2025:AHC:186423-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 35952 of 2025

Mukesh Singh

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Mohd Sauood
Counsel for Respondent(s)	:	C.S.C., Satish Chaturvedi

Court No. - 4

A.F.R.

HON'BLE AJIT KUMAR, J.

HON'BLE SWARUPAMA CHATURVEDI, J.

Per Swarupama Chaturvedi, J.

1. Heard Shri Mohd Sauood, learned counsel for the petitioner and Shri Pankaj Srivastava, learned panel counsel for the respondent no.3, and learned Standing Counsel for State-respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed by the Petitioner, who is an auction purchaser, seeking directions against Respondents in relation to the water supply problem, which was discovered post-sale in respect of a property purchased through SARFAESI e-auction. The grievance of the Petitioner is that there is significant liability in terms of society dues, which had accrued under the account of the previous owner and that was neither disclosed by the Bank at the time of auction, nor was known to the Petitioner prior to taking possession. The main contention of the petitioner is that such liability was not reflected in any encumbrance certificate and therefore he has approached the Court for following relief:

"*i. issue a writ, order or direction in the nature of mandamus directing the respondent no.4 to restore/resume water supply to the petitioner's Flat No. G-11 First Floor*

Saptrishi Apartment, Sector 16B, Pandit Deen Dayal Uyadhyay Puram, Agra. Sikandra Yojna, District Agra.

ii. issue a writ, order or direction in the nature of mandamus directing the respondent no.4 to realize the dues if any from the respondent no.3."

3. The fact of the matter is that the petitioner and his son were declared highest bidder for the flat and subsequently, certificate of sale dated 06.04.2024 was issued by the respondent no.3, Bank in favour of the petitioner and his son. The property in question was put to auction by the respondent no. 3, Bank as per the published sale notice dated 06.12.2023 for E-Auction under the SARFAESI.

4. After execution of the sale deed, the petitioner took the possession of the flat in question, where he noticed that the water supply was disconnected and hence the petitioner sent letters dated 28.03.2024 and 13.05.2024 to respondent no.4, which is the resident welfare society with a request to restore the water supply.

5. The petitioner had also sent a representation dated 14.10.2024 to the respondent no.3 Bank stating that in the auction that no society dues were declared neither mentioned in the sale letter, to which the respondent no.3 replied that the Bank sold the property on "as is where is", "as is what is" and "whatever there is" through E-Auction dated 27.12.2023, nor the RWA (Society) of Saptrishi Apartment conveyed about the dues of the Society before the auction and as such he could not be intimated about the dues of the society and further it has been stated by the respondent Bank that the Bank is not liable to pay any dues of the society.

6. Learned counsel for the petitioner submits that the petitioner has also sent representation dated 15.10.2024 and 27.11.2024 to the Sub-Registrar, Registrar of Societies and Chits, Agra stating therein that after taking possession and registry, he had noticed that water supply to the flat in question was disconnected and inspite of repeated request, the same had not been restored and as such he could not have been deprived of basic needs. It is further submitted that the petitioner was not informed about the society dues when he enquired about liabilities.

7. As per learned counsel for the petitioner, neither the respondent-Bank obtained no dues certificate, nor had made any application for grant of "No

Dues Certificate" prior to executing the registered deed under the provisions of Uttar Pradesh Apartment (Promotion of Construction Ownership and and Maintenance) Act, 2010. Learned counsel for the petitioner further argues that it was incumbent upon the respondent Bank prior to e-auctioning the property to obtain the NOC from the society and therefore, the respondent-Bank cannot escape now from the liability by merely saying that the Bank sold the property on a "as is where is", "as is what is and "whatever there is" through E-Auction dated 27.12.2023. Learned counsel for the petitioner also submits that in the sale certificate under Article 18 (sale deed) it has been mentioned that the property listed was made free from encumbrances but as a matter of fact that respondent-Bank did not comply with the same.

