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

Date of Decision: 28.11.2019

+ W.P.(C) 11914/2019

OPTIMA FOODTECH PRIVATE LIMITED Petitioner

Through: Mr. Anant Aggarwal, Advocate.

Versus

CITY UNION BANK LIMITED AND ORS. Respondents

Through: Mr. Devender Sain, Advocate
with Mr. Siddharth Sain,
Advocate for respondent No.1.
Mr. Arun Birbal, Advocate for
DDA.

Mr. Shubham Jaiswal,
Advocate for respondent No.3.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S. SISTANI, J. (ORAL)

In this petition filed under Article 226 of the Constitution of India, the following prayers have been made:

“a) Issue appropriate writs, orders and/or directions particularly in the nature of certiorari quashing the impugned tender-cum-sale notice dated 31.08.2019;

b) Issue appropriate writs, orders and/or directions particularly in the nature of mandamus directing

respondent no.1 to issue fresh tender-cum-sale notice taking consideration material disclosures with respect to nature/title/description/encumbrances along with the financial liability attached;

c) Issue appropriate writs, order and/or directions particularly in the nature of mandamus directing DDA to disclose the exact amount of Un-earned Income as well as the amount required for converting the properties in question from leasehold to freehold;

d) Pass such other and further orders as this Hon'ble Court may deem fit in the facts of the case and in the interest of justice, equity and good conscience."

2. In this case respondent No.1 issued a tender-cum-auction sale notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with respect to various properties including three flats at Jasola bearing Nos. DTJ705, DTJ706 and DTJ707. A corrigendum to the tender-cum-auction sale notice was also published by respondent No.1 bank in Mail Today, New Delhi edition prior to the date of auction on 13.10.2019, which corrigendum reads as under:-

“ CORRIGENDUM

TENDER-CUM-AUCTION SALE NOTICE

We refer to the Tender-cum-Public Auction Sale dated 31-08-2019 published on 2nd September 2019 in Mail Today/Rastriya Sahara, our bank has intended to sell the Commercial Space/floor in Plot No.11 bearing

DTJ-705, DTJ-706 and DTJ-707 all on 7th Floor at Plot-11, DLF Towers, Jasola, Delhi.

Whereas the said property was wrongly mentioned as owned by Mr. Rajiv Goyal & Mrs. Deepa Goyal, this corrigendum is issued amending the Sale Notice dated 31-08-2019.

“the property belongs to DDA and title of Lease can be transferred to the Auction Purchaser being the Leasehold property and will remain with the Auction Purchaser provided he/she comprises with the terms and condition of the lease. The Auction Purchaser can get the property converted into freehold on making an application to DDA and clearance of the requisite dues including UEI as per the freehold policy of DDA.”

Place: Kumbakonam, Date: 11-10-2019 Authorised Officer”

3. On the date of auction, the petitioner admittedly acknowledged corrigendum dated 13.10.2019 issued by respondent No.1 making certain additional enquiries with regard to the flats in question. However, being dissatisfied by the last minute corrigendum the petitioner did not participate in the bid despite being present.

4. The grievance of the petitioner is that the bank had failed to disclose in the tender-cum-auction sale notice as originally issued that the flats in question were leasehold flats and the purchaser would be saddled with payment of unearned increase. Counsel for respondent No.1 bank, on the other hand, submits

that three flats have been successfully auctioned and the successful bidder viz. respondent No.3 has paid the entire amount; and that the sale certificate has also been issued to respondent No.3.

5. Considering what has been stated by respondent No.1, in our view, this writ petition has been rendered infructuous. It is nobody's case that it was not known that the property under auction was leasehold, which fact was in public knowledge and domain. The petitioner therefore cannot say that he was unaware that he would have to bear the unearned increase for mutation of the petitioner's name in the DDA records. Moreover, as it later transpired, the petitioner did not even participate in the auction.

6. In the above view of the matter, no ground is made-out to interfere by way of the writ petition.

7. The writ petition and application are accordingly dismissed.

C.M. No.48843/2019 (stay)

8. Since the petition is disposed of, this application is also disposed of.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 28, 2019/Ne