



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 17<sup>TH</sup> DAY OF DECEMBER, 2025**

**BEFORE**

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**THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO. 11346 OF 2021 (CS-RES)**

**BETWEEN**

SRI SURESHA  
S/O LATE SIDDE GOWDA @ DOLLEGOWDA  
AGED ABOUT 48 YEARS,  
RESIDING AT NO.26 KENDAVARE NILAYA  
2<sup>ND</sup> FLOOR, 38<sup>TH</sup> MAIN, 16<sup>TH</sup> CROSS  
ROSE GARDEN J P NAGAR 6<sup>TH</sup> PHASE  
BANGALORE-560 078

...PETITIONER

(BY SRI. JAYAKUMAR S. PATIL., SR. ADVOCATE FOR  
SRI. B. PRAMOD., ADVOCATE)

**AND**

1. ADDITIONAL REGISTRAR OF  
COOPERATIVE SOCIETIES  
(H AND M) ALI ASKAR ROAD,  
BENGALURU-560 052
2. M/S BEML EMPLOYEES C-OPERATIVE SOCIETY LTD  
C/O B E M L LIMITED  
BENGALURU COMPLEX  
NEW THIPPASANDRA POST  
BENGALURU-560 075  
BY SECRETARY
3. SRI J MUNNAGAPPA  
S/O LATE JAYARAMAIAH  
AGED ABOUT 53 YEARS,  
EX-PRESIDENT  
BEML EMPLOYEES COOP SOCIETY LTD  
RESIDING AT NO.96 B NAGASANDRA





YAMALUR POST BENGALURU-560 037

4. SRI N RAMAKRISHNA  
EX-VICE PRESIDENT AND  
EX-EXECUTIVE DIRECTOR  
BEML EMPLOYEES CO-OP SOCIETY LTD  
RESIDING AT NO.33 10<sup>TH</sup> CROSS, 1<sup>ST</sup> MAIN  
YAMALUR POST YAMALUR  
BENGALURU-560 037
5. SRI B M YOGESH  
S/O B K MARI SHETTY  
AGED ABOUT 51 YEARS,  
RESIDING AT NO.25/32 2<sup>ND</sup> FLOOR  
8<sup>TH</sup> MAIN, PALACE GUTTAHALLI  
BENGALURU-560 003
6. SRI S BHASKAR  
S/O R SHIVA SHANKAR  
AGED ABOUT 48 YEARS,  
RESIDING AT NO.2894, 14<sup>TH</sup> A CROSS  
BSK 2<sup>ND</sup> STAGE, BENGALURU-560 070

.... RESPONDENTS

(BY SRI. HARISH A.S., AGA FOR R1;  
SRI. M.S. RUDRAIAH., ADVOCATE FOR R2;  
R3, R4 & R6 SERVED;  
V/O DATED 6.12.2022 NOTICE TO R5 D/W)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE JUDGEMENT DATED 09.07.2020 PASSED BY THE KARNATAKA APPELLATE TRIBUNAL, BANGALORE IN APPEAL NO.253/2018 (CO-OP) (ANNEXURE-A) AND DECLARE IT TO BE ILLEGAL AND CONTRARY TO THE PRINCIPLES OF NATURAL JUSTICE AND ETC.



THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 24.11.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

**CAV ORDER**

1. The Petitioner is before this Court seeking the following reliefs:
  - i. Issue a writ of certiorari quashing the Judgment dated 09.07.2020 passed by the Karnataka Appellate Tribunal, Bangalore in Appeal No.253/2018 (Co-op) (Annexure-A) and declare it to be illegal and contrary to the principles of natural justice; and*
  - ii. Pass any such other order(s), writ, directions as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity.*
  
2. Respondent No.2 - Society had formed a residential layout and allotted sites to its members. One of the sites being Site No.15, formed in Sy.No.22/4, 22/6, 22/7 (Renumbered Sy.Nos.45 and 46 and 48) situated at Channasandra Village, Uttarahalli Hobli, Bangalore South Taluk, measuring East to West (60 + 62)/2 feet North to South (72 + 60)/2 feet, totally



measuring 4026 sq.ft., was allotted in favour of Respondent No.5-B.M.Yogesh. A sale deed dated 19.1.2013 came to be executed, and Respondent No.5 was put in possession of the same. Respondent No.5 sold the said property on 11.03.2013 vide a registered sale deed in favour of the Petitioner and Respondent No.6-S.Bhaskar. Respondent No.6 subsequently relinquished his 50% share in the said property under a registered release deed dated 9.10.2015, subsequent to which the Petitioner claims to be the absolute owner in possession.

