

Karnataka High Court

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Dattaprasad Co-Operative ... vs State Of Karnataka on 17 March, 2003

Equivalent citations: ILR 2004 KAR 1892, 2004 (3) KarLJ 310

Author: V G Gowda

Bench: V G Gowda

ORDER

V. Gopala Gowda, J.

1. The petitioners are the registered Co-operative Housing Societies under the provisions of the Karnataka Co-operative Societies Act, 1959 and the Karnataka Co-operative Societies Rules, 1960 (for short, hereinafter called as 'KSC Act' and 'KCS Rules' respectively). They are aggrieved of the amendment to Section 38 by inserting proviso to the KCS Act by Act No. 6 of 2001. They have filed these petitions seeking for issuance of writ of certiorari to strike down Section 5 of the Karnataka Act No. 6 of 2001, by inserting the proviso to Section 38 of the KCS Act contending that the same is unconstitutional and further sought for such other directions or direction of this Court that it may deem fit to grant in the facts and circumstances of case.

2. Certain necessary and relevant facts and the legal contentions urged by the petitioners are adverted to in this judgment for the purpose of considering and answering the points that would arise in these petitions by this Court.

3. It is the case of the petitioners that unamended provision of Section 38 of the KCS Act has exempted the Co-operative Societies from the application of provisions of Section 17(1)(b) and (c) of the Indian Registration Act, 1908 (hereinafter referred to as the 'Registration Act') for compulsory registration of the documents and payment of stamp duty and registration fee as provided under the provisions of the Karnataka Stamp Act, 1957 and Registration Rules (in short, called as 'Stamp Act and Rules'). The provisions of unamended Section 38 of the KCS Act verbatim incorporated from Section 27 of the Central Co-operative Societies Act, 1912 (hereinafter referred to as the 'Central Act'). The provisions exempts applicability of the aforesaid provisions of the Registration Act, Stamp Act and Rules. It is further stated by them that the aforesaid provisions of the Registration Act and Stamp Act are exempted in all the States throughout the Country with regard to the registration and payment of stamp duty and registration fee upon the deeds to be executed by either Societies or on their behalf. Further, stated that Section 17(2)(iii) of the Registration Act itself gives such exemption to joint stock companies registered under the Indian Companies Act, 1956 from registering and payment of the stamp duty and registration fee to the conveyance deeds.

4. The aforesaid relevant provisions of the Registration Act and Stamp Act are exempted its applicability to the Co-operative Societies by virtue of Section 38 of the KCS Act to the Co-operative Housing Societies in metropolitan cities, where acute housing problem is being faced. Further, it is stated that as early as in the year 1940, several housing Co-operative Societies were formed in Mumbai, Ahmedabad etc. Large number of people with limited means were able to have flats for their residences. Subsequently, the movement attracted the people of other cities living in flats owned by Co-operative Housing Societies by becoming their members is a common feature in cities and metropolitan areas. In recent years, Co-operative Movement has extended to Banking, Farming Industries, Sugar Industries, Milk Ferations, Consumer products.

5. Petitioners have stated that the Co-operative Housing Societies are mainly two types:

(1) Societies which acquire the lands, forms the layouts and sell the sites. The activities of these Societies are analogous to Bangalore Development Authority or Urban Development Authority. The members become the owners of the property and their rights, title and interest are transferable and the Society does not come into picture.

(2) Second category of Societies are described by Judicial pronouncements as 'Tenant Co-partnership Societies'. In these Societies, land is owned by the Society, upon which houses are constructed by the Society for the benefit of its members. The Society allots the shares to members and the incident of allotment or transfer of shares is enjoying the privilege of occupation of the apartment/flat. There is no transfer of any part of immovable properties which vests in the Society. However, transfer of shares creates interest in the apartment attached to the shares. Such transfer is exempt from registration under Section 38 of the Act. Similar provisions under the Maharashtra Co-operative Societies Act (Section 41 and Gujarath Co-operative Societies Act (Section 42) are construed to be covered by the exemption to registration under Section 17(1)(b) or (c) of the Registration Act.

6. The petitioners claim that they are all of both the categories. The lands and buildings vest in the Society only, at all times and therefore they need not register the conveyance deeds by paying stamp duty and registration fee upon such documents when they execute the same in favour of its members or any other persons.