8. After hearing learned counsels for parties and going through record, the following issues arise for the consideration by this Court:

(i) Whether the respondent Bank is liable for the society dues, which got discovered by the purchaser after execution of sale transaction in the light of the fact that e-auction notice had clear mention that it is on "as is where is", "as is what is and "whatever there is" basis?

(ii) Whether after purchasing the property on "as is where is", "as is what is and "whatever there is" basis, and realizing non-compliance of the provision of the Uttar Pradesh Apartment (Promotion of Construction Ownership and and Maintenance) Act, 2010, is it open for the petitioner to pray for directions against respondents under Article 226 of the Constitution of India?

9. To decide the first issue, it is pertinent to note that the law is well-settled through a series of judgments delivered by various High Courts as well as the Hon'ble Supreme Court.

10. In the matter of ***South Indian Bank Limited and Another Versus JAC Olivol Products Private Limited and Others, 2024 SCC OnLine Cal 3938,*** where Calcutta High Court has held that the proposed tenderer was required to read and understand the terms and conditions mentioned in tender-cum-sale notice published by the Bank The Calcutta High Court further held that:

"*16. As mentioned above, Rule 8(7)(a) mandates disclosure of the description of the immovable property to be sold including the details of the encumbrances known to the*

secured creditors. This rule needs to be interpreted bearing in mind the terms and conditions of the subject tender cum auction notice to which the writ petitioner has irrevocably bound himself. Further we point out that Clause (a) of Rule 8(7) only mandates disclosures of the "known encumbrance". The terms and conditions of the subject tender states that particulars furnished regarding the secured assets is stated to the best of information of the Bank and the Bank will not be answerable for any error or mis-statement or omission. The terms and conditions also mandate that the successful tenderer has to pay all taxes to the Government and local authorities. The writ petitioner has irrevocably agreed to abide by the terms and conditions by their letter dated 17.06.2022. Therefore, even if it is argued that there was certain statutory protection given to the writ petitioner/successful bidder (which in our opinion on facts is not so), the writ petitioner is deemed to have been waived such rights."

11. The implication of an auction sale of premises on an 'as-is-where-is' basis, in the context of electricity arrears, was considered by a three-judge Bench of the Supreme Court in the matter of ***K. C. Ninan vs Kerala State Electricity Board and Others, (2023) 14 SCC 431***, and it was held that:

"*342.9. The implication of the expression "as-is-where-is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities;"*

12. Applying the above principles of law to the facts of the case, we find that petitioner does not dispute this fact that he had participated in proceedings of E-Auction dated 27.12.2023 with the knowledge of the fact that the property in question was available on "as is where is", "as is what is and "whatever there is" basis. Hence, the facts of the case fall within the parameters of law laid down in the judgements cited above. In the light of settled principles as discussed in above judgements, once a person participates in any auction while having knowledge that the property is being e-auctioned having the condition "as is where is", "as is what is and "whatever there is" the duty is upon the prospective bidder, who is the purchaser in facts of the case, to exercise complete caution in checking dues and liabilities. Accordingly, first issue is decided against the petitioner and the prayer against respondents is rejected.

14. The second issue must also be decided against the petitioner as the grievance regarding non-compliance with the provisions of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 was raised only after the petitioner had taken possession of the property, which was well after the execution of the sale. The terms and conditions of the sale were known to the petitioner at the time of participation in the E-auction and consequent purchase and he had option of not participating if the conditions were not acceptable and, therefore, the respondent Bank has rightly responded that it bears no liability where the purchaser has failed to exercise due diligence in accordance with the conditions specified in the e-auction notice.

11. Therefore, this Court is not inclined to grant indulgence in the matter although liberty rests with the petitioner to pursue remedies available under the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, if so advised.

12. Accordingly, the petition is dismissed and consigned to records.

(Swarupama Chaturvedi,J.) (Ajit Kumar,J.)

October 15, 2025
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