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

+ LPA 698/2018 & CM APPLs. 51856-57/2018

CAPITAL INFRAPROJECTS PVT LTD Appellant
Through: Mr. Debesh Panda with Mr. Neil
Chatterjee, Advs.

versus

THE REGISTRAR OF SOCIETIES & ANR Respondents
Through: Mr. Naushad Ahmed Khan, ASC
(Civil) GNCTD with Mr. Zahid
Hanief, Adv. for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

% **ORDER**
11.12.2018

CM APPL. 51857/2018 (*exemption*)

Allowed, subject to just exceptions.

LPA 698/2018 & CM APPL. 51856/2018

1. Seeking exception to an order passed by the learned writ court on 29.10.2018 in W.P.(C) 11683/2018, this appeal has been filed under Clause 10 of the Letters Patent.
2. Respondent No.2 – a society of flat buyers registered under the Societies Registration Act, 1860 (hereafter referred to as “the Act”), as applicable to the Union Territory of Delhi, raised a dispute with regard to the buyer of a flat in a project known as “The Golden Palms” which is being

implemented by the appellant – a Pvt. Ltd. Company. *Inter alia* contending that the respondent society has been granted registration in an illegal manner under the Act and the same should be cancelled, the writ petition in question was filed.

3. The writ court found that the appellants herein are only challenging the registration of the respondent – society to non suit them from the dispute raised by them with respect to rights of the flat buyers and dismissed the writ petition by passing the following order:

“1. The petitioner has filed the present petition, inter alia, praying that the registration of respondent no.2 association as a society within the meaning of Section 3 of the Societies Registration Act, 1860, be cancelled.

2. Respondent no.2 is a society constituted by flat buyers of a project known as “The Golden Palms”. The said project has been promoted and developed by the petitioner. Admittedly, there is litigation between the petitioner and respondent no.2.

3. It is clear from the above that the petitioner has filed the present petition with the ulterior object of non suiting respondent no.2 in pursuing the litigation instituted against the petitioner.

4. It is not disputed that respondent no.2 is a non profit organisation and works for the benefit of its members.

5. It is well settled that the remedy under Article 226 of the Constitution of India is discretionary. Given the objective with which the present petition is filed, this Court does not consider that exercise of this discretion in favour of the petitioner is warranted.

6. The petition is, accordingly, dismissed.”

4. Even though learned counsel for the appellant inviting our attention to the statutory provision as contemplated under the Act judgment by the learned Single Bench of this Court in the case of *Brij Mohan Gupta v. The Registrar of Societies*, W.P.(C) 6965/2011 decided on 02.05.2012 tried to argue that the only remedy available to the appellant for challenging the registration was to file a writ petition and he vehemently argued that the registration granted to the respondent – society was unsustainable on various grounds as are stated in the writ petition and canvassed before us, we are of the considered view that a perusal of the order passed by the learned writ court would go to show that the learned writ court found that the only purpose for challenging the registration of the respondent – society was to non suit them and to nullify the litigation initiated by them against the appellant.

5. Taking note of the same and the fact that respondent No.2 is a non-profit organization working for the benefit of its members in protecting their rights as flat buyers, the learned writ court refused to exercise its discretionary jurisdiction under Article 226 of the Constitution of India taking note of the object with which the petition was filed.

6. Keeping in view the aforesaid and the discretion exercised by the Court as is evident from the order reproduced hereinabove and the intention of the appellant in invoking the writ jurisdiction of this Court only for cancellation of the rights, we are of the considered view that the discretion exercised by the learned writ court in the peculiar facts and circumstances of this case cannot be termed as illegal or perverse to such an extent that interference into the matter is called for.

7. Accordingly, keeping all legal questions involved in the matter open to be considered, if required, in an appropriate case, we dismiss this appeal. The pending application also stands disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

DECEMBER 11, 2018
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