

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.18606 OF 2014

Between:

Simranjeet Singh Punj & another

... Petitioner

And

Bank of India, Government of India
Undertaking Vasavinagar Branch & another

... Respondents

JUDGMENT PRONOUNCED ON: 18.03.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? : Yes**
- 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes**
- 3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.18606 OF 2014****% 18.03.2024****Between:****# Simranjeet Singh Punj & another****... Petitioner****And****\$ Bank of India, Government of India
Undertaking Vasavinagar Branch & another****... Respondents****< Gist:****> Head Note:****! Counsel for the Petitioners : Mr.S.Laxmikanth
^ Counsel for Respondents : Mr.V.Dyumani****? Cases Referred:**

1. 2018 SCC Online Hyderabad 196
2. (2012) 11 Supreme Court Cases 511
3. 2010 (1) SCC Page 655
4. 2023 SCC Online AP 1048

HON'BLE MRS JUSTICE SUREPALLI NANDA**WRIT PETITION No.18606 OF 2014****ORDER:**

Heard Mr.S.Laxmikanth, the learned counsel appearing on behalf of the petitioners and Mrs.V.Dyumani, learned counsel appearing on behalf of the respondents.

2. PRAYER:

The petitioners approached the court seeking prayer as under:

"To issue Writ, order, or direction more particularly in the nature of writ of mandamus, declaring the action of the respondents in auctioning the Flat No.1 and 2, situated at Sri Sai Baba Ashirwad Sadan, Saraswati Nagar Colony, Lothukunta, Secunderabad-500 015 without disclosing the fact that the flats are constructed on the stilt floor meant for parking which was subsequently declared as unauthorized constriction by the cantonment board by issuing notice under section 248 of the Cantonment Act 2006 dated 13.02.2014 and which were sealed by the Cantonment Board in exercise of this power under section 249 of the Cantonment Act 2006 on 18.02.2013 as illegal, arbitrary, violative of fundamental rights guaranteed under Article 14 and 19(1) (g) of the Constitution of India, violation of constitutional guarantee under Article 300-A of the Constitution of India, amounted to cheating in terms of

Section 420 of IPC and direct the respondents to refund back the entire sale consideration of Rs.12,40,000/and stamp duty, registration charges and legal expenditure incurred by the petitioners with interest at the rate of 24% per annum from the date of payment till the date of refund of the amount."

3. **PERUSED THE RECORD.**

a) **Sale/Auction Notice dated 12.08.2012 reads as under:**

"In continuation of our notices dated 18.01.2010 with regard to Sy.No.1 and 2 in Andhra Prabha and The Financial Express News papers, the said properties are again brought to sale with the terms and conditions as under:

Tenders are invited in sealed covers with bankers cheque/demand draft for the EMD, to reach the under signed on or before 2 pm on 15.09.2012 for the following proposals on "AS IS WHERE IS' and AS IS WHAT IS" basis towards the recovery of Bank's secured debts.

SL NO.	Name & address of the Borrower/Guarantor	Description of the property mortgaged	Reserve Price Rs.	EMD amount 10% of Reserve price
1.	K.Giridhara Babu, 15-118, Sri Venkateswara Temple,(Near Swaroop Nagar, Uppal, Hyderabad, (LN 2159)	Flat No.1, Stilt G.F., Sri Sai Baba Ashirwad Sadan, Manda Baba Basti, Lothukuntha, Secunderabad, Belonging to K.Giridhara Babu, area: 1250 sft.	6,50,000/-	65,000/-
2.	G.Lalitha & G.Suresh, 3/B, Vijaya Nagar Colony, Picket, Secunderabad,(LN 2185)	Flat No.2, Stilt G.F, Sri Sai Baba Ashirwad Sadan, Manda Baba Basti, Lothukuntha, Secunderabad, Belonging to G.Lalitha - area: 950 sft	5,50,000/-	55,000/-

Terms and conditions of Auction:

1. **That the auction is on "As is where is" and "As is what is" and "whatever there is" basis.**
2. That the earnest money shall be paid by way of Demand Draft, Payorder of any Nationalised Bank and should be drawn in favour of Senior Branch Manager, Bank of India, VASAVINAGAR Branch, payable at HYDERABAD. No interest shall be paid on the EMD refunded to the unsuccessful bidders.
3. (If the auction is conducted by inviting bids) "That the bid shall be opened in presence of bidders attending the auction sale. The property will be sold to the highest bidder. However, the Authorized Officer reserves the absolute discretion to allow inter se bidding if deemed necessary among the bidders present, which will take place at the place, date and time of auction as mentioned in this Notice. The amount by which the bidding is to be increased shall be determined by the Authorised Officer conducting the sale. Any bidder interested to increase his offer should remain present on the said date. Failure to remain present will debar to increase their offer subsequently after completion of auction sale".
4. That the statutory encumbrances such as dues of Excise Department, Property Tax or Income Tax Dues, any other types of taxes etc., or any other charges affecting the property under auction to be borne by the purchaser.
5. That the Intending bidder should make discreet enquiries as regards any claim, charges on the property of any

authority beside the Bank's charges/other known encumbrances disclosed above.

6. The Authorized Officer reserves the right to accept or reject any or all the offers or adjourn/postpone the sale without assigning any reason thereof.
7. That the successful purchaser shall bear all existing/future taxes, stamp duty, registration fee, incidental expenses etc for getting the sale certificate registered.
8. If the borrower pays the amount due to the Bank in full before the date of sale, auction is liable to be stopped.
9. The sale shall be subject to the conditions prescribed in the Security Interest (Enforcement) Rules 2002 and the act and to the conditions mentioned above.
10. The Bank Draft of the said EMD (Earnest Money Deposit) drawn in favour of Bank of India, Vasavi Nagar Branch, payable at Hyderabad should accompany with each tender property wise separately super scribing on the cover specifying the bid for the property under SI.No. No interest will be paid on EMD.
11. The Tenders will be opened by the under signed at Bank of India, Vasavi Nagar Branch, Plot No.28, Laxmi Enclave, Vasavi Nagar, Secunderabad-15, on 17-09-2012 at 3 pm in the presence of available/attending tenderers.
12. The Tenders not accompanied by EMD (Earnest Money Deposit) and Tenders below the reserve price shall be rejected outright.

13. The successful tenderer/bidder shall have to pay 25% of the purchase amount by way of Cash or a Demand Draft of on any Nationalised Bank (including EMD already paid) within 24 hours from the date of acceptance of the Tender/Bid conveyed to him in writing. In default of payment of 25% of the purchase amount or any part thereof the EMD shall stand forfeited and property will be, at the discretion of the Authorised officer, may be offered to the second highest tenderer/bidder or resold.
14. The balance 75% of purchase price shall have to be paid within 15 days of conveying the confirmation of Sale to the purchaser. In the event of default in payment of balance 75% of sale price of any part thereof within the stipulated period or within the period as may be agreed by Bank in writing, all moneys paid by the purchaser shall be forfeited by the Bank and the property may be offered to the second highest tenderer/bidder, or resold.
15. The purchaser shall be delivered physical possession of the property at the site mentioned above after receiving full purchase price and issuance of Sale certificate.
16. The interested parties may contact for further details the Senior Branch Manager, Bank of India, Vasavi Nagar Branch, Secunderabad, Ph:27743401, 27742007, Fax: 27746808.
17. Inspection of the property can be made on this spot between 1: am to 4: pm on 13.09.2012."

b) Counter affidavit filed by the Respondents, in particular, paras 6, 7, 8, 9, 10, 11 and 12, read as under:

6. I submit that as the said borrower committed default in repayment of the dues of the Respondent bank, the Bank was constrained to classify the account as Non Performing Asset and invoked the provisions of SARFAESI Act, 2002, this Respondent bank issued demand notice, followed by Possession Notices and Sale Notice dt.11.08.2012 fixing the date of sale as 17-09-2012. The said Sale Notice was published in Financial Express and Andhra Prabha daily News Paper edition dated 12-08-2012. It is submitted that in response to the said Sale Notice, the Petitioners participated in the auction.

7. It is humbly submitted that as per the terms and conditions of the Sale Notice 12-08-2012, this Respondent has specifically stated at Terms and conditions of Sale No.1, that the Auction is on "As is where is" and "As is what is" and "whatever there is" basis. At Terms and conditions of sale No.5, it is specifically stated that intending bidder should make discrete enquires as regard any claim, charges, on the property of any authority besides bank charge/other known encumbrances disclosed above.

