

**2022 LiveLaw (SC) 882**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
M.R. SHAH; KRISHNA MURARI; JJ.  
OCTOBER 14, 2022**

**Kerala Land Reforms & Development Co-operative Society Limited  
versus  
The District Registrar (General) & Another**

**Kerala Cooperative Societies Act, 1969; Section 40(1)(a) - A member of the society executing the document in his own capacity or in the capacity of a Guardian or a minor shall not be entitled to the benefit of remission of stamp duty - The benefit is available only in respect of instruments executed by or on behalf of a society or by an officer or member thereof and instrument so executed should be relating to the business of the society. (Para 8-9)**

CIVIL APPEAL NO. 6588 OF 2015 WITH CIVIL APPEAL NO. 6830 OF 2022 CIVIL APPEAL NOS.6831-6832 OF 2022 CIVIL APPEAL NO. 6833 OF 2022 CIVIL APPEAL NOS.6834-6836 OF 2022 CIVIL APPEAL NO. 6837-6838 OF 2022

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**J U D G M E N T**

**M.R. SHAH, J.**

1. As common questions of law and facts arise in this group of appeals, all these appeals are decided and disposed of together by this common judgment and order.
2. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) passed by the Full Bench of the High Court of Kerala at Ernakulam, by which the Full Bench of the High Court has held that,
  - i) the benefit of remission of stamp duty is available only in respect of instruments executed by or on behalf of a society or by an officer or member thereof and instrument so executed should be relating to the business of the society; and
  - ii) the benefit of remission can be claimed by the society only if, but for such remission, the society, an officer, or the member, as the case may be, would have been liable to pay such stamp duty, the Kerala Land Reforms & Development Cooperative Society Limited, Federal House Construction Cooperative Society Limited & Another, N.B. Krishna Kurup and Others, Aluva Town Cooperative Housing Society and the Central Excise & Custom Officers Housing Cooperative Society Limited have preferred the present appeals.
3. The particulars of each appeal(s) are as under:

ITEM NO.	CASE NUMBER	CAUSE TITLE	APPELLANT(S)	TRANSACTION INVOLVED
101	C.A. No. 6588/2015	KERALA LAND REFORMS & DEVELOPMENT	Co-operative Society	Sale deed executed by the 'A' Class

		COOPERATIVE SOCIETY LTD. VERSUS DISTRICT REGISTRAR (GENERAL) AND ANR		Members of the Society in favour of the Society.
101.1	C.A. No. 6830/2022	KERALA LAND REFORMS VERSUS THE DISTRICT REGISTRAR (GENERAL) AND ANR.	Co-operative Society	Sale deed executed by the 'A' Class Members of the Society in favour of the Society
101.2	C.A. No. 6831-6832/2022	FEDERAL HOUSE CONSTRUCTION CO-OP SOCIETY LTD & ANR VERSUS STATE OF KERALA	Appellant 1. – Co-operative Society Appellant 2. – Member of the Co-op Society	Sale deed executed by the Society in favour of the member (Appellant No. 2) of the Society (Appellant No. 1).
101.3	C.A. No. 6833/2022	N.B. KRISHNA KURUP AND ORS VERSUS DISTRICT REGISTRAR (GENERAL) KALPETTA AND ORS	Members of the Co-operative Society (Including the Impleaders)	Sale deeds executed by the Society in favour of the members of the Society.
101.4	C.A. No. 6834-6836/2022	ALUVA TOWN COOPERATIVE HOUSING SOCIETY VERSUS THE SUB REGISTRAR ERNAKULAM AND ORS	Co-operative Society	Sale deeds executed by the Society in favour of the members of the Society
101.5	C.A. No. 6837-6838/2022	THE CENTRAL EXCISE AND CUSTOMS OFFICERS HOUSING COOPERATIVE SOCIETY LTD VERSUS THE STATE OF KERALA AND ORS	Co-operative Society	Sale deeds executed by the Society in favour of the members of the Society.

