not relevant for the State of Maharashtra. Learned counsel for the petitioner placed reliance on Rule 4 and Rule 16 of the Caste Certificate Rules, 2012 and would submit that the respondent no.3 was required to submit the documents in compliance with those Rules before the Scrutiny Committee. In her affidavit-in-reply, the respondent no.3 had alleged that since the date of her marriage, she has been staying in Amravati. She did not give any reply to the averments made in paragraph 5(B) of the writ petition. He submits that both the documents relied upon by the Scrutiny Committee while issuing the caste validity certificate to the respondent no.3 are false.

44. Learned counsel for the petitioner placed reliance on the judgment of this Court in the case of ***Kesharben Murji Patel Vs. State of Maharashtra & Ors., 2019 SCC OnLine Bom 562*** and in particular paragraphs 105, 112 and 113 and various other judgments forming part of the compilation as under :-

- (i) ***S.P. Chengalvaraya Naidu Vs. Jagannath (Dead) By Lrs. & Ors., (1994) 1 SCC 1;***
- (ii) ***Chaturbhuji Pande and Ors. Vs. Collector, Raigarh, AIR 1969 SC 255;***
- (iii) ***Juwarsingh and Ors. Vs. State of Madhya Pradesh, AIR 1981 SC 373;***
- (iv) ***Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, AIR 1990 SC 2192;***

- (v) ***Rajendra s/o Shivram Thakur Vs. State of Maharashtra, 2019 (4) MH.L.J. 721 and ;***  
(vi) ***Rajendra s/o Shivram Thakur Vs. State of Maharashtra delivered on 5<sup>th</sup> December 2012 in Writ Petition No.4918 of 2012.***

45. Mr. Dhakephalkar, learned senior counsel for the respondent no.3 invited our attention to various documents forming part of the record, various findings rendered by the Scrutiny Committee in the impugned order, relevant provisions of the said Caste Certificate Act and the Rules. He also tendered compilation of judgments for consideration of this Court.

46. Learned senior counsel for the respondent no.3 submits that the respondent no.2 committee did not rely upon any of the documents in respect of which objections were raised by the petitioners in the impugned order passed by the respondent no.2. The respondent no.2 committee only relied upon two documents i.e. (i) Tenancy document and (ii) *bona-fide* certificate of the grandfather of the respondent no.3. Neither of the petitioner had challenged the validity of any of these two documents before the Scrutiny Committee. This Court while exercising writ jurisdiction under Article 226 of the Constitution of India cannot take judicial notice of these additional documents.

47. It is submitted that these two documents were admitted by the petitioners before the Scrutiny Committee and thus cannot be allowed to challenge these documents in the writ petition for the first time. The petitioners had challenged the caste validity certificate of the father of the respondent no.3 who stays at USA. The said caste validity certificate was invalidated ex-parte and thus could not have been



relied upon by the petitioners. It is within the exclusive power of the Scrutiny Committee to interpret any document to find out whether the caste claimed by the applicant was within the schedule prescribed in the Constitution of India or not. The Scrutiny Committee has not inserted any such entry in the schedule to the Constitution of India as sought to be canvassed by the petitioners.

48. Learned senior counsel for the respondent no.3 invited our attention to sections 4(2), 6, 7, 8, 9 of the said Caste Certificate Act and Rules 11, 12, 13(2) (a), (b) of the said Caste Certificate Rules and would submit that the caste validity certificate issued by the respondent no.2 in favour of the respondent no.3 is after complying with all the aforesaid provisions of the said Caste Certificate Act 2000 and Caste Certificate Rules. Learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **Vasant Pandurang Narwade @ Narvade vs. Suhash 2001 (10) JT 125** and in particular paragraph 3 and would submit that the Scrutiny Committee has to return a finding as to whether or not the applicant belongs to reserved caste or not on the basis of the certificates and other documents produced by him at the stage of considering the application.

49. Learned senior counsel placed reliance on an unreported judgment delivered on 28<sup>th</sup> January, 2015 in case of **Minakshi Manohar Gholap @ Ms.Priyanka Suryakant Shrungare vs. State of Maharashtra & Ors.** delivered by the Division Bench of this Court in Writ Petition No.2204 of 2014 and would submit that merely because several documents were not believed to support respondent no.3, that would not be a ground for not considering the other important documents which could have thrown light on the controversy. The

petitioners not having raised objection to those two documents which have been considered by the Scrutiny Committee within its power to consider those documents cannot object to those documents now. Merely because objection raised by the petitioners in respect of the other documents was accepted by the Scrutiny Committee, on that ground, the petitioners cannot be allowed to canvass that other two documents which were though not disputed by the petitioners ought to have been rejected by the Scrutiny Committee on the same basis.

50. Learned senior counsel invited our attention to the findings rendered by the respondent no.2 Committee in respect of the documents which were produced by the respondent no.3 and considered by the Scrutiny Committee while validating the caste claim filed by the respondent no.3. He submits that the document i.e. at serial no.3 “*bonafide* certificate dated 11<sup>th</sup> February, 2014 was issued by the Principal, Guru Nanak Khalsa College of Arts and Science, Mumbai which has been considered by the Scrutiny Committee was not objected by the petitioners. The said document was held admissible. The respondent no.2 Scrutiny Committee has recorded a finding that no objection in respect of the said document was raised by the petitioners. The said finding recorded by the Scrutiny Committee is final. It is submitted by the learned counsel that even in the writ petition filed by both these petitioners, it is not the ground raised that though the objection in respect of the said document at serial no.3 was raised by the petitioners before the respondent no.2 Committee, the respondent no.2 Committee has wrongly held that there was no dispute raised by the petitioners in respect of the said document.

51. Learned senior counsel for the respondent no.3 invited our attention to the finding rendered by the respondent no.2 Committee in respect of “revenue stamp paper of rent agreement in the year 1932 in the name of great grandfather of the respondent no.3 viz. Budhia Roda and would submit that even in respect of the said document, no objection, oral or written had been raised by any of the petitioners before the Scrutiny Committee. The said finding recorded by the Scrutiny Committee that there were no objections by either of the petitioner in respect of the said document also has attained finality. Even in respect of the said document, the petitioners have not raised any ground in the writ petition that the said finding was wrongly recorded or was factually incorrect.

52. Learned senior counsel placed reliance on the judgment of the Hon’ble Supreme Court in case of ***State of Maharashtra vs. Ramdas Shrinivas Nayak & Anr. (1982) 2 SCC 463*** and in particular paragraph 4 and would submit that the Court cannot make an enquiry as to what transpired in the proceedings before the authority. The Court is bound to accept the statement of the Judges recorded in their judgment as to what transpired in the Court. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still afresh in the mind of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. He submits that the petitioners not having rightly made any application before the respondent no.2 Committee for correction of the alleged statement recorded in the impugned order or not having been raised in such ground in the petition filed under Article 226 of the Constitution of

India cannot be allowed to raise any objection in respect of those two documents.

53. Learned senior counsel placed reliance on the judgment of this Court in case of *Niraj Kamlakar More vs. Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, 2012 (5) Mh.L.J. 367* and in particular paragraphs, 4, 6, 9, 12 and 13 and would submit that the issue involved in the said judgment has been referred to the Larger Bench in a case reported in *2019 (4) Mh.L.J. 721* however on different point. The said judgment continues to hold the field. He submits that the caste certificate produced by the applicant is subject to verification and confirmation by the Caste Validity Scrutiny Committee under the provisions of the said Caste Certificate Act, 2000 and Caste Certificate Rules 2012. He submits that after remand of the matter by this Court to the respondent no.2 Committee, a report was obtained from the Vigilance Cell. After considering the said report from the Vigilance Cell, the respondent no.2 Committee considered only two documents in respect of which no objection was raised by either of the petitioners.

54. Learned senior counsel invited our attention to some of the averments made by the petitioner in Writ Petition No.2675 of 2019 filed by Raju S. Mankar, who was the original complainant. He submits that the entire petition filed by the original complainant would clearly indicate that the findings rendered by the respondent no.2 Committee that those two documents were not objected by the petitioners has not been controverted or challenged in the entire petition.

55. Learned senior counsel invited our attention to the order dated 28<sup>th</sup> June, 2017 passed by the Division of this Court in Writ Petition No.325 of 2015 filed by Raju S. Mankar, the original complainant and the petitioner in writ petition No.2675 of 2019 and would submit that by the said order this Court had set aside the earlier caste validity certificate on the ground that the said validity certificate was granted in favour of the respondent no.3 without following the procedure prescribed by law i.e. without calling the report from the Vigilance Cell. After passing of the said order by this Court, the Scrutiny Committee had rendered opportunities to all the parties to place relevant documents in respect of their respective stand and had taken decision in accordance with law. He submits that after passing of the order of remand, the petitioners did not raise any objection before the respondent no.2 Committee.

56. It is submitted by the learned senior counsel that in any event the Vigilance Cell report cannot be considered as a piece of evidence. He invited our attention to the averments made by the petitioner in affidavit-in-rejoinder filed in Writ Petition No.3370 of 2018 and more particularly in paragraphs 6 to 10 and would submit that the petitioner himself had admitted that the alleged Indenture of Tenancy was not objected in view of the advice of the counsel as the said aspect was not realized earlier. He submits that the petitioners thus cannot be allowed to carry out this exercise for the first time across the bar in the writ petition filed under Article 226 of the Constitution of India.

57. Learned senior counsel placed reliance on Rule 13 of the said Caste Certificate Rules and would submit that the Vigilance Cell is not empowered to record any conclusion or opinion. Vigilance Cell report

is meant only for the internal assistance of the Scrutiny Committee. It is within the exclusive domain of the Scrutiny Committee to adjudicate upon the caste claim. The opinion expressed and findings recorded, if any, by the Vigilance Officer would not be binding on the Scrutiny Committee nor could be used as evidence in respect of the caste claim.

58. Learned senior counsel placed reliance on Rule 17 (6) of the said Caste Certificate Rules and would submit that the Scrutiny Committee is empowered to issue validity certificate in Form 20 without enquiry by Vigilance Cell, if the Scrutiny Committee upon appreciating the statement of the applicant or evidence produced is satisfied about the genuineness of the cast claimed. The findings recorded by the Vigilance Cell would not be binding on the Scrutiny Committee. The Scrutiny Committee shall record its reasons for disregarding the report of the Vigilance Cell.

59. Learned senior counsel placed reliance on Rule 17 (10) and (11) of the said Caste Certificate Rule, 2012 and would submit that the Scrutiny Committee is ultimately empowered to consider whether the Vigilance Cell report should be accepted or not before validating the caste certificate in accordance with the said provisions. He invited out attention to the Vigilance Cell report dated 16<sup>th</sup> April, 2014 annexed at page 108 of Writ Petition No.3370 of 2018 and in particular paragraph 5 which deals with the certificate issued by the Khalsa College and would submit that the Vigilance Cell has only recorded the past remand of the proceedings by this Court to the respondent no.2 Committee that he has not seen the original. The Principal was called to show the original of the register to the Court. Earlier report submitted by the Vigilance Cell was set aside by the Scrutiny Committee. The original

register was produced by the Principal, Guru Nanak Khalsa College of Arts and Science, Mumbai before the respondent no.2 Committee thereafter. He was called as witness to produce the said register by the respondent no.2 Committee.

60. In support of this submission learned senior counsel invited our attention to the findings recorded by the respondent no.2 Committee at page 271. Learned senior counsel placed reliance on Section 139 of the Evidence Act and would submit that since the said Principal, Guru Nanak Khalsa College of Arts and Science, Mumbai was only called by the respondent no.2 Committee to produce the said register and not as a witness by the respondent no.2 to prove her case, the said respondent no.2 Committee had rightly not permitted the petitioner to cross-examine the said Principal, Guru Nanak Khalsa College of Arts and Science, Mumbai. In support of this submission, learned senior counsel invited our attention to the order passed by the respondent no.2 Committee on 23<sup>rd</sup> July, 2014 annexed at page 402 of the writ petition.

61. It is submitted by the learned senior counsel that though there is no dispute about the proposition of law that the fraud vitiates everything, the onus was on the petitioner who had alleged fraud on the part of the respondent no.3 to prove such allegation of alleged fraud. Learned senior counsel distinguished the judgment in case of **Chaturbhuj Pande** and would submit that the said judgment was dealing with the matter under Land Acquisition Act. The evidence could be looked into by the Court in First Appeal. In writ petition under Article 226 of the Constitution of India, Writ Court cannot re-appreciate the evidence. The above principles laid down by the Hon'ble Supreme Court in the Land Acquisition matter cannot be

extended to the writ petition being heard by the Writ Court under Article 226 of the Constitution of India. Learned senior counsel also distinguished the judgment of the Hon'ble Supreme Court in case of **Juwarsingh & Ors.** (supra) relied upon by Mr.Patil, learned counsel for the petitioner in Writ Petition No.2675 of 2019 on the ground that appreciation of evidence before the Trial Court cannot be applicable to a Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India.

62. Learned senior counsel for the respondent no.3 distinguished the judgment of the Hon'ble Supreme Court in case of **Periyar and Pareekanni Rubbers Ltd.** (supra) on the ground that the said judgment would also not apply to the facts of this case since the Hon'ble Supreme Court had considered the proceedings under the provisions of the Land Acquisition Act and had not dealt with the powers of the Writ Court under Article 226 of the Constitution of India. The paramount issue involved before the Hon'ble Supreme Court in that matter was as to how to arrive at fair market value in case of Land Acquisition matter.

63. Learned senior counsel distinguished the judgment delivered by the Division Bench of this Court in case of **Rajendra Shivram Thakur** (supra) on the ground that the said judgment also would not assist the case of the petitioner. Even in the affidavit-in-rejoinder filed by the petitioners, the petitioners have admitted that no such argument objecting to any of those two documents was advanced.

64. It is submitted by the learned senior counsel that the judgment in case of **Niraj K. More** (supra) was referred to the larger bench. The



said judgment was reversed on the issue of lack of territorial jurisdiction and not as sought to be canvassed by the learned counsel for the petitioners. In this case, no issue of territorial jurisdiction has been raised by any of the petitioners. The respondent no.2 Committee thus rightly considered only these two documents which were not disputed by the petitioners.

65. Learned senior counsel for the respondent no.3 distinguished the judgment of the Hon'ble Supreme Court in case of ***State of Maharashtra and Ors. v/s. Keshav Vishwanath Sonawne and Ors.*** (supra) and invited our attention to paragraphs 4, 9, 40, 61 and 95 and would submit that the issue involved before the Hon'ble Supreme Court in the said judgment and the findings rendered in the said judgment were totally different. On the contrary, the documents produced by the respondent no.3 clearly showed that she was of scheduled caste. The respondent no.2 Committee has rightly interpreted those two documents submitted by the respondent no.3. It was not the case of the respondent no.3 that the caste certificate should have been granted to the respondent no.3 on the basis of Ravi Dasiya caste.

