HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 01.10.2026
Pronounced on: 30.10.2026

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Whether the operative part or full judgment is pronounced: ***Full***

WP(C) No.1619/2024
c/w
WP(C) No.1936/2023
CCP(S) No.410/2024
WP(C) No.1589/2024
WP(C) No.795/2025

J&K COOPERATIVE HOUSING CORPORATION LTD.

...PETITIONER(S)/APPELLANT

Through: - Mr. Salih Pirzada, Advocate

Vs.

UT OF J&K AND OTHERS **...RESPONDENT(S)**

Through: - Mr. Mohsin Qadiri, Sr. AAG, with
Mr. Muneeb, GA.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioner in all these petitions being common, and identical questions of law and fact having arisen for consideration, the petitions were heard together and are being disposed of by this common judgment.

2) The writ petition titled "**J&K Co-operative Housing Corporation Limited** vs. **UT of J&K and others"** bearing

WP(C) No.1619/2024 shall be the lead case and the facts shall be extracted from the same for adjudication of all these petitions.

3) The petitioner is a Cooperative Society registered under the Jammu and Kashmir Cooperative Societies Act, 1989 and is aggrieved of the action of the respondents in denying registration of various legal instruments such as lease deeds, sale deeds for non-payment of stamp duty/registration fee. It is stated that the Cooperative Societies were initially regulated by the Cooperative Societies Act, Samvat 1993, which came to be repealed by the Jammu and Kashmir Cooperative Societies Act, 1960, which in turn was repealed by the Jammu and Kashmir Cooperative Societies Act, 1989. Under all the three Acts, the Government was conferred with power to grant remissions and exemptions to the Cooperative Societies pertaining to any stamp duty chargeable under law regarding the instruments executed by or on behalf of any Cooperative Society. Under the Act of 1993, the Government while exercising the power of exemption vested in terms of Section 30 of the Act (supra), issued Prime Minister's Order No. 86/C of 1937 and granted sanction for exemption to Cooperative Societies relating to the payment

of stamp duty and registration fee. The Act of 1993 came to be repealed by the Act of 1960. It is contended that in terms of Section 123(2), the notifications issued under the repealed Act of 1993 including the Prime Minister's Order were saved. Subsequently, even the Act of 1960 was repealed by the Jammu and Kashmir Cooperative Societies Act, 1989, which, as per the petitioner, also contains the saving clause under Section 177.

4) The case projected by the petitioner in these writ petitions is that the Prime Minister's Order providing for exemption from the payment of stamp duty as well as the registration fee issued under Section 30 of the Act of 1993 continues to hold ground till date, but the official respondents, by ignoring the applicability of the Prime Minister's Order, are insisting that the Prime Minister's Order has ceased to be in existence after the Act of 1960. It is also contended by the petitioner that the issue of validity of the order of exemption was raised in appeal titled "**Jammu Housing Building Cooperative Society Limited vs. Sub-Registrar (Mufassil) Jammu before Registrar Jammu**" in the final order dated 27.05.1987. In the final order it has been specifically mentioned that Cabinet Order No. 86/C of 1937 published in Government Gazette dated

29th Phagan, 1993, passed under the old Cooperative Societies Act specifically exempts all instruments relating to Cooperative Societies and, accordingly, the appeal was allowed by directing the learned Sub-Registrar (Mufassil), Jammu to admit the document to registration. It is also urged that *inter se* communication dated 17.06.1973 between the Law Department and Deputy Commissioner, Budgam establishes the continued validity of the order issued under the Act of 1993.

5) The respondents have filed their response stating therein that barring the petitioner, no other Cooperative Society has any grievance regarding the application of fee rule as the Cooperative Societies registered under the Jammu and Kashmir Cooperative Societies Act, 1989 appreciate that presently there is no exemption available from payment of taxes, fees and duties under the extant laws and till 21.06.2023, the Registration Department has collected revenue of Rs.1,89,04,260/- (stamp duty to the tune of Rs.1,84,98,330/ and registration fee to the tune of Rs.4,05,930/) from 127 deeds relating to articles/instruments of Cooperative Societies. It is stated that the basic Act, that is Act of 1993, from which the Prime Minister's Order of 1937 derived its authority, was repealed

