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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 217 OF 2018**

Bhatsa Prkalp Visthapit Punarvasan Samiti .. Petitioners
Vs.
State of Maharashtra & ors. .. Respondents

**WITH
CIVIL APPLICATION NO. 1265 OF 2018
IN
WRIT PETITION NO. 217 OF 2018**

Bhatsa Prkalp Visthapit Punarvasan Samiti .. Applicants

IN THE MATTER BETWEEN

Bhatsa Prkalp Visthapit Punarvasan Samiti .. Petitioners
Vs.
State of Maharashtra & ors. .. Respondents

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Mr. Sagar Kasar for the petitioner.
Mr.V.S.Gokhale, 'B' Panel AGP for State–respondent No.1 to 6,8.
Ms. Dhruti M. Kapadia for respondent No.11.

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**CORAM : NARESH H. PATIL, CJ. &
M.S. KARNIK, J.**

RESERVED ON : 27th NOVEMBER, 2018

PRONOUNCED ON : 8th JANUARY, 2019

JUDGMENT (PER M.S.KARNIK, J.) :-

Rule. Rule is made returnable forthwith.

2. Heard by consent of the parties.

3. The petitioners/Bhatsa Prakalp Visthapit Punarvasan Samiti filed this Petition under Article 226 of the Constitution of India, seeking a declaration that the project affected persons of the Bhatsa Dam situated at Shahapur, District – Thane, whom the petitioners claim to represent are entitled for alternate land and employment.

4. The facts of the case in brief as under :

The respondent No. 1 – State of Maharashtra built Bhatsa Dam in the year 1974. For constructing this Dam, by an Award dated 12/1/1970 passed by the Special Land Acquisition Officer, Bhatsa Project Thane, land was acquired under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') at Village Palheri, Taluka Sahapur, District Thane. For this Dam Project, four villages namely Palheri, Pachivare, Kothare (Ghodepada) and Wakichapada/Palaspada came under the submergence area of Bhatsa Dam and also 14 other villages were affected.

5. Learned Counsel for the petitioners submitted that as there was a proposal to provide land to all those project affected persons for purpose of rehabilitating them at Khutghar, Taluka Shahapur, District Thane. However, the project affected persons did not accept the said land and instead took compensation in terms of money and rehabilitated themselves at Khutghar, Birwadi, Atgaon Khere, etc. It is the case of the petitioners that it is responsibility of the State Government to rehabilitate the project affected persons. Learned Counsel for the petitioners submits that either the State Government or the Mumbai Municipal Corporation is obliged to provide employment to the project affected persons and/or any one of their family members.

6. Learned Counsel for the petitioners invited our attention to the various correspondence entered into with the State Government authorities for allotment of alternate land to the project affected persons. Our attention is invited to the communication dated 9th January, 2013 addressed by the

Divisional Commissioner, Konkan Division to the State Government indicating that there was a proposal to offer alternate land to the project affected persons, however, they preferred to accept the compensation for the houses and trees and the petitioners rehabilitated themselves at Khutgar, Birwadi, Atgaon Khere in Shahapur Taluka. In the said communication a reference is made to G.R. dated 24/5/2012 for making applicable the provisions of Maharashtra Project Affected Persons Act, 1999, to all those project affected persons even prior to 1976. Learned Counsel for the petitioners submits that they are entitled for the benefit of rehabilitation in terms with G.R. dated 24/5/2012 referred in the communication dated 9th January, 2013.

7. Learned Counsel for the petitioners submits that the correspondence on record would indicate that they had approached the elected representatives and the State Government for redressal of their grievance from time to time. The petitioners have also resorted to agitations. According to

him, though an assurance was given that the petitioners will be rehabilitated soon, no concrete action or steps to resettle the petitioners is taken. According to the petitioners, these project affected persons are poor and illiterate. Their agricultural lands which were acquired by the respondents was the only source of livelihood.