**4.** The facts leading to the present appeals in a nutshell are as under:

Section 35 of the Travancore-cochin Co-operative Societies Act, 1951 (hereinafter referred to as the 'Travancore Act, 1951') provided that the Government, by notification in the gazette, may in the case of any society or class of societies, remit the stamp duty with which, under any law for the time being in force, instruments executed in favour of or by or on behalf of a society or by an officer or member and relating to the business of such society or any class of such instruments or awards of the Registrar or Arbitrators under the Act are respectively chargeable.

A similar provision was made under the Madras Co-operative Societies Act, 1932 (hereinafter referred to as the 'Madras Act, 1932') as per section 30(2) of the said Act.

4.1 In exercise of the powers conferred under the Travancore Act, 1951 and Madras Act, 1932, the Government of Kerala by SRO No. 75/1960 dated 08.10.1960, directed that in respect of a co-operative society registered in the State, the whole stamp duty with which under the Kerala Stamp Act, 1959 instruments executed by or on behalf of any registered

co-operative society or instruments executed by officer of such society or member in his own capacity or/and in the capacity of a Guardian of minor and relating to the business thereof and decisions, award or orders of the Registrar or the Arbitrators under the said Cooperative Societies Act, there shall be remission of stamp duty. Clause 1(a) of SRP No. 75/60, which is relevant for determination of the issue in question, reads as under:

“1. The stamp duty, registration fees and fees for Encumbrance Certificate payable under the Stamp Act and the Registration Act in force in the State shall be remitted to the Co-operative Societies, in the following cases to the extent indicated in each case.

(a) The whole stamp duty with which under the Kerala Stamp Act, 1959 (Act 17 of 1959) instruments executed by or on behalf of any registered Co-operative Society or instruments executed by “any officer of such Society or member in his own capacity or/and in the capacity of a guardian of minor” and relating to the business thereof and decisions, awards or orders of the Registrar or the arbitrators under the said Cooperative Societies Act.”

4.2 By the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the ‘Kerala Act, 1969’), which came into force on 15.05.1969, the Travancore Act, 1951 and the Madras Act, 1932 came to be repealed. Section 110 of the Kerala Act, 1969 deals with Repeal and Savings, which reads as under:

“**110. Repeal and Savings** – The Madras Co-operative Societies Act, 1932 (VI of 1932), as in force in the Malabar District referred to in subsection (2) of S.5 of the State Reorganization Act, 1956 (Central Act 37 of 1956) and the Travancore-Cochin Co-operative Societies Act, 1951 (X of 1952) are repealed.

(2) Notwithstanding the repeal of the Madras Co-operative Societies Act, 1932 and the Travancore-Cochin Co-operative Societies Act, 1951 and without prejudice to the provisions of Ss.4 and 23 of the Interpretation and General Clauses Act, 1125 (VII of 1125).

(i) all appointments, rules and orders made, notifications and notices issued, and suits and other proceedings instituted, under any of the Acts hereby repealed shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act;

(ii) any society existing in the state on the date of commencement of this Act which has been registered or deemed to be registered under any of the aforesaid repealed Acts shall be deemed to be registered under the Act, and the bye-laws of such society shall, so far as they are not inconsistent with the provisions of this Act, continue in force until altered or rescinded.”

4.3 Section 40 of the Kerala Act, 1969 provides for remission of stamp duty, which reads as under:

“**40. Exemption from certain taxes, fees and duties** –

(1) The Government may, by notification in the Gazette, remit in respect of any class of societies-

(a) the stamp duty chargeable under the Kerala Stamp Act, 1959 (17 of 1959), in respect of any instrument executed by or on behalf of a society or by an officer or member thereof and relating to the business of such society, or any class of such instruments, or in respect of any award or order made under the Act, in cases where, but for such remission the society, officer or member, as the case may be, would be liable to pay such stamp duty.”

