

(2014) 04 KAR CK 0053

In the Karnataka High Court

Case No : W.A. Nos. 5822, 5828, 5832, 5833, 5834, 5835, 5836, 5881-5884, 5885, 5886, 5887, 5894, 5895, 5951-5952, 5953, 5960-5962, 5967-5985, 6014, 6015-6024, 6025-6039, 6064/2013 and 446/2014 (LB-RES)

M.N. Ramesh

APPELLANT

Vs

State of Karnataka
 Puttaswamy Vs The Under
Secretary to Government
 Singamma Vs Mysore Urban
Development Authority

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 32
Karnataka Urban Development Authorities Act, 1987 — Section 65
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2014) ILR 3079 : (2014) 3 KCCR 2603

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : O. Shivarama Bhat, Advocate in W.A. Nos. 5822, 5828, 5832, 5833, 5834, 5835 and 5836/2013, Sri K.R. Lingaraju, Advocate in W.A. Nos. 5881-5884, 5885, 5886, 5887, 5894, 5895, 5951-5952, 5953, 5960-5962, 5967-5985, 6015-6024 and 6025-6039/2013, Sri Prashanth, P.N., Advocate in W.A. No. 6014/2013, Sri M.Y. Sreenivasan, Advocate in W.A. No. 6064/2013 and Sri P.N. Hegde, Advocate in W.A. No. 446/2014, Advocate for the Appellant; A.S. Ponnanna, Ld. PGA for R. 1 in W.A. Nos. 5822, 5828, 5833, 5834, 5835, 5836, 5881-5884, 5887, 5894, 5895, 5951-5952, 5953, 5960-5962, 5967-5985, 6014, 6015-6024, 6025-6039, 6064/2013, 446/2014 and for R. 2 in W.A. No. 5832/2013, Sri. P.S. Manjunath, Advocate in W.A. Nos. 5885, 5886/2013, for R. 1 in W.A. Nos. 5832, 5834/2013, for R. 2 in W.A. Nos. 5822, 5828, 5833, 5835, 5836, 5881-5884, 5887, 5894, 5895, 5951-5952, 5953, 5960-5962, 5967-5985, 6014, 6015-6024, 6025-6039, 6064/2013, 446/2014 and for R. 3 in W.A. Nos. 5822, 5828/2013 and 446/2014, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—These appeals arise out of a common order passed in W.P. No. 13001/2010 and connected matters, disposed of by the learned Single Judge on 05/08/2013. By the said order, the writ petitions filed by the appellants

herein, were dismissed as having no merit and due to delay and laches.

2. As these appeals arise out of a common order passed in several writ petitions, they have been clubbed together and are disposed of by this common judgment.

Background Facts:

3. The facts of the case are narrated in detail by the learned Single Judge in the impugned order and are succinctly stated here.

4. The common facts in these cases are that the appellants had made their respective applications for allotment of a site in Vijayanagar 4th Stage, 2nd Phase and other layouts formed by second respondent - Mysore Urban Development Authority ("MUDA", for short), in Mysore City. Appellants herein were allotted sites on payment of initial deposit and had to pay the balance consideration amount to MUDA. As they did not pay the balance amount in time or did not pay that amount at all, MUDA cancelled the allotments. The following table shows the date of allotment and the date of cancellation if any, in respect of each of these appellants:-

5. The cancellation of the allotment of sites as well as the endorsement issued by MUDA were assailed in certain writ petitions. A direction was also sought to the effect that MUDA should receive the balance sale consideration and execute absolute sale deed in favour of the appellants.

6. Learned Single Judge noted that the writ petitions were not opposed by filing statement of objections by the respondents, particularly the second respondent - MUDA, but the original records were submitted to the Court and they have been perused by the learned Single Judge. He considered Section 65 of the Karnataka Urban Development Authority Act, 1987 ("KUDA 1987", for short) and Rule 19 of the Karnataka Urban Development Authorities (Allotment of Sites) 1991 (for short, "Allotment of Sites Rules, 1991") and considered the main issue with regard to the failure of the appellants herein, who are the allottees to challenge the orders of cancellation of allotment of sites on the principles of delay and laches wherever the sites were cancelled, and dismissed the writ petition on that ground. The directions or instructions issued by the State Government to MUDA in regard to condonation of delay in making belated payments to MUDA subsequent to the allotment of sites in light of Section 65 of KUDA and Rule 19 of Allotment of Sites Rules, 1991 as also the order of the Division Bench of this Court dated 30/01/2012 and the order of the Hon'ble Supreme Court dated 23/04/2012 were also considered by the learned Single Judge. The following additional points were raised by the learned Single Judge:-

10. Keeping in mind the order dated 23.4.2012 of the Apex Court, *supra* and the submission of the learned counsel for MUDA, which is not disputed by the learned Counsel for the petitioners, the following additional points law arise for decision making:

Regard being had to the statutory prescription of time limit to pay the value of

the site by allottees of sites, in Rule 19 of the Rules, whether,

i) MUDA could enlarge time beyond what is prescribed?

ii) The State Government could issue directions/instructions to receive payment of value of site beyond the time prescribed and reallocate sites since cancelled?

Having regard to the provisions of law, the writ petitions were dismissed on merits as also on account of delay and laches. Being aggrieved by the impugned order, the petitioners are in appeal.

