

(2012) 01 KAR CK 0311

In the Karnataka High Court

Case No : Writ Appeal No. 499 of 2011, 663 of 2011 and 777 of 2011 (LB - RES)

Mysore Urban Development Authority

APPELLANT

Vs

State of Karnataka and Sri N C Lingappa
 Sri
Chandappa B.L. Vs The State of Karnataka and Mysore
Urban Development Authority
 Sri N.C. Lingappa Vs
State of Karnataka and The Commissioner Mysore Urban
Development Authority

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Constitution of India, 1950 — Article 21

Karnataka Urban Development Authorities Act (Allotment of Sites) Rules, 1991 — Rule
19

Citation : (2012) 01 KAR CK 0311

Hon'ble Judges : Vikramajit Sen, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : P.S. Manjunath, in Writ Appeal No. 499/2011 and No. 3865/2010,
Sri. K.R. Lingaraju and Usha Lingaraju, in W.A. No. 663/2011, W.A. No.
777/2011, W.A. No. 2108/2011, W.A. No. 5791/2011, W.A. No. 5792/2011 and
W.A. No. 15543/2011 and Sri. O. Shivarama Bhat. in W.A. No. 2763/2011, W.A.
No. 2764/2011, W.A. No. 2765/2011, for the Appellant; B. Veerappa, GA for R1,
Sri. K.R. Lingaraju, for R2 in Writ Appeal No. 499/2011, Sri. B. Veerappa, GA for
R1., Sri. P.S. Manjunath . Advocate for R2 in Writ Appeal No. 663/2011, Writ
Appeal No. 2108/2011, Writ Appeal No. 5791/2011, Writ Appeal No. 5792/2011,
Writ Appeal No. 2763/2011, Writ Appeal No. 2764/2011, Writ Appeal No.
2765/2011 and Writ Appeal No. 15543/2011 and Sri. O. Shivaram Bhat, for R2
and Sri B. Veerappa, GA for R1 in Writ Appeal No. 3865/2010, for the Respondent

Judgement

Nagarathna, J.—These appeals arise out of a common order dated 03/08/2010.
passed by the learned Single Judge in various writ petitions filed by the allottees
of sites in different layouts by Mysore Urban Development Authority (hereinafter,
referred to as "MUDA", for the sake of brevity). MUDA has filed certain appeals
being aggrieved by the direction of the learned Single Judge to execute the sale
deeds in favour of the petitioners (allottees), within a period of two months, on

satisfaction of the receipt of the entire allotment consideration, with 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 and also by the fact that the learned Single Judge has proceeded to issue the aforesaid directions on the premise that Rule 19 of the Karnataka Urban Development Authority (Allotment of Sites) Rules, 1991 (hereinafter, referred to as the "Allotment Rules, 1991", for the sake of brevity), has fallen into desuetude or become inoperative, by lapse of time.

2. The allottees have also filed writ appeals being aggrieved by the aforementioned direction issued by the learned Single Judge, directing MUDA to accept the price fetched in the auction of a comparable site if the said price is higher than the allotment price and the interest thereon.

3. The brief facts of the case are that the petitioners applied to MUDA for allotment of sites situated in various layouts in Mysore city. They had paid the initial deposit but had committed default in payment of balance site amount towards the allotment of sites. When they did not comply with demand notice issued by MUDA, the allotments were cancelled. It appears that the petitioners had sought for extension of time for making the balance payment but the same were turned down by MUDA. Therefore the petitioners assailed the cancellation of allotment and sought for re-allotment of the very same sites on acceptance of the balance consideration. It also transpires that the State Government had issued a letter dated 26/08/2005 (Annexure "H" to the writ petition), directing MUDA to receive from the allottees the belated payments by imposing a higher rate of interest or the price fetched in an auction whichever is higher on humanitarian basis. Accordingly, letter dated 04/03/2008 was issued by the State Government to MUDA to execute sale deeds in favour of 95 allottees who had paid sale consideration belatedly along with interest as a one-time measure. The contention of the petitioners before the learned single judge was that when 95 allottees were shown a concession of making belated payments along with interests and seeking re-allotment of the sites initially allotted in their names, the same should have been followed in so far as the petitioners are concerned, since Rule 19 of the said Rules had not been followed by the State Government in so far as 175 cases were concerned out of whom in respect of 95 allottees, the sites had been re-allotted.

