

(2025) 12 SC CK 0005

Supreme Court

Case No: Civil Appeal No. 14585 Of 2025 Arising Out Of Special Leave Petition (Civil) No. Of 2025 Diary No. 7678 Of 2024

Adarsh Sahkari Grih Nirman
Swawlambi Society Ltd

APPELLANT

Vs

State Of Jharkhand & Ors

RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Constitution of India, 1950- Article 226
- Indian Stamp Act, 1899- Section 9
- Indian Stamp (Bihar Amendment) Act, 1988- Section 5(7), 9A
- Jharkhand Self-Supporting Cooperative Societies Act, 1996- Section 5, 5(7), 6, 7
- Registration Act, 1908- Section 34

Hon'ble Judges: Pamidighantam Sri Narasimha, J; Atul S. Chandurkar, J

Bench: Division Bench

Advocate: Rahul Arya, Ankit Ambastha, Aahana Jaiswal, Shailendra Slaria, Bhaskar Aditya, Kumar Anurag Singh, Jayant Mohan, Meenakshi Chaterjee, Nilesh Kumar, Adya Shree Dutta, Dorjee Ongmu Lachungpa

Final Decision: Allowed

Judgement

Pamidighantam Sri Narasimha, J

1. Delay condoned. Leave granted.

2. Simplicity in public transactions is good governance. Constitutional courts uphold this virtue to strengthen the rule of law and ensure access to justice. In administrative law, simplicity means laws, regulations, and procedures should be clear, straightforward, and easy to understand, allowing for effortless compliance. Administrative procedures should avoid complexity, redundant requirements, and unnecessary burdens, which waste time, expense, and disturb peace of mind.

2.1 While higher courts set aside executive decisions on the grounds of illegality if they are not founded on relevant considerations, or even when the decisions are based on irrelevant considerations, it is important to recognize the principle that executive actions that mandate certain unnecessary, excessive requirements, must equally be set aside as

illegal.

2.2 On this principle, we have held that the Memo issued by the Principal Secretary, Department of Registration, mandating an additional recommendation of Assistant Registrar, Cooperative Society of the existence of a Cooperative Society, as a pre-condition for registration of a document under Section 9A of the Indian Stamp (Bihar Amendment) Act, 1988 as illegal. The reason is simple. Once a cooperative society is registered and a certificate is issued, Section 5(7) of the Act declares it to be a conclusive proof of its existence and continuation as a body corporate. We have held that when the certificate serves the purpose, the additional requirement is unnecessary. We have also noted that the Memo requiring recommendation from Assistant Registrar, Cooperative Society is based on irrelevant considerations and it does not offer any value addition to the integrity of the transaction as alleged.

3. Section 9 of the Indian Stamp Act, 1899 "Stamp Act" empowers the government to reduce, remit or compound stamp duties on various instruments. Section 9A was inserted by the Indian Stamp (Bihar Amendment) Act, 1988, exempting payment of stamp duty on instruments relating to transfer of premises by Cooperative Societies to their members. For ready reference, Section 9A is reproduced below -

"Section 9A. Notwithstanding anything contained in any rule or orders under clause (a) of section 9 reducing or remitting the duty on an instrument or class of instruments in force immediately before the date of commencement of this section, any instrument, so far as it relates to premises of a Co-operative Society registered or deemed to be registered under any law relating to the Co-operative Society for the time being in force, executed by or on behalf of or in favour of such society or by an officer or member in favour of another member and relating to business of such society shall be chargeable with duty under this section read with articles indicated in

Schedule I-A:

...

Provided further that an instrument relating to transfer of premises by a Co-operative Society to be registered in favour of its members shall not be chargeable with duty:

..."

4. Problem arose in 2009, when the Principal Secretary to the Department of Registration (respondent no. 2) issued the impugned Memo number 494, dated 20.02.2009, calling upon the District Sub-Registrars to ensure that exemption under Section 9A will be given only when there is a recommendation of the Assistant Registrar, Cooperative Society. The Memo addressed by the Principal Secretary to all District Sub-Registrars of the State is reproduced below -

**"Jharkhand Government
Registration Department
File No 1/Ni Vi 1079/08**

By,
Shri Sudhir Prasad,
Principal Secretary
Registration Department, Jharkhand, Ranchi

To,
All District Sub Registrars,
All Sub Registrars

Ranchi Dated2009

Subject: - Regarding giving guidelines for exemption of stamp duty and registration fee in the deed submitted for registration by the Cooperative Societies.