66. Learned senior counsel distinguished the judgment of the Hon'ble Supreme Court in case of ***Parsram and Anr.*** (supra). He invited our attention to paragraph 2 of the said judgment and would submit that 'Mochi' was not included in item 9 in part X of the Constitution of India (SC), Order 1950 issued under Article 341 of the Constitution of India. He relied upon paragraph 3 of the said judgment and would submit that the finding of fact was rendered by the Scrutiny Committee that "Mochi" and "Chamar" were the same

caste and were on the same footing. He submits that Supreme Court did not interfere with the findings recorded by the High Court that the Applicant was a “Chamar” and not a “Mochi”. He submits that it was not the case of the respondent no.3 that her caste should be included in the entry in Schedule to the Constitution of India.

67. Learned senior counsel placed reliance on the judgment of the Supreme Court in the case of **Bhaiyalal Vs. Harikishan Singh & Ors., (1965) AIR (SC) 1557** and in particular paragraphs 2, 4 and 8 thereof and would submit that it was the duty of the Scrutiny Committee to find out whether the respondent no.3 was “Mochi” or “Chamar.” “Mochi” and “Chamar” were on the same footing. The finding of the Scrutiny Committee that the respondent no.3 was “Mochi” thus cannot be interfered with by this Court by exercising jurisdiction under Article 226 of the Constitution of India. Even if the Scrutiny Committee would have held that the respondent no.3 was “Chamar” by caste, even “Chamar” is included in the Schedule to the Constitution of India as Scheduled Caste. Learned A.G.P. supported the impugned order.

68. Mr. Korde, learned senior counsel for the petitioner in Writ Petition No.3370 of 2020 in his rejoinder arguments submits that it was the submission of the petitioner before the respondent no.2 committee that there were two sets of documents. There were contradictions in the documents submitted by the respondent no.3 as pointed out by the petitioner. The respondent no.3 did not deal with this crucial submission made by the petitioner. The respondent no.3 had claimed to be a Sikh Chamar or Ravidasia Mochi. The respondent no.3 did not give up one of the two castes whether Sikh

Chamar or Ravidasia Mochi. The respondent no.3 had not stated whether she was “Mochi under a separate entry in the Schedule to the Constitution of India.

69. It is submitted by the learned senior counsel that the proceedings before the Scrutiny Committee are not in the nature of the adversary proceedings. It is the duty of the Scrutiny Committee to apply its mind independently irrespective of the fact whether the complainant had raised any dispute in respect of any particular document or had admitted documents or had allegedly admitted the documents by not disputing the documents. The Scrutiny Committee has not recorded any independent finding that those two documents were valid and were proved. The Scrutiny Committee has abdicated the duties prescribed under the provisions of the said Caste Certificate Act, 2002 read with Certificate Rules, 2012.

70. It is submitted by the learned senior counsel that the powers of writ Court under Article 226 of the Constitution of India are very wide. Writ Court may even permit the parties to lead oral evidence in appropriate cases. The fraud was staring on the face of every documents submitted by the respondent no.3 before the respondent no.2 Committee. By considering these two fraudulent documents, the respondent no.2 Committee has caused gross injustice to the petitioner. The enquiry into the caste claim made by the respondent no.3 was not in the nature of a personal litigation between two parties but was in the nature of enquiry in rem. Outcome of such enquiry and validating a caste certificate affects public at large in every sector, may be at the stage of seeking admission in any

school or college or even at the stage of applying for employment or even while contesting an election.

71. It is submitted that if the arguments of the learned senior counsel for the respondent no.3 are accepted, it would defeat the very object and purpose of Article 226 of the Constitution of India. Learned senior counsel once again strongly placed reliance on the judgment of the Supreme Court in the case of **S.P. Chengalvaraya Naidu Vs. Jagnath (Dead) by Lrs. & Ors. (supra)** in support of the submission that fraud vitiates all judicial acts and such acts would be nullity in the eyes of law. The Scrutiny Committee was bound to apply its mind and to verify the correctness and genuineness of the documents produced by the respondent no.3 before issuing the caste validity certificate.

72. It is submitted by the learned senior counsel that though some of the judgments relied upon by the petitioner were under the provisions of Land Acquisition Act, the principles laid down by the Hon'ble Supreme Court in those judgments would also apply in case of caste scrutiny claims.

73. It is submitted by the learned senior counsel that both these documents which were relied upon by the respondent no.3 and accepted by the respondent no.2 Committee were clearly case of inherent probability. The respondent no.3 had not stated as to how and when the respondent no.3 came in the custody of the alleged tenancy documents. It was not a personal fight between the petitioner and the respondent no.3 before the respondent no.2 who was empowered to consider the caste claim. The respondent no.3 herself

has filed a counter petition bearing (L) No.9426 of 2020 impugning part of the order passed by the respondent no.2 committee. The respondent no.3 deliberately did not make any submission in the counter petition filed by her.

74. It is submitted by the learned senior counsel that the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra and Ors. Vs. Keshao Vishwanath Sonone & Ors.(supra)** relied upon by the petitioner is directly relevant as to how to interpret the entry in the Schedule to the Constitution of India. Learned senior counsel distinguished the judgment in the case of **Bhaiyalal (Supra)** and would submit that when the respondent no.3 herself had made an application for caste "Mochi," she cannot be allowed to now say that the said application was irrelevant. She submits that Chamar and Mochi are not synonymous. Mochi and Chamar are different identities.

75. Learned senior counsel for the petitioner relied upon paragraph 4 of the judgment in the case of **Parsram Vs. Shivchand (supra)** and would submit that now we have separate statute on the caste certificate in the State of Maharashtra.

76. It is submitted by the learned senior counsel that under the provisions of the said Caste Certificate Act, 2000, caste scrutiny committee has a Suo Moto power to cancel and confiscate the caste validity certificate if any fraud is committed upon the Caste Scrutiny Committee by the applicant. He submits that the procedure prescribed under the said Caste Certificate Act read with Rules has not at all been followed by the respondent no.2 committee while validating the caste certificate submitted by the respondent no.3.

77. Mr. Patil, learned counsel for the petitioner in Writ Petition No.2675 of 2019 submits that in case of ***Niraj Kamalakar More Vs. Schedules Tribe Certificate Scrutiny Committee, Aurangabad (supra)***, this Court had decided the territorial jurisdictional issue which issue only was reversed by the Full Bench of this Court in case of ***Vasant Pandurang Narvade Vs. Suhas (supra)***. The said judgment in case of ***Vasant Pandurang Narvade Vs. Suhas (supra)*** was delivered on 27<sup>th</sup> July 2001. The Caste Certificate Act, 2000 came into effect on 17<sup>th</sup> October 2001. Prior to enactment of the said Caste Certificate Act, 2000, guidelines laid down by the Hon'ble Supreme Court in case of ***Madhuri Patil (supra)*** were applicable.

78. Learned counsel for the petitioner submits that the judgment in case of ***Vasant Pandurang Narvade Vs. Suhas (supra)*** is not applicable. Vigilance Committee found all the documents submitted by the respondent no.3 as false and fraudulent. The respondent no.3 gave up those documents. School Leaving Certificate of the father of the respondent no.3 was also found false. He invited our attention to Rule 17 (2) of the Caste Certificate Rules, 2012 and would submit that since the original School Leaving Certificate was not produced, the respondent no.2 committee ought to have drawn adverse inference against the respondent no.3.

79. Mr. Dhakephalkar, learned senior counsel for the respondent no.3 submits that the litigation between the parties was an adversarial litigation and thus objection not having been raised before the respondent no.2 committee in support of those two documents cannot be allowed to be raised at this stage.

**REASONS AND CONCLUSION :**

80. We have heard learned counsel for the parties at length and have given our anxious consideration to the rival submissions made by the parties. Before we deal with the submissions made by the parties through their respective counsel, we will summarize the relevant provisions of the said Caste Certificate Act, 2000 and the said Caste Certificate Rules, 2012.

81. Section 2 (a) of the said Caste Certificate Act defines “Caste Certificate”. Section 2(b) defines “Competent Authority”. Section 2(j) defines “Scheduled Castes” and “Scheduled Tribes” which shall have meanings respectively assigned to them in clause (24) and (25) of Article 366 of the Constitution of India. Section 2(k) defines “Scrutiny Committee”. Under section 3 of the said Caste Certificate Act any person who seeks to claim benefit of any reservation provided to Scheduled Caste, Scheduled Tribe, De-notified Tribes, (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category are required to produce caste certificate in order to claim such benefit availed in any public employment or for admission into any educational institution, or any other benefit under any special provisions made under clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or in the Co-operative Societies; or for purchase or transfer of land from a tribal land-holder or any other purposes specified by the Government, shall apply in such form and in such manner as may be prescribed, to the Competent Authority for the issue of a Caste Certificate.

82. Under section 4 of the said Caste Certificate Act, the Competent Authority is empowered to issue caste certificate on receipt of the application under section 3 only after satisfying itself about the genuineness of the claim and following the procedure as prescribed within such time limit and in such form as may be prescribed or reject the application for reasons to be recorded in writing. Under section 6 of the said Caste Certificate Act, the Government is empowered to constitute one or more Scrutiny Committees for verification of Caste Certificates issued by the Competent Authorities under section 4(1) specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

83. The person who seeks to avail off such benefit and seeks to obtain caste certificate has to make an application well in time and in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee about the verification of such caste certificate and for issuance of the caste validity certificate. The Scrutiny Committee has to follow such procedure for verification of caste certificate and adhere to the time limit for verification and grant of validity certificate as prescribed.

84. Under section 7 of the said Caste Certificate Act, the Scrutiny Committee may *suo moto* or otherwise call for the record and enquire into the correctness of any caste validity certificate and if it is of the opinion that certificate was obtained fraudulently, it shall by an order cancel and confiscate the certificate by following such procedure as prescribed, after complying with principle of natural justice. Such order passed by the Scrutiny Committee thereby confiscating or cancelling false certificate thereby is final and shall not be challenged



before any authority or Court except High Court under Article 226 of the Constitution of India.

85. Section 8 of the said Act cast burden of proof upon the applicant who claims that he belongs to scheduled Caste, Scheduled Tribe, Denotified Tribes, (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes or Special Backward Category before the Competent Authority or Scrutiny Committee or the Appellate Authority or at any Tribunal of often found under the said Caste Certificate Act. Under section 9 of the said Caste Certificate Act the Competent Authority, Appellate Authority and the Scrutiny Committee have powers of the Civil Court while trying a suit under the Code of Civil Procedure, 1908 while holding an enquiry under the said Act.

86. Under section 10 of the said Caste Certificate Act any person, who has secured the benefits on the basis of the false caste certificate, on cancellation of such false caste certificate, is liable to be debarred from the concerned educational institution or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith. He is also liable to various consequences prescribed under the said provision. Under section 11 of the said Caste Certificate Act, such person who obtains false caste certificate is also liable to be punished as prescribed therein.

87. Under Rule 2(e) of the said Caste Certificate Rules, “deemed date” is defined which means 10<sup>th</sup> August, 1950 i.e. the date of Presidential Orders for Scheduled Castes, 21<sup>st</sup> November, 1961 for Denotified Tribes (*Vimukta Jatis*) and Nomadic Tribe and 13<sup>th</sup> October,

1967 for other backward classes and special backward categories. For the purpose of this case, deemed date is 10<sup>th</sup> August, 1950. Under Rule 3, the Competent Authority is empowered to issue a caste certificate to the applicant who is permanent resident of the concerned area on the deemed date for which the Competent Authority is designated or appointed by the Government, by publishing a notification in the Official Gazette. It is also provided that in case of the applicant who is born after the deemed date, the place of ordinary residence for the purpose of issuance of caste certificate shall be placed of permanent residence of his father or grandfather or great grandfather.

88. Rule 4 provides for procedure for obtaining caste certificate from the Competent Authority by submitting an application in Form-1 accompanied by attested copies of various documents and also to produce the originals thereof on demand by the Competent Authority. In this case admittedly the respondent no.3 who has been granted caste validity certificate was not born in the State of Maharashtra on or before the deemed date. We will deal with the documents produced by the petitioners and the respondent no.3 before the respondent no.2 Committee in the later part of this judgment.

89. Rule 4 was substituted in the month of November, 2017. It is provided that validity certificate if any of father in blood relation or real uncle or any other relative of the applicant in blood relation from paternal side is granted by the Scrutiny Committee, the Competent Authority will issue caste certificate without asking for any other documents of proof by considering that validity certificate is an important evidence. In this case, the respondent no.3 did not produce

any caste validity certificate of any person prescribed in Rule 4 which was alleged to be in existence, if any, on the date of such application made by her.

90. Rule 5 of the said Caste Certificate Rules provides for the procedure to be followed by the Competent Authority for issuance of the caste certificate or rejection of a caste certificate. It is provided that the Competent Authority may issue caste certificate to the applicant who himself or whose father or grandfather or great grandfather was ordinarily residing within the area of territorial jurisdiction of that Competent Authority on the deemed date. In case the applicant or his father or great grandfather or relative was not ordinarily resident of any place within the area of jurisdiction of that Competent Authority, temporary residence of the applicant for the purpose of service, employment, education or confinement in jail etc. within such area shall not confer jurisdiction on that Competent Authority to issue caste certificate.

91. Under Rule 5(6), the Competent Authority is required to verify the documents with original documents and after satisfying about the correctness of the information, documents and evidence furnished by the application, he shall issue the caste certificate to the applicants belonging to the Scheduled Caste in Form – 6 and to other backward categories in various other forms within 45 days from the date of receipt of duly completed application provided that if the validity certificate of father in blood relation or real uncle or any other relative of the applicant in blood relation from paternal side granted by the Scrutiny Committee has been submitted by the applicant, the Competent Authority shall issue caste certificate without asking for

any other documents or proof by considering that validity certificate is an important evidence.

92. Rule 8 of the Caste Certificate Rules provides for duties of the Competent Authority while issuing caste certificate. Rule 12 provides for constitution of Vigilance Cell to assist the Scrutiny Committee in conducting any field enquiry under Rule 17 consisting of various persons for conducting domestic enquiry and verification of authenticity of the documents for various purposes. Such Vigilance Cell has to work under the supervision and control of the Scrutiny Committee. Rule 13 provides for submission of report by such Vigilance Cell upon carrying out investigation to do various acts including by visiting permanent place of the residence and conducting domestic enquiry to collect information, record submission by personally visiting the office of the Committee Authority or revenue or school or several offices.

93. In the Rule 13 of Caste Certificate Rules however, it is made clear that the Vigilance Cell shall not record concluding remark or opinion since the Vigilance Cell enquiry is meant for internal assistance to the Scrutiny Committee and adjudication of the Scheduled Castes and Scheduled Castes converts to Buddhism, De-notified tribes (Vimukta Jatis), Nomadic Tribes, other backward classes or special backward category status is exclusive domain of the Scrutiny Committee. It is provided in the said Rule that the findings recorded and the opinion expressed, if any, by the Vigilance Cell shall not be binding on the Scrutiny Committee nor could be used as evidence, in support of the Scheduled Castes, Scheduled Castes

converts to Buddhism, De-notified tribes (Vimukta Jatis), Nomadic Tribes, other backward classes or special backward category claim.

