

**Rakesh Gupta and Another Vs. Harsh Construction and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/911739](http://sooperkanoon.com/911739)

**Court :** Kolkata

**Decided On :** Jan-21-2011

**Judge :** Pinaki Chandra Ghose; Asim Kumar Ray, JJ.

**Appeal No. :** A.P.O.T No. 139 of 2010; Arising out of G.A.No. 302 of 2009  
G.A.No. 2859 of 2009 C.S.No. 4161 of 1953 C .S.No. 187 of 1952

**Appellant :** Rakesh Gupta and Another

**Respondent :** Harsh Construction and Others

**Advocate for Def. :** Mr. S.N.Mukherjee; Mr. Amitava Das; Mr.Ratnanko Banerjee,  
Advs.

**Advocate for Pet/Ap. :** Mr. Pratap Chatterjee; Mr. Abhrajit Mitra, Advs.

**Judgement :**

1. This appeal is directed against the order dated 23rd November, 2009 passed in G.A.No. 2859 of 2009 and C.S.No. 4161 of 1953 ( Baidyanath Chatterjee and another vs- Kumar Purendu Nath Tagore and others ) by the Honble Justice Sanjib Banerjee thereby His Lordship has refused to cancel the deed of conveyance dated 21st August ,2008.
2. The short background of the matter is that a perpetual lease was granted by the sons of late Raja Prafulla Nath Tagore, predecessors-in-interest of the parties to the present suit in favour of Babu Bechanram Gupta and Babu Mewalal Gupta by a registered deed dated October 1, 1994. The appellants are the successors-in-

interest of Babu Bechanram Gupta. They erected a building on the property and the same has been let out. Presently the Associate Tubewells Limited is the appellants tenant in respect of the property. One M/s. Harsh Construction, a partnership firm claiming to be the present owner of the property allegedly disturbed the appellants possession. They claimed that they are the owner of the property by virtue of a sale deed executed by the Special Officer appointed in Suit No. 187 of 1952 and Suit No. 4161 of 1953 in terms of the order passed by this Honble Court. On the appellants application , the learned trial Judge by its impugned order refused to cancel the deed of conveyance dated 21 st August, 2008, so this appeal.

3. Mr. Pratap Chatterjee, learned senior counsel appearing on behalf of the appellants has contended that the property belonging to the appellants cannot be dealt with by Court of law without notice to the appellants and all orders that have been passed concerning the property without notice to the appellants are without jurisdiction. He has further contended that the Honble trial Court has not at all dealt with the issue as to whether the order for sale could have at all been made in view of the fact that the property had been previously sold to the appellants. He has also contended that the appellants are the permanent lessees and are in possession of the land for a substantial period of time and the Honble trial Court ought to have restrained the respondents from interfering with the petitioners right in respect of the said property. The respondent No. 1 should have been restrained from taking steps for mutation of their names in the relevant record including the municipal records in respect of the property in question.

4. Mr. S.N. Mukherjee, learned senior counsel appearing on behalf of the respondents has contended that the order impugned is in fact an order passed on consent of the parties. The appellants admittedly nothing more than the lessees cannot object with the sale of the said property. The property was sold to the respondent No. 1 on as is where is basis and since admittedly, a suit has already been filed by the appellant before the Varanasi Court , the appellant did not have any reason or basis to maintain the above appeal before this Honble Court. The Honble first Court has held that Harsh Construction was purchasing the property on as is where is basis and the order dated 18-3-2008 is absolutely clear to that

extent. It was directed to take necessary steps for executing the deed of conveyance . It was spelt out in the said order that upon execution of the deed, the Inspector in-charge of the concerned police station and the Superintendent of Police would render assistance to the Special Officer or his agent to take appropriate steps for making over possession of the land on as is where is basis to the purchaser nothing in the order dated March 28, 2008 required actual possession delivered to the respondent No. 1.

5. The impugned order indicates that it will be open to both the purchaser and the appellant to establish their right in the appropriate forum. On plain reading of the order dated 28 th March, 2008 , it appears that actual possession either was not required to be delivered to the purchaser or entitled the purchaser to dispossess any person from the property. It was not necessary to go into the question as to whether appellants are in possession of the property. Similarly if the appellants have any right for their names to remain in the municipal records , the mere fact that the order dated March, 28, 2008 was made to facilitate the purchaser obtaining the property would not imply that the municipal corporation cannot consider any defence that may be set up by the appellants or cannot take into consideration the relevant provisions of law. It transpires from the impugned order that the parties submitted before the learned trial Court that in view of the impugned order dated 23-11-2009 nothing remains in GA No. 302 of 2009 and GA No. 463 of 2009. It is to be recorded that GA No. 302 of 2009 was an application praying for cancellation of the deed of conveyance executed in favour of the respondent No. 1 by this Special Officer.

6. Taking this background in mind, we do find reason to express that the order impugned does not suffers from any illegality resulting in interference in it.

7. The appeal stand dismissed.

8. Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.