3. The Society had filed a dispute before the Additional Registrar of Cooperative Society (for short, 'Addl.RCS') seeking relief to direct Respondents No.3 and 4 to pay an amount of Rs.62,05,300/- with interest at the rate of 18% per annum and cancel the sale deed dated 19.1.2013.
4. In the said dispute, it was contended that the Board of the Society is the one that was competent to allot



the sites. The Board had not allotted any site to Respondent No.5. Respondent No.4 had no power or Authority to execute a sale deed in respect of the scheduled property in favour of Respondent No.5. The sale deed which had been executed in favour of Respondent No.5 was so done, ignoring the seniority of other members.

5. The site, which had been allotted to Respondent No.5, had immediately been sold within two months to the Petitioner for a sum of Rs . 62,05,500/-, and as such, a huge loss had been incurred by the Society.
6. The Petitioner and Respondent No.6, on appearance, filed their objections, contending that the dispute is not maintainable against the Petitioner and Respondent No.6 since they are not members of the Society. The Respondent No.3, being the President of the Society, and the Respondent No.4, being the Executive Director of the Society, having executed a



sale deed in favour of the Respondent No.5, is proper and correct. The Vice-President has also signed the sale deed as a witness, and for that reason, the Petitioner believed the sale deed to be proper and valid. As such, they contended that the Petitioner and Respondent No.6 were bona fide purchasers for value.

7. Respondents No.3 to 5 had also filed objections contending that Respondent No.5 was their member and the sale deed which had been executed in favour of Respondent No.5 was proper and valid. No sale deed could be cancelled by the Addl.RCS. Such power would vest only with the Civil Court. Section 70 does not provide any power for cancellation.
8. The dispute came to be dismissed on the ground that the allegation made by the Society was not true and that Respondent No.1 did not have the Authority to cancel the sale deed. It is claimed that post such dismissal, the Petitioner started construction and was



close to completing the construction of a building by investing more than Rs. 2 crores.

9. At that stage, an appeal in Appeal No.253/2018 was filed before the Karnataka Appellate Tribunal, where an application had been filed seeking an injunction restraining the Petitioner and Respondent No.6 from putting up any construction. The matter having been taken up for final arguments on 26.3.2020, the same could not be so conducted on account of the Covid-19 lockdown. It was subsequently taken up on 11.6.2020 and was adjourned to 25.6.2020. On that day, arguments were heard of Respondent No.2 in the absence of the Petitioner, and the matter was reserved for Judgment and Judgment was pronounced. The Petitioner was not aware of the posting of the case but came to know about the impugned Order only in the second week of November 2020. It is in that background that the



Petitioner is before this Court seeking the aforesaid reliefs.

10. Sri. Jayakumar S. Patil., learned Senior Advocate appearing for the Petitioner, submits that:

10.1. There being a Standard Operating Procedure and a lockdown, the Petitioner could not approach the Additional Registrar of Cooperative Societies and the disposal of the matter without providing an opportunity to the Petitioner is bad in law, and in that background, he submits that the aforesaid relief, which had been sought, is required to be granted.

10.2. In this regard, he relies upon the decision in the case of ***Siddamma vs. Bhavani Housing Cooperative Society Limited and Ors<sup>1</sup>***, more particularly Para 7 thereof, which reads as under:-

*7. Even if such a liberal view is to be taken in the present case on hand, the Authority vested in the Additional Registrar of Cooperative Societies*

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<sup>1</sup> W.P.No.49491/2015



*would stop short of deciding whether an allotment made by a society in favour of its member was valid. But when once a sale deed is executed and registered, the purchaser becomes the absolute owner and neither the Authority nor the Society would have the power to negate the registered deed unless it is cancelled by a competent Civil Court.*

*It may hence be said that a dispute as to the validity of the sale deed in favour of the deceased, under whom the Petitioner claims, could not have been raised before the Additional Registrar of Cooperative Societies. A reading of Section 117 of the KCS Act would not also indicate that the said Authority is vested with any such power to address the validity of a registered Sale deed. Consequently, even the appellate Authority, prescribed under the KCS Act, would have no jurisdiction to address the Order passed in such a dispute. The writ petition is hence held to be maintainable, as the Petitioner is left with no remedy as against the impugned Order, in the first of these petitions, passed by a statutory authority. Further, having regard to certain glaring circumstances which are apparent, prima facie, it is a fit case for the intervention of this Court.*

10.3. By relying on ***Siddamma's*** case, he submits that the Additional Registrar of Cooperative Society cannot decide whether the allotment made by the Society was valid, once the sale is



executed and registered, since the purchaser becomes the absolute owner.

