

pmw

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

WRIT PETITION NO.810 OF 2017

National Insurance Company Limited

... Petitioner

Vs.

The State of Maharashtra and Ors.

... Respondents

Mr. Mohan Jayakar a/w Mr. Ashwin Shete and Ms. Aakansha Agrawal
i/by Jayakar & Partners for the Petitioner.

Mr. Abhay Patki, Additional Government Pleader for the Respondent
Nos.1, 5 and 6.

Ms. Kejali Mastakar for Respondent Nos.2 to 4 – BMC.

Mr. Navroz Seervai, Senior Counsel a/w Mr. Mikhail Behl, Mr. Rahul
Dwarkadas, Mr. Ziyad Madan i/by Veritas Legal for Respondent No.8.

**CORAM : A.S. OKA &
M.S. SONAK, JJ.**

DATE : 12th DECEMBER, 2017

PC.

1 Heard the learned counsel appearing for the petitioner, the
learned Senior Counsel appearing for the eighth respondent, the
learned Additional Government Pleader for the first, fifth and sixth
respondents and the learned counsel appearing for the second, third
and fourth respondents. The main issue to be decided in this Petition
under Article 226 of the Constitution of India is as regards the present
structural status of the building which is the subject matter of this
Petition. There are reports on record filed by the Municipal Officers

dealing with the structural status of the building. The last of such report is dated 27th November, 2017 which is signed by the Ward Executive Engineer, G/ South Ward in terms of the order of this Court dated 21st November, 2017. The said report records a conclusion on the basis of visual observations that the subject building has been already categorized as C2B (requiring major structural repairs without evacuating). The learned Senior Counsel appearing for the eighth respondent on instructions states that the eighth respondent is not disputing the said conclusion reached by the Municipal Officer. He, however, invited our attention to paragraph 4 of the affidavit of Ms. Minal Rao dated 3rd November, 2017 filed on behalf of the eighth respondent. He states that the eighth respondent will abide by the statements made in paragraph 4 of the said affidavit.

2 The learned counsel appearing for the petitioner states that as of today he is not in a position to make any statement as to whether the petitioner is accepting categorization as C2B.

3 If the petitioner wants to challenge the said categorization, the petitioner will have to file appropriate proceedings in accordance with law.

4 Now the Municipal Corporation has come to a conclusion
that the building will have to be categorized as C2B. If necessary, the
Municipal Corporation is always entitled to take recourse to Section 354
of the Municipal Corporation Act, 1888 or any other provision of law.

5 The learned counsel appearing for the petitioner, as stated
in the Petition, reiterates that the petitioner is keen on ensuring that the
subject building is repaired.

6 Therefore, we need not keep this Petition pending and the
same is disposed of by passing the following order :-

ORDER

- (i) If the petitioner is disputing the conclusion arrived at by
the Municipal Corporation that the subject building falls
in category C2B, it will be always open for the petitioner
to adopt appropriate proceedings in accordance with
law;
- (ii) The appropriate authority of the Mumbai Municipal
Corporation will consider the report dated 27th
November, 2017 and shall take appropriate action on
the basis of the said report dated 27th November, 2017
in accordance with law. Needless to add that no adverse

action shall be taken against any of the affected parties without giving an opportunity of being heard to them;

- (iii) We accept the statement made on behalf of the eighth respondent that the said respondent is accepting that categorization as C2B is correct. We also accept the statements made by the eighth respondent in the affidavit dated 3rd November, 2017 and in paragraph 4 thereof;
- (iv) We make it clear that we have made no adjudication on the present structural status of the said building and all contentions in that behalf are kept open;
- (v) The Petition is disposed of on above terms;
- (vi) As the earlier directions issued by the Municipal Corporation to the petitioner were before the last report dated 27th November, 2017 and as we have granted opportunity to the Municipal corporation to take action in accordance with law, the said directions shall not be enforced.

(M.S. SONAK, J)

(A.S. OKA, J)