94. Rule 16 provides for the information and documents to be supplied by the applicant before the Competent Authority. Rule 17(6) provides that if the Scrutiny Committee, upon appreciating the statement of the applicant or the the claimant submitted in the form of affidavit filed in consonance with Order 18 Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal is satisfied, about the genuineness of the Scheduled Castes, Scheduled Castes converts to Buddhism, De-notified tribes (Vimukta Jatis), Nomadic Tribes, other backward classes or special backward category claim, the Scrutiny Committee shall forthwith issue validity certificate in Form-20 without enquiry of the Vigilance Cell.

95. Rule 17(7) provides that if the Scrutiny Committee is of the opinion that the documents produced by the applicant did not satisfy or conclusively prove the caste claim of such applicant, the Scrutiny Committee by mentioning the same in the Roznama, shall refer such case to the Vigilance Cell for carrying out suitable enquiry as is deemed fit by the Scrutiny Committee. The Scrutiny Committee shall render its reasons for discarding the report of the Vigilance Cell.

96. Under Rule 17(11)(iii), the Scrutiny Committee is required to offer an opportunity of hearing and shall on being satisfied regarding genuineness of the caste claim, decide the matter finally, upon appreciation of evidence by its reasoned decision and forward the same to the concerned authorities within 30 days. Under 17(12), it is

incumbent on the applicant to disclose all true and correct information including the disclosure of adverse entries or material, failing which it shall be lawful for the Scrutiny Committee to draw adverse inference. If the Scrutiny Committee finds and concludes that the report of the Vigilance Cell is false or unrealistic shall record the reasons in decision and direct appropriate action as contemplated under section 14 read with sections 11 and 12 of the said Caste Certificate Act and also to recommend the departmental enquiry against such Vigilance Office. Under Rule 19, it is provided that the complaint can be made by any person, that a person to whom the caste certificate has been issued, is not belonging to the case of tribe mentioned in the certificate. Such complaint has to be enquired into by the concerned Scrutiny Committee. Such Scrutiny Committee has to record its decision on receipt of such complaint after following the procedure prescribed therein.

97. In this matter, the respondent no.3 submitted an application for obtaining the caste certificate on 26<sup>th</sup> August, 2013 as belonging to Mochi” and submitted various documents. The respondent no.3 was granted a caste certificate by the office of Deputy Collector, Mumbai District Suburb on 30<sup>th</sup> August, 2013 of “Mochi”. Prior to the date of the respondent no.3 submitting an application for issuance of caste validity certificate, the father of the respondent no.3 had applied for caste certificate on 2<sup>nd</sup> July, 2012 to Grampanchayat, Ganja – Dhekale, Taluka Palghar by including his name in the Birth Register maintained by the said Grampanchayat. He had also filed an affidavit on 10<sup>th</sup> July, 2012 mentioning therein that his birth took place in the said village on 17<sup>th</sup> April, 1949.

98. The Executive Magistrate of Palghar passed an order on 6<sup>th</sup> August, 2012 to include the name of the father of the respondent no.3 - Harbhansingh Ramsingh Kudles in the Birth Register of the said Grampanchayat. In the said birth certificate, the date of birth of the father of the respondent no.3 was mentioned as 17<sup>th</sup> April, 1949. It is the case of the petitioner that due to the public pressure and the complaints, the said birth certificate issued in the name of the father of the respondent no.3 was cancelled by an order dated 20<sup>th</sup> December, 2013. The date of birth of the father of the respondent no.3 however reflected on record was 17<sup>th</sup> April, 1954 such as in the Pan Card and Passport. The place of his birth mentioned was Khokhara – Punjab. One of the petitioner filed a complaint against the respondent no.3 and her father with the Mulund Police Station, Mumbai for submitting false documents while obtaining the caste certificate. Charge sheet came to be filed before the Metropolitan Magistrate Court No.27 at Mulund, Mumbai on 6<sup>th</sup> August, 2015. The father of the respondent no.3 surrendered before the learned Metropolitan Magistrate Court No.27, Mulund, Mumbai on 2<sup>nd</sup> April, 2018 and was taken into MCR and was released on bail.

99. It is the case of the petitioners that even at that time, the father of the respondent no.3 had submitted a copy of the Pan Card and Passport. The place of birth was mentioned as Khokhara – Punjab and the date of birth as 17<sup>th</sup> April, 1954 in the passport. In the affidavit in reply dated 21<sup>st</sup> October, 2020 filed in Writ Petition No.3370 of 2018, the respondent no.3 did not deny the averments made by the petitioners in paragraph 5(B) of the writ petition alleging that the place of birth of the father of the respondent no.3 was Kokhara – Punjab and the date of birth was 17<sup>th</sup> April, 1954. She also did not dispute about the complaint

filed by one of the petitioner against the respondent no.3 and her father before the Mulund Police Station.

100. The petitioners have also produced a copy of the Ration Card in the name of the mother of the respondent no.3. The name of the mother of the respondent no.3 was originally mentioned as Rajinder Kaur and was subsequently corrected as “Rajinder Kaur Harbhansingh Kudles - Mochi on 14<sup>th</sup> February, 2013. Mr.C.M. Korde, learned senior counsel for the petitioner is right in his contention that the caste is not required to be mentioned in the Ration Card under any of the provisions of law. The said alleged amendment in the Ration Card was made obviously with a view to fabricate the record and to create evidence to confer the benefit ultimately to the respondent no.3. The Ration Officer subsequently by a letter dated 18<sup>th</sup> December, 2013 informed that the Ration office has included only the name by the head of the office and had not included the caste “Mochi on the Ration Card.

101. It appears that the father of the respondent no.3 thereafter applied to the Tahsildar, Palghar, District Thane for getting the caste certificate and submitted his School Leaving Certificate No.11016 of Bombay Municipal Corporation Poisar Hindi School, Borivli mentioning his caste as “Mochi” and place of birth as Thane. He also submitted his father’s caste certificate which was issued by the S.D.O. Ropar, Punjab dated 14<sup>th</sup> November, 1988 and the affidavit. The said application, however was rejected on the ground that the caste certificate of the grandfather of the respondent no.3 was issued from State of Punjab.



102. The father of the respondent no.3 applied for the caste certificate once again before the Deputy Collector, Mumbai on 25<sup>th</sup> July, 2013 and submitted another School Leaving Certificate No.11166 issued by Bombay Municipal Corporation Poisar Hindi School, Borivli and a copy of the Ration Card in which his name was entered with the caste "Mochi". The said School Leaving Certificate No.11166 was different than the earlier School Leaving Certificate No.11046. The office of the Deputy Collector, Mumbai admittedly by his order dated 30<sup>th</sup> July, 2013 set aside the caste certificate of "Mochi" in favour of the father of the respondent no.3. Two different school leaving certificates bearing two different numbers before two different authorities were submitted by the father of the respondent no.3. The father of the respondent no.3 thereafter applied for obtaining caste certificate on 26<sup>th</sup> August, 2013 as belonging to "Mochi". Respondent no.3 along with her application also relied upon the same Ration Card where the word "Mochi" was not corrected by the Ration Officer.

103. The respondent no.3 also relied upon the caste certificate and school leaving certificate of her father. After making enquiry, it was found that the said entry "Mochi" was made by separate application on 7<sup>th</sup> August, 2013 by the husband of the respondent no.3, who was a member of Legislative Assembly of the State of Maharashtra. The caste "Mochi" was added in the school leaving certificate only in the month of August, 2013. The management of the Kartika High School, Kurla who had issued school leaving certificate in the name of the respondent no.3 vide their letter dated 31<sup>st</sup> January, 2014 recorded that the husband of the respondent no.3 had made an application dated 7<sup>th</sup> August, 2013 to the said school thereby alleging that he knew that the respondent no.3 and her brother were belonging to "Mochi" caste and

had accordingly requested to add the caste “Mochi” in the certificate of the respondent no.3 and merely on his request the said caste was added in the school record of Kartika High School, Kurla.

104. It is the case of the petitioners that the said Kartika High School, Kurla also furnished a copy of the application for admission which was submitted by the respondent no.3 dated 23<sup>rd</sup> April, 1991. Even in the said application for admission, the caste / sub-caste and religion of the respondent no.3 was mentioned as Shikh in the original birth certificate bearing No.66182 which was issued in Form-9 in favour of the respondent no.3 and did not mention the caste “Mochi”. A perusal of record further indicates that the names of the respondent no.3 and her mother were different in the original certificate issued by the Bombay Municipal Corporation and the certificate which was created at the instance of the respondent no.3. The record further indicates that two surname Kundles” and “caste Mochi” are included in the register maintained by the Bombay Municipal Corporation on 3<sup>rd</sup> January, 2013 by the Medical Officer of Birth N/Ward. The Scrutiny Committee passed an order on 11<sup>th</sup> Separate, 2013 for issuance of caste validity certificate in favour of the respondent no.3. The Scrutiny Committee however mentioned that the file was put up before the members of the Committee in the meeting held on 25<sup>th</sup> September, 2013 though the order was already passed on 11<sup>th</sup> September, 2013.

105. One of the petitioner and Mr.Jayant Vanjari thereafter filed the complaints before the respondent no.2 with a request to cancel the validity certificate issued in favour of the respondent no.3 on various grounds. The Vigilance Cell submitted a report on 12<sup>th</sup> February, 2014 to the respondent no.2 Committee and informed that the school leaving

certificate submitted by the respondent no.3 was forged and fabricated. The Scrutiny Committee thereafter issued a show cause notice upon the respondent no.3 as to why the caste validity certificate shall not be cancelled on the ground that the same was obtained by producing false and fabricated documents.

106. A perusal of the record further indicates that in response to the said show cause notice, the respondent no.3 submitted additional documents including the alleged bonafide certificate of her grandfather Ramsingh Kudles allegedly issued by Khalsa College, Mumbai on 11<sup>th</sup> February, 2014, Pedigree certificate in Urdu along with English translation issued by the Tahsildar, Ropar, Punjab wherein the caste was mentioned “Ravidasiya Mochi” and a letter addressed to Khalsa College, Mumbai by the brother of the respondent no.3 for obtaining bonafide certificate.

107. On 10<sup>th</sup> March, 2014, the Vigilance Cell submitted its report to the respondent no.2 Committee. In the said report it was stated that the authorities of the Khalsa College, Mumbai did not show any original document or register to the Vigilance Cell but handed over a photocopy of the concerned pages of the register. The Vigilance Cell was of the opinion that there was difference in the handwriting and the ink between two entries made immediately on the same date i.e. 16<sup>th</sup> November, 1946. A perusal of the record indicates that at the behest of the respondent no.3, the Scrutiny Committee replaced the said Vigilance Cell Officer by appointing another officer in his place. The Vigilance Cell submitted another report on 16<sup>th</sup> April, 2014 after conducting an enquiry in respect of those additional documents submitted by the respondent no.3 and opined that the entry “Mochi”

was made in the school leaving certificate issued by the Kartika High School, Kurla later on in the year 2013. The school leaving certificate in the name of the father of the respondent no.3 which was relied upon by the respondent no.3 also was not even in existence at the relevant time. The said report further stated that the authorities of Khalsa College, Mumbai did not show the original register to the Vigilance Cell.

108. Insofar as Pedigree certificate issued by the Tahsildar, Ropar, Punjab and relied upon by the respondent no.3 is concerned, the Vigilance Cell officer opined that when the enquiry was made from some of the persons at the native place of the respondent no.3 of her forefather, the Vigilance Cell was informed that the caste of the respondent no.3 was "Ravidasiya Mochi". The said caste "Ravidasiya Mochi" is not included in the list of Scheduled Caste declaration under Article 341 of the Constitution of India.

109. One of the petitioner impugned the caste validity certificate dated 25<sup>th</sup> September, 2013 issued in favour of the respondent no.3 by the respondent no.2 Committee by filing a Writ Petition No.325 of 2015. By an order dated 28<sup>th</sup> June, 2017 after hearing the parties through their respective counsel, a Division Bench of this Court recorded that the issue regarding locus cannot be restricted in the matter, regarding a status of caste and tribe. This Court held that if a candidate claims a status of a particular reserved category though he or she is not entitled to that, a citizen would be entitled to knock the door of the Court and seek redressal. This court rejected the issue of locus raised by the respondent in the petition. In paragraph 7 of the said order, this Court observed that the Court failed to understand as to

how, in the present case, the Scrutiny Committee has been magnanimous enough to accept the contention of the respondent no.3 that she belongs to scheduled caste, as being *ipse dixit*, without there being a single validity in favour of her closed relatives.

110. This Court held that the procedure adopted by the Scrutiny Committee in granting the validity certificate in favour of the respondent no.3, without undertaking the Vigilance Cell enquiry, is completely extraordinary. This Court held that since the caste validity certificate granted to the respondent no.3 has been granted without following the procedure as prescribed by law i.e. without calling the report of the Vigilance Cell, the same is not sustainable in law and accordingly quashed and set aside the said order passed by the Scrutiny Committee. This Court directed the Scrutiny Committee to give an opportunity of hearing to the petitioner as well as the respondent no.3 to place all the relevant documents in support of their claims and to take a decision in accordance with law. This Court also granted an opportunity to the parties to submit their objection to the Vigilance Cell enquiry, if they so desired. This Court further directed that if the Scrutiny Committee finds that if any Vigilance Cell enquiry is required to be conducted, the same shall be done. This Court allowed the said writ petition.

111. Admittedly in this case, no caste validity certificate in favour of the father of the respondent no.3 or any of her relatives was produced before the Scrutiny Committee. This Court while setting aside the earlier caste validity certificate issued in favour of the respondent no.3 had considered as one of the ground for setting aside the earlier caste validity certificate when the Scrutiny Committee had hurriedly issued

the said caste validity certificate in favour of the respondent no.3. In the report dated 10<sup>th</sup> March, 2014 submitted by the Vigilance Cell to the Scrutiny Committee, it was recorded that the Principal, Khalsa College, Mumbai when was approached refused to show the General Register of the college and informed that the Principal would submit a report to the Caste Scrutiny Committee. Though the Principal of Khalsa College forwarded a letter through Speed Post i.e. to the respondent no.2 - Scrutiny Committee along with certified photocopy of the college admission general register No.486 dated 16<sup>th</sup> November, 1946 of Ramsingh Kudles, the said report did not provide the information as sought by the Vigilance Cell. On page 333, at entry no.486 the name of Ramsingh Budhiya appeared.

112. Entry Nos.485 and 486 had been made on 16<sup>th</sup> November, 1946. There was overwriting in the entry no.485. Entry nos.485 and 486 though were made on the same day i.e. 16<sup>th</sup> November, 1946, there was difference in the handwriting and ink. The Vigilance Cell had therefore, visited again on 25<sup>th</sup> February, 2014 to the Principal, Khalsa College, Mumbai and submitted a request letter to allow inspection of the said General Register and to take photocopy in digital camera, the Principal of Khalsa College, Mumbai did not allow to do so. The Vigilance Cell was again called for 3-4 days. The Vigilance Cell again met the Principal, Mr.Ajitsingh Khalsa on 7<sup>th</sup> March, 2014 and was again denied to see entry no.486 of 16<sup>th</sup> November, 1946 in the said admission register.