7. The appellants based their claim on a Government Communication dated 26/08/2005 to the effect that the case of the allottees who had not paid the sital value in time and whose allotment had been cancelled would have to be considered on humanitarian grounds, by collecting the balance amount with interest or equivalent amount that MUDA would have received in case the site were put to public auction, whichever was higher and reallocate the sites to the original allottees.

8. Reliance was also placed on another Communication dated 27/12/2005 from the Under Secretary, Urban Development Department, Govt. of Karnataka to the Commissioner of MUDA, by which, certain terms were fixed to collect the balance sital value with interest. On 23/04/2007, one more Communication was made to the Commissioner, MUDA that, excluding 51 cases, in respect of other allottees who had not paid sital value in time, totaling 91 persons, where balance sital value had been received, to return the amount. Further, in respect of 175 other allottees, not to receive any belated payments and to stop registration of sites in their names. This Communication dated 23/04/2007 was assailed by certain allottees before this Court. During pendency of the writ petitions, MUDA submitted a letter to the State Government dated 04/03/2008, seeking permission to allot sites to 95 persons, despite there being a delay in payment of balance sital value as a one-time measure. As the allotment in respect of 95 allottees was to be regularized on the basis of the Government granting permission as a one-time measure, those writ petitions were disposed of, recording the above development.

9. Subsequently, by order dated 10/12/2009, the Government rejected the request of allottees for allotment of sites, by condoning delay in payment of sital value. Being aggrieved, some other allottees approached this Court by way of writ petitions. The writ petitions were disposed of by this Court on 03/08/2010, by directing MUDA to execute the sale deed in favour of the petitioners therein within an outer limit of two months, from the date of issuance of the certified copy of that order, on satisfying that they had all paid the entire allotment consideration including interest at 18% p.a. for the first 90 days and thereafter, 20% p.a. till the date of payment or the price fetched at the auction of a comparable site, whichever was higher. That order was assailed by MUDA as well as by the allottees, who were the petitioners therein, by preferring writ appeals.

10. A Division Bench of this Court of which one of us (Nagarathna J.) was a Member, allowed the appeals of MUDA as well as allottees, by judgment dated 30/01/2012. Being aggrieved by that judgment, MUDA had filed Special Leave Petitions (SLPs) before the Hon'ble Supreme Court and by order dated 23/04/2012, the SLPs were dismissed, keeping open the question of law on the applicability of doctrine of desuetude to Rule 19 of the Allotment of Sites Rules, 1991. MUDA was directed to accept the balance sital value together with interest from the respondent allottees therein, who were in default. Subsequently, a batch of writ petitions filed by the appellants herein and others were dismissed by the learned single Judge by the impugned order. It is the contention of the appellant that they must be given the benefit of the judgment passed by the Division Bench of this Court as similarly placed persons have paid sital value belatedly with interest and have been allotted their respective sites.

Contentions:

11. In oral and the written arguments submitted by Sri O. Shivarama Bhat and Sri Lingaraju, learned counsel for the appellants, it is submitted that admittedly, the appellants had failed to deposit the balance sital value within the stipulated time after the allotment of their respective sites on account of stringent financial conditions or non receipt of intimation regarding allotment of sites. When MUDA, wrote to the State Government about the belated payments sought to be made by the appellants, by invoking Rule 24 of the Allotment of Sites Rules, 1991, the State Government directed MUDA to receive the balance amount. Accordingly, MUDA prepared a list of 317 allottees out of which, balance amount with interest from 142 allottees was received and MUDA declined to receive the said amount from 175 other allottees. A few of the 175 allottees preferred W.P. No. 14/2010 in which, a direction was issued to MUDA to formulate a comprehensive scheme covering all similarly placed allottees. MUDA challenged that order in W.A. 499/2011 and connected appeals, which were partly allowed by a Division Bench of this Court, against which SLPs were filed and were dismissed on 23/04/2012. Some other allottees out of 175 allottees had filed W.P. Nos. 8239-8242/2012, which were disposed of on 05/06/2012 based on the Division Bench judgment in W.A. No. 499/2011 dated 30/01/2012. It is further contended that some allottees who were parties to W.P. No. 14/2010 had challenged the order passed therein in W.A. Nos. 4275/2012 and 4276/2012 subsequent to the dismissal of S.L.Ps. those appeals were also disposed of on 05/08/2012 on the basis of order dated 30/01/2012 of the Division Bench in W.A. No. 499/2011 and connected matters. That MUDA has not complied with the order passed in W.P. No. 14/2010, wherein a direction was issued to formulate a scheme covering all similarly placed persons, and though these appellants are similarly situated to the other allottees, who received the benefit of the orders of this Court.

12. It is further contended that learned Single Judge dismissed the writ petition on the ground of delay and laches and also by stating that the Government had no powers to issue directions to MUDA, contrary to Rule 19 of the Allotment of

Sites Rules, 1991. It is submitted that the order of the learned Single Judge is contrary to the order passed in W.A. No. 499/2012. That learned Single Judge has failed to appreciate that these appellants are part of 175 allottees in respect of whom MUDA declined to accept the belated sital value with interest, though in respect of 142 other persons MUDA had accepted the same. Then, when the State Government on humanitarian considerations had directed MUDA to accept the sital value with interest in respect of 142 allottees invoking Rule 24 of the Allotment of Sites Rules, 1991 the same order ought to have been passed also in respect of the appellants. By not doing so, the appellants have been discriminated against and there has been violation of Article 14 and 21 of the Constitution insofar as the appellants are concerned, was the submission. Relying on certain decisions, it was contended that the impugned order be set aside and relief be granted to these appellants also.

