



2026:AHC:64785

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 3505 of 2026

M/S Vertex Builders Pvt. Ltd.

.....Petitioner(s)

Versus

Anand Nagar Cooperative Housing Society And
Another

.....Respondent(s)

Counsel for Petitioner(s)	: Akash Chandra Maurya, Sanjay Kumar Om
Counsel for Respondent(s)	: Abhinava Krishna Srivastava, Anand Prakash Paul, Indra Jit Singh

Court No. - 5

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Sanjay Kumar Om, learned counsel for the defendant-petitioner, Sri O.P. Singh, learned Senior Advocate assisted by Sri Indrajeet Singh for the plaintiff-respondent/appellant and Sri Anand Prakash Paul for the defendant-respondent.

2. Since a statement has been made by the respective parties that they do not propose to file any affidavit, with the consent of the parties, petition is being decided at the fresh stage.

3. The case of the defendant- petitioner is that there happens to be an Arazi no. 797 admeasuring about 17 bigha 19 biswa situate at village Chanderi pargana and District Kanpur, which according to the defendant-petitioner, stood acquired by the Nagar Mahapalika, Kanpur and the said land stood entrusted and transferred to Kanpur Development Authority by virtue of an Award no. 38 dated 29.03.1963. It is also the case of the defendant-petitioner that the possession of 6 bigha 10 biswa of the acquired land was taken on 17.03.1964, whereas the possession of remaining land admeasuring 11 bigha 9 biswa was taken on 31.10.1969. As per the defendant-petitioner, the said land being plot no.C-01, C-02, C-03 and C-04, Krishnapuram, HIG 1 Kanpur Nagar stood allotted to the defendant-petitioner on 30.06.2005. As per the defendant-petitioner, an Original Suit no.340 of 1991, Anand Nagar Housing Cooperative Society vs. Kanpur Development Authority, Kanpur and others came to be instituted by the plaintiff-respondent before the trial court in which an injunction order came to be passed on 19.03.1991 by the

Court of Civil Judge (Senior Division) Kanpur Nagar. However, during the pendency of the aforesaid injunction order passed in Original Suit No.340 of 1991, allotment came to be made of the demised land/ plot, which was subject matter in the said Original Suit in favour of the defendant-petitioner on 30.06.2005. However, in the year 2012, the suit was dismissed for non-prosecution/in default and a restoration application came to be preferred in the year 2023. A Civil Misc. Writ Petition No.47011 of 2005 was also preferred in between which was disposed of on 01.07.2005 and also proceedings under Order 39 Rule 2A of CPC came to be preferred. Writ-C No.20405 of 2023, Anand Nagar Housing Cooperative Society vs. State of U.P. and 3 others came to be preferred seeking a direction for forestalling the unauthorized construction over the Azari in question and the said writ petition came to be disposed of on 20.06.2023 requiring the development authority to decide the representation so preferred. An application came to be preferred for grant of injunction, which on opposition was not granted, against which a Misc. Civil Appeal No.190 of 2024 came to be preferred before the District Judge, Kanpur Nagar and thereafter a preliminary objection-cum-application on behalf of the defendant-petitioner came to be preferred for deciding the maintainability of the Misc. Appeal as a preliminary issue (under Section 151 CPC/Inherent Powers of the Court), which on objection came to be rejected by the Court of Addl. District Judge, Court No.8, Kanpur Nagar by virtue of order dated 17.02.2026.

4. Questioning the said order passed by the Addl. District Judge, Court No.8, Kanpur Nagar in Misc. Appeal No.190 of 2024, the present petition has been preferred.

5. Learned counsel for the defendant-petitioner has sought to argue that the Misc. Appeal so preferred by the plaintiff-respondent cannot be said to be maintainable for the simple reason that once the demised land/plot in question stood acquired, possession whereof stood delivered to the defendant- petitioner in the year 2005, post taking of possession in the year 1963 and 1969, then mere institution of the Original Suit No.340 of 1991 and passing of injunction order of 19.03.1991 would not be of relevance and once in the year 2012, the suit came to be dismissed for non-prosecution/ in default and restoration application was filed in the year 2012 and by virtue of the order dated 21.11.2024 injunction has not been granted, then the issue which the defendant petitioner had raised as a preliminary issue for the maintainability of the Misc. Appeal ought to have been decided. He submits

that the lower appellate court ought to have decided the preliminary objection so raised by the defendant-petitioner on a preliminary basis as the pendency of the Misc. Appeal would be just like flogging a dead horse. Contention is that the pleadings in Writ-C No.20405 of 2023 itself shows that it was the case of the plaintiff-respondent that he was not in the possession.

6. Sri Paul, who appears for the Development Authority has supported the argument of the learned counsel for the defendant-petitioner.

7. On the contrary, Sri Singh, learned Senior Advocate for plaintiff-respondent has submitted that no prejudice is being caused to the defendant-petitioner particularly when, it is not a case wherein the Misc. Appeal against the order dated 21.11.2024 has been allowed. However, the appellate court has taken note of the arguments advanced by the respective parties and has only recited this much that there is no occasion to decide the objections on preliminary basis, as the contentions so raised by the rival parties including the defendant-petitioner shall be considered when the appeal is being heard.

8. I have heard the submissions so made across the Bar and perused te record carefully.

9. Apparently, the suit came to be instituted by the plaintiff-respondent in the year 1991 being O.S. No.340 of 1991, injunction order came to be passed on 19.03.1991, however, as per the own saying of the defendant-petitioner, the possession of the land in question came to be taken in the year 1963 and 1969 and the same was allotted to the defendant-petitioner in the year 2005 by virtue of the allotment letter dated 30.06.2005. The suit came to be dismissed for non-prosecution/in default in the year 2012, restoration application was preferred in the year 2013, which came to be restored in the year 2023, however the interim injunction was not restored on 21.11.2024, an application, which came to be preferred by the plaintiff-petitioner, was rejected against which an appeal was preferred and during the pendency of the appeal, an appeal for deciding the maintainability of the appeal as a preliminary issue came to be preferred, which had been rejected by the order impugned.

10. Plainly and simply, the appellate court has come to the conclusion that the issue regarding maintainability of the appeal on the ground that the

interim injunction order has not been continued post restoration would not make the appeal non-maintainable.

11. In the opinion of the Court, the question whether there is any merit in the appeal so preferred by the respondent is a matter, which is to be decided, once arguments are being advanced, after hearing the parties, post exchange of affidavits. Indeed, the rejection of the application, which is subject matter of the challenge in the present proceeding does not touch the merit of the matter and the same as each and every contention which would be raised by the petitioner would be considered when the appeal is decided. No prejudice whatsoever is being caused to the writ petitioner.

12. Accordingly, interference is declined. The writ petition stands **disposed of** leaving it open for the petitioner to raise all legal and factual grounds, which are available and permissible in law in the pending appeal and this Court has no reason to disbelieve that the grounds so raised would be considered strictly in accordance with law.

March 28, 2026

N.S.Rathour

(Vikas Budhwar,J.)