113. Insofar as the documents of family tree relied upon by the respondent n o.3 is concerned, the Vigilance Cell Officer opined that the family tree issued by the Tahsildar, Ropar, District Ambala is

neither issued by Tahsildar, nor any stamp or signature of the Tahsildar, Ropar, District Ambala was found on the said document.

114. On 16<sup>th</sup> April, 2014, the Vigilance Cell Officer submitted a report before the respondent no.2 Committee after verification of various documents. In the said report, the Vigilance Cell Officer opined about the documents submitted by the respondent no.3 before the Sub-Divisional Officer, Mumbai Suburban District who had issued Caste Certificate dated 30<sup>th</sup> August, 2013 in favour of the respondent no.3. Insofar as the school leaving certificate submitted by the respondent no.3 which was issued by Kartika High School is concerned, the Vigilance Cell Officer met the Headmaster and Secretary of the Institute. She informed that the respondent no.3 had studied in the school from 23<sup>rd</sup> April, 1991 to June 1994 in 1<sup>st</sup> Standard to 4<sup>th</sup> Standard. The original school leaving certificate was issued on 28<sup>th</sup> April, 1995 to her.

115. On 23<sup>rd</sup> August, 2013, she had submitted an application to the school requesting to give her duplicate school leaving certificate mentioning caste 'Mochi'. Headmistress Mrs.Nair informed the Kurla Police Station that due to water logging in the school on 26<sup>th</sup> July, 2005 the school record was damaged. The documents in respect of the claim of the caste of the respondent no.3 were taken from her. It is thus clear that the caste 'Mochi' was added much later i.e. after more than 18 years of issuance of the original school leaving certificate on the request made by the respondent no.3 for mentioning the caste Mochi on the duplicate school leaving certificate.

116. The Vigilance Cell Officer made comments on the school leaving certificate of father of the respondent no.3 bearing certificate no. 11166 issued by the Municipal Primary School, Poisar, S. V. Road, Borivali showing the date of birth as 11<sup>th</sup> April, 1949, date of entry in the school on 18<sup>th</sup> June, 1954 and date of leaving the school as 25<sup>th</sup> April, 1958. The Vigilance Cell Officer inspected the general register of the school and found that the first student of the said Hindi School i.e. Fatimadevi Muhammad Hussain had taken admission on 13<sup>th</sup> October, 1964. The name on the entry no. 281 which was relied upon by the father of the respondent no.3 was of some of other candidate. The name of father of the respondent no.3 did not appear against entry no. 281. First school leaving certificate was given to Sanjay S. Panchal on 16<sup>th</sup> December, 1964. It is thus clear that the said school leaving certificate produced by the father of the respondent no.3 was also fraudulent.

117. The Vigilance Cell Officer stated that the principal of the college issued the certified copy of the bonafide certificate and the general register of the student. The Vigilance Cell Officer stated that the letter dated 8<sup>th</sup> February, 2014 has not been issued by the Head Master of Municipal Primary School, Poisar, Borivali (West). The Head Master denied the hand writing and signature on the letter dated 1<sup>st</sup> April, 2014.

118. Insofar as the alleged rent agreement of the grand-father of the respondent no.3 dated 28<sup>th</sup> July, 1932 stating the address '22, 2<sup>nd</sup> Fofalwadi, Bhuleshwar is concerned, the Vigilance Cell Officer stated that the enquiry in respect of the said document was conducted in the Bhuleshwar area but due to insufficient address and the name of the



building, nobody of that area could inform about the said address. In the said report, Vigilance Cell Officer opined that the school leaving certificate no. 11166 showing caste Mochi by Municipal Primary School, Poisar, Borivali in favour of the father of the respondent no.3 was not issued by the said school. The verification of the rent agreement dated 28<sup>th</sup> July, 1932 could not be done as the name and address were insufficient.

119. The Vigilance Cell Officer in his report dated 16<sup>th</sup> April, 2014 to the respondent no.2 Committee stated that on 26<sup>th</sup> March, 2014, the Vigilance Cell Officer had visited the Khalsa College where the Principal informed that report was ready with one Shri Sundaram and can be collected from him. The Vigilance Cell Officer requested to show the original register to verify the entry but was denied. In the report dated 26<sup>th</sup> September, 2017, the Vigilance Cell Officer made various comments in respect of the documents from the office of Tehsildar, village Khokhar, Post Office Berhampur, Punjab relied upon by the respondent no.3.

120. In the report dated 9<sup>th</sup> October, 2017 submitted by the Police Vigilance Cell it was stated that he had visited the village Khokhar, Post Office Berhampur, Punjab to enquire about the evidencial documents submitted by the respondent no.3. The Sarpanch of the village Mr.Avtar Singh Indersingh told that the certificate in Punjabi and English were not issued by him and the signatures were not of him. The Sarpanch of the village informed the Vigilance Cell Officer that the population of the village was more than 1000 and in his village most of the persons belong to Labhana caste and they do agriculturing for their livelihood. In his village no family of Mochi caste was living

and he did not know about Mochi community. He told that whether the father of the respondent no.3 can be a resident of his village, he cannot comment about his caste. A perusal of the Vigilance Cell report on record would clearly indicate that no clean chit was given to the respondent no.3 in respect of any of the documents submitted by her in support of her caste claim.

121. We shall now deal with some of the findings recorded by the respondent no.2 Committee in respect of the documents relied upon by both the parties before the respondent no.2 Committee in the impugned order in favour of the respondent no.3. At page 333 of the Writ Petition No. 3370 of 2018 while dealing with the school leaving certificate produced by the respondent no.3 issued by Kartika High School and Junior College, respondent no.2 Committee held that the change in the said document on 23<sup>rd</sup> August, 2014, the word i.e. 'Mochi' could not be taken as original record and therefore was not admissible as evidence of caste. The respondent no.2 Committee took into consideration the Vigilance Cell report oral and written arguments of both the parties while recording the said finding.

122. Insofar as the school leaving certificate of the father of the respondent no.3 which was relied upon by her, the respondent no.2 Committee held that since both the documents were not issued by the concerned school, the same were not admissible as evidence for caste claim. Insofar as pedigree of the family of the respondent no.3 and her forefathers at the village Khokhar, Tal. Ropar, Dist. Ambala, the respondent no.2 Committee was of the view that the Committee cannot come to the conclusion to take the said document as admissible in

evidence in support of the caste claim of the respondent no.3 and rejected the said document.

123. In respect of the pedigree in the year 1894-95 at village Khokar, Tal. Ropar, Dist. Ambala the respondent no.2 Committee held that the said document was not taken as admissible. In respect of the pedigree in the year 1920-21 at village Khokar, Tal. Ropar, Dist. Ambala is concerned, it is held by the respondent no.2 Committee that the said document is a pedigree table wherein family pedigrees of the Hajjam Saggi, Jat Lohar, Ravidasia Mochi castes have been mentioned. The names of people in the Ravidasia Mochi community have been mentioned as Chachandu, Harichand, Mikhkhyi, Budhya, Asaram, Ralta. The respondent no.2 Committee however held that the pedigree is not a complete form and therefore Committee could not come to the conclusion to take the said document admissible as evidence for the caste claim made by the respondent no.3.

124. Similar reasons were recorded in respect of pedigree 1936-37 and 1940-41 submitted by the respondent no.3 in support of her claim and by the respondent no.2 and rejected those documents also. At page 343 of the Writ Petition (internal page 62 of the impugned order) the respondent no.2 Committee recorded the submissions made by the petitioners that the respondent no.3 had committed a fraud. The petitioners had also relied upon 10 documents. The documents relied upon by the petitioners were however rejected without any proper enquiry.

125. The respondent no.2 Committee relied upon (i) bonafide certificate dated 11<sup>th</sup> February, 2014 issued by Principal, Gurunanak

Khalsa College of Arts, Science and Commerce, Mumbai and (ii) Alleged rent agreement for the year 1932 in the name of the Budhia Roda i.e. the great grand-father of the respondent no.3 and the affidavit of Mrs.Radhadevi Adukiya while allowing the caste claim of the respondent no.3. It is vehemently contended by Mr. Dhakephalkar, learned Senior Counsel for the respondent no.3 that though the respondent no.2 has relied upon several documents in support of her caste claim, the respondent no.2 Committee has relied upon only these two documents which were not objected by the petitioners before the respondent no.2 Committee. It is urged by the learned Senior Counsel that no reliance on the other documents which were not accepted in evidence by the respondent no.2 Committee though were relied upon by the respondent no.3 in support of her claim cannot be referred to or relied upon by the petitioners in support of their case.

126. We shall now deal with the part of the order dealing with these documents which are accepted by the respondent no.2 Committee in allowing the caste claim of the respondent no.3. Insofar as the bonafide certificate dated 11<sup>th</sup> February, 2014 alleged to have been issued by the Principal of Gurunanak Khalsa College of Arts, Science and Commerce, Mumbai to show that the great grand-father of the respondent no.3, Shri Ramsingh Budhiya had taken admission in the college in the year 1946 and having address at Mumbai and the caste mention therein was Sikh Chamar was an authentic document or not is concerned, it is not in dispute that the said document was relied upon by the respondent no.3 much later. The Vigilance Cell Officer had made enquiry repeatedly with the Principal of the said College and had sought inspection of the original register.

127. In various reports submitted by the Vigilance Cell Officer, it was brought on record that the Principal of the said college had refused to give inspection of the original register though was under an obligation to produce the original register during the course of conducting enquiry by the Vigilance Cell Officer. The respondent no.3 did not controvert the said reports submitted by the Vigilance Cell raising suspicion on the photo copy of the said register before the respondent no.2 Committee. It was opined by the Vigilance Cell Officer that ink and the signature of two entries on the said register were different though were alleged to have been entered on the same day. At page 335 of the writ petition, the respondent no.2 Committee referred to the visit of the Vigilance Squad to verify the bonafide certificate and stating that the original register was not shown to the Vigilance Squad by the said college. The petitioners had raised doubt about the copy of the said register produced by the Principal of the said Khalsa college and had strongly relied upon the said Vigilance report raising doubt about the authenticity of the entries regarding the name of the great grand-father of the respondent no.3 and the caste in the said register.

128. The Vice-Principal of the said college appears to have remained present before the respondent no.2 Committee. The petitioners had requested the respondent no.2 Committee to permit the petitioners to cross-examine the Vice-Principal of the said college. The said request on the part of the petitioners was however rejected by the respondent no.2 Committee on the ground that the Vice-Principal was not called as a witness for recording his evidence and thus the petitioners could not have been permitted to cross-examine the said Vice-Principal. A perusal of the record indicates that though in several reports submitted by the Vigilance Cell clearly placing on record that the original copy of

the said register was not shown and there was a difference in the ink and the handwriting of last two entries in the said register, no cognizance had been taken by the respondent no.2 Committee in the impugned order at all.

129. Learned senior counsel for the respondent no.3 has tenaciously argued that none of the petitioners had assailed the validity of the bonafide certificate of the grandfather of the respondent no.3 before the Scrutiny Committee. Therefore, this Court while exercising writ jurisdiction cannot go into merits or demerits in the said document. It would be apt and apposite to note here that the said document was duly taken care of and considered by the Scrutiny Committee and the said document very well weighed in its mind while validating the Caste Certificate issued in favour of respondent no.3.

130. There are two inherent infirmities in this idle submission of learned senior counsel for the respondent no.3. To find out how and in what manner we straightway go to the observations and findings of Scrutiny Committee in respect of bonafide certificate of the grandfather of the respondent no.3.

131. It is apparent from the impugned order that pursuant to the request made by the counsel for complainant, the Scrutiny Committee ordered to produce the original register of the Guru Nanak Khalsa College of Arts, Science and Commerce, Mumbai in its hearing on 16<sup>th</sup> July, 2014 and accordingly the same was allegedly produced by the Vice Principal, namely, Shri. L. N. D'Souza, representative of the Principal of said college.

132. We further note that Shri. L. N. D'Souza was examined by the Scrutiny Committee and confronted with the entry No. 486 dated 16<sup>th</sup> November, 1946 pertaining to grandfather of the respondent no.3. He was asked whether the said entry was recorded in the same year i.e. 1946 or thereafter to which he expressed ignorance.

133. What is prominently pertinent here is that the original register was summoned at the request of counsel for the complainant. It is not the case that Scrutiny Committee on its own wanted to examine the witness vis-a-vis bonafide certificate of the grandfather of the respondent no.3 as the Vigilance Cell had duly informed the Scrutiny Committee that during its visit to the said college for the purpose of an enquiry, said college had refused to show original register. We also note with dismay that inspection of original register was not given to the complainant as we do not find anything in the impugned order to that effect. This being so, there was no occasion or opportunity to complainant to raise any objection, if any, in respect of entry No. 486.

134. What prompted the Scrutiny Committee to record examination-in-chief of the said representative is not made clear in the impugned order. Probably answer lies in the questions, as noted above, posed to said representative. The nature of questions asked by Scrutiny Committee at the first instance itself goes to suggest and demonstrate that the Scrutiny Committee was harbouring some doubt or suspicion as to the entry No.486 and that is why the questions find their way on to record. There is nothing on the record to show that any further

enquiry was conducted by the Scrutiny Committee to verify the correctness of the said entry, particularly in the light of answer given by the said representative. What aghasts us is an eerie silence and failure on the part of Scrutiny Committee to give finding(s) on the answer so given by the said representative in response to the questions put to him by the Scrutiny Committee itself. Abdicating its responsibility and duty, the Scrutiny Committee chose to remain discreet. We do not approve of the way the Scrutiny Committee handled the said representative. This approach needs to be frowned upon.

135. The moment Scrutiny Committee examined the said representative, both the parties had become entitled for cross-examination. They had right to cross-examine the said representative. And this right was rightly exercised by the counsel for complainant, which is apparent from the impugned order, by requesting Scrutiny Committee to allow him to cross-examine the said representative but his request was turned down by the Scrutiny Committee on the ground that since the said representative had come as a presenter of the original document of college before it, he does not become a witness of complainant.

136. We are unable to persuade ourselves to countenance the approach of Scrutiny Committee. This was not simplicitor the case of production of original register. The Scrutiny Committee went a step ahead, placed the representative in the dock and grilled him about the entry No. 486. Here we are mindful of principle and scope of Section



139 of the Evidence Act. Section 139 of the Evidence Act provides that a person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness. The phrase “ until he is called as a witness” means until he is summoned to depose and is sworn. In the instant case the said representative was admittedly sworn and replied to the queries raised by the Scrutiny Committee thereby giving both parties a right of cross-examination. We have already pointed out how the right of cross-examination of complainant was defeated and frustrated by the Scrutiny Committee. Thus, the principle of natural justice was not adhered to and rather was thrown to the winds by the Scrutiny Committee. We cannot take our eyes off the illegality staring at us and committed at the hands of Scrutiny Committee.

