

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2931 OF 2018

1. **Mr D.V.M. Patel**

2. **Mr Homa Petit**

Being the present Trustees of the
Jamsetji Nusserwanji Petit
Institute Being a Public Charitable
Trust registered under the
provisions of the Maharashtra
Public Trust, 1950 as also a society
registered under the provisions of
the Societies Registration Act, 1860
And having its office at 312, Dr.
Dadabai Naoraji Road, Fort,
Mumbai 400 001.

... Petitioners

Versus

1. **State of Maharashtra**
through the Government Pleader

2. **Mumbai Metropolitan Regional
Development Authority**
Having its Office at Bandra.

3. **Mumbai Metro Rail Corporation
Limited** being a company
incorporated Under the Companies
Act, 1956 and having its office at
Bandra (East), Mumbai – 400 050.

4. **Sir Dinshaw Manockjee Petit**
Vth Baronet being one of the

Present Trustees of a Public Charitable Trust i.e. The Jamsetjee Nesserwanjee Petit Institute Registered under the provisions of the Maharashtra Public Trust Act, 1950 under Registration No.F-230(B) having its office at 312, Dr. Dadabai Naoraji Road, Fort, Mumbai 400 001.

... Respondents

Ms Ferzana Behramkamdin, *with Ms Kalyani Deshmukh, i/b, FZB & Associates, for the Petitioners.*

Ms Manisha Gawde, AGP, *for the Respondent No. 1-State.*

Ms. Kavita N. Solunke, *for the Respondent No.2 – MMRDA.*

Mr Mayur Khandeparkar, *with Ms Heenal Wadhava, i/b, The Law Point for the Respondent No. 3.*

**CORAM : M.S. Sonak &
Jitendra Jain, JJ.**

**RESERVED ON : 4 JULY 2025
PRONOUNCED ON : 10 JULY 2025**

JUDGMENT: *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.
2. The Petitioners are the Trustees of the Jamsetjee Nesserwanjee Petit Institute, a public charitable trust registered under the provisions of the Maharashtra Public Trust Act, 1950 and a society registered under the Societies Registration Act, 1860. The trust *inter alia* has

founded and operates the J. N. Petit Reading Room and Library since 1856.

3. This petition concerns the building known as the “J. N. Petit Institute,” along with an arcade constructed on the land bearing C.S. No. 702 of Fort Division, in the Neo-Gothic Revival style, dated 1898. This structure features various ornamental, decorative, and distinctive elements, including a circular staircase tower, bouquets, finials, and tower turrets that shape its silhouette. The petitioners have stated that this building has an extremely shallow foundation, only around three metres deep, and extends beyond the superstructure of the building. It is acknowledged that this building is a Grade II A Heritage Structure and is regarded as one of the landmark properties along D.N. Road, Fort, Mumbai.

4. The Petitioners have pleaded that the said building was renovated in 2014-15 and was conferred the UNESCO Award of Distinction for Cultural Heritage Conservation in 2015.

5. The Petitioners have pleaded that the building has always been and is still used as a Reading Room and library, housing 1,00,000 books, including 2,400 rare books and 12 manuscripts, some of which date back to the 17th Century. The library also houses three collections of newspapers, viz. Jam-e-Jamshed from 1936 onwards, Times of India from 1933 onwards and

Mumbai Samachar from 1926 onwards. The Petitioners have pleaded that the building is open to all subscribers to the Library/Reading Room, including the poor and needy citizens, at reasonable and affordable subscription rates. Several poor and needy students use the Library and Reading Room for their studies.

6. Metro Line III was proposed to be aligned along the D. N. Road, Fort. Several objections were raised from various quarters to this alignment, mainly because it would seriously affect the structures or stability of the several heritage structures on either side of this road. Even the Mumbai Heritage Conservation Committee (MHCC) objected to this alignment and withheld its No Objection Certificate (NOC) for some time. The MHCC, later, upon being assured that only the tunnelling method would be adopted and that no station, namely the Hutatma Chowk Station, would be constructed at D.N. Road, or that such a station would be built using the cut and cover method, reluctantly agreed to the Metro Line III alignment along D.N. Road.

7. Before the construction work could commence, the contractors engaged by the Mumbai Metro Rail Corporation Ltd. (MMRCL) sought the Petitioners' NOC to allow them to enter the Petitioners' property to carry out a pre-construction survey, to install building monitoring instruments and allow their representatives

to read such monitoring instruments. The Petitioners were also requested to furnish structural/as-built drawings of the said building.