and with the repeal of the said basic Act, the Prime Minister's Order No. 86/C has ceased to hold the field. The Prime Minister's Order was published in Government Gazette on 29th Phagan, 1993 wherein exemption of instruments relating to co-operative societies from payment of stamp duty and registration fee under Section 30 of the Cooperative Societies Act was sanctioned. The Order derived its authority from the Cooperative Societies Act, 1993. Thereafter, the Jammu and Kashmir Cooperative Societies Act, 1960 was enacted which extended to the whole of J&K and in terms of Section 125 of the 1960 Act, the Act of 1993 was repealed in its entirety. In the said section, no saving clause was provided. The contention of the petitioner that Section 123 saves the Order No.86/C of 1937 is vehemently denied as the import of section clearly postulates the saving of existing societies of that time, their bye-laws, rules or orders issued by them and not the exemption order. Had that been the intention of the legislature, then saving clause would have been provided in Section 125 of the repealed Act of 1960 like it was done in Section 177 of the Jammu and Kashmir Cooperative Societies Act, 1989 which makes provision for both repeal of the earlier Act and saving of certain provisions. It is further submitted that vide SRO No. 212 of 01.05.1973, the

Government in exercise of powers conferred under sub-section (2) of Section 35 of the Act of 1960 remitted the fee chargeable under the Registration Act and the Stamps Act in respect of surety bonds and mortgage deeds relating to co-operative society registered under the Cooperative Societies Act. The notification dated 01.05.1973 only exempts the instruments of surety bonds and mortgage deeds from the payment of registration fee and stamp duty and not any other instrument, as such the petitioner under the guise of Prime Minister's Order cannot claim any exemption of stamp duty/registration fee for registration of their deeds. Under General Clauses Act, 1897, Section 6, "Repeal" connotes abrogation or obliteration of one statute by another from the statute book completely as if it had never been passed. When an act is repealed, it must be considered as if it had never existed. Even otherwise, the petitioner cannot claim for any exemption as the petitioner society is not registered under any of the repealed Acts which fact can be gauged from para 1 of the writ petition. It is further stated that till date no notification has been issued by the Government under Section 41 of the Act of 1989 to grant any exemption. With regard to *inter se* communication dated 17.06.2003 between the Law Department and Deputy Commissioner, Budgam, it is

stated that the Department did not reiterate the validity of the Prime Minister's Order but limited its mention stating that the order had not been withdrawn, whereas the fact remains that it stood automatically repealed with the repeal of Act of 1993.

6) The primary argument advanced by the learned counsel for the petitioner is that the Prime Minister's Exemption Order of 1937, issued under the Act of 1933, continues to operate in full force, being expressly saved under Section 123(2) of the 1960 Act and Section 177 of the 1989 Act. He has further contended that the subject enactments contain express provisions empowering the Government to grant exemptions from the payment of stamp duty and registration fees; consequently, the exemption order issued under the Act of 1933 shall be deemed to have been issued under the subsequent enactments.

7) Per contra, learned Sr. A.A.G has argued that upon the repeal of the Act of 1933 by virtue of Section 125 of the Act of 1960, the Exemption Order issued by the Prime Minister ceased to hold the field. Section 123 of the 1960 Act merely saves the existing Cooperative Societies, along with their bye-laws, rules, or orders, but does not extend

such protection to the Exemption Order. Had the Legislature intended to save the Exemption Order, an express provision to that effect would have been incorporated in Section 125 of the Act of 1960, as was done under Section 177 of the Act of 1989.

8) Heard and perused the record.

9) In order to appreciate the rival contentions of the parties, it would be profitable to advert to relevant Sections 35, 123 and 125 of Act of 1960 and section 177 of Act of 1989 and the same are extracted as under:

> **35. Exemption from certain taxes, fees and duties**:(1) The Central Government may, by notification in the official Gazette, remit the income-tax payable in respect of the profits of any class of Co-operative Societies or the dividends or other payments received by members of any class of such societies on account of profits.
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> (2) The Jammu and Kashmir Government by notification in the Government Gazette may in the case of any Cooperative Society or class of Co-operative Societies remit:
>
> (a) the stamp duty chargeable under any law for the time being in force in respect of any instrument executed by or on behalf of a Co-operative Society or by an officer or member thereof and relating to the business of such society or any class of such instruments or in respect of any award or order made under this Act, in cases where, but for such remission the Co-operative Society, officer or member, as the case may be would be liable to pay such stamp duty:
> (b) any fee payable under any law for the time being in force relating to the registration of documents or court fee.

(3) The Jammu and Kashmir Government may, by notification in the Government Gazette, exempt any class of Co-operative Societies from taxes on (a) sale or purchase of goods, and (b) professions, trades, callings and employments.

