

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9268 OF 2018

Ramesh Vitthal Takke V/s. Additional Commissioner Pune Division & Ors.	...	Petitioner Respondents
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Mr.Chetan Patil for Petitioner.
Ms.VS. Nimbalkar, AGP for Respondent Nos.1 to 3.
Mr.Umesh Pawar for Respondent Nos.4 to 8.

CORAM : A.S. GADKARI, J.

DATE : 1st October 2019.

P.C. :

1] Heard Mr.Patil, learned counsel for the petitioner, Mr.Pawar, learned counsel for the respondent Nos.4 to 8 and Ms.Nimbalkar, learned AGP for the respondent Nos.1 to 3.

2] The record indicates that, the respondent Nos.4 to 8 challenged Mutation Entry No.41 effected in favour of the petitioner after laps of about 29 years, 4 months and 13 days by way of RTS Appeal No.149 of 2015. The respondent Nos.4 to 8 also filed an application for

condonation of delay in the said appeal. The said application for condonation of delay has been allowed by the respondent No.3 by its Order dated 14th June 2016.

3] The Second RTS Appeal No.538 of 2016 and RTS Revision No.72 of 2017 preferred by the petitioner has been rejected by the respondent Nos.2 and 3 by their Orders dated 28th February 2017 and 16th October 2017 respectively on the ground that the said authorities has no jurisdiction under Section 247/257 having regard to Section 252 of the Maharashtra Land Revenue Code, 1966 (for short, “M.L.R. Code”) condoning the delay in preferring RTS Appeal No. 149 of 2015.

It is submitted that, RTS Appeal No. 149 of 2015 is already been decided by the respondent No.3 in favour of the respondent Nos.4 to 8. That a substantive appeal bearing RTS Appeal No.657 of 2018 has already been preferred before the respondent No.2 i.e. Additional Collector, Kolhapur and the same is pending for final adjudication.

4] Learned Single Judge of this Court in the case of *Balwant Narayan Thale Vs. Pushplata Vasudev Patil & Ors. in Writ Petition No. 8673 of 2016 in its Order dated 9th January 2017*, has taken a view that, having regard to Section 252 of M.L.R. Code, it is only in the event of an

appeal being admitted, the prohibition to entertain an appeal under Section 252 comes into play. Having regard to the ratio laid down by the Co-ordinate Bench of this Court in the case of *Balwant Narayan Thale (supra)*, this Court is of the considered view that, the impugned Orders passed by the respondent Nos.2 and 1 in RTS Appeal No. 538 of 2016 and RTS Revision No. 72 of 2017 respectively needs to be quashed and set-aside and are accordingly quashed and set-aside.

5] RTS Appeal No. 538 of 2016 is restored on the file of the respondent No.2 i.e. Additional Collector, Kolhapur for its hearing, in view of the decision of this Court in the case of *Balwant Narayan Thale (supra)*. The respondent No.2 i.e. Additional Collector, Kolhapur, is hereby directed to decide Appeal No. 538 of 2016 along with RTS Appeal No.657 of 2018 preferably within a period of one year from today.

6] Petition is allowed in the aforesaid terms.

[A.S. GADKARI, J.]