



2026:AHC-LKO:17312

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

MATTERS UNDER ARTICLE 227 No. - 610 of 2026

Kusum Mishra And Another

.....Petitioner(s)

Versus

U.P. Avas Evam Vikas Parishad Thru. Executive
Engineer Lko. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Samarth Saxena
Counsel for Respondent(s)	:	Puneet Chandra

[A.F.R.]

Court No. - 17

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Samarth Saxena, the learned counsel for the petitioners, Sri Puneet Chandra, the learned counsel for the opposite parties - U.P. Avas Evam Vikas Parishad and its officers and perused the records.

2. By means of the instant petition filed under Article 227 of the Constitution of India the petitioners have challenged the validity of a judgment and order dated 17.01.2026, passed by the learned Additional District Judge/FTC (New), Lakhimpur Kheri in Misc. Civil Appeal No.03 of 2025: U.P. Avas Evam Vikas Parishad and others Vs. Smt. Kusum Mishra and another.

3. Briefly stated the facts of the case are that the petitioners had filed Regular Suit No.217 of 2024 against the opposite parties seeking a decree of perpetual injunction stating that the petitioner no.1 was allotted House No.75-EWS measuring 42.21 square meters situated in Awas Vikas Colony, Lakhimpur Kheri on 02.12.1994 and she is in possession of the house along with petitioner no.2. Boundaries of the house are mentioned are as follows: -

East - six meters wide road,

West - eight feet wide lane,

North - House No.74

South - eight feet wide lane and thereafter pond.

4. The plaintiffs pleaded that the opposite parties want to allot the pond land and for that purpose they have wrongly carved out Plot No.75/1 over a part of the pond land. The opposite parties have issued a notice dated 01.12.2023 for demolition of alleged illegal construction raised by the plaintiffs. The

petitioners-plaintiffs have prayed for issuance of a perpetual injunction restraining the defendants-opposite parties from carrying out any demolition or alteration in the petitioners' house and from allotting the land adjacent to the house of the plaintiffs to any person. The petitioners filed an application for temporary injunction to the same effect.

5. The opposite parties filed objections against the application for temporary injunction wherein they inter alia stated that the petitioner no.1 has been allotted House No.75-EWS, measuring 42.21 square meter. She has paid the sale consideration in installments, but has not got a sale deed of the house executed in spite of issuance of several notices. The opposite parties stated that possession of the petitioner no.2 over the house in dispute is illegal. The opposite parties denied that there is a passage (*kulia*) towards south of the house in dispute and they stated that towards south of the house of the petitioner no.1, there is Plot No.75/1, which has duly been allotted to one Ashish Agarwal. The petitioner no.2 has constructed a parapet which extends beyond the boundaries of the land allotted to the petitioner no.1 and she has raised illegal construction on the first floor of the building, for demolition of which a notice has already been issued.

6. The learned trial court issued a commission to the Curt Amin for local inspection of the property in dispute and the Amin submitted a commission report dated 16.04.2024, wherein it is stated that the land in dispute is in the form of a lane, which is lying vacant. A parapet is extending on the lane towards south of the house of the petitioner no.1. The site plan prepared by the Amin Commissioner mentions a pond after the passage.

7. The petitioners had filed a copy of the allotment letter dated 31.12.1993 issued by the U.P. Awas Vikas Parishad which mentions area of the land of Plot No.75, allotted to the petitioner no.1 as 42.21 square meters. A copy of the hire purchase agreement dated 02.12.1994 between the petitioner no.1 and the U.P. Awas Vikas Parishad has also been filed before the learned trial court and it also mentions Plot No.75, area 42.21 square meters. The hire purchase agreement makes a mention of only northern and eastern boundaries of the allotted plot as Plot No.74 and six meters wide road. The southern and western boundaries are not mentioned in the allotment letter.

8. The learned trial court allowed the application for temporary injunction (Paper No.6-Ga) vide order dated 03.01.2025, in which it is recorded that the plaintiff is the allottee of Plot No.75 and she is in possession of the house. In case any illegal construction has been raised upon Plot No.75/1, that is an issue which can be decided only after the parties lead evidence. The point as to whether the construction raised by the plaintiff is legal or not, can also be

decided after the parties lead their evidence. The learned trial court found a prima facie case in favour of the plaintiffs and balance of convenience and irreparable loss and injury was also found in their favour.

9. The opposite parties challenged the temporary injunction order dated 03.01.2025 by filing Misc. Civil Appeal No.03 of 2025, which has been allowed by the impugned order.

10. In appeal the opposite parties filed a copy of the site plan as paper no.55-Ga which was not filed before the learned trial court. The appellate court found that the petitioner no.1 has been allotted EWS House No.75, measuring 42.21 square meters. The petitioner no.2 has no right, title or interest in respect of the house in question. The petitioner no.1 was given possession of the aforesaid house on 10.12.1994 and she has not been granted any right, title or interest in respect of the property exceeding 42.21 square meters. The petitioners have not produced any documents to establish that they had given intimation of raising construction on the first floor of the house to the opposite parties. Even if a pond is existing towards south of the house allotted to the petitioner no.1, she has no right to make a parapet by making projection over the land beyond the land allotted to her. Because of the parapet projecting over a width of 3.6 feet towards south of the house allotted to the petitioner no.1, the opposite parties could not hand over possession of the plot to its allottee Sri Ashish Agarwal. The Amin's report and site plan prepared by him also show that the dispute is not regarding 42.21 square meters allotted to the petitioner no.1, rather it is regarding a parapet constructed by the petitioners in an illegal manner beyond the aforesaid area. Further, the petitioners have raised construction on the first floor of the house without getting any development plan sanctioned by the authorities. The appellate court held that the petitioners have got no right to raise any constructions on the land beyond the land allotted to the petitioner no.1. She has got no prima facie case. Accordingly, the first appellate court allowed the appeal and set aside the temporary injunction order dated 03.01.2025, passed by the learned trial court.