10.4. He relies on the decision in the case of **G. Parameshwara vs. Vittalnagar House Building Cooperative Society Limited and Ors.**<sup>2</sup> more particularly Paras 3, 4, 7, 8 and 27, which are reproduced hereunder for easy reference:

*3. The petitioner and respondent No. 5 are the members of respondent No.1, Housing Cooperative Society. The Petitioner claims that he was admitted to membership of respondent No.1-Society in the year 1983 and on 01.04.1991, lease cum sale deed was executed in his favour by respondent No.1 - Society in respect of site No.124, measuring 30 ft. x 40 ft in Sy.No.15 of Bikashipura Village, Uttarahalli Hobli, Bengaluru South Taluk. The Petitioner also claims that he was put in possession of the said property on 04.09.1994.*

*4. Petitioner alleged that site No.217 was allotted to respondent No.5 on 9.06.2000 and the lease cum sale deed was executed in favour of respondent No.5 on the same day. It is further stated that on 30.07.2001, the lease cum sale deed dated 01.04.1991 executed in his favour in respect of site No.124 was*

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<sup>2</sup> W.P.No.45550/2013



*cancelled without his notice and consent. Thereafter, on 13.08.2001, the rectification deed was executed in favour of respondent No.5 by substituting site No.124 (Petitioner's site) in place of site No.217 without notice to the Petitioner.*

**7.** *In addition to the prayer to declare the Petitioner as the owner of the disputed site, the Petitioner also sought a declaration that the rectification deed dated 13.08.2001 and the sale deed dated 08.03.2006 executed by respondents No.2 and 3 in favour of respondent No.5 are illegal and nullity in law. The Petitioner also sought a declaration that the sale deed executed by respondent No.5 in favour of respondent No.6 (non-member) on 10.03.2006 as illegal and nullity in law. By way of an amendment, Petitioner also prayed for cancellation of the registered cancellation deed executed on 30.07.2001.*

**8.** *The purchaser/non-member took a stand that Registrar acting under the Act of 1959 has no jurisdiction to entertain the petition under Section 70 of the Act of 1959.*

**27.** *The co-ordinate Bench of this Court in Smt Siddamma's case supra has taken a view that the dispute relating to the transfer of immovable property or validity of registered sale deed is not contemplated under Section 70 of Act of 1959. The Court has also taken a view that the dispute under Section 70 of the Act of 1959 is only confined to the disputes named in*



*Section 70(2) (a) to (e) of the Act of 1959, and once the sale deed is executed and registered, the purchaser becomes the absolute owner and neither the Authority under the Act of 1959 nor the Society will have the power to negate the registered deed, unless it is cancelled by the competent Civil Court.*

10.5. By relying on ***Parameshwara's*** case, he again reiterates that once the sale deed has been executed, the Registrar of Cooperative Society cannot adjudicate on the validity of the sale deed.

10.6. By relying on the decision of this Court in the case ***Mr.Mir Ubaidullah vs. Jaraganahally House Building Cooperative Society Ltd.,***<sup>3</sup> He contends that a proceeding under Section 70 is in the nature of arbitral proceedings, and it is only a personal lis which could be decided. No *Right in Rem* could be decided under Section 70, like that of cancellation of a sale deed.

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<sup>3</sup> CRP No.12/2021 dtd 19.8.2021



10.7.He relies on the Decision in **Mr. Mir Ubaidullah vs. Jaraganahally House Building Cooperative Society Ltd<sup>4</sup>**. Paras 13, 14, 15 and 16 thereof, which are reproduced hereunder for easy reference:-

13. *Thus even if there is a dispute which can be said to impinge upon or touching upon the constitution, management or business of the cooperative Society it would have to be seen whether the Registrar could have granted a relief of declaration in terms of Section 34 of the Specific Relief Act, 1963 since it is only a Civil Court which is empowered to grant such declaration and the Registrar not being so empowered there would be no purpose which would be served by referring the matter to the Registrar.*
14. *In this regard reference may also be drawn to the decision of the Apex Court in the case of **Booz-Allen & Hamilton Inc Vs. SBI Home Finance Ltd., & Others** reported in **(2011)5 SCC 532** while dealing with Section 11 of the Arbitration and Conciliation Act, 1996 wherein the Hon'ble Apex Court has categorically defined the disputes which an arbitrator can adjudicate to be as regards "rights in personam" and those which are a "right in rem". The rights in personam are dispute interparties which would not have impact on the Society in general or anybody else apart from the parties to the lis whereas the right in rem are those which would have an impact on the Society as a whole.*

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<sup>4</sup> Civil Revision Petition No.12/2021



15. *On that basis, the Hon'ble Apex Court has held that the matters relating to divorce, mortgage etc. cannot be referred to arbitrator, since an arbitrator would not have power to decide such matters.*

16. *Applying the said dicta to the present case also and considering that the Registrar is an Administrative Officer or at the most a Quasi Judicial Officer he cannot grant a declaration sought for which would be a declaration in rem that is against the Society as a whole since any declaration of title would apply to the Society as a whole.*

11. Sri.M.S.Rudraiah, learned counsel for the Society, would contend that:

11.1.By way of the Order dated 9.7.2020, the Karnataka Appellate Tribunal has only remanded the matter, to be decided afresh by Respondent No.1. Even if it is accepted that the Order of the Appellate Tribunal has been passed without notice and without hearing the Petitioner, the same would not cause any harm or injury since the Petitioner could always place his say on record before the Additional RCS.



