

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

WEDNESDAY, THE 14TH DAY OF SEPTEMBER 2022 / 23RD BHADRA, 1944

WP(C) NO. 18904 OF 2021

PETITIONER:

SUJITH LAL,
AGED 41 YEARS
S/O. SETHURAJAN,
T.C. 29/169,
ERAYIL HOUSE,
C. KESAVAN ROAD,
PALKULANGARA WARD,
PETTAH P.O.,
THIRUVANANTHAPURAM 695 025.

BY ADVS.
SMT.MINI GANGADHARAN
N.C.SAJUNAM
MS.R.SUDARSANA DEVI
MS.ASWATHI S. KUMAR

RESPONDENTS:

- 1 THE THIRUVANANTHAPURAM MUNICIPAL CORPORATION,
REP. BY ITS SECRETARY,
PALAYAM,
THIRUVANANTHAPURAM 695 033.
- 2 THE SECRETARY,
THIRUVANANTHAPURAM MUNICIPAL CORPORATION,
PALAYAM,
THIRUVANANTHAPURAM 695 033.
- 3 OFFICER IN CHARGE,
FORT ZONAL OFFICE, THIRUVANANTHAPURAM CORPORATION,
THIRUVANANTHAPURAM 695 023.
- 4 CORPORATION ENGINEER,
THIRUVANANTHAPURAM CORPORATION,
OFFICE OF THE CORPORATION ENGINEER,
THIRUVANANTHAPURAM 695 033.

5 **ADDL.R5.IMPLEADED**

THE REGIONAL TOWN PLANNING OFFICER/DISTRICT TOWN
PLANNER, LSGD, HOUSING BOARD BUILDING, SANTHINAGAR,
THIRUVANANTHAPURAM-695001.

(ADDL.RESPONDENT NO.5 IS IMPEADED A PER ORDER DATED
9-12-2021 IN IA 4/2021).

BY ADVS.

N.NANDAKUMARA MENON (SR.)

SHRI.P.K.MANOJKUMAR, SC, TVPM CORPORATION

SRI RAJEEV JYOTHISH GEORGE, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31.3.2022, THE COURT ON 14.9.2022 DELIVERED THE FOLLOWING:

T.R. RAVI, J.

W.P.(C)No.18904 of 2021

Dated this the 14th day of September, 2022

JUDGMENT

The petitioner owns 2.63 ares of property in Sy.No.903 of Petta Village. The petitioner submitted Ext.P1 application for a building permit on 14/8/2020 along with a plan providing for a proposed road widening of 12 metres. According to the petitioner, permissions have been granted in the neighbourhood, for construction of houses based on a proposed road widening of 12 metres. On 8/9/2020, the second respondent issued Ext.P2 notice to the petitioner, noting certain defects in the plan submitted. It is seen from Ext.P2 that Ext.P1 application has been received on 14/8/2020. On 15/9/2020, the petitioner submitted Ext.P3 revised plan after curing all the defects that are noted in Ext.P2. When there was no response from the respondents, the petitioner submitted Ext.P4 representation, the receipt of which is evidenced by Ext.P5 acknowledgment. The petitioner submits that the Roads Network published by the Trivandrum Development Authority stipulates clearance from the road for works and that the Chambakkada junction-Petta road is not

included in the published Master plan and that the place is not included in the Detailed Town Planning scheme as well. According to the petitioner, a 12 metre clearance from the road and a 2 metre building line alone is required in the area where he proposes to construct, as per the Kerala Municipal Building Rules, 2019. The petitioner has specifically pleaded that several persons have been granted the building permit for construction, treating the requirement as 12 metre clearance from the road. The details of such persons have also been stated in the writ petition. Ext.P6 produced is a building permit issued to one such person. The petitioner submits that he is being discriminated against and claims similar treatment. The petitioner had approached this Court earlier in W.P.(C)No.8576 of 2021, which was disposed of by Ext.P7 judgment directing the respondents to consider the revised plan and take a decision regarding the issuance of a building permit. The request for building permit has thereafter been rejected as per Ext.P8, which is titled as a notice, stating that as per the Master plan, the proposed widening for the road is 18 metres and hence the plan submitted, providing for proposed widening of 12 metres cannot be approved. The petitioner challenges Ext.P8 in this writ petition. Along with I.A.No.1 of 2021, the petitioner has produced Ext.P10 reply received from the Public Information Officer, which states that the Petta-Kaithamukku road (Kavaradi Road) is proposed to be widened to 12 metres and on

receiving administrative sanction, the marking of the land will be carried out. Ext.P10 is dated 25.9.2021. However, Ext.P11 which is a clarification issued by the Town Planner earlier on 19.2.2021 says that as per the Sanctioned Master Plan, the proposal is for an 18 metre widening.