137. For all the aforesaid reasons, we do not find merits in the submission of learned senior counsel for respondent no.3 that while exercising writ jurisdiction this Court could not go into merits and demerits of bonafide certificate of the grandfather of respondent no.3. This Court has to see whether the Scrutiny Committee considered the relevant material placed before it in proper perspective or has not applied its mind to relevant facts which have led the committee ultimately record the finding.

138. Viewed in this light we are of the firm view that Scrutiny Committee did its job rather sloppily and shirked the obligations imposed on it by the provisions of the Act, if we may say so.

139. There are no good reasons to feel smug about non-assailability of bonafide certificate of grandfather of respondent no.3. The argument of learned senior counsel for respondent no.3 in this regard has no merit and consequently stands rejected.

140. The respondent no.2 Committee has not even recorded any reasons as to why the said objections/observations of the Vigilance Cell in respect of raising serious doubt about the documents was required to be rejected by the respondent no.2 Committee. Under Rule 18(12) of the Caste Certificate Rules it is incumbent on the applicant to disclose all the true and correct information, including disclosure of adverse entries or material, failing which, it shall be lawful for the Scrutiny Committee to draw adverse inference. In this case, all the documents relied upon by the respondent no.3 in support of her caste claim were held inadmissible except these two documents by accepting the objection of the Vigilance Cell and the petitioners.

141. Under Rule 18(6), the Scrutiny Committee is empowered, if upon appreciating the statement of applicant or claimant submitted in the form of affidavit filed in consonance with Order 18 Rule 14 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any applications or proposal is satisfied, about the genuineness of the caste claim of the applicant, to forthwith issue validity certificate without enquiring by Vigilance Cell. The said power is coupled with duty. In this case, the respondent no.2 Committee had referred most of the documents for enquiry by Vigilance Cell. Though respondent no.2 Committee was satisfied

*prima-facie* that the complaints made by the petitioners that the earlier caste validity certificate issued by the respondent no.2 Committee was based on the fraudulent and fabricated documents, the respondent no.2 Committee has totally ignored the objections raised and doubt raised by the Vigilance Cell officer in various reports without recording any reasons.

142. Under Rule 17(7) of the Caste Certificate Rules, the findings recorded by the Vigilance Cell shall not be binding on the Scrutiny Committee. The scrutiny committee however is obliged to record its reasons for discarding the report of Vigilance Cell. In this case, no such reasons are recorded for discarding the reports of Vigilance Cell raising doubts about the authenticity of the said alleged register showing the entry in the name of great grand-father of the respondent no.3 as a student of Khalsa College. In our view, the respondent no.2 committee has failed to follow the procedure prescribed under the Rule 17 of the Caste Certificate Rules while conducting an enquiry before issuance of the caste validity certificate in favour of respondent no.3 and has abdicated its duties.

143. The burden of proof was on the respondent no.3 to prove that she belonged to caste Mochi and was eligible to claim the benefits provided to a reserved category candidate under the provisions of Constitution of India. Though the Scrutiny Committee is not bound by the strict rules of evidence but is still bound by the principles of Evidence Act and also the natural justice. The principles of Evidence Act and the natural justice applied to the proceedings before the Scrutiny Committee while conducting an enquiry into a caste claim made by any applicant.

144. Surprisingly, the respondent no.2 committee in the impugned order has recorded that no oral or written objections had been taken on behalf of the complainant and therefore the said two documents were competent evidence to prove the residence of the forefathers of the respondent no.3 before the deemed date and the caste of the applicant which the committee should accept as admissible. The respondent no.2 committee did not deal with the observations made by the Vigilance Cell that the original documents was not produced by the Vice-Principal of the said college and also that the hand writing and the ink of the last two entries in the said alleged register though were allegedly made on the same day were different. A colour photo copy of the said page of the register was also produced for perusal and consideration of this Court.

145. Mr. Dhakephalkar, learned Senior Counsel for the respondent no.3 could not dispute the correctness of the observations made by the Vigilance Cell office in its reports pointing out the difference in hand writing and ink in respect of the last two entries in the said alleged register. A perusal of the coloured photocopy of the last page of the register would clearly indicate the difference in hand writing and the ink used in respect of last two entries though had been allegedly entered on the same day. A perusal of the said photo copy of the register also indicates that the said alleged entry 486 was the last entry in respect of the students who were admitted to first year science course. The next page of the admission register starts with entries relating to Arts faculty with serial no. 1. There is overwriting in the number 485. The respondent no.2 committee thus ought to have applied its mind independently and to find out the correctness and

authenticity of the said document when serious doubt about such document was raised by the Vigilance Cell after conducting an enquiry.

146. In our view, since the petitioners had sought an opportunity to cross-examine the Vice-Principal of Khalsa college who had produced a document before the respondent no.2 committee, that itself would indicate that the petitioners had disputed the document produced by the Vice-Principal and relied upon by the respondent no.3 in support of her caste claim. In these circumstances, the respondent no.2 committee could not have accepted a doubtful and suspicious document produced by the respondent no.3 as admissible on the ground that no objection was raised in respect of that document by the petitioners.

147. In our view, the respondent no.2 committee has to carry out investigation independently and to apply its mind before issuing the caste validity certificate irrespective of whether the objections raised by the petitioners who were the complainants or by the Vigilance Cell were strictly proved or not. The Scrutiny Committee does not hear a personal dispute between the complainant and the applicant and thus could not have applied the principles of 'deemed admission' or "deemed to have been proved' while carrying out a statutory duty while considering a caste claim so as to confer various benefits prescribed under the Constitution of India. In our view, the nature of enquiry required to be conducted by the Scrutiny Committee under the provisions of the Caste Certificate Act and the Caste Certificate Rules is an enquiry in *rem* and not an enquiry to decide the personal disputes between two parties i.e. action in personam. Any such caste validity certificate once issued by the Caste Scrutiny Committee in favour of an applicant applies to the world at large and in *rem*.

148. The Supreme Court in case of ***Kumari Madhuri Patil vs. Additional Commissioner, (1994) 6 SCC 241*** has held that issuance of caste verification certificate should not be a casual exercise and Scrutiny Committee must take assistance of Vigilance Cell to ensure that non-entitled person do not get benefited at the cost of the entitled persons. It is held that the issuance of caste certificate for obtaining employment and admission to educational institutions gave rise to vast area of malpractice as non-entitled persons managed to obtain such certificates for availing the benefits. No proper procedure or legislation is provided for checks and balances in issuance of these caste certificates. The Supreme Court accordingly in case of ***Madhuri Patil v/s. Commr., Tribal Development, (1994) 6 SCC 241*** issued various directions and guidelines to be followed by the Caste Scrutiny Committee considering an application for caste claim. Those principals were also subsequently translated into the said Caste Certificate Act and the Caste Certificate Rules.

149. The proceedings before the respondent no.2 committee were not in the nature of adversarial litigation. This Court while setting aside the earlier caste validity certificate issued by the respondent no.2 committee in the petition filed by one of these petitioners had rejected the issue of locus raised by the respondent no.3 in filing the writ petition. Section 19 of the said Caste Certificate Act permits complaints to be made to the Scrutiny Committee that a person to whom a caste certificate has been issued, is not belonging to the caste or thereby mentioned in the certificate and for calling upon the Scrutiny Committee to conduct an enquiry in such complaint or allegations. The complainant in this case having made serious

allegations about the forgery and fabrication of various documents against the respondent no.3 which allegations were supported by the Vigilance Cell report submitted after conducting the enquiry by the Vigilance Cell, the Scrutiny Committee could not have adopted casual approach as adopted in this case.

150. The Scrutiny Committee has totally ignored the objections raised by the complainant and also by the Vigilance Cell in respect of those documents and has allowed the caste claim in favour of the respondent no.3 though the respondent no.3 has failed to discharge her burden by producing authentic and clear evidence. The respondent no.2 committee has failed to follow the procedure prescribed under Section 5 and failed to comply with the duties under Sections 8, 9, 13, 14 and 17 read with Caste Certificate Rules. The Supreme Court in case of **Dayaram v/s. Sudhir Batham and Ors., (2012) 1 SCC 333** has held that each Scrutiny Committee has a Vigilance Cell that acts as the investigation wing of the committee. The core function of the Scrutiny Committee, in verification of the caste certificates, is the investigation carried out by its Vigilance Cell. The Scrutiny Committee is not an adjudicating authority like a Court or Tribunal but an administrative body which verify the facts, investigate into a specific claim of caste status and ascertains whether the caste/tribe status claim is correct or not.

151. The Supreme Court in the said judgment observed that as there were large number of seats or posts reserved for the schedule caste and schedule tribe which were being taken away by bogus candidates claim to belong to schedule caste and schedule tribe, the Supreme Court had directed in case of **Madhuri Patil** (supra) the constitution of such

Scrutiny Committee to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding schedule cast/schedule tribe status.

152. Supreme Court in case of ***District Collector, Satara v/s. Mangesh and Anr. v/s. Mangesh Nivrutti Kashid, (2019) 10 SCC 166*** after construing various provisions of the said Caste Certificate Act and the said Caste Certificate Rules held that issuance of caste certificates for obtaining employment and admission to educational institutions gave rise to vast area of malpractice as non-entitled persons managed to obtain such certificates for availing the benefits. The Supreme Court clearly held that the troublesome aspect is that the validity certificates are not only valid for that election, but also for subsequent elections. They are not only valid for educational purposes (except for some cases so restricted), but also for all other purposes. These validity certificates can possibly become the basis for issuance of further certificates to their legal heirs. The Supreme Court in that matter has quashed the caste validity certificate with a direction to carry out exercise afresh. It is held that where the Vigilance Cell opined otherwise and yet a caste validity certificate has been issued, the exercise may be carried out afresh.

153. Supreme Court in case of ***Rajeshwar Baburao Bone v/s. State of Maharashtra and Anr., (2015) 14 SCC 497*** has held that in the event of occurrence of fraud, the Scrutiny Committee can recall its earlier order even in absence of specific provision enabling the committee to exercise of powers of review. The respondent no.3 has not disputed that the caste certificate obtained by the father of the



respondent no.3 was recalled by a competent authority for similar reasons. Most of the documents relied upon by the father of the respondent no.3 on the basis of which the caste certificate which was earlier issued was recalled and cancelled were relied upon by the respondent no.3 also in support of her caste claim. Though there were serious allegations of fraud and fabrication made against the respondent no.3, the respondent no.2 committee totally overlooked such serious allegations made by the Vigilance Cell.

154. A Division Bench of this Court in case of ***Devidas Baburao Hajare and Anr. v/s. State of Maharashtra and Anr., 1987 Mh. L.J. 801*** has held that there are some unscrupulous and dishonest persons in this country who never fail to defeat these massive and far-reaching endeavours made by a democratic nation to integrate an oppressed, depressed and excluded population into the mainstream of national life. They indulge in various kinds of deceitful and fraudulent methods for obtaining bogus caste certificates on the basis of which they get medical and engineering courses, in the reserved category thus depriving the genuine scheduled castes and scheduled tribes students of their fundamental right to education which was denied to them for thousands of years.

155. This Court held that the totality of the evidence should convince the caste certificate issuing authority that a particular applicant belongs or does not belong to a certain caste. There cannot be hard and fast rule for granting or rejecting the caste-claims of the applicants. The caste certificate issuing authorities have to apply their minds to the facts and evidence in every individual case before them. The principles laid down by this Court in the said judgment applies to the

facts of this case. A Division Bench of this Court in case of **Anita d/o Ramrao Himgire and Anr. v/s. State of Maharashtra and Ors., 2007 (1) Mh.L.J. 797** has held that it cannot be gainsaid that the caste claim is to be proved by unimpeachable material. In this case, the said alleged bonafide certificate did not support the caste claim made by the respondent no.3.

156. Supreme Court in case of **Punit Rai v/s. Dinesh Chaudhary, (2003) 8 SCC 204** has held that the question as to whether a person belongs to a particular caste or not has to be determined by a statutory authorities specified therefor. It is further held that a person infact not belonging to a scheduled caste, if claims himself to be a member thereof by procuring a bogus caste certificate, would be committing fraud on the Constitution. No Court of law encourage commission of such fraud. In our view, the principles of laid down in case of **Punit Rai** (supra) applies to the facts of this case. Though, the respondent no.3 claims to have a big family, the respondent no.3 failed to produce any caste validity certificate in favour of any member of her family or relative certifying caste as Mochi since 1950 in support of her caste claim. The documents annexed by the respondent no.3 in support of her caste claim which were relied upon by the father of the respondent no.3 in support of his caste claim were found fraudulent. The father of the respondent no.3 did not challenge the said order passed by the competent authority withdrawing his caste certificate on such ground.

157. In our view, the finding of the respondent no.2 committee that alleged bonafide certificate dated 11<sup>th</sup> February, 2014 and the general register showing the entry at Sr. No. 486 in the name of the great grand-father of the respondent no.3 Shri Ramsingh Budhiya as an

admissible document is totally perverse, without application of mind and contrary to the evidence on record.

158. The second document i.e. relied upon by the respondent no.2 committee while allowing the caste claim of the respondent no. 3 is an alleged rent agreement for the year 1932 in the name of the great grand-father of the respondent no.3 Shri Budhia Roda and the affidavit filed by Radha B.Adukiya. The said alleged rent agreement was relied upon by the respondent no.3 before the respondent no.2 committee much later. In the said alleged document the term 'compensation' or 'royalty' was mentioned. The alleged caste of great grand-father of the respondent no.3 'Sikh Chamar' was allegedly mentioned. There is no requirement in law to mention the caste of a tenant in any rent agreement. The learned Senior Counsel for the respondent no.3 could not explain as to why the mentioning of the caste of the tenant was necessitated in the said alleged rent agreement. Be that as it may, the Vigilance Cell had repeatedly mentioned in the reports submitted before the respondent no.2 committee that the address mentioned on the said alleged rent agreement was incomplete and thus the Vigilance Cell could not conduct any enquiry in respect of authenticity of the said rent agreement.

159. In the impugned order, however, the respondent no.2 committee though referred to the said objection mentioned in the Vigilance Cell report dated 16<sup>th</sup> April, 2014 totally overlooked the said objection. The respondent no.2 committee however placed reliance on the alleged affidavit made on 26<sup>th</sup> October, 2017 by Smt. Radha Dhanavarilal Adukiya, the grand daughter of Jamnadas Chunilal Adukiya who was alleged to be the owner of the said property and alleged to have rented

out a small portion thereof in favour of the great grand father of the respondent no.3 as far back as in the year 1932. The said document was tendered by the respondent no.3 in the meeting held on 27<sup>th</sup> October, 2017. There was no opportunity available to the petitioners to oppose the authenticity of the said affidavit. Be that as it may, there is no dispute that the respondent no. 2 committee did not refer the said alleged affidavit to the Vigilance Cell for further enquiry.