7. It is further stated that the proviso to Section 38 of the KCS Act, by way of amendment to the Act, leads to a deviation for the first time in respect of the Housing Co-operative Societies from withdrawing the exemption of the application of the provisions of the Registration Act and Stamp Act to the said Societies. Statement of objects and reasons for introduction of the Bill before the State Legislature does not throw any light on the amended proviso with regard to its intentment and objects in inserting the impugned proviso. It reads as follows:

'To give effect to the proposals made in the Budget Speech, it is considered necessary to amend the Karnataka Stamp Act, 1957 and the Karnataka Co-operative Societies Act, 1959'.

8. It is further stated by the learned Counsel Mr. S.G. Bhat that there was certain procedural irregularities in inserting the proviso to Section 38 by way of amendment by the State as it has circumvented the legislative procedure and the State Legislature has targeted only the Housing Co-operative Societies in the State which amounts to hostile discrimination and further stated that the amendment to Section 38 introduced a new classification of Co-operative Societies by excluding the petitioners-Societies from the exemption granted earlier under the unamended provisions of Section 38 of the Act with regard to application of the provision of the Registration Act and Stamp Act and Rules, which action of State Legislature amounts to step motherly treatment to these petitioners. It is further urged that there is no rational basis for the classification of the Co-operative Housing Societies as distinct and separate from other Co-operative Societies. All Co-operative Societies own immovable properties and they are entitled to own the same as they being corporate bodies. Therefore, it is stated that allotment of shares or transfer of shares in favour of its members necessarily create interest upon them in the immovable properties. When exemption for registration and payment of stamp duty on the conveyance deeds and registration fee under the relevant Rules framed under the Stamp Act for registration of the conveyance deeds either in favour of its members, the question of abusing the said provisions of the Act or evading to pay the stamp duty and registration fee by them do not arise. Further, it is stated that joint stock Company in tenant co-partnership Co-operative Societies, its immovable properties vests with them, but nonetheless every member of such Society necessarily has right over such property.

9. It is farther stated that amendment to Section 38 to the KCS Act is repugnant to Section 27 of the Central Act. In support of this submission, the learned Counsel for the petitioners, Sri S.G. Bhat has placed reliance upon the judgment of the Supreme Court in case of M. Karunanidhi v. Union of India, and also further urged that the impugned amended proviso is arbitrary, discriminatory which is violative of Article 14 of the Constitution of India as the petitioners-Societies have been differently classified and treated as they are not eligible for exemption for payment of stamp duty and registration fee in transferring their immovable property in favour of its members by executing conveyance deeds, in support of this contention he has placed reliance upon the following decision in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust v. State of Tamil Nadu and Ors., Therefore, it is urged that the withdrawal of

exemption granted earlier in favour of petitioners-Societies under unamended proviso of Section 38 is a benefit conferred upon them, though it is not a right even in respect of granting benefit, the State shall not make any discrimination between one kind of shareholders to another. Therefore, there is absolutely no rational nexus in classification of petitioners-Housing Co-operative Societies and other Societies by the State by inserting the impugned proviso to the above said section of the Act as the same is opposed to intendment of incorporating the Co-operative Societies under Section 2(c) of the KCS Act. In support of the aforesaid submission, learned Counsel for the petitioners has placed reliance upon the judgments of the Supreme Court in case of State of Andhra Pradesh and Anr. v. Nalla Raja Reddy and Ors., and State of Maharashtra v. Manubhai Pragaji Vashi and Ors., and he has also placed reliance upon the two judgments of the Bombay High Court in cases of Hanuman Vitamins Foods Private Limited and Ors. v. State of Maharashtra and Anr., 1991 Co-op. Cases 1 (Bom ) and Usha Arvind Dongre v. Suresh Raghunath Kotwal., 1991 Co-op. Cases 549 (Bom.) He has also placed reliance upon the judgment of this Court in case of Proposed Dharwad District Ex-servicemen's Co-operative Society Limited, Hubli v. State of Karnataka. and Gujarath High Court in case of

Mulshanker Kunverji Gor and Ors. v. Juvansinhji Shivubha Jadeja., In support of the proposition that, under Section 9 of the KCS Act, the petitioners are the bodies of corporation have got a right to hold property and therefore, there is no legal statutory obligation for them to transfer its property either in favour of its members or other persons.