4.4 The respective appellants herein were denied the benefit of remission of stamp duty considering Section 40 of the Kerala Act, 1969, more particularly the last part of the Section which provides that remission is available only in cases where, but for such remission, the society, officer or member, as the case may be, would be liable to pay such stamp duty. It was the case on behalf of the appellants that with respect to sale deeds in question, the appellants shall be entitled to remission of stamp duty. As per clause 1(a) of SRO 75/60 and as per Section 110(2) of the Kerala Act, 1969, notwithstanding the repeal

of the Travancore Act, 1951 and the Madras Act, 1932, all notifications under the repealed Acts shall be deemed to have been respectively made, issued and instituted under the Kerala Act, 1969. The matter reached up to the Full Bench of the High Court. On interpretation of the relevant provisions of the Kerala Act, 1969 and on interpretation of Section 110(2) of the Kerala Act, 1969 (repealed provision), the Full Bench of the High Court has answered the reference as under:

“(1) SRO No. 75/60 issued under section 35 of the TC Act and section 30 of the Madras Act is saved by virtue of section 110(2) of the Kerala Act only to the extent it is not inconsistent with the provisions of the Kerala Act.

(2) SRO No. 75/60 should be understood within the limitations of sections 110(2) and 40(1)(a) of the Kerala Act.

(3) The benefit of remission of stamp duty is available only in respect of instruments executed by or on behalf of a society or by an officer or member thereof and instrument so executed should be relating to the business of the society.

(4) The benefit of remission can be claimed by the society only if, but for such remission, the society, an officer or the member as the case may be, would have been liable to pay such stamp duty.”

Hence, the present appeals.

5. Shri Gopal Sankaranarayanan, learned Senior Advocate and S/Shri Haris Beeran, K. Rajeev and R. Nedumaran, learned counsel have appeared on behalf of the respective appellants and Shri Jayanth Muthraj, learned Senior Advocate has appeared on behalf of the respondents.

5.1 Learned counsel appearing on behalf of the appellants have vehemently submitted that the Full Bench of the High Court has erred in holding that on the sale deeds in question executed by the members of the society in favour of the society and the respective sale deeds executed by the society in favour of its members respectively, there shall not be any remission of stamp duty.

5.2 Learned counsel appearing on behalf of the appellants have vehemently submitted that in view of Section 110(2) of the Kerala Act, 1969, the notifications issued under the Travancore Act, 1951 and the Madras Act, 1932 are saved and they are deemed to have been issued under the Kerala Act, 1969. It is submitted that therefore SRP No. 75/60 which was issued in exercise of powers conferred under the Travancore Act, 1951 and the Madras Act, 1932, which provides for remission of stamp duty on the instruments executed by the co-operative society or executed by a member in favour of the society, shall be applicable and therefore on the instruments/sale deeds in question, there shall be remission of stamp duty.

5.3 It is also submitted on behalf of the appellants that in the instruments/sale deeds in question, it is specifically provided that the liability to pay the stamp duty would be upon the society and therefore also and considering the relevant provisions of the Kerala Act, 1969, there shall be remission of stamp duty.

5.4 It is further submitted that denying the remission of stamp duty paid on the instruments/sale deeds in question would defeat the object and purpose of providing the exemption from payment of stamp duty with respect to society.

5.5 Making the above submissions, it is prayed to hold that on the instruments/sale deeds in question executed either by the members of the society in favour of the society

(Civil Appeal Nos. 6588/2015 & 6830/2022) and the sale deeds executed by the society in favour of its respective members (rest of the civil appeals), there shall be remission of stamp duty as per clause 1(a) of SRO No. 75/60.

6. While opposing the present appeals, Shri Jayanth Muthraj, learned Senior Advocate has vehemently submitted that on true interpretation of Section 110(2) of the Kerala Act, 1969 and having found that the Travancore Act, 1951 and the Madras Act, 1932 and SRO 75/60 issued in exercise of powers under the aforesaid Acts are not saved as they are inconsistent with the provisions of the Kerala Act, 1969 (Section 40 of the Kerala Act, 1969).

6.1 It is submitted that as per SRO 75/60, the instruments executed by or on behalf of any registered co-operative society; instruments executed by officer of such society and instruments executed by a member in his own capacity or/and in the capacity of a Guardian of minor and relating to the business thereof, there shall be remission of stamp duty. It is submitted that however so far as the Kerala Act, 1969 is concerned, as per Section 40 thereof, on the instruments executed by or on behalf of a society or by an officer or member thereof and relating to the business of such society and only in cases where, but for such remission, the society, officer or member, as the case may be, would be liable to pay such stamp duty, there shall be remission of stamp duty. It is submitted that as per Section 40 of the Kerala Act, 1969, there shall not be any remission of stamp duty in case any instrument is executed by a member in his own capacity or/and in the capacity of a Guardian of a minor, which was there in SRO 75/60. It is submitted that as per Section 30 of the Kerala Stamp Act, the payment of stamp duty is exempted in respect of documents/sale deeds/instruments executed by or on behalf of a co-operative society. It is submitted that therefore when the society is not liable to pay the stamp duty, there is no question of any remission of stamp duty. It is submitted that therefore the respective appellants shall not be entitled to remission of stamp duty on the instruments/sale deeds in question.

