

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.430 OF 2018

IN

WRIT PETITION NO.3475 OF 2017

...

Late Shri Kashinath Devram &

Babubai Thorat Charitable Trust & Ors.

...Applicants

Versus

State of Maharashtra & Ors.

....Respondents

...

Mr.A.V.Anturkar, Sr.Counsel i/b. Mr. Amol Gatne for the Applicants.

Mr.Y.S.Jahagirdar, Sr.Counsel a/w Mr. T. D. Deshmukh for the Respondent
No. 3.

Ms P. N. Diwan, AGP for the Respondents-State.

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CORAM : A.A. SAYED &**SMT. ANUJA PRABHUDESSAI, JJ.****DATED : 25 FEBRUARY 2020****P.C.:**

This Civil Application is filed seeking amendment to the Writ Petition in terms of paragraph 7 thereof. Paragraph 7 of the Civil Application reads as follows:

“7. In the light of these circumstances, it is submitted that the cause title of the Petition is required to be amended and the following portion from the description of the Petitioner No.1 is required to be deleted viz. “Late Shri.Kashinath Devram and Babubhai Thorat Charitable Trust, a public trust registered under the provisions of Bombay Public Trust Act, 1950, having its registered office at :201, C-Wing, Sorento, Shanti Park, Ghatkopar (E), Mumbai- 400 077, through its Chief Trustee”. This portion is required to be deleted and the name of Smt.Sarala sopan Thorat in her individual capacity as Petitioner No.1 is required to be substituted.”

2. The Writ Petition is filed, interalia, challenging the acquisition of the subject property viz. agricultural land bearing Gat Nos147/3, 227, 229 and 230 situated at village Padgaon Tarfe, Awasari Budruk, Taluka Ambegaon, District-Pune, and the Award dated 16 July 2016. On 23 March 2017, an order granting status-quo in respect of the subject property has been passed by this Court, which has been continued from time to time.

3. In the Civil Application, it is the case of the Applicants/original Petitioners that pursuant to Affidavit-in-Reply dated 31 July 2019 filed in the Writ Petition by the Respondent No.3, it was realized that there was a mistake in the title of the Petition, as the Late Shri Kashinath Devram and Babubhai Thorat Charitable Trust (hereinafter referred to as "the Trust") is not having any property of its own and that the subject property belongs to Smt.Sarla Sopan Thorat (alongwith others), who is incorrectly impleaded as party in her capacity as Chief Trustee of the Trust. Smt.Sarla Sopan Thorat is in fact the co-owner of the subject property in her individual capacity alongwith Shri Soumil Sopan Thorat, Shri Jalandar Kisan Sathe, his wife Mrs.Chaya Jalandar Sathe and son Shri Ajinkya Jalandar Sathe, who are impleaded as Petitioners Nos.2, 3, 4 & 5 in the Petition. It is contended that earlier there were two Writ Petitions being Writ Petition No.909 of 2013 and Writ Petition No.9632 of 2013, both filed in the name of Trust (and also in

the individual names of Sarla Sopan Thorat and Jalandar Kisan Sathe in Writ Petition No.9632 of 2013). It is pointed out that the aforesaid two Writ Petitions were wrongly filed in the name of the Trust (and others). It is contended that it was under a bonafide impression that since the earlier Petitions were filed in the name of the Trust, the present Petition is to be filed in the same name. It is pointed out that as a matter of fact Smt.Sarla Thorat's husband, Shri Sopan Thorat was the Chief Trustee of the said Trust and he passed away on 21-01-2017 and he is survived by his wife (i.e. Sarla Sopan Thorat) and two children Payal and Soumil and they were not aware of the subject property and its whereabouts. It is contended that only when the Affidavit-in-Reply was filed by the Respondent No.3 in the Writ Petition and after taking search, it was found that as a matter fact the said Trust has no property and the subject property belongs to Sarla Sopan Thorat, Soumil Sopan Thorat, Jalandar Kisan Sathe, his wife Chaya Jalandar Sathe and son Ajinkya Jalandar Sathe i.e. Petitioners Nos.2 to 5 respectively, who are owners of the property in their individual capacity. The Applicants have relied upon the 7/12 extracts (pages 79 to 82 of the Writ Petition). The Applicants have also relied upon the records of the Trust to show that the Petitioner No.1-Trust is not the owner of the subject property (annexed at Exh.B to the Civil Application, pages 15 to 51).

4. On behalf of the Respondents, it is submitted by the learned Senior Counsel that since the earlier two Writ Petitions were filed in the name of the Trust, the present Petition cannot be allowed to be amended and the Applicants cannot now be allowed to take a different stand.

5. Having heard the learned Senior Counsel for the parties, we find that documents on record prima facie show that the subject property is owned by Smt.Sarla Sopan Thorat, Shri Saumil Sopan Thorat, Shri Jalandar Kisan Sathe, Mrs.Chaya Jalandar Sathe and Shri Ajinkya Jalandar Sathe. The latter four are already impleaded as the Petitioners Nos.2 to 5 respectively in the Petition. Smt Sarla Sopan Thorat, however, is shown as Chief Trustee of the Petitioner No.1-Trust in the title of the Petition. In the order dated 21-07-2012 of the Ast.Charity Commissioner in the Application filed by the Applicant being Application No.Acc-IV/438/2012, it is clearly recorded that the Trust does not own any immoveable property. In our view, merely because the earlier Writ Petitions were incorrectly filed in the name of the Trust would not preclude the Petitioners from filing the present Petition in her individual capacity and bring herself on record in her individual capacity by carrying out the amendment as sought. The other individual co-owners Saumil Sopan Thorat, Jalandar Kisan Sathe, Chaya Jalandar Sathe and Ajinkya Jalandar Sathe are already on record in the

Petition as Petitioners Nos.2 to 5 respectively. In the Affidavit-in-Reply in the Civil Application, it is the Respondent No.3's own case that the Trust is not the owner of the subject property. We note that the earlier Writ Petition being Writ Petition No.9632 of 2013 was disposed of by order dated 27-02-2017 directing the Petitioners to file a fresh Writ Petition keeping all contentions open. Similarly, Writ Petition No.909 of 2013 was disposed of by order dated 1-03-2013 keeping all contentions of the Petitioners open.

6. In the circumstances, keeping all contentions of the Respondents open, we allow the Civil Application in terms of prayer clause (a) and accordingly permit the Petitioners to amend the Petition in terms of para 7 of the Civil Application. Amendment to be carried out within a period of two weeks from the day this order is uploaded. Amended copy of the Petition be served on the Respondents. Additional Affidavit-in-Reply to the Petition, if any, may be filed by the Respondents.

7. We make it clear that this order shall not in any manner entitle the Petitioners to take advantage of any act done prior to passing of this order and this order shall not in any manner be construed as conferring title of the subject property on Smt.Sarla Sopan Thorat or the Petitioner Nos.2 to 5. We further make it clear that notwithstanding this order, it would still open

for the Respondents to dispute the title of Smt.Sarla Sopan Thorat and
Petitioners Nos.2 to 5.

(SMT. ANUJA PRABHUDESSAI,J.)

(A.A.SAYED, J.)