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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4128 OF 2017

1. Nana Tukaram Aabhale (Dead),
Through L.Rs.
- 1-A. Ulhas Nana Aabhale,
Age: 55 years, Occu: Agril.
- 1-B. Santosh Nana Aabhale,
Age: 50 years, Occu: Agril.
2. Vasant Tukaram Aabhale (Dead),
Through L.Rs.
- 2-A. Mukund Vasant Aabhale,
Age: 55 years, Occu: Agril.
3. Nathu Tukaram Aabhale (Dead),
Through L.Rs.
- 3-A. Shantaram Nathu Aabhale,
Age: 50 years, Occu: Agril.
- 3-B. Vinayak Nathu Aabhale,
Age: 50 years, Occu: Agril.
4. Murlidhar Tukaram Aabhale (Dead),
Through L.Rs.
- 4-A. Kailas Murlidhar Aabhale,
Age: 50 years, Occu: Agril.
- 4-B. Radhakisan Murlidhar Aabhale,
Age: 45 years, Occu: Agril.
5. Bhanudas Gangaram Aabhale,
Age: 65 years, Occu: Agril.
6. Shivnarayan Gangaram Aabhale,
Age: 60 years, Occu: Agril.

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7. Dattatray Ramchandra Aabhale,
Age: 60 years, Occu: Agril.
8. Dnyaneshwar Ramchandra Aabhale,
Age: 59 years, Occu: Agril.
9. Kamal Bhausahab Aabhale,
Age: 55 years, Occu: Agril.
10. Rupesh Chandrakant Aabhale,
Age: 45 years, Occu: Agril.,
All R/o Pimpalgaon – Nakvinda,
Tq. Akole, Dist. Ahmednagar ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32
2. The Additional Commissioner,
Nashik Division, Nashik
3. The Collector, Ahmednagar,
Dist. Ahmednagar
4. The Land Acquisition Officer No.10,
Having its office at Ahmednagar,
Tq. & Dist. Ahmednagar
5. The Executive Engineer,
Uppar Pravara Dam Division,
Sangamner (Ghulewadi),
Tq. Sangamner,
Dist. Ahmednagar ..RESPONDENTS

Mr S. K. Shinde, Advocate for petitioners;
Mr K. N. Lokhande, A.G.P. for respondent Nos.1 to 4;
Mr B. R. Surwase, Advocate for respondent No.5

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 10th January, 2019

ORAL ORDER:

Heard learned Counsel appearing on behalf of the petitioners.

2. The petitioners are the land owners and their grievance is reflected in prayer clause (A) of the petition, which reads thus:

“(A) To quash and set aside the awards bearing No. LAQ/SR/05/95 dated 31.12.1999 passed by the respondent No.4 to the extent of petitioners share in land bearing G.No.93, 94, 95 adm. 8 H 07 R, 6 H 46 R. 3 H 95 R respectively situated at village Pimpalgaon-Nakvinda Tal. Akole, as it is not required for construction of Nilwande Dam-2 and to quash and set aside the M.E. No.2820.”

3. Mr Shinde, learned Counsel appearing on behalf of the petitioners, firstly invited our attention to the documents to submit that the said land was acquired for the activities in relation to Nilwande Dam and the document placed on record at Exh. ‘A’ shows that an entry is made to the effect of the land owners, being shown as State and the purpose as Nilwande Dam. Learned Counsel for the petitioners then invited our attention to the copy of award, which is placed on record at Exh. ‘C’. By inviting our attention to Clause-5 of the award, he submitted that the purpose is made eloquently clear in the words that the lands are required for the ancillary activities of Nilwande Dam project in general and quarry purpose in particular.

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4. Learned Counsel for the petitioners then by inviting our attention to the written statement submitted before learned Civil Judge Senior Division, Sangamner, in Land Reference No.15 of 2001 submitted that a statement is made in the written statement that no actual activity of lifting stones or quarrying activities are undertaken by the respondents.

5. Learned Counsel for the petitioners then submitted that by an order dated 31st March, 2016, which is placed on record, passed by the Additional Collector and the Land Settlement Officer, a part of the land acquired from the petitioners for the project is subjected to distribution for rehabilitation of the persons rendering landless. The sum and substance of the submission of the learned Counsel appearing on behalf of the petitioners is, as the lands are not being utilized for the purpose for which they were acquired and as a part of the lands is being disbursed for the purpose other than the purpose of any activity of the Dam or ancillary activity in relation to Nilwande Dam, the award dated 30th December, 1999, passed by respondent No.4, to the extent of the petitioners' share, be quashed and set aside.

6. Learned Counsel for the petitioners then, in support of his submissions, made an attempt to rely on the judgment of the Honourable the Apex Court in the matter of **Tulsi Co-operative Housing Society, Hyderabad Vs. State of A. P. and others**, reported in **AIR 1999 Supreme Court 3667**.

7. Though the submissions of learned Counsel for the petitioners looked attractive at the first blush, we are unable to accept his submissions for more than one reason. The whole thrust of learned Counsel for the petitioners is that the lands of the petitioners, though acquired for the purposes of work in relation to Nilwande Dam, not a single activity was carried out.

8. In response to the notice issued by this Court, an affidavit-in-reply is filed on behalf of respondent No.5 through one Shaikh Kalim s/o Shaikh Karim, Sub Divisional Engineer, Upper Pravara Dam Sub Division No.1, Chitalwedhe, Taluka Akole, District Ahmednagar. It may not be necessary for us to refer to the other details in the affidavit-in-reply, suffice it to say that the Reference submitted by the petitioners was dismissed by learned Civil Judge Senior Division, Sangamner, as the claimants utterly failed to produce any substantive evidentiary material before the Court. Secondly, a specific statement is made in affidavit-in-reply and same reads that insofar as the construction of dam is concerned, it is in completion stage and so far as the canal work is concerned, the right bank canal is completed upto 11% while left bank canal is completed upto 26%. This clearly shows that the activity of construction of dam is not stand still, but it is going on. The further part of the affidavit-in-reply states that the balance work of the dam in general and canal work in particular involves a number of heavy structures and for completion of these heavy structures, huge quantity of rubble and metals are required and this quantity will be available by

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carrying out the activities of excavation and quarrying activities from the suit lands only.

9. Learned Counsel appearing on behalf of respondent No.5 submitted that the order dated 31st March, 2016, passed by the Additional Collector clearly states about utilization of the lands for the rehabilitation purpose and the rehabilitation is certainly a public purpose. He submitted that the part of the lands is neither utilized for any other purpose than the public purposes, as such, the contention of the petitioners that the land is utilized for other purposes than the public purposes, is unacceptable.

10. In view of aforesaid facts, we find considerable merit in the submission of learned Counsel appearing on behalf of respondent No.5 and he is justified in making this submission on the backdrop of the order dated 31st March, 2016, wherein a specific statement is made that the land is made available as an alternate source for the landless persons.

11. Considering all these aspects, we are of the opinion that the petition is meritless and deserves to be dismissed and accordingly same is dismissed.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)