13. Per contra, Sri P.S. Manjunath, learned counsel for MUDA, with reference to his written submissions, contended that the appellants are defaulters as they have not paid the sital value in terms of Rule 19 of the Allotment of Sites Rules, 1991. The allotment of sites are deemed to have been cancelled. Under Rule 19, MUDA has no authority to accept belated payments and restore allotments which are deemed to have been cancelled, by condoning delay in making payment or by relaxation of Rule 19. Under such circumstances, about 316 deemed cancellations had taken place. MUDA sought guidance of the State Government with regard to disposal of those applications. The State Government, after considering the matter, had issued the following directions to MUDA on 27/12/2005 and to consider the case of the appellants on humanitarian grounds:-

(i) If the site after cancellation had not been allotted to the third party, if the applicant comes forward to pay interest at 18% p.a. for the first 90 days and interest at the rate of 20% p.a. for the subsequent period, or if similar sites had been sold in public auction in the concerned layout, the amount fetched in public auction, whichever is higher may be received and allotment confirmed.

(ii) If the statistics regarding auction sale of the sites are not available, the applicant agrees to pay interest at 18% p.a. for the first 90 days and interest at 20% p.a. for the subsequent period, then the allotment may be confirmed. It was further stipulated that in any event prior approval of the Government shall be obtained in each individual case.

14. Thereafter, on 12/05/2006, State Government issued a communication directing MUDA not to take any action pursuant to letter dated 27/12/2005 until further orders. Since no further instructions were issued, MUDA wrote to the State Government on 21/03/2007 for specific orders. Between 27/12/2005 and 12/05/2006, 142 persons had come forward to pay the amount as per second option (supra) and requested for restoration of sites and execution of the sale deeds. In response, State Government issued a communication dated 23/04/2007 to stop all further proceedings with regard to 142 persons, except in 51 cases, wherein after receiving the amount registered sale deeds could be

executed, and directed refund of amounts received from 91 persons and not to take any further action in respect of 175 other applicants. Subsequently, one more communication was issued by the State Government on 04/03/2008 stating that Government had accorded approval for restoring the allotment and granting title deeds to 95 persons (91+4) as a one time measure as they had paid sital value along with interest. These 95 persons comprised of 91 persons in respect of whom an earlier direction had been issued on 23/04/2007 to refund the amount received from them and four other persons who had approached this Court and who had also paid the entire sital value with interest. It was also directed that while restoring the allotment and granting title deeds, transparency in the eligibility and seniority should be maintained. Thus, in respect of 146 persons, State Government had conferred the benefit of reallocation (i.e., 51 + 95 = 146).

15. Challenging communication dated 23/04/2007, restricting relaxation of the Rules only in respect of 51 persons, W.P. 3669/2008 and connected matters were filed by some other allottees. During the pendency of that writ petition, communication dated 04/03/2008 was issued and those writ petitions were disposed of on 20/07/2009. In fact, prior to the disposal of the writ petitions, State Government had passed orders in respect of 95 persons on 04/03/2008 itself. But insofar as other allottees were concerned, the State Government rejected their request on 10/12/2009 and those allottees filed W.P. No. 14/2010 and connected matters. Learned single Judge had granted relief to those allottees by holding that Rule 19 of the Allotment of Sites Rules, 1991 had suffered desuetude and that no reliance could be placed on that Rule. Being aggrieved, by the judgment dated 03/08/2010 of learned Single Judge in W.P. No. 14/2010 and connected writ petitions, MUDA had filed W.A. No. 499/2011, which was allowed in part by order dated 30/01/2012.

16. It is also stated in the written arguments that Secretary to the Urban Development Department had filed an affidavit in W.A. No. 499/2011 to the effect that the State Government had initially issued instructions on 23/04/2007 and 04/03/2008, to consider allotment of sites to the applicants on humanitarian grounds in respect of those, who had paid the full sital value. Later, an order had been passed on 10/12/2009 directing the Authority to reject the applications submitted by the allottees whose allotment had been cancelled for non payment of the sital value within the stipulated time, as there was no provision in the Rules to restore the cancelled allotments. Further, the circular dated 04/02/2011 was issued, stating that no proposal for restoration of cancelled allotments could henceforth be submitted to the Government or otherwise the Commissioner would be held responsible and liable for disciplinary action. Therefore, it was the policy of the Government not to entertain any request for restoration of cancellation of allotment contrary to Rule 19 of the Rules. It was thus, contended that appellants herein could not seek any direction against MUDA to receive the balance sital value and restore the allotment of sites as the same would be in contravention of Rule 19 of the Allotment of Sites Rules, 1991. It was also

contended that merely because certain persons were benefited by earlier orders of the State Government, the plea of discrimination could not be raised by these appellants by placing reliance on Article 14 of the Constitution. It was also submitted that the order dated 04/03/2008 of the State Government in respect of 95 applicants was issued as a one time measure and could not be a precedent in respect of other allottees. That after dismissal of SLP, keeping open the question of law raised therein, 89 allottees belatedly approached this Court, contending that their case was covered in terms of the judgment in W.A. No. 499/2011 and that they were entitled to a similar relief. That these appellants are seeking restoration of allotments made in the year 1984 up till the year 2003 by placing reliance on the Government letters dated 27/12/2005 and 04/03/2008 on the basis of Article 14 of the Constitution and Rule 24 of the Allotment of Sites Rules, 1991, which is impermissible.