2. A counter affidavit has been filed by the 1st respondent stating that the Regional Town Planner has clarified that the widening is for 18 metres and hence the plan which provides only for 12 metre widening cannot be considered for grant of building permit. The 5th respondent Town Planner has also placed a statement on record stating that as per the Thiruvananthapuram Master Plan sanctioned vide GO(Rt) 921/71/LAD dated 21.6.1971, the widening proposal is 18 metres.

3. Heard Adv.Smt.Mini Gangadharan on behalf of the petitioner, Sri N.Nandakumara Menon, Senior Advocate instructed by Advocate Sri P.K.Manoj Kumar on behalf of respondents 1 to 4, and Sri Rajeev Jyothish George, Government Pleader on behalf of the 5th respondent.

4. The only question that needs to be considered is whether the respondents are justified in denying the petitioner a building permit since there is a proposal for widening of the Petta-Kaithamukku road to 18 metres width as per the sanctioned Master

plan of 1971. It is an admitted fact that for the past 41 years after the sanctioning of the Master Plan on 21.6.1971, there has been no such widening undertaken. Though Ext.P11 issued by the Town Planner says that the proposed widening is for 18 metres, a later communication Ext.P10 from the office of the Assistant Executive Engineer, PWD, City Roads Division says that the existing proposal is for widening the road to 12 metres and that landmarking will be done on receipt of administrative sanction. This Court has frowned upon such schemes which have become redundant and unworkable. The case on hand is very similar. A proposal for widening made in 1971 is cited as a reason for rejecting an application for building permit. The petitioner has specifically pleaded that several persons in the neighbourhood have been issued building permits treating the proposed widening as 12 metres. Ext.P12 plan based on which a building permit was issued to one M.P.Asha, for construction on the side of the Kavaradi Road, clearly shows that it has been prepared showing the proposed widening as 12 metres. The permit was granted in the year 2019, at a time when the very same restriction stated in the case of the petitioner existed. The respondents have not denied the specific averments regarding the grant of permit to several others on the side of the very same road, treating the proposed widening as 12 metres.

5. In **Monnet Ispat & Energy Ltd. v. Union of India, [(2012) 11 SCC 1]**, the Hon'ble Supreme Court considered the applicability of the doctrine of desuetude in Indian jurisprudence. The Apex Court considered the earlier decision in **State of Maharashtra v. Narayan Shamrao Puranik [(1982) 3 SCC 519]**, the decision of Scrutton, L.J. in **R. v. London County Council, Ex P Entertainments Protection Assn. Ltd. [(1931) 2 KB 215 (CA)]** and the view of renowned author Allen in *Law in the Making*. It was noted that the rule concerning desuetude has always met with general disfavour and that a statute can be abrogated only by express or implied repeal and cannot become inoperative through obsolescence or by lapse of time.

6. In **Bharat Forge Co. Ltd. [(1995) 3 SCC 434]**, after referring to several authorities on the subject, the Hon'ble Supreme Court held that though in India the doctrine of desuetude had not been used to hold in favour of the repeal of any Statute, there can be no objection in principle to apply the doctrine to our Statutes as well. The reason stated was that a citizen should know whether, despite a Statute having been in disuse for a long duration and instead a contrary practice being in use, he is still required to act as per the "dead letter". The Court took the view that it would advance the cause of justice to accept the application of the doctrine of desuetude

in our country also and that a new path is required to be laid and trodden. In **Cantonment Board, Mhow v. M.P. SRTC [(1997) 9 SCC 450]**, the Hon'ble Supreme Court held that to apply the principle of desuetude it was necessary to establish that the Statute in question had been in disuse for long and the contrary practice of some duration has evolved. On facts the Court held that the doctrine of desuetude had no application. In **Monnet Ispat (supra)** the Hon'ble Supreme Court summarised the law in paragraph 201 which is extracted below.

"201. From the above, the essentials of the doctrine of desuetude may be summarised as follows:

(i) The doctrine of desuetude denotes a principle of quasi-repeal but this doctrine is ordinarily seen with disfavour.