Sir,

In relation to the above-mentioned subject, it is said that under Section 9A of the Indian Stamp Act, there is complete exemption in stamp and registration fees in the deed presented for registration for transfer of land and properties by registered Cooperative Societies. To ensure that unfair advantage is not taken, it will be essential that you ensure that-

1. In case of registration of co-operative societies, exemption will be given only when this matter is recommended by the Assistant Registrar, Co-operative Society.

2. The registrar will receive such recommendation and submit it to the District Under Registrar. In the absence of such recommendation, exemption will not be given.

Please consider this as urgent.

Yours Faithfully

SD/-

Principal Secretary

Registrar Department, Jharkhand, Ranchi.

Memorandum No.: 494

Dated: 20.02.2009"

5. The appellant is a cooperative society, registered under Section 5 of the Jharkhand Self-Supporting Cooperative Societies Act, 1996 "the Cooperative Societies Act, 1996", working with the aim and object of providing housing and other utilities to its members. As the letter issued by the Principal Secretary adversely affected their freedom to transfer property with expedition and efficiency, they approached the High Court by filing a writ petition under Article 226 of the Constitution of India, inter alia raising the following grounds -

(i) That by mandating approval by the Assistant Registrar before registration of a transfer, a new tier has been created as a hurdle, which is ultra vires the Stamp Act.

(ii) That the Memo directly impinges on the independence and self-reliance envisaged for co-operative societies under the 1996 Act.

(iii) That the Assistant Registrar has no authority whatsoever to grant or reject approval to transfers by a co-operative society to its members pursuant to an executive instruction that is contrary to and restrictive of powers of the registering authority under a central legislation, that is, the Registration Act, 1908 "the Registration Act".

(iv) That respondent no. 2 has passed the impugned Memo without providing co-operative societies an opportunity of hearing and has thereby perpetuated gross violation of principles of natural justice.

6. The Single and the Division Benches of the High Court refused to exercise judicial review for the following reason -

(i) The impugned letter is not in contravention to the Stamp Act, generally, or section 9A, in particular. Rather, the requirement under the letter is necessary to ensure that only validly registered cooperative societies get the benefit.

(ii) Under section 34 of the Registration Act, the registering authority has powers to make inquiries as to the executants and their representatives as well as proper stamping and verification of the document presented for registration. However, this power does not extend to examination of validity of registration of a cooperative society and of satisfaction of conditions for availing stamp duty exemption under section 9A of the Stamp Act.

(iii) The impugned executive instruction is intended towards simplifying the process and for benefit of the co-operative societies.

7. While Mr. Rahul Arya, Advocate, reiterated appellant's submissions before the High Court, Mr. Kumar Anurag Singh, Advocate appearing for the State, underscored the spirit of Section 9A and submitted that it is necessary to ensure that fake cooperative societies do not avail the benefit of the exemption. He also submitted that the Principal Secretary, Department of Registration is the competent authority to issue administrative directions to ensure payment of stamp duty and registration of the document and therefore entitled to direct grant of exemption only on the recommendation of the Assistant Registrar, Cooperative Society.

8. The legality of the Memo issued by the Principal Secretary, Registration Department is subjected to judicial review in the context of the power vested in him under the Registration Act. Though the appellants have faintly raised jurisdictional questions about the legitimacy of the so-called power vested in the Principal Secretary on the ground that it is unrelated to the statutory provision, the High Court has not examined this position at all. Even before us, the submission is confined to the exercise of the power being "arbitrary and unreasonable", rather than it being without jurisdiction. We will therefore

confine our enquiry to the exercise of power.