17. Learned Counsel for MUDA further contended that learned Single Judge rightly negated the contentions of the petitioners by holding that the directions of the State Government issued earlier could not be treated as being one u/s 65 of KUDA, 1987 and that those directions of the State Government were contrary to Rule 19 of the Allotment of Sites Rules, 1991. That the appellants were fence-sitters and trying to take advantage of a subsequent judgment while keeping silent for over a decade. It was further contended that these appellants cannot seek a similar treatment as was accorded to 142 persons by the State Government Order dated 27/12/2005 and 04/03/2008 as those directions/orders of the State Government were contrary to Rule 19 of the Allotment Sites Rules, 1991. The State Government realizing that fact, issued Circular dated 04/02/2011 as well as filed the affidavit in W.A. No. 499/11. Supporting the order of the learned single Judge, MUDA contended that the writ petitions are barred by delay and laches and that the principles of negative equality could not be applicable to the petitioners, either by the Government Orders under Rule 19 of the Allotment of Sites Rules, 1991 or under the directions issued by the State Government to MUDA in exercise of its powers u/s 65 of the KUDA 1987, as those directions did not implement the objects of the Act but were contrary to Rule 19 of the Allotment of Sites Rules, 1991, In the circumstances, MUDA sought dismissal of the appeals.

Statutory Frame work:

18. Section 65 of KUDA, 1987 reads as follows:

65. Government's power to give directions to the authority.- The Government may give such directions to the authority as in its opinion are necessary or expedient for carrying out the purposes of this Act and it shall be the duty of the authority to comply with such directions.

Rule 19 of the Allotment of Sites Rules, 1991 reads as under:-

(1) "After the receipt of the allotment letter the allottee shall pay to the Authority sital after deducting the initial deposit made by him within 90 days. Thereafter,

the Authority shall call upon the allottee to execute a lease-cum-sale agreement in Form III. If the allottee fails to execute the lease-cum-sale agreement within 60 days after the Authority has called upon him to execute such agreement, the registration fee paid by the allottee may be forfeited, and the allotment of the site cancelled, and the amount paid by the allottee, may be refunded by the Authority after deducting such expenditure as might have been incurred by the Authority.

(i) Provided that the Authority may extend the time limit specified in sub-rule (1), by 30 days and levy an interest at 18% for the extended period.

(ii) Provided that the Authority may on application of the allottee permit him/her to execute a lease-cum-sale agreement in Form-III in the joint name of the allottee and him/her spouse.

(2) x x x

(3) x x x

(4) Until the site is conveyed to the allottee, the amount paid by the allottee for the purchase of the site shall be held by the Authority as security deposit for the due performance of the terms and conditions of the allotment and the lease-cum-sale agreement entered into between the Authority and the allottee.

(5) x x x

(6) x x x

(7) x x x

(8) x x x

(9) x x x

19. On consideration of the rival submissions and material on record, we find that the plea of the appellants is to seek a benefit under Government Orders/ letters dated 27/12/2005 and 04/03/2008 although they have failed to comply with Rule 19. Those letters have been considered by the Division Bench in W.A. No. 499/2011 in the following manner:-

9. Annexure "H", is a copy of the Government letter dated 26/08/2005 with regard to the restoration of sites to the allottees who had not paid the sital value in time, in respect of the sites allotted to them. Annexure "J" dated 27/12/2005 has stipulated the value of the auction of the site to be paid by the allottee for seeking re-allotment of the cancelled site, as stated supra. The said order states that on humanitarian view of the matter, the cancelled sites shall be re-allotted to the allottees, subject to the condition that the allottees pay the amount, which is equivalent to the amount fetched by the sale of a similar site in public auction or the site value with interest, whichever is higher. However, by a subsequent Government letter dated 04/03/2008 (Annexure "K"), it was directed that as a one time measure title deeds be granted to the allottees who had paid the full

sital value along with interest, in respect of 95 applicants, if they had paid the sital value in its entirety.

10. On a combined reading of the Government letters dated 27/12/2005 and 04/03/2008, it also becomes clear that firstly, the State Government did not apply Rule 19 of the Allotment Rules 1991, in so far as the allottees, whose sites had been cancelled on account of belated payment of the sital value are concerned. Secondly, the Government intended that the sites be re-allotted to the allottees on receipt of the entire sital value with interest in respect of the 95 applicants. Therefore, the payment of the price fetched in the auction of a comparable site, higher than the sital value was given up.

11. Thus, the combined effect of these orders is that with regard to 95 cases, a direction was issued to MUDA to accept the sital value with interest and thereafter, to re-allot the cancelled sites to the very same allottees. Therefore, MUDA was bound to follow the very same procedure in respect of allottees, whose sites had been cancelled and were similarly placed with the 95 allottees, including the petitioners herein. In fact, the said direction of the Government has also been applied by this court in several writ petitions filed by several allottees whose sites had been cancelled by directing MUDA to execute the sale deeds within a stipulated time on payment of the balance sital value with interest for the delayed period. Copies of the orders passed by this court are at Annexures "M" and "L" to the writ petitions. Therefore, in so far as these petitioners are concerned, the learned single Judge ought to have directed MUDA to re-allot the sites to the petitioners on receipt of the balance sital value, with interest at 18% for the first 90 days and thereafter, 20% till the date of payment, as stipulated in the Government Order dated 27/12/2005 and not take into consideration the price fixed in the auction of a comparable site. It is obvious that the price fixed in the auction of a comparable site would always be much higher than the sital value fixed by MUDA at the time of allotment, in addition to the interest therein. Therefore, the appeals filed by the allottees have to be allowed by setting aside that portion of the order of the learned Single Judge wherein, MUDA has been directed to take into consideration the price fixed in the auction of a comparable site for the re-allotment of the site. Consequently, MUDA is directed to accept the balance sital value plus interest at 18% for the first 90 days and thereafter, 20% till the date of payment to be paid by the petitioners, if not already paid and reallot the sites to the petitioners which had been earlier allotted to them and that subsequently, have stood cancelled.