160. A perusal of the order indicates that the respondent no.2 committee heavily relied upon upon the said affidavit of Smt. Radha Dhanavarilal Adukiya made on 26<sup>th</sup> October, 2017 tendered in the meeting held on 27<sup>th</sup> October, 2017. It is held by the respondent no.2 committee that in the said affidavit it was mentioned that the rent agreement had taken place between her grand father Jamnadas Chunilal Adukia and the great grand father of the respondent no.3 Budhia Roda. The said premises were given for staying during the period of 1932 to 1949. The said deponent of the affidavit alleged to have identified the signatures of her grand-father on the said rent agreement. The respondent no.2 committee did not bother to make any further enquiry in respect of the said alleged rent agreement on which no enquiry could be conducted by the Vigilance Cell for lack of complete address. The respondent no.2 committee did not call upon the respondent no.3 to prove both those documents to the satisfaction of the respondent no.2 committee.

161. It is thus clear that both these documents relied upon by the respondent no.2 committee i.e. alleged rent agreement and the said affidavit dated 26<sup>th</sup> October, 2017 were without any opinion on the authenticity of those two documents from the Vigilance Cell. Both

these documents have been accepted merely on an erroneous assumption that none of the petitioners had objected to the said documents orally or in writing. The respondent no.2 committee had thus no option than to accept the said documents as evidence of the residence of the great grand-father of the respondent no.3 in Maharashtra and as evidence of caste. In our view, this finding of the respondent no.2 committee is totally perverse and without application of mind. Mentioning of a caste in any private document such as alleged rent agreement cannot be conclusive to prove the caste of any applicant. The said alleged document did not prove even the factum of residence of the great grand-father in Maharashtra on deemed date. The respondent no.3 had not even disclosed the source of both these documents in her application for caste claim or even thereafter in any of the pleadings before the respondent no.2 committee. The said alleged affidavit was not relied upon before this Court when the earlier caste validity certificate was set aside by this Court and the matter was remanded back.

162. The respondent no.2 committee in paragraph 9 of the impugned order has held that the Vigilance Cell had failed to discharge its duty by simply observing that due to incomplete address, enquiry could not be done in respect of the said rent agreement dated 20<sup>th</sup> July, 1932. The vigilance officer ought to have informed the respondent no.3 or could have obtained complete address so as to complete the enquiry in respect of the said document. The Vigilance Cell officer however did not obtain incomplete address. This part of the reasoning recorded by the respondent no.2 committee is also totally perverse. It was the duty of the respondent no.2 committee to satisfy itself about the authenticity of a document relied upon by an applicant in support of her caste

claim. The respondent no.2 committee was not prevented from directing the respondent no.3 (original applicant) to give complete address of the said premises. The respondent no.2 committee has thereby abdicated its duty to call upon the respondent no.3 to prove the said document to the satisfaction of the respondent no.2 committee instead of blaming the Vigilance Cell.

163. A perusal of the said affidavit relied upon by the respondent no.3 dated 25<sup>th</sup> September, 2017 in the last meeting before the respondent no.2 committee indicates that even in the said affidavit, the deponent of the said affidavit did not give the complete address of the said premises. In the said affidavit, the deponent has alleged to have recognized the signatures of her grand father on the rent agreement which was alleged to have been executed 55 years back. The deponent of the said affidavit herself was about 82 years old on the date of affirmation of the said affidavit. She has signed in Hindi. The contents of the said affidavit in English has not been interpreted to her in Hindi. The respondent no.3 has not explained as to how she obtained such an affidavit and that also in last meeting. The respondent no.2 however somehow accepted such affidavit having no evidenciary value in law and allowed the caste claim of the respondent no.3.

164. On a plain reading of the said affidavit itself it is clear that the said affidavit has been obtained with a view to create a false evidence in support of her caste claim. The respondent no.2 committee could not have accepted the said affidavit without any substantiation. It is clear that the said affidavit was filed so as to support a false claim of the respondent no.3 as caste Mochi. Under Rules 2(e), 'deemed date'

is defined as 10<sup>th</sup> August, 1950 that the date of presidential order for schedule castes.

165. Rule 3 provides that the Competent Authority may issue a caste certificate to the applicant who is a permanent resident of a concerned area on deemed date. Rule 3(2) provides that in case of the applicant, who is born after the deemed date, the place of ordinary residence for the purpose of issuance of caste certificate shall be the place of permanent residence of his father or grand-father or great grand-father. In our view, even if the said alleged rent agreement dated 27<sup>th</sup> July, 1932 is considered, it provides that the tenant will use the said premises only for the business of cobbler. However, in the affidavit obtained by the respondent no.3 from Smt. Radha Dhanavarilal Adukiya, it is alleged that the grand-father of the deponent had informed her that he had given the said premises on tenancy basis to the great grand-father of the respondent no.3 under an indenture of tenancy from 1932 to 1949. The said great grand-father of the respondent no.3 was to use the said premises to reside and run cobbler business.

166. The deponent of the said affidavit has made additional statement in the said affidavit which were not there in the said indenture of tenancy. The respondent no.2 committee did not bother to find out whether the applicant had satisfied the contents of residence and more particularly in Rule 3(2) of the Caste Certificate Rules before issuing the caste validity certificate in favour of the respondent no.3. It was not the case of the respondent no.3 that the said address mentioned in the said alleged rent agreement was the place of permanent residence of his great grand-father and continued to be the place of permanent

residence address on the deemed date i.e. 10<sup>th</sup> August, 1950. The affidavit of Smt. Radha Dhanavarilal Adukiya relied upon by the respondent no.3 itself would falsify the case of the respondent no.3 which was relied upon to prove the place of permanent residence of the great grand-father of respondent no.3 in Mumbai. The impugned order passed by the respondent no.2 committee discloses a total non-application of mind on this aspect also. In our view, though the respondent no.3 has committed fraud on Constitution for availing benefit available to the reserved category persons though was not entitled to, the respondent no.2 committee has accepted the false case of the respondent no.3 by committing the gross violation of the provisions of Caste Certificate Act and Caste Certificate Rules.

167. The respondent no.3 had produced a Ration Card in the name of her mother issued in the year 1983 at the Ghatkopar address, the passport of the father of the respondent no.3 which is also placed on record in the writ petition which clearly indicated that the place of birth of the father of the respondent no.3 was in a village Khokhar at Punjab. The date of birth was 17<sup>th</sup> April, 1954. The father of the respondent no.3 therefore was obviously not born in Maharashtra and was born after the deemed date. PAN card issued to the father of the respondent no. 3 also shows his date of birth as 17<sup>th</sup> April, 1954. It is thus clear beyond reasonable doubt that the father of the respondent no.3 was not even born on the deemed date i.e. 10<sup>th</sup> August, 1950. The father of the respondent no.3 had also applied for caste certificate based on various false documents showing the place of birth as of Palghar.

168. On the basis of such fabricated document, father of the respondent no.3 first obtained a caste certificate. Subsequently, the



said caste certificate was cancelled by the Competent Authority. He did not challenge the said order passed by the competent authority. The respondent no. 3 has not disputed that in the passport issued to father of the respondent no. 3, his place of birth was at Khokhar, Punjab and the date of birth was 17<sup>th</sup> April, 1954. In our view, it was systematic fraud committed by the respondent no.3 with the assistance of her father to obtain the caste certificate Mochi by fabricating the records to enable her to contest the election for member of Parliament in the Constituency reserved for reserved category candidate and other benefits available to such caste under Constitution of India.

169. We shall now deal with the judgments relied upon by both the parties. The Supreme Court in case of **Parsram and Anr.** (supra) considered the item 9 in part X (Punjab) for the Schedule II to the Constitution of India (Scheduled Caste), Order 1950 which read as 'Chamar, Jatia Chamar, Reghar, Raigarh, Ramdasi or Ravidasi.' It was the case of the applicant in that matter that the 'Chamar' and 'Mochi' were not two separate castes and the word 'Mochi' was applicable to 'Chamar' who actually started working in leather. In the said judgment, the Supreme Court adverted to earlier judgment in case of **B. Basavalingappa v/s. D. Municharappa, (1968), AIR 1965 SC 1269** in which it was held that it was not open to any one to seek for any modification in the order by producing evidence to show that though caste A alone is mentioned in the Constitution of India (Scheduled Caste), Order 1950, caste B is also a part of caste A as such deemed to be including in caste A. The Supreme Court in that case held that the applicant was found to be Mochi and not a Chamar and therefore his nomination paper was rightly rejected. He tried to prove by evidence that he was a Chamar but he did not succeed therein.

170. In this case, the documents produced by the respondent no. 3 indicated that the forefather of the respondent no.3 who were residence of Punjab were known as Ravidasia Mochi. In the tenancy agreement which was not proved by the respondent no.3 the caste of the great grand-father Budhia Roda of the respondent no. 3 was mentioned as Chamar. In the bonafide certificate issued by Khalsa college, it was mentioned that the grand-father of the respondent no.3 Shri Ramsingh Budhiya was Sikh Chamar. In the application for caste certificate filed by the respondent no.3, she claimed to be of caste Mochi. A perusal of the letter dated 7<sup>th</sup> August, 2013 addressed by Mr.Ravi Rana, the husband of respondent no.3 to the Management of Kartika High School and Junior College, Kurla indicates that the original school leaving certificate did not mention the caste 'Mochi' of the respondent no.3. The Application for admission dated 23<sup>rd</sup> April, 1991 signed by the mother of the respondent no.3, the caste with sub-caste and religion was mentioned as 'Sikh'. In the column 'whether a member of scheduled caste/scheduled tribe and documentary evidence thereof' it was mentioned as 'N.A. (B.C.)'

171. The original birth certificate of respondent no.3 did not mention the caste Mochi. In the Jamabandi extract of village Khokhar, Tal. Ropar, it was mentioned that the forefather of the respondent no.3 belong to caste 'Labana Garha'. In the impugned order, the respondent no.2 committee while accepting the bonafide certificate issued by the Principal, Gurunanak Khalsa College dated 11<sup>th</sup> February, 2014 as admissible evidence, has further held that the record of caste in the said document is as Sikh Chamar, which is included in the list of caste at serial no. 11 wherein 'Bhambhi, Bhambi, Asadaru, Asodi, Chamdia,

Chamar, Chamari, Chambhar, Chamgar, Haralayya, Harali, Khalpa, Machlgar, Mochigar, Mathar, Mathig, Mochi, Telgu Mochi, Kamati Mochi, Ranigar, Rohidas, Nona, Ramnami, Rohit, Samgar, Satnami, Sarajyabanshi, Surajyanami' castes are included.

172. It is accordingly held that the said bonafide certificate is accepted as admissible as the evidence of caste claim of respondent no.3 and has proved of residence in the State. Though, cast Chamar is included at serial no.11, admittedly Sikh Chamar is not included in the said entry 11. The respondent no.3 however in her application has claimed the caste Mochi and not Sikh Chamar. Supreme Court in case of ***The State of Maharashtra and Ors. v/s. KeshaoVishwanath Sonone and Ors.*** (supra) has held that the High Court could not have entertained the claim or looked into the evidence to find out and decide that the tribe 'Gowari' is part of scheduled tribe 'Gond Gowari' which is included in the Constitution (Scheduled Tribes) Order 1950. Admittedly, the caste 'Sikh Chamar' is not included in the said entry 11 of the Schedule. The respondent no.3 did not produce any other document showing her caste as Mochi or the caste of her forefather as Mochi in the State of Maharashtra on the deemed date.

173. Supreme Court in case of ***Srish Kumar Choudhury v/s. State of Tripura and Ors., AIR 1990 SC 991*** has held that the entries in the presidential order have to be taken as final and the scope of enquiry and admissibility of evidence is confined to showing what an entry in the presidential order is intended to be. It is not open to the Court to make any addition or subtraction from the presidential order. The principles laid down by the Supreme Court in the said judgment applies to the facts of this case.

174. Supreme Court in case of **Bharati Balkrishna Dhongade** (supra) has held that burden of proof lies on the person who claims to belong to that caste, tribes or class. State Government has no power to amend the presidential orders. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste, a group or part of tribe or sub-tribe is included in any of the entries mentioned in the presidential orders issued under Articles 341 and 342 particularly. Such presidential orders cannot be amended or varied except by law made by Parliament and that too by making a law in that regard. It is held that a caste may fall under category of OBC in one State but the said caste may not classified as OBC in other State.

175. In this case, the respondent no.2 committee has directly or indirectly amended entry 11 of the Schedule II to the Constitution of India (Scheduled Caste), Order 1950 by reading the caste 'Sikh Chamar' in entry 11 which is not permissible. In any event, the respondent no.3 failed to discharge the burden of proof on her under Section 8 of the Caste Certificate Act read with Rules. The impugned order is *ex-facie* in violation of the principles laid down by the Supreme Court.

176. In our view, the terms 'Chamar' and 'Sikh Chamar' are not synonymous. The terms 'Sikh Chamar' is also not synonymous with the term 'Mochi' prescribed under entry 11 to the Schedule II to the Constitution of India (Scheduled Caste), Order 1950. This Court in case of **Rajpati Bargav Yadav** which case was heard along with **Kesarben Murji Patel** (supra) has upheld the order passed by the Scrutiny Committee rejecting the claim for caste validity certificate.

The applicant in that matter had relied upon several documents along with application for grant of certificate which were found to be false and fabricated. The applicant thereafter relied upon new documents and stated that he did not want to rely on those documents which were suspicious or were alleged to be false and fabricated. The Scrutiny Committee accepted the documents subsequently submitted during the course of enquiry having found those additional documents to be genuine. The Scrutiny Committee, however, rejected the caste claim on the ground of fraud committed by him for obtaining the caste certificate. This Court confirmed the said order passed by the Scrutiny Committee rejecting the caste claim on the ground of fraud committed by the applicant in obtaining caste certificate. The said judgment of this Court in case of **Kesarben Murji Patel** (supra) has been confirmed by the Supreme Court reported in (2019) **SCC OnLine SC 981** and applies to the facts of this case.

177. Supreme Court in case of **S.P. Chengalvaraya Naidu v/s. Jagannath and Ors., (1994) 1 SCC 1** has held that a person who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. A judgment or decree to be obtained by fraud has to be treated as nullity and non-est by law. In our view, the respondent no.3 in this case clearly committed a fraud upon the respondent no.2 committee by relying upon false and fabricated documents to obtain benefit made available to the persons of reserved category under the Constitution of India. The respondent no.2 committee had closed its

eyes to the fraud committed by the respondent no.3 and validated her caste certificate.

178. Mr. Patil, learned counsel for the petitioner in Writ Petition No. 2675 of 2019 also placed reliance on the judgment of Supreme Court in case of *Juwarsingh and Ors.* (supra) in case of *Periyar and Pareekanni Rubbers Ltd.* (supra) and judgment of this Court in case of *Rajendra s/o Shivram Thakur* which would assist the case of the petitioners.

