

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2643 OF 2014

The Oriental Insurance Company Limited	}	Petitioner
versus		
The Board of Trustees of the Port of Mumbai and Ors.	}	Respondents

Mr. A. S. Khandeparkar i/b. M/s. Warekar and Warekar for the Petitioner.

Mr. Kevic Setalwad-Senior Advocate with Mr. Nishant Atre i/b. M/s. M. V. Kini and Co. for Respondent No. 1.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- JUNE 12, 2015

P.C. :-

This Writ Petition under Article 226 of the Constitution of India is by the Oriental Insurance Company Limited. It seeks a direction to Respondent No. 1, namely, the Mumbai Port Trust to carry out repairs to a property, namely, Magnet House, N. M. Marg, Ballard Estate, Mumbai, in accordance with a report dated 19th February, 2008.

2) In the light of the serious apprehensions and which were placed before us by the Petitioner's Advocate Mr. Khandeparkar, we called upon the Advocate appearing for Respondent No. 1 to take

instructions as to why the Respondent No. 1 is not carrying out repairs to an old structure and which is stated to be existing since 1923.

3) Today, when the matter was placed and bearing in mind the rainy season, an affidavit has been placed by the Senior Assistant Estate Manager of the Respondent No. 1, which indicates that there are huge arrears of outstanding dues not pertaining to the present structure but the one bearing No. 956 at Mody Bay Estate. There are certain breaches alleged and committed by the Lessee/Petitioner before us. We indicated to the learned Counsel for both sides that we are not dealing with such controversy in the present Petition. Our anxiety being that the structure in which a public sector insurance company is carrying out its business operation houses, not only the employees of the company but there are visitors as well, bearing in mind their safety and security, some repairs have to be carried out urgently and as indicated in the prior report. The matter is pending from 2008 on account of some differences and disputes between the parties.

4) However, Mr. Setalwad - learned Senior Counsel appearing for Respondent No. 1 has invited our attention to the affidavit and particularly at page 87 and 88 of the paper book and a letter, copy of which is annexed to the affidavit. That letter at page 96 of the paper book is dated 28th July, 2011 and it is addressed to the Petitioner. It

states that a no-objection certificate to carry out repairs/renovation will be granted on the following three conditions:-

- “1) Submit duly executed undertaking that only urgent structural repairing without increase of built up area will be carried out alongwith certificate by structural Engineer and Architect registered with counsel of Architect and MCGM.
- 2) Submit undertaking to clear all the Port Trust dues/arrears within three months period.
- 3) Submit Plans showing proposed work in distinct colour.”

5) When we called upon Mr. Setalwad to take instructions with regard to the compliance of Item No. 2, he stated and fairly that the undertaking as is sought in terms of this Item need not be furnished by the Petitioner. In other words, this item is not relevant and germane for the purpose of the proposed repairs/renovation work at Magnet House and at this stage. However, Mr. Setalwad insists on the compliance with Item Nos. 1 and 3 reproduced above. He submits that if these compliances are made, within a period of two weeks from the date of such compliances being made, the no-objection certificate for proposed repairs/renovation work at Magnet House will be granted by the Respondent No. 1.

6) The statements made by Mr. Setalwad, on instructions from the competent officials, who are present in Court, are accepted as undertakings given to this Court.

7) Mr. Khandeparkar, on instructions, states that the Petitioner would forward the necessary undertakings and the reports/certificates so also the plans as sought within a period of three weeks from today.

8) Once we have taken care of the request and to carry out such repairs as are necessary to preserve/protect the structure and equally for safety and security of those using it, then, nothing survives in the Writ Petition. It is accordingly disposed of. No costs.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)