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

% *Judgment Reserved on: 01.09.2017*
Judgment Pronounced on: 27.09.2017

+ W.P.(CRL) 1490/2011

S P SAXENA Petitioner
Through: Mr.S.P. Mehta, Advocate.

versus

CBI Respondent
Through: Mr.Sanjeev Bhandari, SPP for
CBI.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The petitioner has invoked the writ jurisdiction of this court under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.PC') seeking quashment of the order dated 06.08.2010 passed by learned Special Judge, CBI in CC No. 10/2008 vide RC No. 6(S)/2006/CBI/SCR-III while dismissing the application dated 27.11.2009 of the petitioner, inter-alia, praying that the proceedings in the case are not sustainable.
2. It is submitted by the learned counsel for the petitioner that a Division Bench of this court in W.P. No. 10066/2004 in the

order dated 21.03.2006 granted six weeks time to CBI to investigate the matter in terms of its earlier order in relation to 102 co-operative group housing societies. He submitted that one such Co-operative Group Housing Society namely Chinar Co-operative Group Housing Society Limited (in short 'Chinar CGHC Limited') assailed the said order of the Division Bench dated 21.03.2006 by SLP (C) No. 7637/2006 and vide order dated 04.08.2006, the Hon'ble Supreme Court has directed that there shall not be any arrest or registration of criminal cases without the leave of the High Court.

3. He submitted that in violation of the order of the Apex Court, the respondent lodged an FIR No. RC-6(S)/2006/CBI/SCR-III/ND on 21.09.2006 under Section 120B read with Section 420/467/468/471 of IPC and 13 (1) (d) and 13(2) of the Prevention of Corruption Act, 1988 against the petitioner and others without seeking the leave of this court. He submitted that in further violation of order of the Apex Court a charge-sheet was also filed by the respondent on 19.08.2008. The petitioner brought this fact to the notice of learned Special Judge, CBI by filing an application on 27.11.2009, which was dismissed by the learned Special Judge, CBI on 06.08.2010. He submitted that since no permission of this court has been obtained by the CBI/respondent to register the case against the petitioner in terms of the order of the Apex Court dated 04.08.2006, the proceedings filed before the learned Special

Judge, CBI by way of charge sheet stands vitiated. He submitted that the order dated 06.08.2010 passed by the learned Special Judge, CBI and the charge sheet filed on 19.08.2008 emanating from the FIR No. RC-6(S)/2006/CBI/SCR-III be quashed.

4. Per contra, learned Special PP for CBI submitted that by initiating such proceedings the petitioner is trying to mislead this court. The impugned FIR No. RC-6(S)/2006/CBI/SCR-III registered against the petitioner is not in connection with the affairs of M/s. Chinar CGHC Limited, a petitioner before the Apex Court in SLP (C) No. 7637/2006. He submitted that order of the Apex Court dated 04.08.2006 of the Apex Court in the said SLP has nothing to do with the petitioner or the FIR in question bearing No. RC-6(S)/2006/CBI/SCR-III.
5. I have heard the learned counsel for the petitioner and the Special Public Prosecutor for CBI and perused the record. I have given my thoughtful consideration to the rival contentions of the parties.
6. For the disposal of this petition, it would be pertinent to refer the order of the Hon'ble Supreme Court dated 04.08.2006, which reads as under: -

“ORDER

Heard both sides.

This Special Leave Petition has been against an interim order. The **matter is concerning with a co-operative Group Housing Society**. Counsel for the petitioner submits that already the **flats are ready** but in view of the pending

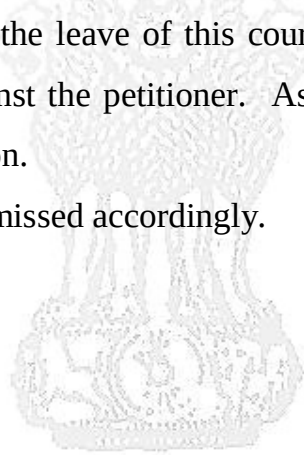
enquiry **the society is not able to allot the houses.** Counsel for the C.B.I. submits that **the enquiry** is continuing and it has not become final and the counsel for the Registrar, Co-operative Societies submits that **they also suspect something about the same.**

In our opinion, it is for the High Court to take a final decision **in the matter.** In the meanwhile, there shall **not be any arrest or registration of criminal cases without the leave of the High Court.** The High Court may take an early decision **as the flats are lying vacant.** We request the High Court to take an **early decision at least within a period of two months,** in view of the above direction.

The special leave petition is disposed of accordingly.”

7. A bare perusal of the order of the Apex Court shows that the matter before it was pertaining to and concerning the affairs of a particular group housing society i.e. M/s. Chinar CGHS Limited. With regard to the affairs of this particular co-operative group housing society, it was pointed out that flats were ready but in view of the pending enquiry the society was not able to allot the houses and learned counsel for the Registrar, Co-operative societies also suspected something about the same. After hearing the parties, the Hon’ble Supreme Court has observed that it is for the High Court to take a final decision in the matter i.e. the matter pertaining to M/s. Chinar CGHS limited and that is why the Hon’ble Supreme Court has further directed that there shall not be any arrest or registration of criminal cases without the leave of the High Court and it was observed that this court may take an early decision as the flats were lying vacant.

8. It is also noticeable that the order of learned Special Judge, CBI dated 06.08.2010 was assailed by the petitioner before the Apex Court by way of SLP (Crl.) No. 8670-8671/2011. However, on 12.09.2011, the Hon'ble Supreme Court dismissed the petition as withdrawn with liberty to seek appropriate relief from the High Court in accordance with law.
9. Therefore, when the impugned FIR and consequent charge-sheet filed before the learned Special Judge, CBI has nothing to do with M/s. Chinar CGHS Limited, there was no occasion for the CBI to obtain the leave of this court before registering the criminal case against the petitioner. As such there is no merit found in the petition.
10. The petition is dismissed accordingly.



(VINOD GOEL)
JUDGE

SEPTEMBER 27, 2017

"shailendra"//

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