8. By letter dated 22 February 2017, the Petitioners sought some information from the contractors, but granted their permission for a survey of the Petitioners' building. The Petitioners pointed out the Special Architectural features of their building, as well as the fact that it had some of the finest stained glass in Mumbai. The copies of the structural plans and sections of the Petitioners' building were furnished to the contractors, highlighting that the said building, including the Arcade, had a very shallow foundation.

9. Concerns were also raised about the proposal to establish entry and exit points to Metro Line III within the garden grounds of the Petitioners' building, as the Petitioners claimed this could cause damage to the building, the Arcade, and the circular staircase. An addendum dated 24 February 2017 provided additional information to the contractors, requesting them to address concerns regarding damage to this heritage building.

10. The contractors, Larsen and Toubro ("L&T"), by their letter dated 06 March 2017, *among other things*, stated the following:-

- a. Encardio would carry out a pre-condition survey of the Petitioners' Building in order to assess the health of the Petitioners' Building and on the basis thereof, the detailed design consultant would suggest what kind of monitoring would be required in the Petitioners' Building in order to prevent damage during the construction of the station and tunnel;
- b. Upon the recommendation of the detailed design consultant, relevant instruments would be installed for monitoring if required;
- c. The metro work would not have impact on the aesthetics of the Petitioners' Building and hence there was no requirement of an architect;
- d. There were qualified structural engineers available to take care of the structural stability of the building.
- e. They would share the Building Condition Survey Reports with the Petitioners;
- f. The responsibility of any damage to the Petitioners structure would be between Respondent No. 3 and L&T and the corrective measures would be taken up as per the Contract between the two parties.

11. The Petitioners have pleaded their dissatisfaction with the survey report furnished by L&T and Encardio. The Petitioners have pleaded about writing to the authorities, pointing out the serious errors in the survey report and comments like '*no architectural appearance was noticed in the building*'. The Petitioners, in their writings, pointed out that no reference was made to Special Architectural, ornamental and decorative features, including the invaluable stained glass.

12. The representatives of the Petitioners and the MMRCL attended a meeting under the auspices of the Heritage Mile Association (a non-profit citizen group that has worked since its inception to revive, maintain, and

preserve the heritage character of DN Road), held at the Petitioners' building on 26 April 2017. This meeting was attended by the contractors, consultants of MMRCL, owners of other buildings along the D.N. Road, Architects, Structural Engineers and concerned citizens who regularly use the D.N. Road for their activities.

13. At the meeting held on 26 April 2017, the MMRCL made a presentation regards the methodology of construction on the Metro Line III project. The Petitioners raised several concerns regarding damage to priceless heritage structures during the construction and whether the MMRCL was prepared to bear the cost of such damages and assist in the restoration.

14. The Petitioners asserted that Mr. Gupta, the Director of MMRCL, was in complete denial regarding the potential for damage to heritage structures and argued that there was no risk of harm from the Metro Line III project. He claimed that the condition of all buildings around D. N. Road would be continuously monitored. However, Mr. Gupta declined to answer questions about responsibility and liability for compensation and restoration if such damage occurred. He only stated that every contractor engaged in the project was required to hold insurance policies, but he refused to share such policies or provide any written or concrete assurances requested by those present. The

Minutes of this meeting were supplied on 03 May 2017.

15. The immediate cause of action for instituting this Petition was that the MMRCL and its contractors, like L&T, commenced digging activities on or about 25 May 2017 along the stretch of D.N.Road from Siddharth College to the Petitioners' building after blocking the access to the Petitioners' building from the road. The Petitioners pleaded that the barricades were placed behind the Arcade columns, which support the porch of the Petitioners' building, thereby rendering it impossible for the Petitioners to see what was happening beyond the barricades. The Petitioners were informed that such barricades would continue to be in place during the construction work on the Metro Line III project. Petitioners have placed photographs of the barricades at Exh-I to the Petition.

16. The Petitioners stated that, contrary to the assurances given to them, the construction works, involving drilling and other activities, were hastily started without the installation of monitoring instruments. Although these drilling and construction activities, which at the time were carried out in front of the adjacent Thomas Cook Building, caused significant vibrations in the Petitioners' building, they claim that even heavy old furniture was vibrating. Accordingly, through letters and emails dated 31 May 2017 and 01

June 2017, the Petitioners requested MMRCL and L&T to install vibration monitoring devices in their building to ensure that the vibrations remained within permissible limits.