10. The State Government has filed its detail statement of counter along with certain documents and also filed memo dated 31-1-2003 by producing Xerox copies of possession certificate, transfer agreement and also filed Xerox copy of the statement of objections filed on behalf of the respondents in W.P. No. 39921 of 2001 and document produced as Annexure-R1, wherein it contains news bulletin and also extracts of advertisements made by some of the petitioners in the Deccan Herald daily newspaper under the Deccan Herald classifieds, dated 28-1-2001 and Times of India dated 31-5-2001 and the Xerox copies of the deeds of transfer executed by some of the members of the petitioners. In the statement of objections, the State Government has stated that Section 38 of the KCS Act is exactly on the lines of Section 27 of the Central Act. It has been specifically stated at para 2 of the counter-statement to that effect. The above said provision of Section 38 was incorporated to encourage co-operative activities in the State by giving exemption to them for registration of documents, transfer of shares creating title and interest in immovable property in favour of the transferees. Further, it is stated that the provision of Section 27 of the Central Act on which basis proviso to Section 38 was incorporated to the KCS Act would not prevent the State Legislature to have re-look to the provision in question and amend it, if, the situation demands. Further, it is stated that proviso to aforesaid provision was incorporated in the Karnataka Stamp Act and Certain Other Law (Amendment) Act, 2001 with a view to give effect to the proposal made in the Budget Speech by the Chief Minister for the year 2001-02. The synopsis of the Chief Minister extracted from para 213 of the Budget Speech is stated as hereunder:

"Para 213 of the Budget Speech of the Chief Minister dated 26th March, 2001 presented before the State Legislature explains clearly the object of amendment made to Section 38 by inserting proviso".

11. It is further stated that benefit of exemption granted in favour of the petitioners-Societies and other similarly placed Societies under Section 38 of the KCS Act were being misused by some of the House Building Co-operative Societies by making a person buying the immovable property from the House Building Co-operative Societies as shareholders of the Society, but not registering the conveyance deeds by paying stamp duty and registration fees as required in law, thus there was a huge loss of revenue to the State Government as a result of which the earlier grant of such exemption under the provision of section has been explained inserting the proviso. Therefore, it was considered necessary by the State Government to amend Section 38 by inserting impugned proviso by clarifying the exemptions in respect of the instruments, which intended to transfer the right, title or interest in respect of the immovable properties executed by them or in favour of the House Building Societies. Further, it is asserted by the State that there was no irregularity in the procedure in presenting the Bill and passing the same by the State Legislature. The said contention is in view

of Clause (1) of Article 212 of the Constitution of India which provides that the validity of any proceedings in the Legislature of a State shall not be called in question in the Court of Law on the ground of alleged irregularity of procedure followed by it.

12. Further, it is contended by learned Government Pleader Smt. Shobha Patil that in view of Clauses (b) and (c) of Section 17(1) and Section 17(2) of the Registration Act granting exemption in favour of the Co-operative Societies under the Act, in respect of certain documents from compulsory registration as specified in Sub-section (1) under the above said provision and Section 38 of the KCS Act adds three more exemptions by granting such exemptions. Therefore, the provision of Section 38 of the Act has become inconsistent with the provision of Section 17 of the Registration Act. Therefore, the impugned proviso was incorporated to Section v of the KCS Act by the State, which is consistent with the provision of Section 17 of the Registration Act, which inconsistency of the provision of Section 38 of the KCS Act was removed by way of amendment in respect of execution and registration of certain documents by or on behalf of the Housing Co-operative Societies as the above said provision created repugnancy. But, on the other hand, the existing inconsistency between the Registration Act, Stamp Act, 1957, to that of Section 38 of the KCS Act are removed. Therefore, it is stated by the respondent-State that there is no merit in the legal contentions urged in the writ petitions by their learned Counsels.

13. It is further stated that the transfer of property and registration of documents falls under the Entry 6 of List II of the Seventh Schedule of the Constitution, Rates of stamp duty payable in respect of documents other than those specified in List I falls under Entry 63 of List II and incorporation of Co-operative Societies falls under Entry 32 of List II of the Seventh Schedule. Therefore, it is stated by the respondents that the State Legislature is competent to amend the provision of Section 38 of the KCS Act by inserting the impugned proviso. Further, it is stated that the provisions contained in Section 27 of the Central Act are relatable to Entry 6 of List III relating to registration of documents. Hence, it is stated that the amendment of Section 38, by incorporating the proviso has not created any fresh repugnancy as contended by the petitioners. But, on the other hand, it has removed the existing repugnancy between the provisions of the Registration Act, Stamp Act, 1957 as that of Section 38 of the KCS Act. Therefore, there is no need for the State Legislature to reserve the Bill for the assent of the President under Article 254 of the Constitution of India as contended by the learned Counsel for the petitioners.

