
(2011) 03 AHC CK 0150
In the Allahabad High Court
Case No : Writ Petition No.1909 of 2006 (M/S)

Shail Kumari and Others

APPELLANT

Vs

Faizabad Development Authority, Faizabad

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 AHC CK 0150

Hon'ble Judges : Rajiv Sharma, J

Judgement

Rajiv Sharma,J.

1. Heard learned Counsel for the petitioner and Sri N.K. Seth, learned Counsel for the opposite party No.1Faizabad Development Authority, Faizabad.

2. Learned Counsel for the petitioner submits that petitioners have filed a suit, bearing Regular Suit No. 523 of 2000, for permanent injunction along with an application for temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for restraining Faizabad Development Authority, Faizabad to raise any construction over the plot in question. The Trial Court, vide order dated 7.9.2001, rejected the application for temporary injunction, against which, petitioners filed an appeal, bearing No. 78 of 2001, before VI Additional District Judge, Faizabad, who, vide order dated 20.3.2006, rejected the appeal. Feeling aggrieved, the petitioners have filed the instant writ petition inter alia on the grounds that the findings recorded by both the Court below that the petitioners are not entitled to interim injunction with respect to the property in dispute although they could establish their prima facie title on it is vitiated by manifest error of law apparent on the face of record in view of the fact that the evidence is yet to be adduced in the case.

3. While entertaining the instant writ petition, this Court, vide order dated 17.4.2006, directed the parties to maintain status quo to the extent it relates to petitioner's share of land so observed by the learned trial Court in judgment dated 20.3.2006.

4. Learned Counsel for the petitioner submits that Regular Suit No. 523 of 2000 is lingering since 2000 and as such, he prays that trial Court be directed to decide the above suit, expeditiously, and till disposal of the suit, status quo be maintained by the parties.

5. Sri N.K. Seth, learned Counsel for the opposite party No.1 has no objection in case the above suit be expedited but he submits that the benefit of the status quo may not be granted.

6. Learned Counsel for the petitioners submits that in case the benefit of status quo be not granted, then, a third party right will be created insofar as the Faizabad Development Authority constructed a complex over the plot in question and the constructed flats/shops in the complex be allotted to the allottee and in that circumstances, all the allottee should be made party and in that case, suit may be lingered furthermore a decade or so.

7. Considering the peculiar facts and circumstances of the case and without entering into the merits of the case, the writ petition is disposed of finally with a direction to the trial Court to decide Regular Suit No. 523 of 2000, in accordance with law, expeditiously, say, within a period of six months from the date of receipt of a certified copy of this order. Till disposal of the suit, status quo to the extent it relates to the petitioners' share of land and construction erected thereof as observed hereinabove shall be maintained between the parties.

8. It is clarified that in case the petitioners sought any adjournment before the trial Court, the benefit of the interim protection of status quo shall not be extended to the petitioners.