x x x

19. In the result, the appeals filed by MUDA are allowed in part as also appeals filed by the allottees are allowed in the following manner:-

i) It is held that the doctrine of desuetude is not applicable to Rule 19 of the Allotment Rules;

ii) MUDA is directed to execute the sale deeds in respect of the cancelled sites in

favour of the petitioners, within a time limit of two months, from the date of issuance of the certified copy of this order, on being satisfied with the entire site value along with the requisite interest being paid by the petitioners, without reference to the price fetched in an auction of a comparable site.

iii) Parties to bear to their own costs.

20. The Order of the Hon'ble Supreme Court while dismissing the Special Leave Petitions arising out of the aforesaid Judgment is as follows:

Heard Mr. P.V. Shetty, learned senior counsel for the petitioners.

Special Leave Petitions are dismissed. Question of law is kept open. However, the time granted by the High Court in paragraph 19(ii) of the impugned judgment extended by two months from today.

21. The Division Bench of this Court in W.A. No. 499/11 held that rule of desuetude did not apply to Rule 19 and the relevant paras of the Judgment in that regard are extracted as under:-

12. As far as the contention raised by the MUDA with regard to the applicability of the doctrine of desuetude to Rule 19 of the Site Allotment Rules, is concerned, we are of the view that the learned Single Judge was not right in applying the said doctrine, having regard to the facts and circumstances of the present case.

13. According to the Black's Law Dictionary, the expression "Desuetude", means lack of use; obsolescence [sic] through disuse. The doctrine implies that, if a statute or treaty is left un-enforced long enough, the court will no longer regard it as having any legal effect even though it has not been repealed. There is some doubt as to whether the doctrine is applicable in English Law, so as to say that the statute ceases to be in force merely because it is obsolete. Normally there is an express repeal of a whole or part of an enactment or there could be an implied repeal by a later statute but the doctrine enables the Courts to hold that a statute is no longer having any legal effect even though it has not been repealed.

x x x

15. The question for consideration is whether on account of the Government letters dated 26/08/2005, 27/12/2005 and 04/03/2008 referred to above, the application of Rule 19 has been hit by the doctrine of desuetude. In this context, it is relevant to note that direction was issued by the State Government to MUDA to re-allot sites on a humanitarian consideration and as a one time measure, as is evident from the Government letters dated 26/08/2005 and 04/03/2008. Therefore the State Government being conscious of the applicability of Rule 19, deviated from the said Rule in so far as 95 allottees were concerned, as a one-time measure. Therefore, it was not the intention of the State Government or MUDA not to apply Rule 19 for all times to come. It is the contention of the petitioners that since the State Government did not apply Rule 19 in the case of

95 persons, the petitioners being similarly situated ought to have been accorded the same treatment. Therefore, the doctrine of desuetude is not applicable having regard to the facts and circumstances of this case.

16. In fact in this context, it would be apposite to refer to two decisions of the Hon"ble Supreme Court which have been brought to our notice by the learned counsel for MUDA, in the case of Municipal Corporation for City of Pune and another Vs. Bharat Forge Co. Ltd. and others, and State of Maharashtra Vs. Narayan Shamrao Puranik and Others, . In the latter decision, it has been stated that the statute can be abrogated only by express or implied repeal and it cannot fall into desuetude or become inoperative through obsolescence or by lapse of time. Quoting the learned Author, Allen, in his "Law in the Making" fifth Edition, to the effect that "Age cannot wither an Act of Parliament, and at no time, so far as I am aware, has it ever been admitted in our jurisprudence that a statute might become inoperative through obsolescence", the Supreme Court observed, that the Rule of desuetude has always met with a general disfavour and that it seems hardly profitable to discuss it further. The said observations are made by the three Judge Bench of the Hon"ble Supreme Court.

17. But another three Judge bench in the former decision has observed that though in India the doctrine of desuetude does not appear to have been used so far, to hold that any statute has stood repealed because of this process, there could be no objection in principle to apply this doctrine to Indian statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the "dead letter". It would advance the cause of Justice to accept the application of doctrine of desuetude in our country also. Our soil is ready to accept this principle indeed, there is need for its implantation, because persons residing in free India, who have assured fundamental rights including what has been stated in Article 21, must be protected from their being, say, prosecuted and punished for violation of a law which has become "dead letter". A new path is therefore, required to be laid and trodden. We can only say that the aforesaid observations of the Supreme Court have been made on the basis of the factual matrix of the said case.

22. In W.A. No. 499/2011 and connected matters, affidavit and the circular were filed on behalf of the Secretary, Department of Housing and Urban Development. The relevant portions read as under:-

GOVERNMENT OF KARNATAKA

No. NaAaE 46 MUDA 2011

Karnataka Government Secretariat, Vikas Soudha, Bangalore, Date: 04/02/2011.