179. In our view, though the respondent no.3 committee rendered a finding that the forefather of the respondent no.3 were “Sikh Chamar”, the respondent no.2 accepted the caste claim of the respondent no.3 as “Mochi” which is a separate caste prescribed at Serial No.11 of the Schedule the Constitution (Scheduled Castes) Order, 1950. The order discloses perversity on the face of it. There is no substance in the submission of the learned senior counsel for the respondent no.3 that the respondent no.2 committee did not rely upon any of the documents in respect of which the objections were raised by the petitioners in the impugned order. In the complaint filed by one of the petitioners and also subsequently in the written arguments before the respondent no.2 committee, the objections were raised by the petitioners that the caste claim filed by the respondent no.3 was based on fabricated and fraudulent documents. All the documents except the above referred two documents have been discarded by the respondent no.2 committee by accepting the submissions made by the petitioners and also the objections raised by the Vigilance Cell and found as not acceptable as admissible evidence.

180. The proceedings between the respondent no.3 (original applicant) and the petitioners (original complainants) were not adversarial in nature. There was no lis between the respondent no.3 and the petitioners in the said proceedings before the respondent no.2 committee. The respondent no.2 committee therefore could not have discarded the objection raised by the Vigilance Cell and also the complainant on the ground that no objections were allegedly raised by the petitioners in respect of those two documents. The respondent no.2 committee has failed in its mandatory duty to find out the truth before allowing the caste claim made by the respondent no.3. The role of the complainant was to bring to the notice of the Scrutiny Committee the fraudulent and fabricated documents. The Scrutiny Committee though has power of Civil Court in some respect, cannot treat the application made by a party for caste claim and the complainant as adversarial proceedings. There is thus no substance in the submission of the learned senior counsel that those two documents cannot be allowed to be challenged in the writ petition.

181. Insofar as the caste validity certificate of the father of the respondent no.3 is concerned, merely because the said caste validity certificate was invalidated ex-parte as canvassed by the learned senior counsel for the respondent no.3, the fact remains that the said order has not been impugned by the father of the respondent no.3. The respondent no.3 thus could not have relied upon the said caste certificate issued in favour of the father of the respondent no.3 and the documents on the basis of which the said caste certificate was issued. The Scrutiny Committee has no power to interpret any document contrary to the entries in the Schedule to the Constitution (Scheduled

Castes) Order, 1950. If such interpretation of the Scrutiny Committee is found contrary to law, shows perversity and if a fraud is committed on the Constitution by an applicant, this Court has ample power and duty to interfere with such perverse and fraudulently obtained order and to set aside the same. We are not inclined to accept the submission made by the learned senior counsel that the impugned order is passed after complying with all the provisions of the Caste Certificate Act and the Caste Certificate Rules.

182. Insofar as the judgment of Supreme Court in case of **Vasant Pandurang Narwade** (supra) relied upon by the learned senior counsel for the respondent no.3 is concerned, there is no dispute about the proposition of law laid down in the said judgment that the Scrutiny Committee has to return the findings as to whether or not the applicant belongs to the particular claim as claimed by him on the basis of the certificate and other documents produced by him. However, such documents have to be relevant and authentic.

183. Insofar as the judgment of this Court in case of **Minakshi Manohar Gholap** (supra) is concerned, the case of the petitioner in that case was that all the documents of the year 1934 in respect of the cousin grand-father of the petitioner were though referred to by the Committee in the impugned order, the same were not considered while deciding the claim of the petitioners. The Scrutiny Committee had not recorded the reasons properly while invalidating the claim of the petitioners. In that context, this Court held that there was a reference to the documents of the year 1934 in respect of the cousin grand-father of the petitioners by name Sadashiv only in the submission made on behalf of the respondent no.4. There was however no consideration of



the said document while recording the reasons for invalidating the claim of the petitioner.

184. It is held that though there were many documents which could have disproved the case of the petitioner that would be no ground for not considering the important document which could have thrown much light on the controversy. There may be a dozen documents against a party but a 13<sup>th</sup> relevant document could turn the table and if the 13<sup>th</sup> document is not considered by an authority, the order would be bad in law. This Court held that the Scrutiny Committee was duty bound to consider the document tendered by the petitioner, more so, when the document was old and was specifically relied on by the petitioner. The non-consideration of the material document in respect of the cousin grand-father of the petitioner would vitiate the order of the Scrutiny Committee. In that matter, the Scrutiny Committee has not considered the document of the year 1934 which was referred only in the statement made on behalf of one of the party. The facts before this Court are different.

185. In this case, the respondent no.3 had relied upon all the fabricated and fraudulent documents. The objection in respect of all the other documents relied upon by the respondent no.3 raised by the petitioners and the Vigilance Cell were accepted. The remaining two documents which were also ex-facie fabricated and obtained fraudulently also ought to have been discarded by the respondent no.2 Committee. The said judgment of this Court in case of **Minakshi Manohar Gholap** (supra) is thus clearly distinguishable in the facts of this case and would not assist the case of the respondent no.3.

186. There is no substance in the submission of the learned senior counsel for the respondent no.3 that those two documents produced by the respondent no.3 were not objected by the petitioner and thus were rightly held admissible by the respondent no.2 Committee. The Scrutiny Committee was under an impression that the application filed by the respondent no.3 for caste claim and the complaint filed by the petitioners alleging that the documents produced by the respondent no.3 were fabricated and fraudulent were in the nature of litigation between two private parties in personam and was an adversarial litigation. The impugned order discloses total non application of mind on the part of respondent no.2 committee. The Scrutiny Committee appears to have applied Order 8 Rule 5 of the Code of Civil Procedure, 1908 in respect of those two documents contrary to law and well settled principles of law by the Supreme Court and this Court. Even if there is no complaint filed by any person opposing the caste claim, the Scrutiny Committee is bound to conduct proper and full fledged enquiry into the correctness of the caste claim and authenticity of the documents to obviate any false caste claim and any fraud on the Constitution of India. Even in such case, Scrutiny Committee cannot decide on the promise that there being no complaint or objection to the applications, all documents are deemed to have accepted. Reliance thus placed by the learned senior counsel on the judgment of this Court in case of ***State of Maharashtra vs. Ramdas Shrinivas Nayak & Anr.*** (supra) will not assist the case of the respondent no.3 on this ground.

187. Learned senior counsel for the respondent no.3 could not dispute that the alleged affidavit of Radha Dhanavarilal Adukiya was tendered in the last meeting by the respondent no.3 and was not referred to the

Vigilance Cell for the further enquiry. There was thus no occasion for the petitioners to raise any objection for the said affidavit. Be that as it may, it was the duty of the respondent no.2 committee to refer the said document also to the Vigilance Cell. This Court has already observed in the oral judgment dated 28<sup>th</sup> June, 2017 in Writ Petition No.325 of 2015 filed by one of the petitioner herein while setting aside the earlier order passed by the Scrutiny Committee allowing the claim of the respondent no.3 that the procedure adopted by the Scrutiny Committee in granting validity certificate in favour of the respondent no.3 without undertaking the Vigilance Cell enquiry was completely extra ordinary.

188. This Court while setting aside the earlier order had made it clear that the order shall be passed in accordance with law. If the Scrutiny Committee finds that any further Vigilance Cell enquiry is required to be conducted, the same shall be done. The Scrutiny Committee thus could not rely upon the affidavit of Radha Dhanavarilal Adukiya without referring the same to Vigilance Cell for enquiry. The Scrutiny Committee did not record any reason as to why the said affidavit was not referred to Vigilance Cell for enquiry. Learned senior counsel could not dispute that the petitioners had applied for the opportunity to cross examine the Vice-Principal of the said Gurunanak Khalsa College of Arts, Science and Commerce in view of the petitioners having not accepted the said certificate produced by the Vice-Principal of the said College and in view of the objection raised by the respondent no.3, the said application of the petitioners was rejected.

189. Insofar as judgment of this Court in case of **Niraj Kamlakar More** (supra) relied upon by the learned senior counsel for the respondent no.3 is concerned, it is submitted that though the said

judgment has been referred to a larger Bench, the issue involved in the said judgment has been referred on the different point. Learned senior counsel vehemently urged that the said judgment continues to hold the field. Learned senior counsel could not however demonstrate as to how the said judgment of this Court in case of **Niraj Kamlakar More** (supra) holds the field even today. There is no substance in the submission of the learned senior counsel that the respondent no.2 committee had accepted those two documents as admissible only after considering the report from the Vigilance Cell. There is no merit in the submission of the learned senior counsel that none of the petitioners have raised any ground to the effect that the respondent no.2 committee has recorded an incorrect finding that no objection was raised in respect of those two documents by either of the petitioners. Be that as it may, it was the mandatory duty of the respondent no.2 committee to satisfy itself by calling upon applicant i.e. respondent no.3 herein to prove her caste claim by producing authentic and reliable documents and not by drawing an adverse inference against the petitioners and holding that those documents were allegedly not objected to by the petitioners.

190. Learned senior counsel for the respondent no.3 could not dispute that the objection in respect of the documents produced by the respondent no.3 were already raised by the complainant on the ground that those documents were fraudulent and fabricated. No opportunity was given to raise objection in respect of affidavit of Radhabai Adukiya. Learned senior counsel strongly placed reliance on the averments made in the affidavit in rejoinder filed by the petitioner in Writ Petition No.3370 of 2018 and more particularly in paragraphs 6 to 10 in support of the submission that the petitioner himself has admitted

that the alleged indenture of tenancy was not objected in view of the advise of the learned counsel as the said aspect was not realized earlier.

191. The Vigilance Cell had already raised an objection in respect of the said alleged rent agreement on the ground that the said authenticity of the said document could not be verified by the Vigilance Cell in view of the incomplete address mentioned on the said alleged document. Admittedly the respondent no.3 did not furnish complete address of the premise either to the petitioners or before the respondent no.2 committee nor the respondent no.2 committee directed the respondent no.3 to furnish the correct address to enable the Vigilance Cell to make any enquiry in respect of the authenticity of the said document. Be that as it may, the said alleged tenancy agreement would neither prove the caste of the respondent no.3 nor the address of the forefather on the deemed date.

192. Insofar as reliance on the Rule 13 of the Caste Certificate Rules by the learned senior counsel in support of the contention that the Vigilance Cell is not empowered to record any conclusion or opinion is concerned, the said Rule has to be read with Rule 17(7). In this case the earlier order passed by the respondent no.2 committee allowing the caste claim of the respondent no.3 was set aside by this Court also on the ground that the respondent no.2 committee had allowed the said caste claim without conducting any Vigilance enquiry. This Court had also directed the respondent no.2 committee to refer the documents to the Vigilance Cell for further enquiry if necessary. The said power vested in the Scrutiny Committee is coupled with duty. The proviso to Rule 17(7) clearly indicates that the Scrutiny Committee shall record its reasons for discarding the Vigilance Cell. No such reasons are

recorded by the respondent no.2 committee for discarding the objection raised by the Vigilance Cell in respect of those two documents. Rule 17(6) also has to be read with Rule 17(7) with proviso.

193. The respondent no.3 did not produce any proof by relying upon any authentic and reliable document to prove her caste claim. The respondent no.2 committee however did not find any lacuna in the said documents. A perusal of the Rule 17(11) of the Caste Certificate Rules clearly indicates that if any case is referred to the Vigilance Cell and if upon considering the report of the Vigilance Cell, if the Scrutiny Committee is not satisfied about the claims of the applicant, it shall call upon the applicant to prove his caste claim, by discharging his burden, as contemplated under section 8 of the Act by issuing a notice in Form – 25, coupled with copy of the report of Vigilance enquiry. The Scrutiny Committee is thereafter required to follow the requisite procedure prescribed under the said Rule 17(11). Under Rule 17(12), the applicant is required to disclose all the true and correct information, including disclosure of adverse entries of material, failing which it shall be lawful for the Scrutiny Committee to draw adverse inference against the applicant.

194. Under Rule 17(13), if the Scrutiny Committee finds and concludes that the report of Vigilance Cell is false or unrealistic, it shall record the reason in decision and direct appropriate action as contemplated under section 14, read with sections 11 and 12 of the Act and also recommend Departmental enquiry against such Vigilance Officer after complying with the principles of natural justice. In this case admittedly no finding is rendered by the respondent no.2 committee that any of the report and more particularly in respect of

those documents was false and unrealistic. No action as contemplated under section 17(13) is initiated against the Vigilance Cell Officer in respect of any of the report submitted by the Vigilance Cell to the respondent no.2 committee and more particularly in respect of those two documents. The respondent no.2 committee has already accepted the objections raised by the petitioners and also the Vigilance Cell in respect of all other documents referred to and relied upon by the respondent no.3.

195. Before the respondent no.2 committee, one of the petitioners Jayant V. Vanjari had specifically raised an objection on 1<sup>st</sup> March, 2014 that the caste certificate had been obtained by the respondent no.3 on the basis of the false, fake and forged documents. It was also brought to the notice of the Scrutiny Committee that the respondent no.3 had obtained the earlier caste certificate by committing fraud and had applied for the said caste certificate by mentioning the bogus and false declaration as she had applied for the employment in the Chetna College, Bandra had not come with clean hands. The said petitioner had called upon the respondent no.2 committee to confiscate the said caste certificate and to initiate the prosecution against the wrong dues. All these objections raised by the petitioners calling upon the respondent no.2 committee to withdraw the earlier caste validity certificate illegally granted in favour of the respondent no.3 were already on record before the respondent no.2 committee when the proceedings were remanded back by the respondent no.2 committee by this Court for considering afresh. Learned senior counsel for the respondent no.3 thus cannot be allowed to urge that upon remand of the matter by this Court to the respondent no.2 committee, the petitioners ought to have raised similar objection in respect of each

document including those two documents which are accepted as admissible by the respondent no.2 committee again.

196. We have also perused the original records and proceedings of the respondent no.2 committee which were produced before us by the learned A.G.P. for the respondent no.3. A perusal of the original record indicates that the respondent no.3 had filed the said affidavit of Radha Banarsilal Adukia, notarized on 26<sup>th</sup> October, 2017 along with reply filed by her to the Vigilance Reports dated 26<sup>th</sup> September, 2017 and 9<sup>th</sup> October, 2017. In the record filed before us by the learned A.G.P. on behalf of the State does not indicate that the original of the said register referred to in the impugned order allegedly produced by the Vice Principal of the said Gurunanak Khalsa College of Arts, Science and Commerce was produced before the respondent no.2 committee. The said original register or even the relevant page of the original register is not found in the record produced before us by the learned A.G.P. If the Vice Principal of the said Gurunanak Khalsa College of Arts, Science and Commerce already had the original register in his custody, why inspection of the original was not offered to the Vigilance Cell though repeatedly called upon. This aspect has not been explained by the Vice Principal of the said College before the respondent no.2 committee. There is no endorsement made in the record that the respondent no.2 committee had returned the original register after verifying the correctness of the said register to the said Vice Principal of the said Gurunanak Khalsa College of Arts, Science and Commerce by taking certified copy thereof on record.

