

WP(C) 6134/2016

BEFORE

HON'BLE MR. JUSTICE A.M. BUJOR BARUA

Heard Ms. D. Borgohain, learned counsel for the petitioner and also heard Mr. A.C Sharma, learned counsel appearing for the respondent Nos. 1, 2 and 3.

Pursuant to a E-auction sale notice dated 03.10.2015, the petitioner had purchased a Flat being Flat No.403 C, Type C, fourth floor, measuring 1197 sq.ft with a car parking space located at Protech Regency, village- Hengrabari, under Beltola Mouza, Guwahati. As per the E-auction sale notice, the reserve price for the flat was `36,80,000/-.

One of the terms and condition of the E-auction sale notice was that the E-auction is being held on As is, where is and As is, what is basis. In the E-auction notice, it has also been provided that to the best and information of the authorized officer of the respondent bank, there is no encumbrance on the property.

The petitioner accordingly purchased the said flat and paid an amount of `36,80,000/- and upon such purchase, had obtained the possession of the flat. But, after obtaining the possession, the petitioner finds that the electricity and water connection of the flat is not being provided. Upon enquiry, the petitioner could learn that the housing society, who is managing the flat is entitled to an amount of `88,972/- from the earlier owner of the flat, who had defaulted the payment of the respondent bank and as a result of which, the auction of the flat had been had taken place.

In such view of the matter, this Court is of the prima-facie satisfaction that the flat sold by the respondent bank through the E-auction sale notice was not an unencumbered property inasmuch as, the earlier owner of the flat from whom the respondent bank had obtained the title, was liable to pay the aforesaid amount of `88,972/- to the housing society.

Availability of electricity connection and water connection is a basic human need and any deprivation of the same would be a violation of the Article 21 of the Constitution of India. The petitioner having purchased the flat through E-auction and having paid the entire amount and the respondents having provided in the E-auction notice that the property is unencumbered, any subsequent event, which makes the petitioner to live in the flat without electricity and water connection would be a violation of the basic human rights.

It is submitted by the learned counsel for the petitioner that in the meantime, the required dues against the electricity payment had been paid by the bank to the housing society and as such, the electricity connection had been restored. But, in respect of the water connection, the same is not yet restored because an amount of `88,972/- is due against payment of water charges.

In such circumstances, in the interim, it is provided that the respondent bank shall pay the amount of `88,972/- towards the water charges to the appropriate authority and get the water connection restored to the flat premises. The payment of the said amount of `88,972/- shall be subject to the final outcome of this writ petition and in the event, if it is ultimately decided that the respondent bank is not liable to pay the said amount, the petitioner undertakes to refund the same to the respondent bank upon the final adjudication.

Accordingly, it is directed that the respondent bank shall pay the amount of `88,972/- to the housing society within a period of seven days from today and the housing society thereafter shall immediately pay the amount to the appropriate authority and get the water connection restored to the flat of the petitioner.

List the matter after two weeks.