14. The Learned Government Pleader Smt. Shobha Patil with reference to the amended proviso to Section 38 of the KCS Act has submitted that the amended proviso is only explanatory in nature, it applies to all Societies. In view of the misinterpretation of the unamended provision under Section 38 of the KCS Act the impugned proviso was incorporated by way of an amendment to the said section. It has been further clarified in the impugned proviso in respect of transfer of immovable property either in favour of its members or by or on behalf of the petitioners-Societies and farther submitted that, the power for registration of the instruments which cover under Section 17(1)(a) and (b) of the Registration is the legislative power of both the Parliament and State Legislature under Entry 6 of List III of Seventh Schedule. The payment of stamp duty and registration fee in respect of the documents which are compulsorily registerable in law is from Entry 63 of List II for which the State Legislature has got the power to enact law, under the said entry State Legislature has enacted the Karnataka Stamp Act, 1957 and State Government has framed the Karnataka Registration fee Rules in exercise of its power under Section 78 of the Registration Act prescribing the amount for payment of stamp duty and registration fees upon the documents which are compulsorily registrable in law. Insofar as the payment of stamp duty under the provisions of the Karnataka Stamp Act, 1957 is the State enactment which has received the assent of the President and therefore, the provisions the Stamp Act shall prevail over the unamended and amended provision of Section 38 of the KCS Act, as the unamended provision is inconsistent with the provisions Stamp Act, as it is the special enactment over the proviso Section 38 of the KCS Act regarding payment of stamp duty and registration fee upon the instruments as they are compulsorily registerable under the provisions of the Registration Act. Therefore, it is contended by the learned Government Pleader that either the impugned proviso is repugnant to Section 27 of the Central Act or suffers arbitrariness on account of classification made between the Co-operative Societies as alleged by the

petitioners and therefore she submits that there is no invidious discrimination between the petitioners and other Societies as contended by them.

15. The learned Government Pleader in support of her above submissions has placed reliance upon the judgment of the Supreme Court in case of Hanuman Vitamin Foods Private Limited and Ors. v. State of Maharashtra and Anr., with reference to the Xerox copies of the sale deed and possession certificates of the immovable properties transferred in favour of the shareholders of one of the petitioner-Society produced along with memo to show that the same would satisfy the requirement of the sale deed and therefore, the provisions of Section 17(1)(b) and (c) of the Registration Act and the provisions of the Karnataka Stamp Act, 1957, are attracted to the above said documents for their registration and payment of stamp duty and registration fees upon such conveyance deeds despite the unamended provision of Section 38 and amended proviso under Section 38 of the KCS Act. Therefore, she has prayed for dismissal of the writ petitions.

16. After hearing the learned Counsels for the parties, the following points would arise for my consideration and answer the same by this Court:

(1) Whether the impugned proviso to Section 38 of the KCS Act is repugnant to Section 27 of the Central Act?

(2) Whether unamended provision of Section 38 and amended proviso to Section 38 would prevail over the statutory provisions of Section 17(1)(b) and (c) and Article 20(1) and (2) of the Karnataka Stamp Act, 1957 and relevant Rule framed under the said Act for payment of registration fees on the conveyance deeds?

(3) Whether the amended proviso to Section 38 of the Act No. 6 of 2001 is violative of Article 14 of the Constitution of India?

(4) What order?

17. Point No. (1): Section 27 of the Central Co-operative Societies Act grants exemption of compulsory registration of the instruments relating to shares and debentures of registered societies notwithstanding the provision Section 17(1)(b) and (c) of the Registration Act. The case of the State Government as stated in its statement of counter is to encourage co-operative activities in the State by giving exemption for them for registration of the conveyance deeds, namely transfer of shares creating title and interest upon the immovable property of the Co-operative Societies and therefore, the provisions contained in the Central Act was incorporated to the KCS Act by incorporating the provisions of Section 38 and further it is rightly stated by the respondents that having regard to the alleged misuse of the said provision of the Act by the Societies, there was heavy loss of revenue to the State Government and therefore, it has considered it necessary to incorporate the proviso to Section 38 of the KCS Act and it has incorporated the same by way of amendment. The learned Government Pleader Smt. Shobha Patil, has rightly pointed out that the provision of Section 27 of the Central Act is concerned, it is not made applicable to the State of Karnataka as it is applicable to the Part B States. The Karnataka State Co-operative Societies Act is enacted by it in exercise of the State Legislative power under Entry 32 of List II of Seventh Schedule and it has received the assent of the President on 11-8-1959 and the said Act is enacted on the basis of the recommendation made by the Committee constituted by the Government of India with a view to bring uniformity in the legislation governing the Co-operative Societies as much as possible throughout the country. Therefore, the proviso to Section 38 by way of an amendment will not create any repugnancy to the provision of Section 27 of the Central Act insofar as the payment of the stamp duty and registration fee upon the instruments which are compulsorily registerable under the provisions of Section 17(1)(b) and (c) of the Registration Act and Article 20(1) and (2) of the Stamp Act, as it would amount to contravention of the above provisions of the Act and also for the reasons stated above by the learned Government Pleader. Therefore, the legal submissions made by the learned Counsel for the petitioners placing reliance upon the provision of Section 27 of the Central Act is unfounded as the same has no application to the impugned amended proviso in view of Article 254 of the Constitution of India and further

