IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15760 OF 2022

Debashish Devnarayan Ghosh ...Petitioner

Versus

The State of Maharashtra and Others ...Respondents

WITH
WRIT PETITION NO.520 OF 2023

Debashish Devnarayan Ghosh ...Petitioner

Versus

The State of Maharashtra and Others ...Respondents

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Mr. Girish Godbole, Senior Advocate a/w Mr. V.S. Kapse, Mr. Ayaz Bilawala, Mr. Yogesh A. Gaikwad i/by M/s. Bilawala & Co. for Petitioner in Writ Petition Nos. 15760 of 2022.

Mr. Vineet Naik, Senior Advocate i/by S. Anchan for Respondent Nos.6 to 8 in Writ Petition Nos. 15760 of 2022.

Mr. V.S. Kapse a/w Mr. Ayaz Bilawala, Mr. Yogesh A. Gaikwad i/by M/s. Bilawala & Co. for Petitioner in Writ Petition No.520 of 2023.

Mr. Atul Damle, Senior Advocate i/by S. Anchan for Respondent Nos.6 to 8 in Writ Petition No.520 of 2023.

Mr. Abhijit Kulkarni, Special Counsel i/by Mr. P.P. Pujari, A.G.P. for Respondent - State in both Petitions.

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CORAM : SANDEEP V. MARNE, J.
DATE : SEPTEMBER 25, 2023.

P.C.:

1. By these Petitions, Petitioner challenges common order dated 09 November 2022 passed by the Minister Revenue in Revision Application Nos.RTS-2721/380 and RTS-2721/382. By the impugned order, the Minister Revenue has set aside the orders passed by the Additional Divisional Commissioner, Konkan and has confirmed the order passed by Additional Collector, Thane. He has further proceeded to set aside the orders dated 16 June 2014 passed by Sub Divisional Officer, Thane, and has consequently set aside Mutation Entry No.425 and has confirmed Mutation Entry Nos.595 and 418.

2. Considering the narrow controversy involved in the present Petitions it is not necessary to narrate detailed facts relating to the passing of the impugned order dated 09 November 2022. Suffice it to state that the orders dated 19 August 2013 were passed by Tahsildar, Thane, mutating the names of Respondents to the record of rights of property in question. The Petitioner was aggrieved by the decision of Tahsildar, Thane and filed RTS Appeal Nos.234/2013 and 235/2013 before the Sub Divisional Officer, Thane. By orders dated 16 June 2014, Sub Divisional Officer, Thane has allowed the appeals and set aside Tahsildar's orders dated 19 August 2013

directing that the only Petitioner's name be recorded to the record of rights of the property in question. Respondents filed RTS Appeal Nos.3 of 2015 and 4 of 2015 before Additional Collector, Thane challenging the decision of Sub-Divisional Officer, Thane. However, there was delay of 74 days in filing the said appeals. The Additional Collector, Thane passed order dated 22 December 2015 condoning the delay in filing the appeals. Petitioner got aggrieved by the decision of Additional Collector, Thane in condoning the delay and challenged his order before the Additional Divisional Commissioner, Konkan by filing RTS Appeal Nos.346/2016 and 347/2016. The Additional Divisional Commissioner, Konkan allowed the appeals by his orders dated 10 October 2017 and set aside the orders of Additional Collector, Thane condoning delay in filing Appeals. Respondents approached the Minister-Revenue challenging the orders passed by Additional Divisional Commissioner, Konkan on 10 October 2017. The Minister-Revenue by his common order dated 09 November 2022, has allowed the Revisions and instead of restricting the scope of Revision to condonation of delay in filing appeals before the Additional Collector, proceeded to decide merits of the matter and set aside the orders of the Sub Divisional Officer, Thane dated 16 June, 2014 cancelling Mutation Entry No.425 and has continued Mutation

Entry Nos. 595 and 418.

3. I have heard Mr.Godbole, the learned senior Advocate and Mr. Kapse, the learned counsel appearing for Petitioner in both the Petitions, I have also heard Mr. Naik, the learned senior Advocate and Mr. Damle the learned Senior Advocate for Respondent Nos.6 to 8 in both the Petitions. Mr. Kulkarni has appeared on behalf of State Government.

4. Perusal of the orders passed by the Minister Revenue would indicate that he has entered into merits of the matter and decided validity of Mutation Entry Nos.425, 595 and 418. Actually, the remit of enquiry before the Minister Revenue was only with regard to condonation of delay in filing appeals before Additional Collector. As observed above, the Additional Collector had condoned delay of 74 days in filing appeals by order dated 22 December 2015. That order of Additional Collector condoning the delay was set aside by the Additional Divisional Commissioner, Konkan by order dated 10 October 2017 holding that the delay could not have been condoned. When the matter was taken up in Revision before the Minister-Revenue, the scope of enquiry was limited to the issue of condonation of delay by the Additional Collector. However, instead of restricting the enquiry to that issue, the Minister Revenue has erroneously gone into merits of the case and has

decided the same. As a matter of fact, on account of condonation of delay in filing RTS Appeal Nos.3/2015 and 4/2015, the said appeals continued to remain pending before the Additional Collector, Thane. The Additional Collector, Thane was yet to decide merits of the controversy. In such circumstances, the Minister Revenue could not have undertaken any enquiry into the merits of the matter.

5. Mr.Godbole and Mr.Kapse, would fairly submit that the Petitioner does not wish to question the correctness of the Additional Collector's decision in condoning the delay of 74 days in filing Appeals. They would submit that RTS Appeal Nos.3/2015 and 4/2015 can be heard on merits by the Additional Collector, Thane, if the order of the Minister-Revenue is set aside.

6. Accordingly the Writ Petitions are disposed of by setting aside the common order dated 09 November 2022 passed by the Minister Revenue as well as orders dated 10 October 2017 passed by Additional Commissioner, Konkan Division. The orders dated 22.12.2015 passed by the Additional Collector, Thane, condoning the delay are confirmed.

7. RTS Appeal No.3/2015 and 4/2015 are restored on the file of Additional Collector, Thane, who shall proceed to decide the same on their

own merits without being influenced by any of the findings recorded by the Additional Commissioner, Konkan Division or by the Minister Revenue.

8. The Petitioner shall be at liberty to apply for interim orders before the Additional Collector and if such applications are filed, the same shall be decided by the Additional Collector on their own merits.

9. All contentions of the parties on merits of the controversy are kept open. With the above directions, both the Petitions are disposed of.

(SANDEEP V. MARNE, J.)