4. The learned single Judge by applying the doctrine of desuetude, held that Rule 19 had been impliedly repealed and accordingly, granted relief to the petitioners in terms of the direction stated supra.

5. We have heard the learned counsel for parties.

6. On behalf of the MUDA, it is submitted that though a direction has been issued to it to execute sale deeds in favour of the petitioners, the said Authority would comply with the said directions but the learned single Judge could not have held that Rule 19 of the said Rules had been impliedly repealed by application of the

doctrine of desuetude. It is this portion of the order of the learned single Judge, which in substance has constrained MUDA to file these appeals.

7. Per contra, learned counsel appearing for the allottees/petitioners, have contended that learned single Judge was right in directing MUDA to execute the sale deeds in favour of the petitioners just as has been done in favour of 95 other allottees, as they are similarly placed but however, the belated price which has been fixed on the balance sital consideration at 18% for the 90 days and thereafter, till the date of payment or the price fixed in the auction for a comparable site, whichever is higher, in effect virtually withdraws the relief or concession that the State Government has granted by condoning the belated payments. Therefore, that portion of order requires to be set aside.

8. 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.

9. 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.

10. 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.

11. 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.

12. According to the Black's Law Dictionary, the expression "Desuetude", means lack of use; obsolescence 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.

13. Rule 19 of the Rules, reads as follows:

6. Substitution of rule-19:- 1) for Rule-19 the following shall be substituted, namely:-

(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) Every allottee shall construct a building on the site so allotted in accordance with the plans and designs approved by the Authority.

(3) The Authority may impose additional conditions in the lease -cum- sale deed as may be considered necessary.

(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) The allottee shall comply with the conditions of the agreement executed by him and the buildings and other bye-laws of the Authority or the Corporation, or the Municipality as the case may be for the time being in force.

(6) The allottee shall construct a building within a period of five years from the date of execution of the agreement or such extended period as the Authority may in any specified case by written order permit. If the building is not constructed within the said period the allotment may after reasonable notice to the allottee be cancelled, the agreement revoked, the lease determined and the allottee evicted from the site by the Authority and after forfeiting twelve and half percent of the value of the site paid by the allottee the Authority shall refund the balance to the allottee.

(7)

(1) On the expiry of a period of ten years from the date of the lease-cum-sale agreement and if the allotment has not been cancelled or the lease has not been determined in accordance with these rules or the terms of the agreement the Authority shall by notice call upon the allottee to get the sale deed of the site executed at his own cost within the time specified in the said notice.

(ii) If the allottee fails to get the sale deed executed within the time specified the Authority shall itself execute the same and recover the cost and other charges if any incidental thereto from the allottee.

(8) With effect from the date of taking possession of the site, the allottee or his legal heirs and successors shall be liable to pay the taxes, fees and cesses payable in respect of the site and any building erected thereon."

(9) If the particulars furnished by the applicant in the prescribed application form for allotment of site are found to be incorrect or false, the site value deposited shall be forfeited and the site shall be resumed by the Authority.

14. 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.

15. 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 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 dis-favour 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.

16. 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.

17. In the instant case, having regard to the fact that the State Government in its letter dated 04/03/2008 directed MUDA to execute sale deeds in favour of 95 allottees who had paid the sale consideration belatedly along with interest thereon, as a one-time measure, we are of the considered view that the said doctrine is not applicable to the facts of the present case, having regard to the factual matrix of these cases. Therefore it would be unnecessary for us to dialate as to whether the said doctrine is applicable in Indian jurisprudence or not. Suffice it to say that the said doctrine is not applicable in these cases and therefore, the learned single Judge was not right in observing that Rule 19 of the allotment Rules attracted the doctrine of desuetude. Therefore, we set aside that portion of the order also.

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 sital 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.