Central Act specifically mentions the applicability of the said provision to the Part 'B' States. Therefore, the submission made on behalf of the State respondents by the learned Government Pleader is well-founded and the same must be accepted by this Court. As there is no repugnancy between the provision of the Central Act and proviso of Section 38 of the KCS Act, and accordingly Point (1) is answered against the petitioners.

18. Answer to the Points. (2) and (3): The answer these points, it would be necessary for this Court to incorporate the provision of Section 17(1)(b) and (c), 17(2) of the Registration Act and Article 20(1) and (2) of the Karnataka Stamp Act.

Section 17. Documents of which registration is compulsory.--(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely.--

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property,

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.

17(2) Nothing in Clauses (b) and (c) of Sub-section (1) applies to.-

(i) any composition-deed; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish, any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or

(x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made under that Act; or

(x-a) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer".

Article 20 of the Karnataka Stamp Act:

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Description of instrument

Proper Stamp Duty

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20(1) For conveyance, as defined by clause (d) of Section 2, not being a transfer charged or exempted under Article 52, on the market value of the property which is the subject-matter of conveyance, if the property is situated within the limits of. --

(i) Bangalore Metropolitan Regional Development Authority

10% of the value

(ii) City Corporation or City or Town Municipal Council or any Town Panchayats other than the areas specified in item (i)

9% of the value

(iii) Any area other than areas specified in items (i) and (ii)

8% of the value:

xx xx :

Provided further that in any case where a lease-cum-sale agreement is executed and is stamped with the ad valorem stamp required for such

(2) Where it relates to firstinstrument of conveyance executed by a promoter, a landowner, or a developer by whatever name called, pertaining to premises of 'Flat' as defined in clause (a) of Section 2 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 (Karnataka Act 16 of 1973) or 'Apartment' as defined in clause (a) of Section 3 of the Karnataka Apartment Ownership Act, 1972 (Karnataka Act 17 of

agreement under item (d) of Article 5 and in furtherance of such agreement a conveyance is subsequently executed, the duty on such conveyance shall not exceed rupees ten or the difference of the duty payable on such conveyance and the duty already collected on the security deposit under item (d) of Article 5, which is greater Where the market value. --

(i) where the market value does not exceed Rs. 3,00,000/- -- 2% of the value.

(ii) exceeds Rs. 3,00,000/- hut does not exceed Rs. 5,00,000/--- Rs. 6,000/- + 3% of the value exceeding Rs. 3,00,000/-

(iii) exceeds Rs. 5,00,000/- but does not exceed Rs. 10,00,000/--- Rs. 12,000/- + 6% of the value exceeding Rs. 5,00,000/-

(iv) exceeds Rs. 10,00,000/-.--

1973) or transfer of share by or in favour of Co-operative Society or Company pertaining to premises or unit and the market value of the property which is the subject-matter of conveyance.

(a) if situated within the limits of Bangalore Metropolitan Regional Development Authority -- Rs. 42,000/- + 8% of the value exceeding Rs. 10,00,000/-.

(b) if situated in areas other than the limits of Bangalore Metropolitan Regional Development Authority -- Rs. 42,000/- + 7% of the value exceeding Rs. 10,00,000/-.

Explanation. -- (a) 'Premises' means and includes undivided interest in the land, building and proportionate share in the common areas;

(b) 'Unit' includes flat, apartment, tenement, block or any other unit by whatever name called, constructed or under construction in accordance with the sanctioned plan by the authority competent to sanction a building plan under any law for the time being in force;

(c) 'Promoter' means a promoter as defined in clause(c) of Section 2 of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 (Karnataka Act 16 of 1973).