8. It is humbly submitted that the intending auction purchasers are supposed to make due diligence about the title, permissions / Approvals relating to the property to be purchased. It is submitted that the Petitioners after going

through the documents available at the branch and after satisfying only have participated in the auction and they became highest bidders for Rs.5.70 Lakhs for Flat No.2 and Rs.6.70 Lakhs for Flat No.1. The Petitioners have paid the bid amount and the Authorized Officer of this Respondent Bank executed the Sale Certificate and the same was Registered as document No. 1658 of 2012 and 1657 of 2012 in the Office of Sub-Registrar, Bowenpally Secunderabad. This Respondent also delivered physical possession of the property.

9. It is submitted that the Cantonment Board Resolution No.2(A-1), dated 30-07-1999 accorded permission for construction of stilt for parking, Ground + Three floors. It is submitted that the flat No.001 and 002 are in stilt ground floor. The petitioners after physical verification of the properties and verification of the documents have participated in the auction. The Petitioners knowing fully about the physical location of the flats and with full knowledge have participated in the auction. It is incorrect to state that this Respondent has misrepresented and deliberately suppressed the facts. The question of misrepresentation does not arise when the petitioners have thoroughly verified the documents and as well as the physical location of the Flats.

10. It is submitted that as against the notice under Section 248 of Cantonment Act, an Appeal lies to the General Officer Commander-in-Chief, Southern Command, Ministry of Defence at Pune under section 340 of the

Cantonment Act. It is submitted that under section 249 of the Act, the show cause notice shall be issued within 12 months from the date of alleged unauthorized construction and in the present case the construction are very old and were existing since long time i.e., from 2000 and as such the said notice is also barred by limitation.

11. It is submitted that the Petitioners instead of filing an Appeal before the General Officer Commander-in-Chief, Southern Command, Ministry of Defence at Pune as contemplated under the Cantonment Act, filed a suit before the Hon'ble Court at Secunderabad. It is submitted that the Commanding Officer and the Cantonment Board are also vested with the powers under the Cantonment Act to regularize the unauthorized construction if any made in deviation of the approved building plan. Therefore the remedy available to the Petitioners is elsewhere and are not entitled to invoke the extraordinary jurisdiction of the Hon'ble Court and file the present Writ Petition.

12. It is submitted that this Respondent has conveyed right title and interest which was mortgaged to this Respondent bank by the owners of the said properties. It is pertinent to note that there is no dispute with regard to title to the property. The petitioners instead of approaching the correct Forum to redress their grievances, allowed the Cantonment Board to lock the premises."

4. The case of the Petitioner, in brief, as per the averments made in the affidavit filed in support of the present writ petition:

It is the specific case of the Petitioner that in response to Sale-cum-Auction Notice published by Respondent Nos.1 & 2 in leading newspapers including Financial Express on 12.08.2012 proposing to auction Flat No.1 and 2, Stilt Floor, Sri Sai Baba Ashirwad Sadan, Manda Baba Basti, Lothukunta, Secunderabad, to recover the outstanding debt of one Sri K.Giridhara Babu and Another, the Petitioner Nos.1 and 2 approached Respondent No.2 and in turn Respondent Nos.1 and 2 had shown Flat No.1 & 2 in the Stilt Floor of Sri Sai Baba Ashirwad Sadan, Manda Baba Basti, Lothukunta, Secunderabad, to the Petitioners herein, and the Petitioners 1 and 2 submitted their bid for the said two flats. The sale was knocked down in favour of the Petitioners and the Petitioners deposited 25% of the bid amount. The bid for Flat No.2 was Rs.5,70,000/- and the bid for Flat No.1 was Rs.6,70,000/-. The Petitioners were directed to deposit the balance 75% of the consideration by 16.10.2012 and thereafter after the Petitioners deposited the balance consideration and the Sale Certificates bearing Doc.No.1658/2012 and 1657/2012, dt. 01.12.2012 of Sub Registrar, Bowenpally, Secunderabad in

respect of Flat No.1 and Flat No.2 respectively were accordingly issued. At that stage, the residents of the said building approached Secunderabad Cantonment Board complaining that the Stilt Floor cannot be converted into residential flat and based on the said complaint after following due procedure U/s.248 and 249 of the Cantonment Act, 2006 on 13.02.2013 the entire property i.e. Flat No.1 and 2 were sealed by the Cantonment Board being unauthorized construction.

It is further the case of the Petitioner that the Respondents had failed to confer any subsisting marketable title and hence the entire auction proceedings are vitiated under law. The Petitioners had purchased the subject flats out of the retirement benefits by the father and father-in-law of the Petitioners and hence became a dead investment and therefore aggrieved by the notice dated 13.02.2014 the Petitioners filed the present Writ Petition.