17. The Petitioners received an email from the Project Manager of MMRCL assuring that investigations would be conducted. However, until 07 June 2017, nothing was done, and therefore, the Petitioners were obliged to send another email on 07 June 2017 to the Project Manager. On that same day, the Constructions Manager of L&T visited the site and recorded vibration levels. This was done without installing any monitoring instruments in the Petitioners' building. Throughout this period, drilling and construction activities continued unabated.

18. The Petitioners, concerned with safety and stability issues, had the building videotaped and photographed (interiors and exteriors) because otherwise it would be easy for MMRCL or its contractors to deny any liability. The Petitioners also wrote to MMRCL and their contractors about the installation of monitoring equipment and complained about the tremendous vibrations that threatened to damage their heritage building. The MMRCL and their contractors, however, maintained that such vibrations were within the permissible limits.

19. The Petitioners have pleaded that despite their

protests and expression of their genuine apprehensions, the callous and negligent attitude of the Respondents in continuing with unmonitored drilling and construction activities within a distance of less than 2 to 3 feet from the Petitioners building and other heritage structures along D.N.Road finally resulted in an Architectural ornamental and decorative feature of the Petitioners' building on the North Side viz. a "limestone finial" getting dislodged and falling in the Petitioners Garden Ground on the morning of 25 August, 2017.

20. The Petitioners have pleaded that, fortunately, the said limestone finial fell in the Petitioners' Garden Ground, which was vacant, and not on the pavement adjoining the Garden Ground, which several pedestrians used throughout the day. Photographs of the broken ornamental feature are attached to the Petition. The Petitioners have also sought leave to rely upon CCTV footage which captured the collapse of this ornamental feature on 25 August 2017.

21. The Petitioners, alarmed by all this, once again addressed several emails to MMRCL, their contractors and consultants. The contractors and the consultants' representatives visited the site, but only provided assurances that monitoring instruments would be installed and a detailed survey would be carried out. The Petitioners recorded this in their email dated 25 August

2017. The Petitioners also addressed complaints to the other Respondents and authorities, but this was of not much avail.

22. The petitioners then pleaded about the visit of MMRCL officials, accompanied by a Conservation Architect, on 29 August 2017. The Petitioners pointed out that the building had been renovated in 2015, and the collapse of the limestone finial, which was resting on the masonry below and had stood for over 100 years, could be attributable only to the unmonitored, immense vibrations during the drilling and other works on the Metro Line III project. The Petitioners requested that they be furnished with the raw data of the vibrations, if recorded. Despite such a request, no such data was furnished to the Petitioners.

23. On 01 September 2017, the Petitioners were informed that L&T had installed certain monitoring instruments in the Petitioners' building. The Petitioners expressed surprise because they were not informed or made known of where such instruments were precisely installed and how they were being monitored. Finally, the Petitioners discovered some instruments on the ground floor pillars of the Petitioners' building. These instruments appeared to be capable only of manual monitoring and were hardly equipped to record vibrations.

24. The Petitioners, therefore, instituted this Petition on 07 September 2017, seeking several final and interim reliefs listed out after paragraph 28 of the Petition.

25. This Petition was heard by the Division Bench comprising Dr. Manjula Chellur, CJ and N.M. Jamdar, J. on 15 September 2017 and an order was made on the same date. In this order, the apprehensions expressed by the Petitioners and the immediate reliefs that they were claiming were briefly summarised in paragraph 2. Based upon the same, this Court appointed a committee comprising the following: -

- a) A representative of the Respondent-authorities' Structural Engineering Department.
- b) A representative from M/s Sterling Engineering Consultancy Services Private Limited.
- c) A Structural Engineering Consultant nominated by the Petitioners; and
- d) One expert in the field from I.I.T. Mumbai.

The above committee was tasked with investigating the matter and considering the concerns expressed by the Petitioners, as well as the suggestions offered by both the Petitioners and the Respondents. The committee was instructed to submit a report on how the proposed excavation by MMRCL should be conducted without damaging the Petitioners' heritage building. This report

was to be submitted within two weeks. Meanwhile, the Respondent authorities were directed not to carry out any work in front of the Petitioners' building and the garden on the ground floor.

26. On 05 October 2017, this Court noted that the Expert Committee report was being placed on record. At paragraph 5, recommendations (a) to (e) were made by the Committee, which recommended that these should be implemented before any further construction activity is undertaken. Accordingly, in the order dated 05 October 2017, the Respondents were directed to submit the proposals they intend to implement before any further construction was undertaken.