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19. The Registration Act, 1908, though it is a pre-constitutional law, the same is passed on the test under Article 13 of the Constitution of India and therefore, it is made applicable with regard to the registration of conveyance deeds in the State for the reason that the legislative power of both the Parliament as well as State Legislature to enact such law is traceable from the Entry 6 of List III of Seventh Schedule of the Constitution of India. Further, the payment of stamp duty and registration fees for compulsorily registerable documents under the above provisions of the Registration Act, the State Legislature in exercise of its legislative power under sic [Entry 32] of List II of Seventh Schedule of the Constitution, has enacted the Karnataka Stamp Act, which has received the assent of the President on 28-1-1957. The aforesaid provisions of both the enactments exclusively deal with the matter in relation to compulsorily registerable conveyance deeds with regard to transfer of right upon the immovable property and collection of stamp duty and registration fees on such deeds. Therefore, the above said enactments occupy the field of registration of the conveyance deeds and payment of stamp duty and registration fees on such documents, which are compulsorily registerable, as the transfer of interest and title upon the immovable property by the petitioners-Societies under the guise of transfer of their shares to either its members or any persons fall under the provisions of Section 17(1)(b) and (c) of the Act of 1908 and therefore, the petitioners-Societies or any person are required in law to register such



instruments, pay stamp duty and the registration fee as prescribed in law. Contrary to the above said provisions of both the enactments referred to supra, if any provision is incorporated in the Karnataka Co-operative Societies Act by the State Legislature, to that extent, the provisions of unamended Section 38 of the KCS Act will be repugnant and the provisions of the Registration Act, 1908 and Stamp Act, 1957 are applicable to the instruments to be compulsorily registerable and payment of registration fee by the petitioners-Societies as the said enactments are special enactments in law over the unamended and amended provision of Section 38 of the KCS Act. This position of law is well-settled by the Supreme Court in case of Life Insurance Corporation of India v. D.J. Bahadur, The Supreme Court with reference to the provisions of the Industrial Disputes Act, Life Insurance Corporation Act, has held that between both the above enactments, the Industrial Disputes Act is held to be a special Act, and laid down the law succinctly after interpretation of the provisions of both the Acts with reference to Article 254 of the Constitution of India at paras 51, 52 and 53, which read thus:

"51. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity not absolutes - so too in life. The Industrial Disputes Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the Industrial Disputes Act has one special mission -- the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the Industrial Disputes Act is a special statute, and the Life Insurance Corporation Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the Life Insurance Corporation Act. And whenever there was a dispute between workmen and management the Industrial Disputes Act mechanism was resorted to.

52. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is 'an industrial dispute between the Corporation and its workmen' qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis 'industrial disputes' at the termination of the settlement as between the workmen and the Corporation the Industrial Disputes Act is a special legislation and the Life Insurance Corporation Act a general legislation. Likewise when compensation on nationalisation is the question, the Life Insurance Corporation Act is the special statute, An application of the generalia maxim as expounded, by English textbooks and decisions leaves us in no doubt that the Industrial Disputes Act being special law, prevails over the Life Insurance Corporation Act which is but general law.

53. I am satisfied in this conclusion by citations but I content myself with a recent case where this Court tackling a closely allied question came to the identical conclusion. [Uttar Pradesh State Electricity Board v. H.S. Jain, AIR 1979 SC (55 : (1978)4 SCC 16 : 1978-II-LLJ-399 (SC)]. The problem that arose there was as to whether the standing orders under the Industrial Employment (Standing Orders) Act, 1946, prevailed as against Regulations regarding the age of superannuation made by the electricity board under the specific power vested by Section 79(c) of the Electricity (Supply) Act, 1948, which was contended to be a special law as against the Industrial Employment (Standing Orders) Act. This Court (a bench of three Judges) speaking through Chinnappa Reddy, J., observed:

The maxim "Generalia specialibus non derogant" is quite well-known. The rule flowing from the maxim has been explained in *Mary Seward v. Veera Cruz*, (1884)10 AC 59 as follows:

"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so".

In J.K. Cotton Spinning and Weaving Mills Company Limited v. State of Uttar Pradesh, this Court observed (at page

1174):

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by Lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect".

We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, or workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro t repealed by Section 79(c) of the Electricity (Supply) Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity (Supply) Act, in regard to matters to which the Standing Orders Act applies.

I respectfully agree and apply the reasoning and the conclusion to the near identical situation before me and hold that the Industrial Disputes Act relates specially and specifically to industrial disputes between workmen and employers and the Life Insurance Corporation Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be a special legislation regulating the take-over of private insurance business".