5. The learned Counsel appearing on behalf of the Petitioner mainly puts forth the following submissions :

a) The Respondents misrepresented the true question of facts and compelled the Petitioners to purchase the property after publishing the auction notice in widely circulated English and vernacular dailies.

b) The Respondents indulged in commission of offence of cheating punishable under section 420 of IPC since the Respondents sold the Stilt partition of the building meant for parking of vehicles in the flats, misrepresenting that the construction is legal to the Petitioners amounted to commission of offence of cheating punishable U/s.420 of IPC.

c) In view of the fact that both the mortgagors and also the bank as a mortgagee had no right to alienate the property, the Petitioners right guaranteed under Article 14 and 19(1)(g) and 300-A of the Constitution of India is infringed.

The learned counsel appearing on behalf of the Petitioners based on the aforesaid submissions contended that the Writ Petition should be allowed as prayed for.

6. The learned Counsel appearing on behalf of the Respondents, placing reliance on paras 6, 7, 8, 9, 11 and 12 of the counter affidavit filed on behalf of the Respondents mainly put-forth the following submissions :

i) The intending auction purchasers are supposed to make due diligence about the title, permissions/ Approvals relating to the property to be purchased.

ii) The Petitioners after going through the documents available at the branch and after satisfying only have participated in the auction and became the highest bidders and the Respondent bank also delivered physical possession of the property and therefore the question of misrepresentation does not arise.

iii) The Cantonment Board Resolution No.2 (A-1) dated 30.07.1999 accorded permission for construction of Stilt for Parking, Ground + Three Floors and the Flat No.001 and 002 are in Stilt Ground Floor and the Petitioners after physical verification of the properties and verification of the documents have participated in the auction.

iv) The Petitioner instead of filing an Appeal before the Competent Authority approached the Court by filing the present Writ Petition.

v) The writ petition needs to be dismissed since there is no misrepresentation and suppression of facts and the property is sold "As is where is" and "As is what is" and "whatever there is" basis.

The learned Counsel appearing on behalf of the Respondents on the basis of the aforesaid submissions sought for dismissal of the present Writ Petition.

7. Reply affidavit has been filed by the Petitioners to the counter filed by the Respondents contending that the Respondent Bank indulged in fraud in selling the property which is absolutely unauthorized construction, constructed in parking area and hence the Respondents having projected the flats as authorized construction and within the ambit of the plan sanctioned by the Cantonment Board the transaction did not fall under the caution i.e., "As is where is" and "As is what is" and "whatever there is" basis.

DISCUSSION AND CONCLUSION :

8 A bare perusal of the Notification dt.12.08.2012 issued by the Bank of India clearly indicates that the subject notification had been issued by the Respondent Bank with a clear stipulation that tenders are invited for the subject properties on "As is where is" and "As is what is" and "whatever there is" basis and further it is also stipulated in the said notification at Clause 5 as under :

That the intending bidder should make discreet enquiries as regards any claim, charges on the property of any authority beside the Banks charges/other known encumbrances.

At para 9 of the Counter Affidavit filed on behalf of the Respondents it is stated that the Cantonment Board Resolution No.2 (A-1) dated 30.07.1999 accorded permission for construction of Stilt for Parking, Ground + 3 Floors and the Petitioners after physical verification of the properties and verification of the documents knowing fully about the physical location of the flats in Stilt, Ground Floor have participated in the auction.

10. The specific averments made at para 11 of the counter affidavit filed on behalf of the Respondents is extracted below:

"11. It is submitted that the Petitioners instead of filing an Appeal before the General Officer Commander-in-Chief, Southern Command, Ministry of Defence at Pune as contemplated under the Cantonment Act, filed a suit before the Hon'ble Court at Secunderabad. It is submitted that the Commanding Officer and the Cantonment Board are also vested with the powers under the Cantonment Act to regularize the unauthorized construction if any made in deviation of the approved building plan. Therefore the remedy available to the Petitioners is elsewhere and are

not entitled to invoke the extraordinary jurisdiction of the Hon'ble Court and file the present Writ Petition."