11.2.His submission is that the transaction which has been carried out in terms of allotment and execution of sale deed is contrary to the Bylaws of the Society and if any of the office bearers were to act contrary to the Bylaws, it would not be required for the Society to approach a Civil Court, there being a remedy available under Section 70 of the KCS Act, the Society could always approach the jurisdictional Authority under the KCS Act.

11.3.His submission is that illegalities committed by some of the directors by executing a sale deed cannot preclude the Society from raising a dispute under Section 70, and by causing such illegalities, the Society cannot be made to approach a Civil Court.

11.4.It would be for the concerned authorities to decide on the matter in accordance with law and if the actions on part of any of the officers



of the Society were found to be illegal and or contrary to the Act or Rules, in that event, the authorities could pass necessary orders, which could include cancellation of the allotment and the sale deed, since the same is carried out contrary to the applicable Rules and Bylaws.

11.5. In this regard, he relies upon the Judgment of this Court in the case of **A.S.Nanjappa VS. The Deputy Registrar of Cooperative Societies<sup>5</sup>**, more particularly, Para 3, which is reproduced hereunder for easy reference:-

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*It is not in dispute that business of R-2 Cooperative Society is to acquire the land and form layout and distribute sites to its members. Therefore, the said dispute cannot be said to be outside the purview of Sec.70 of the Cooperative Societies Act. In the circumstances, this Court is of the opinion that the Deputy Registrar of Cooperative Societies has committed an error in dismissing the petition of the Petitioner by holding that the dispute between the Petitioner and the Society has to be get it adjudicated in a civil court. Therefore, on the short ground, Order of the Deputy Registrar as per Annexure-G dated 7.8.1999 has to be quashed. When this Court has come to the conclusion that an error has been committed by the Deputy Registrar of Cooperative Society in dismissing the dispute of the Petitioner, Order passed*

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<sup>5</sup> W.P.No.42049/2001 dtd 29.9.2005



*by KAT in Appeal No.483/99 as per Annexure-J dated 13.3.2001 is also required to be quashed. Since no evidence is recorded by the Deputy Registrar of Cooperative Societies, matter is required to be remitted back to R-1.*

11.6.By relying on **A.S.Nanjappa's** case, his submission is that any dispute as regards allotment of the site, could be decided under Section 70.

11.7.In this regard, he relies upon the Judgment of this Court in the case of **Sri.Harish N.Puthran vs. Mahalakshmi Cooperative Bank Ltd., and others<sup>6</sup>**, more particularly, Paras 4 to 6, which are reproduced hereunder for easy reference:-

*4. The Karnataka Appellate Tribunal has held on facts that the second respondent before it / petitioner herein had mortgaged his immovable properties as security for availing loan but during the subsistence of the mortgage, properties mortgaged in favour of the bank were sold to respondents 8 to 22 allegedly without the leave of the appellant-bank. The Karnataka Appellate Tribunal did not go into the merits of the matter as the preliminary objection raised before it was confined to the question*

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<sup>6</sup> W.P.No.13915/2011 dtd 23.5.2011



*whether the dispute raised against the members and non-members together could be maintained before the Joint Registrar of Cooperative Societies. The Tribunal has found after referring to Section 70, 117 and 117(3) of the Karnataka Cooperative Societies Act, 1959 that in view of the expression used claiming through a member under Section 70 and on verification of the pleadings of the parties, it was clear that the dispute was against the members as well as non-members claiming through the members and hence, the findings recorded by the Joint Registrar of Cooperative Societies was unsustainable.*

*5 Section 70(1) of the Act states that notwithstanding anything contained in law for the time being in force, if any dispute touching the constitution, management or the business of a Cooperative Society arises along members, past members and persons claiming through the members, past members or deceased members. such a dispute shall be referred to the Registrar for decision and no Civil or Labour or Revenue Court or Industrial Tribunal shall have the jurisdiction to entertain any suit or other proceedings in respect of such dispute. It is clear from Section 70(1) that even if a dispute touching the business of a Cooperative Society were to arrive among persons claiming through members, such a dispute is maintainable and can be legitimately referred for decision to the Registrar.*

*6. In the present case, the mortgagor - the Petitioner has sold the property in favour of the non-members respondents 8 to 22 during the subsistence of the mortgage. In the dispute he is arrayed as a party, so also the principal debtor and the purchasers of the property. who claim right under the mortgagor. Therefore, these purchasers fall within the ambit of the expression 'persons*