20. The above said judgment is subsequently approved by the Constitutional Bench of the Apex Court in the case of *Ashoka Marketing Limited v. Punjab National Bank*, wherein the Apex

Court dealing with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act (40 of 1971) and the Bombay Rent Control Act, Delhi Rent Control Act, 1959 and also examining the provisions under Article 246(1) and (4) of the Constitution of India and Entries 32, 95 and 97 of List I of Seventh Schedule and Entries 6, 7 and 13 of List III of Seventh Schedule, at paragraph 54, it has clearly held that the Public Premises Eviction Act is deemed to be a special enactment and the ratio laid down by the Supreme Court in the aforesaid case and other cases are referred to in the case of *Ashoka Marketing Limited*, supra, the same are approved and therefore, this Court has to hold that the provisions of the Registration Act, 1908 and Karnataka Stamp Act, 1957, shall be the special enactments over the unamended provision of Section 38 of the KCS Act.

21. The Karnataka Co-operative Societies Act deal with the incorporation and registration of Co-operative Societies, persons who can become members of the Co-operative Societies, disqualification for membership, management of Co-operative Societies, privileges of Co-operative Societies, election of members of the

committees of Co-operative Societies, State aid to Co-operative Societies, properties and funds of Co-operative Societies, audit, inquiry, inspection and surcharge, settlement of disputes between the members of Co-operative Societies, past members, winding up and dissolution of Co-operative Societies, agriculture and rural development Banks, execution of awards, decree, orders and decisions, appeals, revision and review. Whereas, the Indian Registration Act, 1908, deals with the registration of compulsorily registrable documents, the time of presentation, the place of registration, preserving documents for registration, enforcing the appearance of executants and witnesses, presenting Wills and authorities to adopt, the deposit of Wills, the effects of registration and non-registration the duties and powers of registering officers, refusal to register, the fees for registration, searches and copies, penalties etc., and the Karnataka Stamp Act, 1957, provides for the liability of instruments to duty, of stamps and the mode of using them at the time of stamping instruments of valuation for duty, duty by whom payable, adjudication as to stamps, instruments not only stamped, allowances for stamps in certain cases, reference and revision, criminal offences and procedure and other supplemental provisions.

22. In view of the above clear statement and objects of the above said Acts, which would operate in different fields for different purposes, which are enacted by the State Legislature and Parliament respectively in exercise of their respective legislative power under the Constitution of India from different entries of the State and concurrent list of Seventh Schedule respectively. Therefore, each statutory enactment referred to above is a self-contained one, which exclusively operates in its respective fields for which purpose they are enacted. The Karnataka Co-operative Societies Act is a statutory enactment of establishing Co-operative Societies/banks for the purpose of establishing co-operative movement in the State, whereas, the Registration Act and Stamp Act operate in different fields by making the instruments and deeds compulsorily registrable, if, there is transfer of interest and title in respect of immovable property by means of written instrument which property is valued more than Rs. 100/- and the Stamp Act deals with the payment of stamp duty upon instruments and to frame rules in exercise of its power under Section 68 of the Stamp Act prescribing rules, regarding payment of registration fees at the time of registration of the compulsorily registrable instruments with the registering authority. Therefore, the statutory enactments viz., Registration Act and Stamp Act are special enactments over the provisions of Karnataka Co-operative Societies Act.

23. For the reasons stated supra Point (2) has to be answered in favour of the State and merely unamended provision Section 38 was incorporated into the KCS Act and subsequently, the proviso was inserted by way of amendment by the impugned Act 6 of 2001 explaining the provision regarding the registration of the conveyance deeds of transfer of shares in favour of the members of the Housing Co-operative Societies by transferring interest and title upon the immovable properties and shall be compulsorily registerable payment of stamp duty and registration fee upon such conveyance deeds either they are executing or executed the deeds by them in respect of the immovable properties in favour of its members or other persons. The provisions of the Registration Act and Stamp Act are applicable to them for Registration of the conveyance deeds and therefore contention urged on their behalf that their so-called rights are affected by virtue of the impugned proviso cannot be accepted by this Court as the said contention is wholly untenable in law as held by the Apex Court in the cases referred to supra. But on the other hand, despite the provisions of unamended and amended proviso to Section 38 of the KCS Act, the provisions of the above said Acts are applicable to the conveyance deeds which are executed in favour of either the members of the Societies or any other person. Therefore, this Court has to hold that the amended proviso to Section 38 of the KCS Act is not inconsistent with the provisions of the aforesaid enactments. Both the above said enactments in view of the law laid down by the Supreme Court in the case of Life Insurance Corporation of India, supra, which case is extensively referred to in the Ashok Marketing Limited's case, supra, which is decided by the Constitutional Bench which has approved the Life Insurance Corporation's case, supra, and therefore the provisions of the said Acts are applicable to the conveyance deeds which are executed by the petitioners in favour of either its members or any person are compulsorily registerable, payment of stamp duty and registration fee is very much required, as such documents confer interest and title upon them in respect of such immovable properties, which would exceed its value more than one hundred rupees.

