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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of Decision : 4<sup>th</sup> September, 2015.**

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**W.P.(C) 8462/2015 and C.M.Nos.18146-18147/2015**

**C.P. DHARMESH**

..... Petitioner

Through: Mr.Bishwambhar D.Sharma, Adv.

versus

**THE REGISTRAR COOPERATIVE SOCIETIES & ORS**

..... Respondents

Through: Mr.Sandeep Kr., Adv. for R-2 & R-3.

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MR. JUSTICE I.S.MEHTA**

**GITA MITTAL, J (ORAL)**

1. The petitioner is a Member of the ESIC friend CGHS, a Co-operative Group Housing Society, who stands allotted Flat No.223 and is in possession of the same. The petitioner is inter alia aggrieved by the failure of the Society to refund an amount of Rs.2,32,086/-. He contends that the same has been wrongly recovered from him. This claim is premised on the petitioner's contention that the cost of the flat has been wrongly calculated.
2. The instant writ petition for this claim is not the first petition by way of which the petitioner has approached this Court. It appears that the petitioner had earlier filed a writ petition being W.P.(C) No.3287/2008 premised on this very contention wherein a Division Bench of this Court directed an expert Committee to be set up to determine the cost of the flat.

With the consent of the parties, an Architect was appointed to carry out the necessary task. The report of this expert was considered by this Court in the second writ petition filed by the petitioner being W.P.(C) No.326/2012. After consideration of the report, the writ petition came to be dismissed by an order dated 18<sup>th</sup> March, 2013 wherein, inter alia, the Court had observed as follows:

*“In the order dated 18/03/2013 passed by the Hon’ble High Court in W.P.(C) No. 326/2012, the Hon’ble High Court had observed as under:-*

*“The result of the aforesaid is that unnecessarily a hue and cry has been made over the cost of the flat over a long period of time as it appears to be so as the petitioner has come into occupation without paying the full cost of the flat.*

*The result of the aforesaid is that the cost of the flat as determined by the Society cannot be doubted and consequently the Society is entitled to recover the balance of unpaid cost with interest.”*

3. The petitioner was not satisfied with the dismissal of his writ petition and had filed a review application which also came to be dismissed by an order dated 5<sup>th</sup> July, 2013. These orders were challenged by the petitioner by way of special leave petition before the Hon’ble Supreme Court of India, which came to be dismissed on 18<sup>th</sup> October, 2013.

4. The litigation did not end here with the dismissal of the special leave petition. On 21<sup>st</sup> May, 2014, the writ petitioner invoked now the jurisdiction of the Registrar of Co-operative Societies by filing a claim under Section 70 of the Delhi Co-operative Societies Act, seeking the following reliefs:

- 1. Pass an award directing the society to refund Rs.232086/- {(26027524+1001727+728189+325000/121)} illegally and fraudulently demanded and collected with 12% interest and litigation charges.*
- 2. To take up steps as required to take cognizance of the offences committed by various members of the MC's of society and get the necessary FIR registered against the culprits.*
- 3. Pass an award to disqualify the members who were/are holding two flats in their name and/or on their spouse name in the same society and or the society.*
- 4. Pass an award declaration of the present MC as null and void being constituted by the illegal members who have submitted false affidavit in their support and if necessary appoint an Administrator.*
- 5. Pass such further or other order/award which your honour deems fit and proper in the facts and circumstance of the case.*

5. This claim of the petitioner was rejected by an order dated 17<sup>th</sup> September, 2014 passed by the Dy. Registrar holding that the dispute raised by the petitioner already stood decided by this Court in the writ petition filed by the petitioner being W.P.(C) No.326/2012. Still not satisfied with this, the petitioner now filed an appeal No.181/14/DCT under Section 112 of the DCS Act, 2003 before the Delhi Co-operative Tribunal assailing the order dated 17<sup>th</sup> September, 2014. This appeal has been rejected by the impugned order dated 7<sup>th</sup> April, 2015.

6. The Tribunal has noted the fact that the petitioner is residing in Lebanon and was unnecessarily trying to make out a case under Section 70 of the DCS Act read with Rule 84 (4) of the DCS Rules.

7. The Tribunal also observed that the claim petition would tantamount to seeking a review of the order dated 18<sup>th</sup> March, 2013 passed by this Court in writ petition (Civil) No.326/2012.

8. Before us also, learned counsel for the petitioner submits that the order suffers from errors apparent on the face of the record. This submission does not entitle any person to invoke the extraordinary writ jurisdiction of this Court. In any case, the intricate matters relating to costing of the flats, construction of which admittedly commenced in the year 1990 and stood completed in the year 2000, cannot be gone into in these proceedings. Even otherwise, this Court has already examined the entire matter in two previous writ petitions.

9. It is noteworthy that the petitioner is represented by a counsel who is his brother. Additionally, the counsel has been appointed as general power of attorney as well by the petitioner. The affidavit in support of the writ petition has been sworn by counsel in this capacity. Clearly, the instant writ petition is a luxury litigation and an act of judicial adventurism by the petitioner, despite the finality attached to the adjudication on these very facts in the previous litigation.

10. We are of the view that valuable judicial time has been unnecessarily caused to be expended by us on this case. Additionally, the respondent-society stands unnecessarily burdened with the cost of engaging a counsel, who is present in Court on advance notice. Therefore, we find that the instant writ petition is completely devoid of any legal merit. We are also of the view that the petitioner deserves to be burdened with costs.

11. For the above reasons, the writ petition is dismissed with costs which are quantified at Rs.5,000/- which shall be paid to the society and costs of Rs.5,000/- shall be additionally deposited with the Delhi High Court Legal Services Committee. The costs shall be deposited by the petitioner within a period of four weeks from today.

**GITA MITTAL**  
**(JUDGE)**

**I.S.MEHTA**  
**(JUDGE)**

**SEPTEMBER 04, 2015**  
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