*claiming through the members' and therefore, the dispute raised under Section 70 and referred for adjudication to the Registrar could not have been rejected by the Joint Registrar of Cooperative Societies holding that the same was not maintainable, as the only way they could have been made party-respondents, was by way of filing an application to implead them with the leave of the Authority. When Section 70 makes it clear that the dispute which arises between the members of the Society or persons claiming through the members has to be referred, in the facts and circumstances of the case, as the purchasers were claiming right over the property by way of sale deeds executed in their favour by the Petitioner, who had mortgaged the very properties in favour of the appellant-bank, it was unnecessary for the respondent no.1- bank to raise the dispute first against the members and then seek leave of the Joint Registrar of Cooperative Societies to implead the non-members for the simple reason that the non-members were not total strangers but were persons who were claiming through the members. In view of the same, I am of the considered view that the view taken by the Tribunal does not suffer from any patent illegality or error of jurisdiction so as to warrant interference by this Court in exercise of writ jurisdiction. Hence, the writ petition is dismissed.*

11.8. By relying on **Harish N.Puthran's** case, he submits that any dispute touching on the constitutional management or business of a Corporative Society would include any



contention relating to a mortgage. A person, even though not being a member of the Society if claiming under a member of the Society would be covered under Section 70 of the KCS Act and he submits that even an aspect of mortgage could be dealt with under Section 70 of the KCS Act.

11.9. He relies upon the Judgment of the Hon'ble Supreme Court in the case of ***Deccan Merchants Cooperative Bank Ltd., vs. M/s Dalichand Jugraj Jain and others***<sup>7</sup>, more particularly, Para 25, which is reproduced hereunder for easy reference:-

*25. The appeal must also fail on the ground that even if it is a dispute touching the business of the Society within the meaning of Section 91(1) of the Act, it is not a dispute between a society and a member or a person claiming through a member. It seems to us that before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the Society as a member. If a member entered into a transaction with the Society not as a member but as a stranger, then he must be*

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<sup>7</sup> AIR 1969 SC 1320



*covered, if at all, by the provisions of Section 91(1)(a) or (c). But once it is held that the original transaction was entered into by the member with the Society as a member then any person who claims rights or title through that member must come within the provisions of Section 91(1)(b).*

11.10. By relying on ***Deccan Merchant's*** case, he submits that any person who claims right, title or interest under the member would also come within the purview of Section 70 of the KCS Act.

11.11. He relies upon the Judgment of the Full Bench of this Court in the case of ***Karnataka Sugar Workers Federation v. State of Karnataka***<sup>8</sup>, more particularly, Paras 15, 20 and 21, which are reproduced hereunder for easy reference:-

*15. A perusal of the record reveals that the subject matter of amendment Act impugned in the Writ Petition is enacted by the Legislature in exercise of the power conferred under Entry 32 to List II of the VII Schedule to the Constitution of India which deals inter alia with Cooperative Societies and the bill which was passed by the Legislators of*

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<sup>8</sup> ILR 2003 KAR 2531



*Karnataka was reserved for the assent of the President. The original records produced by learned Government Advocate, however, disclose that the amendment bill 2 of 1997 was introduced in the Legislative Assembly on 25.8.1997 and was passed by the Legislative Assembly on 14.5.1998 and was passed by the Legislative Council on the same day i.e., 14.5.1998. Thereafter, since the provisions of Clause 3 were repugnant to the Industrial Disputes Act, 1947 which is an existing law the bill was forwarded to the Governor for reserving the same for the assent of the President of India. The Governor by Order dated 14.6.1998, reserved the Bill for the assent of the President and the President of India gave his assent on 18.3.2000, the same was published in the gazette on 27.3.2000 and amended provision has come into effect from 20.6.2000.*

*20. The other argument raised is that the Registrar of Societies is not a trained judicial person where the Presiding Officer of the Labour Court or Industrial Tribunal is a qualified District Judge, and therefore, Section 70 should be declared as invalid. The argument is not attracted as the powers which have been granted to a Judge of Labour Court or Industrial Tribunal are quasi-judicial in nature. Further, he has been empowered under the Statute and enjoined to resolve the dispute therein. Similarly, the competent authorities appointed under various Acts like Shops and Commercial Establishments Act, Payment of Wages Act, Workmen's Compensation Act, Employees' State Insurance Act, are exercising their power to adjudicate the dispute pertaining to various labour matters in spite of the fact that they are not qualified as District Judge. Yet, they are functioning as Presiding Officers. Be that as it may. The other argument that the Registrar is likely to be biased in*



*favour of management is also not a ground to hold the amendment invalid as the aggrieved parties are always entitled to challenge the individual orders, if necessary.*

*21. In view of what we have discussed above, we hold that the provisions of Section 70 of Karnataka Cooperative Societies (Amendment) Act, 1997 which has come into effect from 20.6.2000 are valid with the legislative competence and constitutional. Therefore, no reconsideration is required as stated.*

11.12. By relying on the ***Karnataka Sugar Workers Federation's*** case, he submits that even the Labour Court or Industrial Tribunal would not have any jurisdiction if the same relates to a Cooperative Society.