CIRCULAR

Sub: Clarification regarding action to be initiated for payment of amount in time towards allotment of site by Urban Development Authorities - reg.

x x x

As per Rule 19(1) of Karnataka Urban Development Authorities (allotment of Site) Rules, 1991, entire balance amount out of the value of the site allotted to the applicant after deducting initial deposit, has to be paid to the Authority within 90 days from the date of allotment. If such outstanding amount could not be paid within this period, the same may be accepted within 30 days together with interest at the rate of 18%.

But, as few authorities, particularly, Mysore Urban Development Authority have permitted the aspirants of sites for payment of the amount, who are default in payment of the site value within stipulated period, there is violation of rules and amounts to accepting amount unlawfully and the same is observed in the orders of the Hon'ble High Court of Karnataka passed in Writ Petition No. 5311/2010 dated 03/08/2010. In view of the same, accepting amount towards value of the site from the allottees after lapse of the time granted, is not permitted.

Despite, it is hereby clarified that, for no reason, any such proposals wherein amount towards value of the site is accepted unlawfully after expiry of the time granted, seeking approval of the Government shall be submitted. In case if such time barred proposals are submitted, the Commissioner of the concerned authorities would be held responsible and disciplinary action would be initiated against them.

In this connection, it shall be noted that, the Government has filed "Affidavit" in the case in Writ Appeal No. 499/2011 before the Hon'ble High Court of Karnataka.

Sd/- (M.M. Hiremath) Under Secretary to Government, Urban development Department.

AFFIDAVIT

I, Shambhu Dayal Meena, S/o. Sri Kanwari Lal Meena, aged about 54 years, working as Secretary to Government, Urban Development Department, Vikasa Soudha, Bangalore-560-001, do hereby solemnly affirm and state on oath as follows:

1. I submit that I am representing on behalf of the 1st respondent State Government and I am fully aware of the facts of the case.
2. I respectfully submit that the above appeal is filed by the Mysore Urban Development Authority challenging the order dated 03-08-2010 made in W.P. No. 5311/2010 passed by the learned Single Judge directing the Mysore Urban Development Authority to execute Sale Deed in favour of the petitioners within an outer limit of 2 months from the date of issuance of certified copy of the order on satisfying that they have all paid the entire allotment consideration - which means the interest at 18% for the first 90 days and thereafter 20% till the date of payment or the price fetched in the auction of a comparable site, whichever is

higher.

3. I respectfully submit that the learned Single Judge while passing the impugned order was pleased to hold that if the respondents have not followed Rule 19 of the Karnataka Urban Development Authority (Sites Allotment) Rules 1991, it attracts the application of the doctrine of desuetude. When the respondents have been consistently acting in disregard of the said Rule 19, some kind of implied repeal or quasi-repeal of the said Rule has taken place and the doctrine of desuetude means that the statute in question has been in disuse for long and the contrary practice of some duration has evolved. In view of the said observation made by the learned Single Judge, it is not possible either Mysore Urban Development Authority or any other Urban Development Authorities in the State of Karnataka to rely upon said Rule 19 for any future allotments and therefore, on the said contention, the Mysore Urban Development Authority has filed the above appeal.

4. I respectfully submit that the State Government has issued necessary instruction on 23-04-2007 and 04-03-2008 to the Commissioner, Mysore Urban Development Authority to consider the allotment of sites to the applicants who have paid full sital value along with the interest on humanitarian ground as one time measure. Subsequently, the Government has issued the Order No. UDD 441 APRA 2008 dated 10-12-2009 directing the Commissioner, MUDA not to consider and submit such proposal which are not in conformity with the Rule 19 of Karnataka Urban Development (Allotment of sites) Rules, 1991.

5. It is further submitted that Circular No. UDD 46 MYAAPRA 2011 Dated 04-02-2011 is issued by the Government directing all the Urban Development Authorities of Karnataka to strictly abide by the provisions envisaged in above stated Rule of Karnataka Urban Development (Allotment of sites) Rules, 1991.

6. I respectfully submit that the State Government will not allow Urban Development Authorities to violate any of the provisions of Rule of the Karnataka Urban Development (Allotment of sites) Rules, 1991 and will implement strictly in accordance with law.

Hence, I pray that this Hon"ble Court may be pleased to dispose off the above Writ Appeal, in the interest of justice and equity.

Bangalore, Date: 05-02-2011

Sd/- DEPONENT

x x x

23. On a reading of the above, it becomes clear that the State Government has rescinded its earlier instructions dated 23/04/2007 and 04/03/2008 and decided to follow Rule 19 of the Allotment of Sites Rules, 1991. Thus, the doctrine of desuetude does not apply to that Rule as has been held earlier. That apart, u/s 65 of the Act, the Government is empowered to give directions to MUDA if in its

opinion, it is necessary or expedient for carrying out the purposes of the Act, in which case MUDA is duty bound to comply with such directions. But the earlier orders issued by the State Government were not in consonance with the Allotment of Sites Rules, 1991. Therefore, those orders cannot be considered to be issued u/s 65 of the Act particularly, in view of the subsequent Circular dated 04/02/2011. Even under the earlier instructions of the Government, the benefit given to the allottees despite belated payments being made was expressly a one time measure. That cannot be considered to be a precedent insofar as these appellants are concerned.