11. The Division Bench of the High Court of Hyderabad at Hyderabad in Judgment reported in 2018 SCC Online, Hyderabad 196 dated 21.02.2018 in "Mr.Mandava Krishna Chaitanya v. UCO Bank, Asset Management Branch" dealing with sale of property on "as is where is" by the Bank rejected the plea that a sale on "as is where is" basis constitutes a shield of protection. At paras 22 and 23 of the said judgment it is observed as under:

"22. In terms of the statutory scheme of the SARFAESI Act and the Rules of 2002 and given the weighty preponderance of judicial wisdom, as set out supra, a secured creditor who is empowered under the SARFAESI Act to enforce any secured interest created in its favour, without the intervention of a Court or a Tribunal, but in accordance with the procedure prescribed therefor, cannot take the responsibility resting upon it lightly. Such a secured creditor not only owes a duty to protect the interest of the borrower by raising the best possible price while selling his mortgaged properties, but also owes a duty to the auction purchaser to verify the encumbrances that attach to the mortgaged property proposed to be sold, so as to inform all intending bidders of the same. Clauses (a) and (f) in the proviso to Rule 8(6) of the Rules of 2002

bear out this responsibility explicitly, as the secured creditor is mandated thereunder to include the details of the encumbrances known to it and also any other thing which may be considered material for a purchaser to know in order to judge the nature and value of the property. These clauses therefore visit a duty upon the secured creditor to undertake due diligence at least at the stage of putting the secured asset to sale, if not at the time of taking the said property as security while granting loans, so that the bidders in the auction can rest assured that the bank has taken necessary measures in this regard and proceed to participate in the auction sale. Ignorance of the secured creditor as to the encumbrances on the property sold by it is no longer an acceptable argument in the light of the decisions of various Courts rejecting the plea that a sale on as is where is basis constitutes a shield of protection.

23. Further, the concept of as is where is and as is what is basis has lost its significance in the current commercial milieu and the principle of caveat venditor is more on the rise as compared to the outdated principle of caveat emptor. The Transfer of Property Act, 1882, requires the seller to own up to certain duties and it is not open to a responsible bank to take an innocent auction purchaser for a ride by selling to him a tainted property and thereafter claim protection under the principles of buyer beware. The counter- affidavit filed by the bank clearly demonstrates that the bank undertook no exercise whatsoever to verify and ascertain as to what encumbrances attached to the

subject property at any stage. No details are forthcoming of any efforts having been made by the bank, be it before the registration authorities or any other authority at any stage. Now, it has come to light that the property in question is tainted on grounds more than one. It falls within the full tank level of a lake and, surprisingly, it is also treated as a ceiling surplus land. That apart, the possession of the property cannot even be handed over by the bank to the petitioner as the sale was effected without the bank securing actual physical possession thereof and the bank does not deny the factum of a lease having been created by the borrower in relation thereto. The bank therefore cannot comply with the statutory mandate of delivering actual possession of the property sold under the sale certificate. The decisions of various Courts referred to supra would come to the aid of the petitioner in this regard. That apart, the registration authorities already indicated to the petitioner that the subject land is noted as a ceiling surplus land. Therefore, even if they do entertain the sale certificate issued by the bank for registration, it would be subject to this cloud and would not amount to clear conveyance of title. It is therefore manifest that the bank made the innocent petitioner a victim by failing to exercise due diligence, not only in terms of the statutory scheme of the SARFAESI Act and the Rules of 2002, but also in its own commercial interest, let alone public interest, when it accepted this property as security for the loan sanctioned by it. This utter carelessness on the part of the bank in sanctioning loans, by use of public monies, on

the strength of secured assets which are not even worthy of being mortgaged, requires to be deprecated in the strongest terms. Banks necessarily have to exercise more care and caution while using public monies available with them, be it through deposits by customers or otherwise, when sanctioning loans without caution or worse and cannot be permitted to claim protection under outdated legal principles so as to victimize innocent auction purchasers, such as the petitioner. This Court therefore has no hesitation in holding that the auction sale held by the bank, without even exercising minimum care to ascertain the encumbrances attaching to the subject property and without informing the petitioner or other bidders of the same, vitiates the sale proceedings, culminating in issuance of the sale certificate which is yet to be registered."

12. In the present case admittedly the respondent Bank did not stipulate in the notification dated 12.08.2012 that the stilt portion of the building meant for parking in the flats had been converted into residential flat and failed in its duty to perform its obligation in giving a fair description of the property offered for sale.