11.13. He relies upon the Judgment of this Court in the case of ***Dattatreya vs. the Assistant Registrar of Cooperative Societies***<sup>9</sup> , more particularly, Paras 8 and 9, which are reproduced hereunder for easy reference:-

*8. The Constitution Bench of the Apex Court in the case of Dhulabhai (supra) has laid down seven principles as to when the jurisdiction of Special Authority/Tribunal excludes that of the ordinary Civil*

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<sup>9</sup> W.P.No.105644/2018 dtd 13.3.2019



*Courts. Going by the stand of the parties, it cannot be gainsaid that the respondent-ARCS lacks jurisdiction. The second principle formulated in the said decision, which squarely applies to the case of the Petitioner, reads as under:*

*"(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the Statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said Statute or not."*

*9. No special circumstances are shown by the Petitioner justifying exercise of writ jurisdiction by this Court for granting relief to him, in terms of prayer. Justice of the case requires that the Petitioner should chose to appear before the first respondent Arbitrator and take up appropriate stand in the ongoing Arbitral Proceedings, in which admittedly he has already participated. All contentions of the parties need to be kept open.*

11.14. By relying on ***Dattatreya's*** case, he submits that there being no express bar on the exercise



of jurisdiction, Section 70 dealing with all kinds of disputes, the concerned Authority under the Act can deal with even an aspect of illegal allotment, and cancellation of a sale deed if it has been so executed in pursuance of illegal allotment.

11.15. He relies upon the Judgment of the Hon'ble Supreme Court in the case of **A.Jitendernath vs. Jubilee Hills Co-op, House Bld. Soc. and anr.,<sup>10</sup>** more particularly, Paras 54 and 55, which are reproduced hereunder for easy reference:-

**54.** *The question which now arises for consideration is that what would be the effect of allotment of plot No. 400 in Phase III by the First Respondent during pendency of the proceedings before this Court. We have noticed hereinbefore that this Court, while asking the learned counsel appearing on behalf of the First Respondent, was of the opinion that interest of justice may be subserved if some plot which was available for allotment could be directed to be allotted in favour of the Appellant herein. A representation was made, which now turns out to be*

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<sup>10</sup> (2006) AIR SCW 3653



*wrong, on behalf of the First Respondent that the plot No. 400 was available for allotment. It was in that situation, the offer of the First Respondent as regard allotment of the said plot to the Appellant was accepted. The Appellant paid a huge sum therefor. The said amount has also been appropriated by the First Respondent. However, in law only because an order of allotment has been issued in favour of the Appellant herein by the First Respondent, the same by itself would not mean that thereby the right of the others for being considered therefor or for that matter any other plot which was available for allotment could be put in jeopardy. This Court whence proceeded to consider the matter of allotment of another plot in favour of the Appellant by the First Respondent, it had evidently in its mind that same plot may be available for allotment but by reason thereof the right of somebody else was not meant to be nor could be affected. Even in exercise of its jurisdiction under Article 142 of the Constitution while making an attempt to do complete justice to the parties this Court cannot pass an order which could cause injustice to others and in particular to those who are not before it. The correctness or otherwise of the contentions raised by the impleaded parties, thus, need not be gone into. We must, however, place on record that our attention has been drawn to the fact that several proceedings as regard allotment of plot at the hands of the Society are pending adjudication before several forums. Even a direction has been issued by a Cooperative Tribunal as regard allotment of plot No. 400. It goes without saying that the courts of law would always see to it that while making allotment of plot by a cooperative society, no discrimination is caused amongst the members.*

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**55.** *We, therefore, are of the opinion that interest of justice would be subserved if the First Respondent is directed to consider the question of allotment amongst its members upon strict compliance of the extant rules including its bye-laws wherefor cases of all persons eligible therefore must be considered.*

11.16. By relying on ***Jitendernath's*** case, he submits that it being a mandate that there is no discrimination between the members of the Society as regards allotment of plots, if there is any violation of the applicable law, the same would have to be dealt with under Section 70 of the KCS Act.

11.17. He relies upon the interim Order passed by this Court in the case of ***Sri.M.Shashidharan and others vs. Joint Registrar of Cooperative Societies and others***<sup>11</sup>, more particularly, Para 6, which is reproduced hereunder for easy reference:-

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<sup>11</sup> W.P.Nos.9869-9876/2016 dtd 7.8.2017



*6. Keeping in the mind the facts and circumstances of the case and also the interest of the petitioners as well as Respondent No.3-Society and its members, I am of the view that the interim Order granted on 10.03.2016 deserves to be modified. Accordingly, the following modification is made:*

*It is made clear that pending disposal of these writ petitions, respondent No.3-Society shall not make any allotment/execution of sale deeds without following the seniority list of its members as approved by the concerned Registrar of Cooperative Societies. Interim Order passed on 10.03.2016 is accordingly modified.*

11.18. By relying on ***Shashidharan's*** case, he submits that if the seniority list is violated and an allotment is made, it would be for the Registrar to deal with such allotment and if there is a violation of the applicable law, to hold the allotment made to be bad and consequently, set aside the sale deed.