24. In view of the foregoing reasons the reliance placed by the learned Counsel for the petitioners upon the judgment of Supreme Court in *M. Karunanidhi's case*, supra, with regard to the repugnancy of the amended proviso to Section 38 of the KCS Act to the provisions of Section 27 of the Central Act is only untenable in law and also in view of the finding recorded by this Court on the Point (1) holding that there is no repugnancy between the provisions of the KCS Act and Central Act. The reliance placed upon the judgment of Supreme Court in *Thirumuruga, Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust's case*, supra, is also not applicable to the fact situation and the reliance placed upon the judgment of Bombay High Court *Hanuman Vitamin Foods Private Limited*, referred to supra, contending that Maharashtra Co-operative Societies Act, 1960, the provisions of Sections 29 and 30 of the Bombay Stamp Act, 1958, Section 2(1), 2(g) and Schedule 1, Article 25(b)(i) (as amended in 1985) transfer of shares by the Co-operative Societies, document of transfer, transferee getting right of allotment and occupancy of office premises previously occupied by the transferor though the title is transferred by transferring the shares, it is conveyance of a right upon its member to occupy immovable property and was chargeable with under duty under Article 25(b)(i) of the Act and cannot be, exempted from payment of stamp duty, and therefore it has held that levy of the stamp duty upon conveyance deeds and therefore it cannot be said the powers of the State Legislature are ultra virus to the constitutional provisions- The above said judgment is against the petitioners and further the reliance placed on *Usha Arvind Dongre* referred to supra in which case it is held that, transfer of the interest upon the flat belonging to tenant, co-partnership housing Society by an award of arbitrators. Section 41 of the MCS Act exempts registration of such document which is essential under Section 17(1)(b) of the Registration Act, and such award does not require any registration. The said judgment cannot be applied to the fact situation of the cases on hand having regard to the finding recorded by this Court on Point (2) holding that the provisions of the Registration Act and Stamp Act are held to be special enactments over the provision under Section 38 of the Karnataka Co-operative Societies Act with regard to compulsorily registrable conveyance deeds executed by the societies and payment of stamp duty and registration fee is also required in law.

25. In fact in the above said case, the Bombay High Court has not examined the legality of provision under Section 41 of the MCS Act with reference to the law laid down by the Apex Court in the cases referred to supra. This Court by relying upon the said judgments has already answered the Point (2) against the petitioners holding that the unamended proviso to Section 38 cannot prevail over the provisions of the above said enactments and amended proviso to the said section does not affect their statutory rights as alleged by them. Hence, the reliance placed upon the said case by the learned Counsel for the petitioners has no application to the facts of the present cases. Further, the reliance placed on the judgment of Gujarat High Court *Mulshanker Kunverji Gor's case*, supra and other cases referred to supra in the earlier paragraph of this judgment where the contentions of the learned Counsel for the petitioners are noted also do not apply to the fact situation and also in view of the law laid down by the Apex Court in the case of *Hanuman Vitamin Foods Private Limited*, interpreted the provisions of Bombay Stamp Act, 1958 and also considered its earlier cases referred to in the above case.

26. Further the learned Government Pleader has rightly placed reliance upon the judgment of the Supreme Court in *Hanuman Vitamin Foods Private Limited's case*, supra, paras 6 and 7, wherein it has held if the transfer of share of Co-operative Society in favour of a member who will have right to occupy premises as incident of his membership and therefore it amounts to conveyance of property in his favour and therefore the provisions of Stamp Act attracts the liability of the stamp duty on such conveyance deeds is required as the same are compulsorily registrable documents with the registering authorities. The ratio laid down in the said case also applies to the facts of the present cases and in view of the same the proviso to Section 38 of the KCS Act is in conformity with the law laid down by the Apex Court and Registration Act and Stamp Act.

27. For the aforesaid reasons, the legal submissions made by the learned Counsel for the petitioners that there is invidious discrimination between the petitioners-Societies and other Societies under the amended proviso to Section 38 of the KCS Act need not be considered by this Court as the same docs not arise in these cases. Further there is no merit in this contention and also for the reasons that this Court has answered the relevant

point holding that the provisions of Registration Act and the Karnataka Stamp Act would prevail over either the unamended provision or amended provisions of Section 38 of the KCS Act, therefore, the Point (3) does not arise for consideration to answer the same by this Court.

28. For the reasons stated supra, there is no merit in these petitions and these petitions are liable to be dismissed.

29. Accordingly, I pass the following order.

Writ petitions are dismissed.