9. Administrative law has well recognised the principal of an administrative decision becoming unlawful if the decision fails to take into account relevant considerations, or even when it takes into account irrelevant considerations. Judicial review of administrative action on the ground of illegality would then require consideration of provision of the statute, rules or regulations, or even a policy empowering exercise of such power or discretion. This process may seem to be a simple case of interpretation of the laws, however as judicial review is in the realm of public law, constitutional courts have the duty to ensure that the power or discretion is exercised in furtherance of the purpose and object of the statute, the rule or the regulation, or for that matter implementation of a policy. In this process while accounting for relevant and irrelevant considerations that may influence the decision, the court also takes into account the broader principles of rule of law and good governance. Irrelevant consideration includes insistence or performance of acts or submission of documents, which neither have relevance nor are value additions to the purpose or object of law or policy in place. Instead, they are demonstrably superfluous and unnecessary, consuming limited time and human resource. This also has a direct bearing on efficiency and good governance. It appears to us that the benefit granted to a cooperative society under Section 9A of the Bihar Amendment Act is sought to be regulated by the Principal Secretary of the Department of Registration to ensure that the benefit is not misused by what he terms as fake societies. With this objective, the Principal Secretary, in exercise of his power and discretion, directed all the registering authorities of the State not to register a document till recommendation of the Assistant Registrar of Cooperative Society is obtained. It is this endeavour of the Principal Secretary that is subjected to judicial review. We will examine the legality of this decision.

10. The Indian Stamp Act is a fiscal enactment, primary object of which is to raise and collect revenue for the State. The power of the State to impose and collect stamp duty and prevent evasion also extends to reducing, remitting or compounding duties, if the State is of the opinion that such a measure is necessary. 'See Section 9 of Indian Stamp Act'

11. In order to encourage cooperative movement, the Bihar legislature introduced Section 9A by the Indian Stamp (Bihar Amendment) Act, 1988, the effect of which is that an instrument relating to transfer of a premises by a Cooperative Society to its members shall not be chargeable with stamp duty. Section 9A has the effect of creating a right in favour of cooperative societies and also of imposing a statutory duty on the authorities; a right in the sense that the cooperative societies can transfer premises to their members without stamp duty and a duty in the sense that instruments of transfer by cooperative societies to their members shall be registered by the authorities without any further requirement of stamp duty.

12. The requirement of recommendation by the Assistant Registrar, Cooperative Society as a pre-condition for registering an instrument transferring premises of a cooperative society in favour of its members without stamp duty to prevent fake cooperative societies from claiming benefit of Section 9A is, in our opinion, an irrelevant consideration leading to illegality in action. Such a pre-condition is clearly superfluous and in fact, unnecessary. The following is the explanation.

13. A cooperative society in Jharkhand, like the appellant herein, registered under Section 5, acquires the status of a body corporate under Section 6[Section 6 Cooperative Society to be a body corporate -(1)The Cooperative Society shall be a body corporate by the name under which it is registered having perpetual succession and a common seal. The Cooperative Society shall be entitled to acquire, hold and dispose of property, to enter into contracts on its behalf, to institute and defend suits and other legal proceedings and to take all such steps necessary to achieve its objectives. (2) All transactions entered into in good faith prior to registration, furtherance of the purposes of the Cooperative Society shall be deemed to be transactions of the Cooperative Society after registration. (3) A Cooperative Society may be registered with limited liability and it shall have the word "limited" as suffix to its name.]. Such a cooperative society will be entitled to display its name at its office, issue notices, official publications, business letters, bills of exchange, etc 'See Section 7 of the 1996 Act'. in its own name. The effect of being a body corporate is in fact evident from Section 5(7) of the Act, which declares that, "*where a cooperative society is registered, the certificate of registration signed and sealed by the Registrar shall be conclusive evidence*". A cumulative reading of Chapter II of the 1996 Act, under which any cooperative society in Jharkhand is registered, is that the certificate of registration is conclusive evidence of the existence of the cooperative society. The State and its

instrumentalities are bound by this certification and no further question should arise about the existence or authenticity of the cooperative society. The certificate is a recognition and a declaration of the State that the cooperative society is continuing on statutorily maintained roll.

14. In lieu of the certificate granted by the Registrar, Cooperative Society, which certificate would necessarily be enclosed with the instrument presented for registration by the cooperative society for registration, the further requirement of a recommendation by the Assistant Registrar, Cooperative Society is superfluous and unnecessary. This requirement, in our opinion, is disruptive of ease of transaction, without any value addition to the integrity of the transaction. Such question would not arise in the teeth of the statutory declaration under Section 5(7), wherein a certification of the cooperative society by the Registrar, Cooperative Society is a conclusive proof.

15. In view of the above, we have no hesitation in holding that the impugned Memo issued by the Principal Secretary, Department of Registration is set aside on the ground of illegality, as it seeks to rely on a superfluous and redundant requirement.

16. For the reasons stated above, the Appeal is allowed against the judgment and order of the High Court of Jharkhand in LPA No. 553 of 2022.