IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8451 OF 2017
WITH CA/10075/2017 IN WP/8451/2017
WITH CA/7670/2018 IN WP/8451/2017

NANDA HARIBHAU JADHAV AND OTHERS
VERSUS
TALATHI, SHIRDI, AHMEDNAGAR AND OTHERS
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Advocate for Petitioners : Shri Kulkarni Sanket S.
AGP for Respondent 1 : Shri Shinde B.A.
Advocate for Respondents 3 to 6 & 8 : Shri Jadhav Y.H.
Advocate for Respondents 2 & 7 : Shri Nagarkar Kiran M.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 26, 2018
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PER COURT :-

1. The learned Advocates for the respective sides and the learned AGP are heard at length. With the assistance of the learned AGP and in view of the judgment of the Honourable Apex Court in the matter of Gurudassing Nawoosing Panjwani Vs. State of Maharashtra [2015 (6) Mh.L.J. 915], the learned AGP submits that the first revision No.27 of 2014, preferred by the petitioner quoting Section 257 of the Maharashtra Land Revenue Code, 1966 ("Code"), should in fact be treated as a proceeding under Section 247(1) of the Code. An order passed by the Sub Divisional Officer ("SDO") would be

appealable under Schedule 'E' to Section 247 before the Collector or Assistant or Deputy Collector. As the SDO is normally the Assistant or Deputy Collector in the State of Maharashtra, the appeal preferred by the petitioner under Section 247 before the Additional Collector, Ahmednagar, registered as RTS No.100 of 2016, was maintainable.

2. Learned counsel for contesting respondent Nos. 2 to 9 agrees with the contention of the learned AGP.

3. It appears that the Additional Collector has referred to Section 252(b) for the reason that the petitioners had quoted Section 257 in their first proceeding before the SDO. That created a confusion, which prompted the Additional Collector to conclude that he did not have jurisdiction to deal with the appeal under Section 247 of the Code.

4. It is undisputed that the delay caused by the petitioners in approaching the Additional Collector by filing the appeal under Section 247 has been condoned, but the Additional Collector has disposed off the said appeal by the impugned order on the ground that he had no jurisdiction. The delay of

33 years caused by the petitioners in approaching the SDO will be the issue which the Additional Collector will have to deal with while hearing RTS Appeal No.100 of 2016.

5. In view of the above, this petition is partly allowed. The impugned order of the Additional Collector, dated 26.5.2017, concluding that he did not have jurisdiction to entertain RTS Appeal No.100 of 2016 is set aside. The said Appeal is restored to the file of the Additional Collector, Ahmednagar.

6. The litigating parties would appear before the said authority on 13.7.2018 at 11.00 am. Formal notices need not be issued. After appearance of the parties, the Additional Collector shall decide the issue of whether the SDO had rightly refused to condone the delay of 33 years, allegedly caused by these petitioners. Needless to state, it is only if the said authority is convinced that the delay deserves to be condoned, that the matter could be restored before the SDO under Section 247 of the Code for dealing with the contentions of the parties on the merits of the challenge to the mutation entry No.6241.All contentions of the litigating sides are kept

open, except the issue of jurisdiction, which has been settled by this order.

7. Pending Civil Applications do not survive and stand disposed off.

(RAVINDRA V. GHUGE, J.)

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