27. By the last week of November 2017, the Respondents, including MMRCL, claimed that they had completed the precautionary measures recommended by the Expert Committee and therefore should be permitted to resume drilling and construction activities.

28. Therefore, this Court made an order on 29 November 2017 permitting the MMRCL to resume the works and complete them within a reasonable time/schedule, if any. The order dated 29 November 2017 also refers to four crucial aspects concerning the maintenance of supporting works during construction, periodic visits as part of monitoring, the installation and monitoring of crack meters, and other recommendations from the

committee during the progress of construction and drilling activities. This Court noted that since the works were being permitted to resume, the Petition should be kept pending until the works are completed. This Court also directed that if the Petitioners express any concerns during the progress of the work, the Expert Committee constituted by the order dated September 15, 2017, should address such concerns.

29. The record of the Petition contains affidavits filed by the parties from time to time, joint inspection reports, photographs, and correspondence. In the affidavit filed on behalf of the Petitioners on 10 January 2025, the Petitioners have pleaded that MMRCL removed the monitoring equipment, i.e. vibration meters, in the earlier part of 2023 after informing the Petitioners that blasting and piling work of Metro Line III had been completed.

30. In this affidavit, the Petitioners claimed that even though the construction work is completed, the Petitioners apprehend that once Metro Line III starts running or functioning, the Petitioners building, constructed in 1898, which has a very shallow foundation, (hardly 3 to 4 meters deep) will suffer damage due to intense vibrations. The Petitioners pointed out that their building was Grade II A Heritage Structure restored in 2014 and 2015 for which they were

presented an Award of Distinction from UNESCO for Cultural Heritage Conservation - 2015. They urged in this affidavit that their building clearly needs protection and monitoring to ensure that no further damage of whatsoever nature is caused. For this, the Petitioners submitted that this Petition be admitted and that interim reliefs in terms of the prayer clauses (f), (h), and (i) be granted. They also sought directions for the re-installation of the monitoring equipment so that vibrations could be measured and monitored once the Metro Line III starts functioning.

31. The Affidavit dated 10 January 2025, filed on behalf of the Petitioners, also refers to the fallen limestone finial and points out that, to date, it has not been restored by the Respondents.

32. Ms Behramkamdin, learned counsel for the Petitioners, referred to the substantive relief in prayer clause (b) and the interim reliefs in prayer clauses (f), (h), and (i). Based on the averments in the Petition, exhibits accompanying the Petition, and the material on record thus far, she submitted that the relief in terms of prayer clause (b) of the Petition for the restoration of the fallen limestone finial should be granted finally, that this Petition be admitted and kept pending, and that, pending its final disposal, interim reliefs in terms of prayer clauses (f), (h), and (i) be granted. In particular, she

submitted that the monitoring instruments be reinstalled so that vibrations once the Metro Line III begins functioning could be effectively monitored. She further argued that if the vibrations exceed the permissible limits or pose any danger to the Petitioners' heritage structure, immediate measures could be undertaken, and appropriate orders could be passed.

33. Mr Khandeparkar, the learned counsel for MMRCL, submitted that the entire foundation of the Petition was that the drilling, tunnelling and other construction activities on the Metro Line III would damage the Petitioners' building. There were allegations in the Petition that MMRCL or its contractors were undertaking no precautionary measures; therefore, the construction, drilling, and tunnelling works should not be allowed to proceed without such precautionary measures being in place.

34. Mr Khandeparkar submitted that this Court appointed an Expert Committee which made several recommendations. He submitted that after compliance with such recommendations, the interim order halting the constructions was vacated by this Court. The Petition was kept pending till the works were completed. He pointed out that, according to the Petitioners' affidavit, the works were completed in 2023. He submitted that neither were any serious complaints made, nor has any

serious material been produced on record to suggest that any structural or other damage was caused to the Petitioners' building on account of the construction works on the Metro Line III project. He objected to the production of some photographs, which are allegedly a part of a report prepared by some private engineers/architect and submitted, without prejudice, that even these photographs do not show any damage to the Petitioners' building, which, in any case, could be attributable to the works on the Metro Line III project.

35. Mr Khandeparkar, without prejudice to his contention that MMRCL was not responsible for the collapse of the limestone finial and without admitting any liability, on instructions, stated that MMRCL was agreeable to reconstruct/replicate the fallen limestone finial previously forming a part of the Petitioners' building at its own cost and expense, subject to the Petitioners providing MMRCL with all drawings, photographs, plans etc.; and the Petitioners obtaining all prior requisite permissions, sanctions, approvals and NOCs from the concerned authority for such reconstruction/replication, including in particular the permissions from the Heritage Committees/Authorities.

