

12.7.2010.

On 16.8.2010, the Court passed the following

order:

"Heard learned counsel for the parties.

At the fag end of the arguments, Mr.R.F.Nariman, learned senior counsel appearing for the petitioner very fairly stated that in view of report dated 28.06.2010 sent by Metropolitan Magistrate, Court No.61, Kurla (Mumbai), this Court may direct that the space meant for shop Nos. 1 to 3 be kept vacant and no third party rights shall be created till the disposal of appeal by the High Court.

Finding that the statement made by the learned counsel was very fair, we started dictating the order but before we could complete the order, Mr.Vikas Mehta, learned counsel assisting Mr.Nariman first stated that a tenant is occupying the space earmarked for shop Nos.1 to 3. He then changed his statement and gave out that somebody is unauthorisedly occupying that portion. The third statement made by the learned counsel was that the shop is occupied by the tenant.

In order to clear the confusion, we direct that an affidavit be filed on behalf of the petitioner whether or not any person has been inducted as a tenant in the open space identified in the chart prepared by the Metropolitan Magistrate which is available at page No.251 of the paperbook. If the tenant has been inducted, the date of induction along with the documents by which the tenancy was created should be filed along with the affidavit. The needful be done within a period of seven days.

List the case on 25.08.2010."

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In the purported compliance of the direction given by the Court, an affidavit has been filed on behalf of the petitioner by Shri Shanti Lal Bohra who has claimed himself to be Senior Vice President (Sales) of the petitioner organisation.

We have gone through the affidavit dated 18.08.2010 of Shri Shanti Lal Bohra and annexed documents and are convinced that instead of complying with the direction given by this Court, the deponent has tried to give an altogether new twist to the entire controversy. The averments contained in the affidavit suggests that different persons are occupying the area meant for the shops to be constructed by the petitioner. However, it is not clear whether they are occupying the premises as

tenants of the petitioner or otherwise. The affidavit further shows that some other litigation is also pending in relation to the shops in question. If the facts incorporated in the affidavit are correct, we have no hesitation to observe that the petitioner had not disclosed full facts to the advocates appearing before this Court. Therefore, the affidavit of Shri Shanti Lal Bohra is rejected.

We have considered the matter de hors the affidavit of Shri Shanti Lal Bohra and are convinced that the directions given by the learned Single Judge are just and proper and

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the impugned order does not suffer from any patent legal infirmity warranting interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master