7. We have heard learned counsel for the respective parties at length.

The appellants herein are claiming remission of stamp duty on the respective instruments/sale deeds, the particulars of which are reproduced hereinabove. In two cases, the sale deeds are executed by the members in favour of the society and in rest of the cases, the sale deeds are executed by the society in favour of respective members. The respective appellants are claiming the benefit of remission of stamp duty under clause 1(a) of SRO 75/60. It is the case on behalf of the appellants that despite the repeal of the Travancore Act, 1951 and the Madras Act, 1932, SRO 75/60 which was issued under the aforesaid Acts is saved. However, as rightly interpreted and held by the Full Bench of the High Court, the notification issued under the repealed Acts shall be saved to the extent "so far as may be". Therefore, on true interpretation of Section 110(2) of the Kerala Act, 1969, the provisions of the repealed Acts and/or the notifications and/or orders issued under the repealed Acts is/are saved and/or deemed to have been issued under the Kerala Act, 1969 to the extent the same is not at variance or inconsistent with the provisions of the Kerala Act, 1969. The following chart would demonstrate to what extent clause 1(a) of SRO 75/60 is inconsistent with Section 40 of the Kerala Act, 1969:

S.R.O. No. 75 of 1960 clause 1(a)	Kerala State Co-Operative States Act 1969 Sec. 40
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1.	instruments executed by or on behalf of any registered Co-operative Society;	1.	instrument executed by or on behalf of a Society
2.	instruments executed by any officer of such society.	2.	by an officer or member thereof
3.	Instrument executed by a member in his own capacity or/and in the capacity of a guardian of minor.	3.	_____
4.	relating to the business thereof.	4.	relating to the business of such society
5.	_____		in cases where, but for such 11 remission the society, officer or member, as the case may be, would be liable to pay such stamp duty;

**8.** From the aforesaid, it is apparent that the instruments executed by a member in his own capacity or/and in the capacity of a Guardian of a minor, which was there in clause 1(a) of SRO 75/60 is missing insofar as Section 40 of the Kerala Act, 1969 is concerned. Section 40 of the Kerala Act, 1969 further provides that only in cases where, but for such remission the society, officer or member, as the case may be, would be liable to pay such stamp duty. As per Section 40 (1)(a), the stamp duty chargeable under the Kerala Act, 1959 in respect of any instrument executed by or on behalf of a society or by an officer or member thereof and relating to the business of such society..... and in cases where, but for such remission the society, officer or member, as the case may be, would be liable to pay such stamp duty, there shall be remission of stamp duty. Thus, as clause 1(a) of SRO 75/60 is inconsistent with the relevant provisions of the Kerala Act, 1969, more particularly Section 40 thereof, the said order is not saved and cannot be said to be deemed to have been issued under the Kerala Act, 1969 (Section 110(2) of the Kerala Act, 1969) as has been contended on behalf of the appellants. Therefore, considering the express provision contained in Section 40(1) (a) of the Kerala Act, 1969, a member of the society executing the document in his own capacity or in the capacity of a Guardian or a minor shall not be entitled to the benefit of remission of stamp duty.

**9.** In view of the above and for the reasons stated above, the appellants herein shall not be entitled to the benefit of remission of stamp duty on the instruments/sale deeds in question. Such instruments/sale deeds in question cannot be said to be executed by or on behalf of a society or by an officer or member thereof relating to the business of the society. We are in complete agreement with the view taken by the Full Bench of the High Court.

**10.** Under the circumstances, all these appeals fail and the same deserve to be dismissed and are accordingly dismissed. However, there shall be no order as to costs.