(ii) Although the doctrine of desuetude has been made applicable in India on few occasions but for its applicability, two factors, namely, (i) that the statute or legislation has not been in operation for a very considerable period, and (ii) the contrary practice has been followed over a period of time must be clearly satisfied. Both ingredients are essential and want of any one of them would not attract the doctrine of desuetude. In other words, a mere neglect of a statute or legislation over a period of time is not sufficient but it must be firmly established that not only the statute or legislation was completely neglected but also the practice contrary to such statute or legislation has been followed for a considerably long period."

7. In the case on hand, this Court is not concerned with a Statute falling into disuse. The question is whether the proposal in

the sanctioned Town Planning Scheme for widening a road to 18 metres, which had not been carried out for the past more than 40 years, should be allowed to be used as a reason for denying permission for the construction of a building. In other words, the question is whether the Town Planning Scheme to that extent has become obsolete. If the doctrine of desuetude can be applied in the case of Statutes, there is no reason why it should not be applied in the case of a scheme that is prepared under the provisions of a Statute relating to Town Planning. The only aspect to be looked into is whether the two conditions for the application of the doctrine are satisfied. Admittedly, even after 40 years, the road has not been widened to 18 metres width. At the same time, the reply received from the Public Works Department shows that at present the proposal that is being considered is widening the road to a width of 12 metres. It is also in evidence that the restriction for construction within 18 metres was not followed for the past 40 years and on the contrary, persons have been permitted to effect construction by applying the restriction to only 12 metres. Both the conditions for the application of the doctrine thus stand satisfied.

8. The writ petition hence stands allowed. Ext.P8 notice is quashed. There will be a direction to the respondents to reconsider the application for building permit submitted by the petitioner along with Ext.P3 revised plan and pass orders on the same, after hearing

the petitioner. The permit shall not be denied for the reason that the plan does not provide for 18 metres of road widening. The petitioner shall be permitted sufficient opportunity to cure any other defects in the application. Necessary orders shall be issued at the earliest, at any rate within two months from the date of receipt of a copy of this judgment.

Sd/-

T.R. RAVI
JUDGE

dsn

APPENDIX OF WP(C) 18904/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE PHOTOCOPY OF APPLICATION FOR BUILDING PERMIT DATED 14.08.2020.
- Exhibit P2 TRUE COPY OF NOTICE DATED 8.09.2020 ISSUED BY THE 4TH RESPONDENT STATING THE ACCEPTANCE OF APPLICATION FOR BUILDING PERM,IT DATED 14.08.2020 NOTING THE DEFECTS.
- Exhibit P3 TRUE COPY OF REVISED PLAN SUBMITTED BY THE PETITIONER BEFORE THE CORPORATION FOR GETTING BUILDING PERMIT.
- Exhibit P4 TRUE COPY OF APPLICATION DATED 16.12.2020.
- Exhibit P5 TRUE COPY OF RECEIPT DATED 16.12.2020 ISSUED BY RI.
- Exhibit P6 TRUE COPY OF APPROVED BUILDING PERMIT GIVEN TO MRS. ASHA BY THE SIDE OF THE SAME ROAD WITH PROPOSED ROAD WIDENING OF 12.25 METERS.
- Exhibit P7 TRUE COPY OF THE CERTIFIED COPY OF JUDGMENT DATED 20.04.2021 IN WPC NO. 8576/2021.
- Exhibit P8 TRUE COPY OF NOTICE DATED 24.08.2021 ISSUED TO HE PETITIONER DISAPPROVING HIS REVISED BUILDING PLAN.
- Exhibit P9 TRUE PHOTOCOPY OF APPLICATION DT.20.9.3032 SUBMITTED BY THE PETITIONER BEFORE THE INFORMATION, CITY ROADS SUB DIVISION, PUBLIC WORKS DEPARTMENT
- Exhibit P10 TRUE COPY OF THE REPLY DT.25.9.2021 RECEIVED FROM THE INFORMATION OFFICER, OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER, PWD CITY ROADS SUB DIVISION, THIRUVANANTHAPURAM.
- Exhibit P11 TRUE COPY OF REPLY DT.19.2.2021 ISSUED TO THE PETITONER FROM THE TOWN PLANNER, OFFICE OF THE DISTRICT TOWN PLANNER, LSGD, HOUSING BOARD BUILDING, SANTHI NAGAR, THIRUVANANTHAPURAM.
- Exhibit P12 TRUE COPY OF THE APPROVED BUILDING PERMIT FOR ASHA.M.P WITH 12 METER ROAD WIDENING SHOWING THE DATED OF APPROVAL AS 3.4.2019
- Exhibit P13 TRUE COPY OF PART OF THE COMPLETION PLAN FOR ASHA.M.P SHOWING DATE AS 19.12.2019