24. That apart, the principle of equality does not apply in these cases. Principles relating to grant of relief in cases of discrimination are well settled. In Chandigarh Administration and another Vs. Jagjit Singh and another, , it has been held that mere fact that the respondent-authority therein had issued a particular order in case of other persons similarly situated could never be a ground for issuing a writ in favour of the petitioner therein on the plea of discrimination. The Hon"ble Supreme Court observed that the order in favour of the other person might be legal and valid or it might not be. That had to be investigated first before it could be directed to be followed in subsequent cases. If the order in favour of the other person was found to be contrary to law or not warranted in the facts and circumstances of the case, it was obvious that such illegal or unwarranted order could not be made the basis for issuing a writ compelling the authority to repeat the illegality or to pass another unwarranted order. "The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose" was the observation of the Hon"ble Supreme Court in that case.

25. Similarly, in Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, , it has been held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court, contending that the same irregularity or illegality be committed by the State or an authority so far as the subsequent petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others, although in an irregular or illegal manner.

26. In State of Haryana and Others Vs. Ram Kumar Mann, , the Hon"ble Supreme Court held that a person who has no legal right cannot be given relief merely because such relief had been wrongly given to others and a wrong order cannot be the foundation for claiming equality, nor does a wrong decision by the Government give a right to enforce the benefit thereof or claim parity or equality.

27. In the instant case, although about 142 persons have been allotted the sites by accepting belated sital value with interest by MUDA, the circular issued by the State Government dated 04/02/2011 states that the Commissioner of the concerned authority, such as MUDA would be held responsible and liable for disciplinary action in case time barred proposals were submitted to the

Government. An affidavit enclosing the circular was also been filed in W.A. No. 499/2011, stating that the orders and instructions issued by the State Government to MUDA on 23/01/2007 and 04/03/2008 were not in conformity with Rule 19 of the Allotment of the Sites Rules, 1991. In view of circular issued by the State Government, there can be no further violation of Rule 19. It is also stated that the said Rule would be implemented strictly. Therefore, the State Government has itself disapproved grant of any benefit under its Orders dated 23/04/2007 and 04/03/2008 as they were contrary to Rule 19 of Allotment of Sites Rules, 1991. That apart. Government letter dated 04/03/2008 issued to MUDA was clearly a one time measure. It was on that premise, that the Division Bench granted relief to the allottees in W.A. No. 499/2011. The circular as well as the affidavit filed before this Court by the State Government was after realizing that Rule 19 of the Allotment of Sites Rules, 1991 could not be given go-by. Neither does the doctrine of desuetude apply to Rule 19 nor can Rule 19 be ignored in the case of these appellants. On the contrary, the circular as well as the affidavit emphasize the fact that Rule 19 of the Allotment of Sites have to be given effect to. Therefore, the appellants cannot seek any relief, which is contrary to the said Rule. Thus, the Single Judge was right in declining to extend benefit of the earlier instructions or orders of the State Government to these appellants.

28. We have perused the date of allotment of sites made to the appellants herein. They are from 1984 upto 2003. Rule 19 of the Allotment of Sites Rules, was enforced with effect from 29/01/1994. When Rule 19 was in force, neither the State Government nor MUDA could have restored allotment of sites, which had been cancelled nor could they have received belated payments and re-allotted the very same sites. On realizing this fact, the circular was issued by the Government. Therefore, any benefit given to certain allottees under the earlier instructions of the State Government cannot be a valid precedent for these appellants to claim a similar benefit.

29. That apart, insofar as these appellants are concerned, even though allotments were made in the years 1984 to 2003 and were cancelled between the years 1998 to 2005 by express orders, the writ petitions were filed from the year 2010 onwards till the year 2013. Therefore, learned Single Judge has rightly dismissed the writ petitions also on the ground of delay and laches.

30. There is a plethora of decisions of the Hon'ble Supreme Court on the issue regarding delay and as to how a Court of equity exercising jurisdiction under Article 226 of the Constitution cannot extend its hands to such persons who approach the Court after several years. In fact, the Apex Court has held in several decisions that stale claims ought not to be entertained by High Courts exercising writ jurisdiction under Article 226 of the Constitution of India. The recent decisions in that regard are as follows:-

a) In *State of Orissa and Another Vs. Mamata Mohanty*, the consideration of an application where delay and laches could be attributed against a person who

approaches in a writ petition is discussed by stating that though the Limitation Act, 1963 does not apply to writ jurisdiction, however, the doctrine of Limitation being based on public policy, the principles enshrined therein are applicable and writ petitions could be dismissed at the initial stage on the ground of delay and laches. In fact, in the said case a challenge was made to the notification issued on 6.10.1989 by filing a writ petition on 11.11.2005 and the Apex Court held that the High Court should not have entertained the writ petition on said cause of action at a belated stage.

b) Similarly, the Apex Court in *Sawaran Lata etc. Vs. State of Haryana and Others*, held that when the notification u/s 4 of the Land Acquisition Act, 1894 was issued in the year 2001 and the award was passed in the year 2004, writ petitions filed for quashing of the notification in the year 2009 had to be dismissed on the ground of delay as the litigants who dared to abuse the process of the Court having no idea of law of limitation, delay and laches, should not be encouraged.

c) In *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, , the Apex Court had cautioned the High Court not to entertain writ petitions where there was inordinate delay while exercising jurisdiction under Article 226 of the Constitution of India. The said decisions are clearly applicable to the facts of the present case.