123. Savings of existing societies.-(1) Any co-operative society now existing which has been registered under the Co-operative Societies Act, Svt. 1970 or the Co-operative Societies Act, Svt. 1993 or under any other law relating to Co-operative Societies in force in the State shall be deemed to be registered under this Act, and its bye-laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under any of the said Acts or laws shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

125. Repeal – The Co-operative Societies Act, Svt. 1993 (VI of 1993) is hereby repealed.

Section 177 of the Act of 1989:

Section 177. (1) **The Jammu and Kashmir Co-operative Societies Act, 1960 (Act No. XXVIII of 1960 is hereby repealed**.

(2) Notwithstanding such repeal anything done, any action taken, order or notification issued, rule or bye-laws made under the provisions of the aforesaid Act, shall, in so far the same are not inconsistent with the provisions of this Act, **be deemed to have been done, taken, issued, made under the corresponding provisions of this Act.**

10) The perusal of section 123 of Act of 1960 reveals that it provides for saving of existing societies and sub-section (2) of Section 123 is relatable to appointments, rules and orders made, notifications issued concerning the said societies existing at the time of enactment of Act of 1960

either registered under Cooperative Societies Act of 1970 or Act of 1993.

11) Further, a reading of Section 125 of the Act of 1960 reveals that the Act of 1993 has been repealed in its entirety. On the contrary, an examination of Section 177 of the Act of 1989 demonstrates that while it repeals the Act of 1960, it expressly saves, notwithstanding such repeal, anything done, action taken, orders or notifications issued, and rules or bye-laws made under the provisions of the Act of 1960, provided that a corresponding provision exists in the repealing Act and that they are not inconsistent therewith. A comparative analysis of the repealing provisions of the Act of 1960 and the Act of 1989 reveals a fundamental distinction; whereas Section 125 of the Act of 1960 does not contain a saving clause for orders, notifications, or acts done under the repealed Act of 1993, Section 177 of the Act of 1989 encompasses both repealing and saving provisions. Had it been the intention of the Legislature to protect notifications or orders issued under the Act of 1993, suitable provisions to that effect would have been incorporated into the Act of 1960, more particularly in Section 125 thereof, analogous to the provision enacted under Section 177 of the Act of 1989.

12) Furthermore, Section 123 of the Act of 1960 deals exclusively with societies registered under the Act of 1970 or the Act of 1993 that were in existence at the time of the enactment of the 1960 Act. By the petitioners' own admission, the petitioner-Society was registered under the Act of 1989. Consequently, even assuming arguendo that the Exemption Order stood protected, the same would remain inapplicable to the petitioner-Society, given its registration under the Act of 1989.

13) The reliance placed by the petitioners on the order dated 27-05-1987 for seeking the benefit of exemption order is misconceived. Similarly, the communication issued by the Law Department on 17.06.2003 affords no sustenance to the claim of exemption advanced by the petitioners. Rather, the respondents are correct in their response that with repeal of Act of 1993, Prime Minister order No. 86/C cease to hold the field.

14) It is worthwhile to observe that the respondents, correctly appreciating the legal position under clause (b) of sub-section (2) of Section 35 of the Act of 1960, issued Notification No. SRO 211 dated 01.05.2013, thereby exempting all cooperative societies from the fees chargeable

under the Registration Act and the Stamp Act in respect of surety bonds and mortgage deeds.

15) Record further reveal that Registrar, Cooperative Societies J&K, in terms of communication dated 08.02.2023, had requested the Administrative Department that Govt. must issue notification both in terms of Section 41 of Act of 1989 and Section 58 of J&K Self Reliant Cooperative Societies Act of 1989, specifying the exemptions/concessions to Cooperative Societies. Learned Senior AAG has produced the order dated 20.06.2024 issued by the Govt whereby a committee has been constituted to prepare the limit of exemption requested for stamp duty and registration fee on the instruments relating to the Cooperative Societies. But it appears that till date no order has been issued by the Govt providing for such exemptions.

16) In view of the above discussion and analysis, this Court is of the considered view that the petitioner is not entitled to the benefit of order No.86/C of 1937 regarding the exemption from payment of stamp duty and registration fee. Accordingly, this petition and other connected writ petitions are found to be without any merit and the same are dismissed. Petitioner shall pay the applicable stamp

duty as well as the registration fee, if the documents have been registered by the Registering Authority, without payment of stamp duty/registration fee, pursuant to the interim directions of this court, within the thirty days of this order.

17) With the dismissal of main writ petitions, the contempt petitions shall also stand disposed of.

(**Rajnesh Oswal)**
Judge

SRINAGAR
30.10.2026
"Bhat Altaf-Secy"

Whether the **judgment** is reportable: **YES/NO**

HIGH COURT
JAMMU & KASHMIR AND LADAKH