11.19. He relies upon the Order dated 24.11.2015 in CRP No.130/2012, more particularly, Para 4 thereof, which is reproduced hereunder for easy reference:-



*4. On perusal of Sections 70 & 118 of the Act, it is clear that if any dispute arises between the cooperative Society and its members with regard to the business of the Society, such dispute shall have to be referred to the Registrar for adjudication and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. Therefore, it is apparent from a reading of Section 70 along with Section 118, that Civil Court has no jurisdiction to adjudicate the dispute regarding non-allotment of site by the defendant-Society to the plaintiff, because such a dispute which touches the business of the Society has to be necessarily referred to the Registrar for adjudication in terms of the provision under Section 70 of the Act. The Trial Court, was therefore, in total error in dismissing the application.*

11.20. By relying on ***Byanna's case***, his submission is that if there is any dispute which arises between the cooperative Society and its members with regard to the business of the Society, such dispute would have to be referred to the Registrar for adjudication, and no Court, including the trial Court, would have jurisdiction.

11.21. He refers to the decision of the Hon'ble Supreme Court in the case of ***Thakur Jugal***



***Kishore Sinha vs. Sitamarhi Central Co  
operative Bank Ltd & another<sup>12</sup>*** , more  
particularly Para 11 thereof, which is  
reproduced hereunder for easy reference:-

***11.*** *It will be noted from the above that the jurisdiction of the ordinary civil and Revenue courts of the land is ousted under Section 57 of the Act in case of disputes which fell under Section 48. A Registrar exercising powers under Section 48 must therefore be held to discharge the duties which would otherwise have fallen on the ordinary civil and Revenue courts of the land. The Registrar has not merely the trappings of a court but in many respects he is given the same powers as are given to ordinary civil courts of the land by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own Order and even exercise the inherent jurisdiction of courts mentioned in Section 151 of the Code of Civil Procedure. In such a case, there is no difficulty in holding that in adjudicating upon a dispute referred under Section 48 of the Act, the Registrar is to all intents and purposes a court discharging the same functions and duties in the same manner as a court of law is expected to do.*

11.22. By relying on ***Thakur Jugal Kishore Sinha's*** case, he submits that the jurisdiction of the ordinary civil and revenue courts, once ousted by a specific provision, the said Court cannot

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<sup>12</sup> 1967 SCC Online SC 60



exercise jurisdiction it would have to be adjudicated by the Authority, prescribed under the Statute.

11.23. By relying on the above, he submits that the writ petition is required to be dismissed.

12. Heard Sri. Jayakumar S.Patil, learned Senior Counsel for the Petitioner, Sri. Harish A.S., learned counsel for Respondent No.1, Sri.M.S.Rudraiah, learned counsel for Respondent No.2 and perused papers.

13. The points that would arise for determination are,

- 1) Whether the Additional Registrar of Cooperative Societies could in a dispute raised before him under Section 70 of the KCS Act cancel a sale deed which has been registered? If so, under what circumstances?**
- 2) Whether the impugned Order passed by the KAT suffers from any legal infirmities requiring interference at the hands of this Court?**
- 3) What Order?**

14. I answer the above points as follows:



15. **Answer to Point No.1: Whether the Additional Registrar of Cooperative Societies could in a dispute raised before him under Section 70 of the KCS Act cancel a sale deed which has been cancelled a sale deed? If so, under what circumstances?**

15.1. The submission of Shri. Jayakumar S. Patil, learned senior counsel, is that the ARCS cannot decide whether the allotment is valid or invalid, and on that basis, cancel the allotment and/or the sale deed once executed. His submission is that the sale deed having been executed, the matter can only be agitated before the competent civil Court, and in this regard, reliance has been placed on ***Siddhama's*** case and ***Parameshwara's*** case. His further submission is that the validity or otherwise of a sale deed, being one relating to a *right in rem* in proceedings under Section 70 of the KCS Act, 1959, no such declaration could be made, and



in that regard, reliance is based on ***Mir Ubaidullah's*** case.

15.2. Per contra, Sri.Rudraiah, the learned counsel for Respondent No.2, submits that it would always lie with the ARCS to consider if there is any violation of the bylaws and or the Act has been made and it would be for the officers under the Cooperative Societies Act, 1959 to take necessary action in the event of there being any violation and in that regard, reliance has been placed on ***Nanjappa's*** case, ***Harish N.Puthran's*** case, ***Deccan Merchants'*** case, ***Karnataka Sugar Workers Federation's*** case, ***Dattatreya's*** case, ***Jitendernath's*** case and ***Shashidharan's*** case.

15.3. Though the submission of Sri.Jayakumar S. Patil, learned Senior counsel, is that an order of cancellation cannot be passed by the Additional Registrar or any Registrar acting under the KCS



Act. What is required to be examined is the context in which the powers are being exercised inasmuch as the powers being exercised in the background of there being allegations that there is an improper or illegal or unauthorised allotment made where a person who is not entitled to an allotment has been allotted a site by not taking the seniority into consideration etc.,.