197. Insofar as submission of the learned senior counsel that since the Vice-Principal was not called as witness for recording his evidence at



the instance of the respondent no.3, the respondent no.2 committee was justifying in not permitting the cross examination of the said Vice Principal of Gurunanak Khalsa College of Arts, Science and Commerce is concerned, if according to the respondent no.2 committee, the provisions of the Evidence Act and more particularly section 139 was applicable, on the same basis, the respondent no.2 committee could not have relied upon the said document without existence and the contents thereof having been proved by the respondent no.3. The respondent no.2 committee has applied different yardstick to the application made by the petitioners for seeking the permission for cross examination of the Vice Principal of the said College who had alleged to have been produced the said register while relying upon the said disputed document in the impugned order. Be that as it may, the said Vice Principal stated before the Scrutiny Committee that he could not say as to when the said entries were made.

198. Learned senior counsel has distinguished the judgment of Supreme Court in case of **Chaturbhuj Pande & Ors.** (supra), judgment of Supreme Court in case of **Periyar and Pareekanni Rubbers Ltd.** (supra) on the ground that the power of the Appellate Court in the appeal arising out of the order passed by the Reference Court under the provisions of Land Acquisition Act cannot be compared with the power of the writ court. In our view, since the order passed by the respondent no.2 committee allowing the caste claim of the respondent no.3 is made on fabricated and fraudulent document and amounts to fraud committed upon the Constitution of India by the respondent no.3, the writ Court while exercising the powers under extraordinary jurisdiction under Article 226 of the Constitution of India is not powerless to set right such fraud on Constitution of India. Court cannot be a silent

spectator. Under section 7 of the said Scheduled Caste Certificate Act, though the order passed by the Scrutiny Committee under the said Act shall be final and shall not be challenged before any authority or Court, the said order can be challenged before the High Court under Article 226 of the Constitution of India. There is thus no merit in this submission of the learned senior counsel.

199. Insofar as judgment of the Supreme Court in case of **Juwarsingh and Ors.** (supra) relied upon by the learned counsel for the petitioners is concerned, the said judgment is distinguished by the learned senior counsel by the respondent no.3 on the ground that the appreciation of the evidence before the trial court cannot be applicable to the court exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India. We have already summarized the power of writ Court in the earlier part of this judgment.

200. Learned senior counsel could not distinguish the judgment of the Full Bench of this Court in case of **Rajendra s/o Shivram Thakur** (supra). Full Bench of this Court in the said judgment held that a candidate desirous of seeking a caste certificate shall have to apply to the competent authority having jurisdiction over the area or place to which he/she or his/her father or grandfather originally belongs or was/is an ordinary residents or native of that place, except in cases where such applicants can produce tribe certificate issued in favour of their father or grandfather issued by the competent authority of their original place of residence as on the date of presidential order, of their tribe. The Full Bench accordingly held that that the view expressed in case of **Niraj More** (supra) does not state the law correctly as it was not the case of lack of territorial jurisdiction, but lack of inherent jurisdiction.

The Full Bench of this Court approved the view expressed in case of **Rajendra s/o Shivram Thakur** (supra).

201. Division Bench of this Court in case of **Rajendra s/o Shivram Thakur** (supra) has been approved by the Full Bench in case of **Rajendra s/o Shivram Thakur** (supra), 2019(4) Mh.L.J. 721. In our view, learned senior counsel could not distinguish the judgment of Supreme Court in case of **State of Maharashtra & Anr. vs. Keshao Vishwanath Sonano** (supra) relied upon by the learned counsel for the petitioners. There is no merit in the submission of the learned senior counsel that the documents produced by the respondent no.3 shows that she was of Scheduled Caste.

202. Learned senior counsel for the respondent no.3 made an attempt to distinguish the judgment of the Supreme Court in case of **Parsram and Anr.** (supra) relied upon by the learned counsel for the petitioners on the ground that the term 'Mochi' was not included in item 9 in Part X Punjab of the Constitution (Scheduled Castes) Order, 1950. In item no.11 in paragraph (10) of the Constitution (Scheduled Castes) Order, 1950, the term "Chamar" and "Mochi" both are included. The respondent no.3 however had produced two documents which though were allegedly proved had referred to the term 'Sikh-Chamar' and not 'Mochi'. The term 'Chamar' and the term 'Mochi' are two separate castes mentioned in the said item no.11 in Part X of the said Constitution (Scheduled Castes) Order, 1950. The caste 'Chamar' and 'Mochi' both were mentioned in the said Schedule and were different.

203. The respondent no.2 committee had not rendered any finding on the basis of those two documents that the respondent no.3 had proved

her caste claim in respect of the caste 'Mochi'. The respondent no.2 committee has directly or indirectly amended the said entry no.11 in Part 10 of the Constitution (Scheduled Castes) Order, 1950 by inserting the term 'Sikh Chamar' in the said entry and has exceeded its jurisdiction. The new entry could be inserted only by the Parliament by electing law or amendment and not by Scrutiny Committee. Also it is well settled by the judgments of the Supreme Court that the entries in the Presidential Order cannot be added to by synonymum.

204. The Supreme Court in case of **Bhaiyalal** (supra) has held that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. In that case, the notification referred to Chamar, Jatav or Mochi, and so, in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. The Supreme Court held that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341. In this case, the documents relied upon by the respondent no.3 which were even if considered as proved, were showing the caste 'Sikh Chamar' which was not included in item 11 of Part X of the Constitution (Scheduled Castes) Order, 1950. The said entry referred to 'Chamar' as well as 'Mochi' separately. The said judgment would assist the case of the petitioners and not the respondent no.3. In our view, there were two sets of the documents produced by the respondent no.3 which were contradictory to each other before the respondent no.2

committee. The respondent no.3 had claimed to be 'Sikh Chamar' as well as 'Ravidasiya Mochi'. The respondent no.3 has not given up one of the two castes i.e. Sikh Chamar or 'Ravidasiya Mochi'. It was not the case of the respondent no.3 that she was of the caste 'Mochi' under the separate entry in the Schedule of the Constitution of India.

205. In our view, Mr.Korde, learned senior counsel is right in his submission that the power of the writ court under Article 226 of the Constitution of India are vast. Writ Court even in certain circumstances may permit the parties to adduce oral evidence in appropriate cases. By accepting both these fabricated and fraudulent documents produced by the respondent no.3, the respondent no.2 committee has caused injustice to the petitioners and has put its imprimatur on such fraudulent caste claim. The outcome of such enquiry and validating a caste certificate affects public at large in every sector, may be at the stage of seeking admission in any school or college or even at the stage of applying for employment or even while contesting an election in perpetuity. A wrong caste validity certificate granted in favour of the party who does not belong to that caste may deprive a genuine and deserving person belonging to such reserve category of the caste and of the benefits and all the benefits prescribed in the Constitution of India. In our view, the impugned order passed by the respondent no.2 committee accepting both these fabricated and fraudulent documents is a clear case of inherent improbability. Though the respondent no.3 herself had challenged the part of the impugned order passed by the respondent no.2 committee, has cleverly not pursued the said writ petition bearing (L) No. 9426 of 2020. In our view, the term 'Chamar' and 'Mochi' are not synonymous and are different identity.

206. In our view, the impugned order allowing the caste claim of the respondent no.3 on the basis of those two documents is totally perverse, contrary to the provisions of the said Caste Scrutiny Act, the said Caste Certificate Rules and contrary to the principles of law laid down by the Supreme Court and this Court in catena of decisions.

207. Under Section 7 of the Caste Certificate Act, it is mandatory duty of the Caste Scrutiny Committee to cancel and confiscate caste certificate suo-moto or otherwise by calling for the record and after enquiry and to the correctness of such certificate, if it is of the opinion that the certificate was obtained fraudulently by a person not belonging to any of the Schedule Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category to the effect that either himself or his children belong to such caste, tribes or classes after following the procedure as prescribed and after giving the person concerned an opportunity of being heard. In this case, though the complainant had brought to the notice of the respondent no.2 committee that the respondent no.3 had obtained a false caste certificate certifying to be a schedule caste and though the petitioners had demonstrated that the said caste certificate was obtained fraudulently by the respondent no.3, the scrutiny committee did not cancel and confiscate the said false caste certificate obtained by the respondent no.3 from the Competent Authority. The respondent no.3 committee has thus failed to comply with its mandatory duty under Section 7 of the Caste Certificate Act.

208. A Division Bench of this Court in case of ***Nutan Vidarbha Shikshan Mandal v/s. Presiding Officer, School Tribunal, Amravati***

*and Ors., 2007(2) Mh.L.J. 440* has dealt with the powers and duties of the scrutiny committee to cancel, forfeit and confiscate a caste certificate fraudulently obtained by a party. This Court in the said judgment adverted to the judgment of Supreme Court in case of *Kumari Madhuri Patil* (supra) in which it was held that in case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

209. It is held that if the finding is recorded by the scrutiny committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it would be communicated to the educational institutions concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The principal etc. of the educational institution is responsible for making the admission or the appointment authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

210. The Division Bench in the said judgment held that where the committee finds a certificate to have been obtained fraudulently, the Caste Scrutiny Committee is left with no alternative than to direct cancellation and confiscation of the certificate by following the procedure prescribed for the same. Section 7 of the said Act essentially deals with the powers of the scrutiny committee to verify

the caste claim and on the basis of such verification to pass an appropriate order, while making it obligatory for the committee to cancel and confiscate such certificate in a case where the same is found to have been obtained fraudulently. Section 10 of the said Act provides for withdrawal of the benefits secured by the claimants on the basis of false caste certificate. It is further held that if the Caste Scrutiny Committee finds the certificate to have been obtained fraudulently, it has to confiscate it on the cancellation thereof. The process before the scrutiny committee does not come to an end by mere declaration in that regard.

211. It is held that the constitution endeavours for social and economic upliftment of the down-trodden population of this country and social equality of status and dignity of person, by providing reservation in services of the State and in education by operation of Articles 15, 16 read with 14 of the Constitution of India. The provisions for reservation of seats or benefits in educational institutions for reserved category are being made in pursuance of the constitutional mandate in that regard.

212. It is not in dispute that under various Articles of the Constitution of India, various seats in the election of statutory bodies, legislative assembly and parliament are reserved exclusively for candidates falling under any of such reserved categories prescribed in the Constitution of India. Such benefits which are available to such reserved category candidates cannot be availed by any person who is not falling under category. This Court also held while construing Section 10 of the said Act that the statute nowhere distinguishes between intentional or unintentional false claim, though it does not differentiate between the



false claim on the basis of the certificate and the false declaration in obtaining such certificates.

213. In our view the caste claim made by the respondent no.3 for obtaining a caste certificate as schedule caste itself was fraudulent and was made with intention to obtain various benefits available to a candidate from such schedule caste category knowingly well that she does not belong to that caste. The application thus itself was made intentionally to make a fraudulent claim to enable the respondent no.3 to contest an election for member of parliament on the seat reserved for a scheduled caste candidate. The said caste certificate obtained by the respondent no.3 from the competent authority was obtained fraudulently and thus it was the mandatory duty of the Caste Scrutiny Committee to cancel the said fraudulently obtained caste certificate and ought to have been confiscated. In paragraph 29 of the said judgment, this Court held that the caste certificate is essentially obtained to avail certain benefits in life of an individual, either may be for educational purpose or for employment, or for other benefits like contesting election.

214. This Court adverted to the judgment of Supreme Court in case of ***State of Tamil Nadu and Ors. v/s. A. Gurusamy, AIR 1997 SC 1199*** in which it was held by the Supreme Court that the Courts would not lend assistance to perpetrate fraud on the Constitution and an applicant cannot be allowed to get the benefit of the fraudulent certificate obtained from the authorities. This Court adverted to the judgment of Supreme Court in case of ***Lilly Kutty v/s. Scrutiny Committee, AIR 2005 SC 4313***. The Supreme Court while dealing with the concept of fraud with reference to the caste or tribe certificates obtained by the

persons claiming to be the member of such caste or tribe held that when a person who is not a member of schedule caste or schedule tribe obtains a false certificate with a view to gain undue advantage of which he or she was not otherwise entitled to would amount to commission of fraud. Fraudulent acts are not encouraged by the Courts. The constitution does not postulate conferment of any special benefit on those who do not belong to the category of SC/ST people for whom the provision was made.

215. This Court also held that merely because no case of any fraud being played in obtaining the caste certificate is made out, that by itself would not be sufficient to contend that the consequences specified under Section 10 of the said Act would not follow even after invalidation of the caste claim. In this case, the respondent no.3 had intentionally made a false claim for the schedule caste and after obtaining such false caste certificate got it validated fraudulently from the Caste Scrutiny Committee and continued to avail all such benefits fraudulently. The principles laid down by this Court in the said judgment in case of *Nutan Vidarbha Shikshan Mandal* (supra) applies to the facts of this case.

216. In our view, since the respondent no.3 has obtained the caste certificate fraudulently and got the said caste certificate validated fraudulently from Caste Scrutiny Committee by producing fabricated and fraudulent documents, such caste certificate is cancelled and stands confiscated. It is needless to observe that all the consequences in law provided upon cancellation of such fraudulently obtained caste certificate and caste validity certificate shall follow.

217. Before we part with the judgment, we are constraint to put a word or two as to the abysmal functioning of the Scrutiny Committee which is more or less akin to and trappings of judicial functioning and therefore requires a high degree of sensible approach with all circumspection.

218. We would also like to remind the Caste Scrutiny Committee that since it is endowed with the power of validating or otherwise of the Caste Certificate, a solemn duty is cast on it to be more cautions and careful and must considerate all attending circumstances so as to enable it to validate or otherwise the Caste Certificate by all judicial means.

219. In the present case we do not find any such judicious approach on its part to say the least and rather seems to be swayed away by extenuating circumstances, keeping aside the application of judicious mind. We in all seriousness, hope that hereinafter, the Scrutiny Committee shall take all caution and guarded approach before validating the Caste Certificate.

220. We, therefore, pass the following order :-

- (a) Impugned order dated 3<sup>rd</sup> November, 2017 passed by the respondent no.2 committee validating caste claim of the respondent no.3 as 'Mochi' Schedule Caste is quashed and set aside. The caste certificate obtained by the respondent no.3, which is validated by order dated 3<sup>rd</sup> November, 2017 is cancelled and confiscated.

- (b) It is declared that all consequences in law, which may occur on cancellation and confiscation of the fraudulently obtained caste certificate by the respondent no.3 would follow.
- (c) Respondent no.3 is directed to surrender the caste certificate validated by order dated 3<sup>rd</sup> November, 2017 to the respondent no.2 committee within six weeks from today.
- (d) Rule is made absolute in Writ Petition Nos. 3370 of 2018 and 2675 of 2019 in aforesaid terms.
- (e) Writ Petition (L) No. 9426 of 2020 is dismissed. Rule is discharged.
- (f) Respondent no.3 is directed to pay cost of Rs.2,00,000/- (Rupees Two lakhs only) to the Maharashtra Legal Services Authority within two weeks from today.
- (g) Parties to act on the authenticated copy of this judgment.
- (h) The Associate of this Court is directed to handover the original records of the proceedings before the respondent no.2 committee produced before this Court to the learned A.G.P.

**[V.G.BISHT, J.]**

**[R. D. DHANUKA, J.]**