d) Reliance may be placed on another decision of the Apex Court reported in *Rup Diamonds and Others Vs. Union of India and Others*, , wherein the petitioners therein had sought relief in terms of the order passed by the High Court of Judicature at Bombay, for issuance of appropriate writs to the authorities to revalidate the import licence, on the basis of an earlier order of learned Single Judge, which was affirmed by the Division Bench and also by the Apex Court. It was contended that the petitioners therein were similarly placed and that the petitioners in the earlier cases were granted relief by the Bombay High Court and therefore, the same relief should also be given to them. The petitioners in the said case had in fact directly filed a writ petition invoking Article 32 of the Constitution before the Apex Court. Those petitions were rejected by stating that the petitioners were re-agitating claims which they had not pursued for several years. The petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. According to the Apex Court, their case could not be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later declared to be void. The Apex Court held that there was an unexplained and inordinate delay in preferring the writ petition which was brought a year later. Therefore, the delay in filing the writ petition persuaded the Apex Court to decline to interfere with the case and rejected the writ petition. Even though certain persons were granted reliefs in the matter of import facility, the same relief was not granted to the petitioners therein by the Apex Court, having regard to the delay and laches in approaching the Court. This decision is squarely

applicable to the present case.

e) Similarly, in the case of Om Parkash Vs. Union of India (UOI) and Others, , the Apex Court declined to grant relief to the petitioners in a matter pertaining to acquisition of land, where there was failure on the part of the appellants therein, in getting the matters adjudicated along with other similar matters. Infact, in the said case, at Para. 86, the Apex Court has observed as follows:-

Even though the arguments advanced by learned counsel for the appellants appear to be attractive, but, on deeper scanning of the same, we are of the opinion that on account of omission of the appellants, they cannot be granted dividend for their own defaults. The appellants should have been more careful, cautious and vigilant to get the matters listed along with those 73 petitions, which were ultimately allowed by the High Court. Not having done so, the appellants have obviously to suffer the consequence of issuance of notifications u/s 4 and further declaration u/s 6 of the Act.

f) In Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others, , the Hon"ble Supreme Court has observed that though no hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches, discretion must be exercised judiciously and reasonably.

g) H.D. Vora Vs. State of Maharashtra and Others, , it was observed that delay could be condoned if the Court finds violation of substantive legal rights of the applicant. In that case, requisition of premises made by the State was assailed. Where the claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights or persons who do not have a business or calling to fall back upon for earning their livelihood, in such a case delay could be condoned, was the observation of the Hon"ble Supreme Court.

31. In the instant case, the facts are otherwise. When the appellants made their respective applications for allotment of sites, they were well aware that after the allotment, the balance sital value had to be deposited within the stipulated time. If they did not do so, they were liable to pay interest and if the time stipulated for payment of the balance sital value with interest also expired, the allotment was deemed to be cancelled. Thus, an express order of cancellation of allotment was not required. But in these cases, there has also been an express cancellation of allotment. But the appellants did not choose to assail the same at the earliest point of time, in case they had a grievance about the cancellation of the allotment. That apart, if these appellants were a part of 317 persons, who formed a class of persons who had failed to pay the balance sital value in time, they could have sought relief at an earlier point of time in terms of the Government Orders dated 27/12/2005 and 04/03/2008, in case the said orders were applicable to them. However, these appellants approached this Court after the issuance of circular dated 04/02/2011 by the Government directing MUDA to

abide by Rule 19 of the Allotment of Sites Rules, 1991 and after the affidavit being filed to that effect in W.A. No. 499/2011 before this Court. Thus, these appellants remained mute spectators when several legal proceedings were being pursued by other allottees. They were not inclined to approach this Court at the earliest point of time to seek a direction against MUDA, assuming that such a direction could have been issued with regard to payment of balance site value with interest. Probably, these appellants were complacent and thought that even without approaching this Court, the orders of cancellation of their allotment would be revoked and they would be benefited in terms of the earlier orders of the State Government. Plausibly, these appellants were under the impression that in view of the judgment of the Division Bench of this Court in W.A. No. 499/2011, they would be entitled to re-allotment of their cancelled sites. But that was an incorrect impression, particularly having regard to the circular dated 04/02/2011 and the affidavit filed before this Court. Relief was granted to the allottees in that appeal based on the premise that as a one time measure 91 + 4 persons could be re-allotted the sites. This Court also held in that appeal that the doctrine of desuetude did not apply to Rule 19 of the Allotment of Sites Rules, 1991. In that view of the matter, learned Single Judge was right in dismissing the writ petitions not only on merits but also on the ground of delay and laches.

32. The following judgments relied upon by the learned counsel for the appellants are not applicable to the present case:-

- i) State of Punjab and Another Vs. Surjit Singh and Others,
- ii) Purnendu Mukhopadhyay and Others Vs. V.K. Kapoor and Another,
- iii) Noida Entrepreneurs Association Vs. NOIDA and Others,
- iv) B. Anjanappa and Others Vs. Vyalikaval House Building Co-operative Society Limited and Others,
- v) State of Gujarat and Another Vs. Hon''ble Mr. Justice R.A. Mehta (Retd.) and Others,
- vi) M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others,
- vii) Chameli Singh and others etc. Vs. State of U.P. and another,

33. In the result, there is no merit in these appeals. The appeals are dismissed. Parties to bear their respective costs.

34. In view of the dismissal of the writ appeals, I.As. would not survive for consideration.