15.4. The Governing Body of the Cooperative Society, having acted illegally, cannot in my considered opinion, take up a contention that a civil suit would have to be filed to set right the illegality committed by the Governing Body. By carrying out the illegality of execution of a sale deed, the Society in the present matter, is seeking to contend that any challenge would have to be made before the civil Court, and the supervising authorities under the KCS Act 1959 cannot



exercise any powers and or take any action against the Governing Board and or the beneficiary of the largese extended by the Governing Board to any particular person. That in my considered opinion, would amount to granting a premium for the illegal actions on the part of the Governing Board as also by the beneficiary inasmuch as the beneficiary also was aware that, in normal circumstances, there could have been no allotment made to the beneficiary, without following the due procedure and complying with the applicable seniority rules etc.

15.5.The cancellation of the sale deed is in furtherance of the cancellation of the allotment. The allotment having been made in an illegal or improper manner, the Additional Registrar and the other registrars cannot, in my considered



opinion, be denuded of their power under the Act to take action against the wrongdoers.

15.6. Merely because the sale deed has been registered in pursuance of such wrongdoing would not require the Registrar or any other person who is aggrieved by such allotment and execution of the sale deed to file a suit.

15.7. Looked at from another angle, the Governing Body having performed the illegality, the Governing Body representing the Society, the Society would not seek cancellation. If a subsequent committee comes into being and or an administrator is appointed, the said committee and or the administrator cannot be expected to take action by filing a civil suit to set right the wrong committed by the Governing Body. In my considered opinion, all these issues could be looked into and decided



upon by the Additional Registrar, exercising powers under section 70 of the KCS Act.

15.8. This Hon'ble Court in **Nanjappa's** case has categorically held that all disputes could be resolved under section 70, the same having been confirmed in **Harish Puthran's** case. Even if a further sale deed is executed by the member who has received the undue benefit, proceedings under Section 70 would be maintainable against such third party in terms of the decision of the Hon'ble Apex Court in **Deccan Merchant's** case. Moreso as held by this Court in **Karnataka Sugar Workers Federation**, any matter relating to labour and service issues would also be adjudicated under Section 70 even though there are separate Labour Courts and Industrial Tribunals set up for this purpose, Section 70 of the KCS Act



ousting the jurisdiction of even such specialised tribunals.

15.9. In terms of decisions in ***Jithendranath*** and ***Shashidharan's*** case, if an allotment of a site has been made without following the due procedure or in violation of the seniority, proceeding under Section 70 would be maintainable, this relating to the internal working of the Society and or being a violation of the applicable Act, Rules, Byelaws to such Society.

15.10. The decisions in ***Byanna's*** case and ***Thakur Jugal Kishore Sinha's*** case also clearly specify that it is only the designated Authority under the Statute, that is, the Registrar, who could adjudicate the disputes in terms of Section 70. Thus, the allotment of a site being a business of the Society, any violation of the



allotment rules would also come within the purview of Section 70 of the KCS Act.

15.11. As such, I answer Point No.1 by holding that the Additional Registrar of Corporative Societies could, in a dispute raised before him under Section 70 of the KCS Act 1959, cancel the allotment improperly or illegally made, and thereafter cancel the sale deed improperly or illegally executed, even if it is so registered. Necessary intimation could be sent by the concerned Registrar to the jurisdictional Sub-Registrar to do the needful after such cancellation, of course, before doing so the person in whose favour the illegal allotment has been made would have to be heard. Jurisdiction under Section 70 cannot be entertained as regards transactions between members or a member and a third party where there is no



allegation of violation of KCS Act, KCS Rules,  
Society's bye laws or the like.

16. **Answer to Point No.2: Whether the impugned Order passed by the KAT suffers from any legal infirmity requiring interference at the hands of this Court?**

16.1. In view of my findings to answer to Point No.1, the KAT, having considered these aspects and having come to a conclusion that the Board was not competent to allot the site, though the contention of Sri Jayakumar S. Patil, learned senior counsel, is that adequate opportunity had not been granted. In the present matter, all and necessary arguments have been addressed. I am of the considered opinion that these arguments and contentions, having been considered by this Court, the Order passed by the KAT cannot be faulted with.

16.2. Hence, I answer Point No.2 by holding that for the reasons mentioned by the KAT as well as the reasons mentioned in the present Order,



the Order passed by the KAT does not suffer from any legal infirmity requiring interference at the hands of the Court.

17. **Answer to Point No.3: What order?**

17.1. In view of my answers to Points No.1 and 2, I pass the following:

**ORDER**

- i) The Writ Petition stands ***dismissed***.

**SD/-  
(SURAJ GOVINDARAJ)  
JUDGE**

PRS  
List No.: 2 Sl No.: 1