

(2009) 04 AHC CK 0404
In the Allahabad High Court

Nirmal Devi

APPELLANT

Vs

State of UP and others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0404

Hon'ble Judges : Sunil Ambwani, J

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.

Heard learned counsel for the petitioner. Learned standing counsel appears for the respondents.

The petitioner is wife of Shri Mukesh Chand Gupta, who was serving as Accountant in Government Industrial Training Institute, Aligarh from 1995 to 1999. He was transferred by an order dated 17.3.1999 to the office of District Employment Officer, Aligarh and had joined the new posting on 20.3.1999. Shri Gupta and his family, however, did not vacate the residential accommodation allotted to him in the campus of Government Industrial Training Institute at Aligarh.

By the order dated 12.2.2009 passed by the Principal, Industrial Training Institute, Aligarh the petitioner has been asked to vacate the accommodation on the ground that for last 12 years Shri Gupta or his family has not paid the rent or water and electricity charges for the facilities enjoyed by them and that they have connections with anti social elements.

Learned counsel for petitioner submits that her husband is missing since 11.12.2003. He has not been heard by her, or the persons known to him and that the search made for him were not successful.

Learned counsel for the petitioner would further contend that the civil death will be presumed only after seven years i.e. 10.12.2010 and that until then the

petitioner will not be entitled to service dues. She has prayed that she is prepared to pay the rent and charges but that she should not be evicted from the premises. It is contended by her that she has two school going children and taking into account the fact that her husband has gone missing since November 2003, the respondents should be compassionate for allowing her to occupy the accommodation.

In this case Shri Mukesh Kumar Gupta, who is not yet presumed to have died civil death, and his wife is not entitled to service dues, was transferred from ITI Aligarh in the year 1999 and had joined in the District Employment Office, Aligarh on 20.3.1999. He continued to occupy the accommodation without any authority even upto date when he is reported to have gone missing. He or his family therefore do not have any right to occupy the accommodation.

By the order under challenge the Principal, ITI Aligarh has not demanded the arrears of rent or the water and electricity charges. He has required the petitioner to vacate the accommodation as she has no right to occupy the same. The petitioner's right to occupy the government accommodation is flowing through her husband. Since her husband had lost the rights to continue to occupy the house on and after 17.3.1999, and there is no order, by which he was allowed to continue, her occupation also tagged on with the occupation of her husband, has become unauthorised. She does not have a right to occupy the accommodation, any more.

The writ petition is dismissed with observations that the rent may be treated to be payable and recoverable from the petitioner only after a presumption may be raised with regard to the civil death of Shri Mukesh Kumar Gupta or if he is found or returns back. She however will liable to pay water and electricity charges and will vacate the accommodation in a month from today.