11. Assailing the validity of the aforesaid appellate order, the learned counsel for the petitioners has submitted that the first appellate court could not have examined the findings of fact recorded by learned trial court while examining the prima facie case, balance of convenience and irreparable loss and injury, as the scope of scrutiny by the appellate court is limited to examining whether the learned trial court's order suffers from perversity, capriciousness, arbitrariness, mala fides or it has been passed in ignorance of settled principles governing the grant of an injunction under Section XXXIX C.P.C. In support of this submission the learned counsel for the

petitioner has placed reliance on a judgment of Hon'ble Supreme Court in the case of **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others**: (2024) 11 SCC 351.

12. The next submission of learned counsel for the petitioners is that the opposite parties have filed the site plan Paper No.55-Ga before the learned trial court without any application filed under Order XLI, Rule 27 C.P.C. and without any order having been passed by the appellate court permitting filing of additional evidence. He has submitted that additional evidence can only be submitted in circumstances permitted by Order XLI, Rule 27 C.P.C.

13. The learned Counsel for the petitioner has lastly submitted that the question as to whether a parapet has been constructed beyond the area of the land allotted to the petitioner no.1, can only be decided after the parties adduce evidence before the learned trial court and this cannot be decided while deciding an application for temporary injunction.

14. In **Ramakant Ambalal Choksi v. Harish Ambalal Choksi**: (2024) 11 SCC 351, the Hon'ble Supreme Court held that: -

"20. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727] Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial Judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:

(a) First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and

(b) Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trade mark on which the passing off action is founded.

21. With regard to (a), this Court held thus:

"14. ... In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. ... The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below.... If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

28. In *Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan* [(2013) 9 SCC 221], this Court emphasised on the principles laid down in *Wander* and observed that while the view taken by the appellate court may be an

equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39CPC. The basis for substituting the view of the trial court should be mala fides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd. "

(emphasis supplied)

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31. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the appellate court under Order 43CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in Wander case."

15. Even as per the law laid down by the Hon'ble Supreme Court in Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727] and Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan [(2013) 9 SCC 221] and followed in Ramakant Ambalal Choksi v. Harish Ambalal Choksi: (2024) 11 SCC 351, while deciding an appeal under Order XLIII Rule 1(r) and examining the validity of an order of temporary injunction, the appellate Court can examine whether the trial Court has exercised its discretion by ignoring the settled principles of law regulating grant or refusal of interlocutory injunctions. It is a settled principle of law regulating grant or refusal of interlocutory injunctions that the Court has to satisfy itself regarding existence of a prima facie case, balance of convenience and apprehension of irreparable loss and injury to the plaintiff.

16. In the present case, the plaintiff no. 1 has been allotted EWS House

No.75, measuring 42.21 square meters and she has not been granted any right, title or interest in respect of the property exceeding 42.21 square meters. The plaintiffs have constructed a parapet which projects over a width of 3.6 feet towards south, beyond the limits of the house allotted to the petitioner no.1, whereas the petitioners have got no right to raise any construction covering the land beyond the land allotted to the petitioner no.1. Therefore, the plaintiffs have got no prima facie case. Demolition of construction which covers an area beyond the area allotted to the plaintiff would not cause any legal injury to the plaintiffs and, therefore, the balance of convenience also does not tilt in favour of the plaintiffs.

17. The trial Court's order granting temporary injunction to the plaintiffs in respect of an area beyond the land allotted to the plaintiff no. 1 is a perverse order and the appellant Court has rightly set aside the temporary injunction order passed by the trial Court. Therefore, I find no force in the first submission of the learned Counsel for the petitioners.

18. Regarding the second submission of the learned Counsel for the petitioners based on Order XLI Rule 27 C.P.C., the aforesaid Rule applies to filing of additional evidence in appeal, after the parties have availed the opportunity to adduce evidence before the trial Court. In the present case, evidence is yet to be produced before the trial Court. Therefore, the provisions of Order XLI Rule 27 C.P.C. will not apply to filing documents before the appellate Court while challenging the validity of an order of temporary injunction. Moreover, no prejudice has been caused to the plaintiffs by filing of additional documents by the opposite parties because the plaintiffs could not make out a prima facie case, balance of convenience and irreparable loss and injury and the application for temporary injunction was liable to be rejected even on the basis of the pleadings and the documents filed by the plaintiffs themselves.

19. The last submission of the learned Counsel for the petitioner, that the question as to whether a parapet has been constructed beyond the area of the land allotted to the petitioner no.1, can only be decided after the parties adduce evidence before the learned trial court and this cannot be decided while deciding an application for temporary injunction, is also without force, because although the trial Court is not required to record any finding of fact at the stage of deciding an application for temporary injunction, it has to record a prima facie satisfaction of the plaintiffs' claim. In the present case, the material adduced by the plaintiffs themselves prima facie establishes absence of a prima facie case in their favour and, therefore the trial Court ought to have rejected the application for temporary injunction.

20. In view of the foregoing discussions, I find no force in the submissions of the learned counsel for the petitioners. There appears to be no error in the impugned judgment and order dated 17.01.2026, passed by the learned Additional District Judge/FTC (New), Lakhimpur Kheri in Misc. Civil Appeal No.03 of 2025: U.P. Avas Evam Vikas Parishad and others Vs. Smt. Kusum Mishra and another. The petition lacks merit and the same is **dismissed** accordingly.

March 10, 2026
Ram.

(Subhash Vidyarthi,J.)