8. Learned AGP appearing for the State Government brought to our notice the affidavit-in-reply filed by Ms. Sangita Takle working as Deputy Collector (Resettlement) Thane. It is the stand of the respondent No.5 that the acquisition process for Bhatsa Dam was implemented in the year 1968-69 before the Rehabilitation Act, 1976 came into force. In so far as 97 project affected families are concerned, the rehabilitation or resettlement was not done by the Government of Maharashtra since they have received compensation and as these project affected persons wanted to resettle at their own will. The compensation of Rs.6,61,105/- has been paid to 286 Khatedars of these 97 families and these project affected families are shifted to other place as per their own will. Our attention is

invited to the averments in paragraph 4 as regards the report dated 11/7/2016 of the Executive Engineer stating that employment was provided to 96 persons out of each project affected family as per their educational qualification in the five Departments of the Circle Office at Thane. It is further stated that the project affected persons accepted the compensation in monetary terms and resettled themselves at Mauje Khutghar, Birwadi, Agaon, Khere, Taluka Shahapur. It is the specific case of the respondent No.5 that there is no question providing alternate land to the project affected persons as the said rehabilitation process took place as per their own will in the year 1967.

9. Learned Counsel for the Mumbai Municipal Corporation submitted that it is not their responsibility to provide employment to all those who are affected by the Bhatsa Dam Project. It is submitted that as per the Directives of the State Government vide G.R. dated 3/4/2008, it is specified that the employment in MCGM will be provided to project affected

persons where MCGM owns and executes the project. Bhatsa Dam Project is not covered under the purview of the MCGM Project. The respondent – Corporation thus submitted that it is not their responsibility to provide employment to these project affected persons.

10. We have heard learned Counsel for the parties. Considered the submissions advanced.

11. The petitioners are project affected persons of the Bhatsa Dam Project. It appears that there was proposal to provide land to the project affected persons by providing land belonging to the Forest Department. The project affected persons did not accept the said proposal and have instead taken compensation in terms of money. They rehabilitated themselves at Khutghar, Birwadi, Atgaon Khere, Taluka – Shahapur. We find that the petitioners themselves pleaded that the petitioners accepted the compensation in terms of money and rehabilitated themselves at various places instead of accepting the proposal of the State for rehabilitation.

12. It, however, appears that pursuant to the representation made by the petitioners to the various authorities, the respondent No. 2- Divisional Commissioner had requested the respondent No. 3 – Principal Secretary, Revenue and Forest Department to implement G.R. dated 24/5/2012 for making applicable the provisions of the Maharashtra Project Affected Persons Act, 1999 to those project affected persons prior to 1976 also. We find that based on the assurances which the petitioners claim to have been given by the State Government, that the petitioners pray for allotment of alternate land and employment being project affected persons.

13. We find the petitioners have approached the State Government seeking the benefit of rehabilitation. The Resettlement Act has come into force in the year 1976. The petitioners are project affected persons prior to 1976. On the basis of the G.R. dated 24/5/2012, though petitioners are project affected persons prior to 1976, they are seeking relief based on some assurance given by the State Government. Under

these circumstances, it is for the petitioners to approach the State Government for claiming the benefits under the said G.R. dated 24/5/2012 in accordance with the terms and conditions of the G.R. We must indicate that the said G.R. dated 24/5/2012 is not placed on record.

14. It is thus the petitioners' claim that despite the assurance given by the State Government they have not been rehabilitated. In the facts of the present case, it is not possible for us to grant any relief to the petitioners in the absence of any provisions/ G.R. which is on record entitling the petitioners for such relief. Grant of relief of rehabilitation to project affected persons of projects prior to 1976 who are not governed by the Maharashtra Project Affected Persons Act, 1976 is a matter within the realm of the policy of the State. As it is the contention of the petitioners that the respondents have assured to rehabilitate the petitioners, it is obviously open for the petitioners to pursue the matter with the State Government.

15. Needless to mention that any observations made by us will not come in the way of the State Government or appropriate authorities in dealing with the question of rehabilitation/employment of the petitioners as per the policy of the State.

16. With these observations, the present Petition is disposed of.

17. Rule is discharged in the above terms.

18. In view of the disposal of the Writ Petition, nothing survives in the Civil Application for consideration. Hence, Civil Application is disposed of.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)