13. The Apex Court in the Judgment dated 24.05.2012 in "RAM KISHUN AND OTHERS v. STATE OF UTTAR PRADESH AND OTHERS" at para 13 and 14 observed as under:

“Recovery of public dues

13. Undoubtedly, public money should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions.

14. A right to hold property is a constitutional right as well as a human right. A person cannot be deprived of his property except in accordance with the provisions of a statute. (Vide Lachhman Dass v. Jagat Ram and State of M.P. v. Narmada Bachao Andolan) Thus, the condition precedent for taking away someone's property or disposing of the secured assets, is that the authority must ensure compliance with the statutory provisions.”

14. The Apex Court in the Judgment reported in 2010 (1) SCC Page 655, in “HARYANA FINANCIAL CORPORATION AND ANOTEHR v. RAJESH GUPTA” at paras 24, 29 and 31 observed as under:

“24. In view of the aforesaid, we are of the considered opinion that the b appellant Corporation cannot be permitted to rely upon Section 55 of the Transfer of Property Act, 1882. The appellant Corporation failed to

disclose to the respondent the material defect about the non-existence of the independent 3 "karams" passage to the property. Therefore, the appellant Corporation clearly acted in breach of Sections 55(1)(a) and (b) of the Transfer of Property Act, 1882.

29. In any event, the facts of this case as narrated above would clearly indicate that the respondent had made all necessary inquiries. **It was the appellant Corporation that failed to perform its obligations in giving a fair description of the property offered for sale.**

31. It appears that the judgment of the High Court had been stayed by this Court on 2-9-2002. In view of the dismissal of the appeal, we direct that the forfeited amount be refunded to the respondent with 12% interest w.e.f. 1-2-1998 till payment. The amount be paid to the respondent within a period of two months of producing the certified copy of this order. We also direct that in the event the aforesaid amount is not paid within the stipulated period. the respondent shall be entitled to interest at the rate of 18% per annum till payment. We also direct that the respondent shall be entitled to costs which are assessed as Rs 50,000."

15. The Division Bench of A.P. High Court in Judgment dated 23.06.2023 reported in 2023 SCC Online AP 1048 is "Syed Hidayathulla v. Authorized Officer, Canara Bank", at paras 11, 14 observed as under:

11. According to the learned senior counsel, since a substantial part of the property is in the pathway, the property therefore does not have proper market value. He contends that this is a factor which should have been mentioned in the auction notice itself. Relying upon a Division Bench judgment of the combined High Court reported in Mandava Krishna Chaitanya (1 supra), he points out that in that case that the property was sold on 'as is where is' basis also. The Division Bench cancelled the sale and directed the refund. Relying upon para 21, it is argued that it is the Rule of caveat venditor, which is applicable now and not caveat emptor. The Division Bench noticed that the property falls within the full tank level of lake and this was not disclosed. Relying upon this, it is argued that the Court can set aside the sale even if it is 'as is where is' basis etc. Relying upon the second judgment reported in Adhya Industries's case (2 supra), it is argued that if the description of the property is not very clear, the sale can be set aside.

14. In the Division Bench judgment that is cited, the Bench found that since the property falls within the full tank level of a lake, it is not in the strict sense 'saleable'. In that case, an argument was advanced by the Bank that the property was sold on 'as is where is' basis and that the careful buyer should look into all the issues before bidding for the same. **This Court noticed that after the amounts were deposited in that case, the buyer realized that there were defects. Still the Division**

Bench upheld its contentions and directed the Bank to refund the amount.”

16. This Court opines that the Judgments relied upon by the counsel for the respondent Bank do not apply to the facts of the case.

17. Taking into consideration the afore said facts and circumstances of the case and duly considering the law laid down in the Judgment of the Apex Court reported in 2010 (1) SCC Page 655 in Haryana Financial Corporation and others v. Rajesh Gupta, in the Judgment of the Apex Court reported in 2012 (11) SCC Page 511 Rama Kishun and others v. State of Uttar Pradesh and others, and the law laid down by the Division Bench of High Court of Hyderabad at Hyderabad reported in 2018 SCC Online Hyderabad 196 in Mr.Mandava Krishna Chaitanya v. UCO Bank, and the law laid down by the Division Bench of A.P. High Court reported in 2023 SCC Online AP 1048 in Syed Hidayathulla v. Authorized Officer, Canara Bank, and further duly considering that in the present case the Respondents sold the stilt partition of the building meant for parking of vehicles in the flats without giving a fair description of the said subject property offered for sale in

the notification issued by the Bank dated 12.08.2012, the Writ Petition is allowed as prayed for. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

SUREPALLI NANDA,J

Date: 18.03.2024

Note: L.R.Copy to be marked
(B/o) *Yvkr*