36. Mr Khandeparkar submitted that from the orders previously made in this Petition, it is apparent that the same was kept pending until the completion of the

construction works involving drilling and tunnelling. He submitted that these works have now been completed, and since no damage was noticed to the Petitioners' building and the Petitioners also never thought it necessary to approach the Expert Committee with any concerns during the construction, this Petition may be disposed of. He submitted that, at the highest, liberty may be granted to the Petitioners to approach the appropriate Courts in case the Petitioners have any grievances after the Metro Line III becomes operational or functional.

37. Mr Khandeparkar also referred to the Affidavit of Shashikant Laxman Damse filed on behalf of MMRCL, including paragraphs 4, 8, 9 and 10 of this Affidavit to submit that MMRCL has taken full precautions to monitor and control noise and vibration levels at certain identified locations. He submitted that with all these measures, there was no serious scope for any further apprehensions. In any event, Mr. Khandeparkar submitted that liberty can always be granted to the Petitioners to approach the appropriate Courts in case any grievances arise after the Metro Line III project becomes operational or functional.

38. Accordingly, Mr. Khandeparkar submitted that this Petition may be disposed of by recording MMRCL's statement concerning the restoration of the fallen

limestone finial and, by granting the Petitioners liberty to approach the Courts in case any grievances surface after the Metro Line III project becomes operational or functional.

39. We have, as noted earlier, considered the rival contentions, perused our previous orders, the pleadings in the Petitions, the material accompanying the pleadings and the reports placed on record by the Expert Committee and others from time to time.

40. At the outset, we note that there is no dispute whatsoever that the Petitioners' building is a Grade II A Heritage Structure constructed in the Neo-Gothic Revival Style in 1898, requiring protection and maintenance. The Development Control Regulations recognise the importance of such Heritage Structures and the need for their protection. Incidentally, in 2014-15, the Petitioners' building was restored to its earlier glory and was conferred UNESCO recognition for such Cultural heritage conservation.

41. In addition to the Petitioners' building, it has been asserted—and remains undisputed—that D.N. Road contains numerous other heritage structures of historical and architectural significance. There are pleadings that the D.N. Road, on account of these Heritage Structures, has been designated as Grade II (in the Heritage

Regulation of Greater Bombay, 1995). Therefore, it must be safeguarded and preserved.

42. In **Sadik Ali Mohammed Ali Noorani Vs. The State of Maharashtra & ors.**¹, a Division Bench of this Court comprising Dipankar Datta, C.J. (as His Lordship then was) and G. S. Kulkarni, J., were concerned with a heritage building known as “Esplanade Mansion” (previously the “Watson’s Hotel”). This building was designed and constructed by the British between the year 1860 and 1863. This Court, after perusing the record, opined that since the building in question was a world heritage structure of historical importance, the same ought to be repaired and restored.

43. This Court also noted that, apart from the Esplanade Building, there are a large number of beautiful buildings, not only in the Fort area, which were constructed during the British times, are privately owned and occupied, but also elsewhere in the city. Such buildings, at all times, have added to the glory and fame of this beautiful city. The Court noted that there are good laws to protect ancient monuments, but the implementation of these laws, as well as the protection of heritage buildings, is certainly inadequate and, in fact, dismal. Such buildings/monuments are neglected and not maintained. The Court opined that the issue raised in

¹ Writ Petition No.1681 of 2015 decided on 03 July 2021.

the matter was an eye-opener and an impetus for the authorities to devise an effective mechanism for protecting and restoring heritage structures. A positive approach and the will in this regard would go a long way in maintaining such heritage buildings for all times to come, as it is impossible to construct such structures in contemporary times.

44. Fortunately, with the resources the Petitioners could gather, the petitioners' building was restored in 2014-15 to its former glory. UNESCO awarded this restoration as a fine example of cultural heritage conservation. Therefore, there can be no doubt that the protection and preservation of the Petitioners' building is a must. Whilst the march of development and infrastructural projects cannot be halted in a city like Mumbai, such a march cannot be permitted to run roughshod over the concerns of preserving and maintaining heritage buildings for posterity.

45. In **Archaeological Survey of India Vs. Narender Anand and others**², a matter dealing with the Ancient Monuments and Archaeological Sites and Remains Act, 1958 [1958 Act], the Hon'ble Supreme Court observed that the High Court's anxiety to maintain a balance between dire necessity of protecting historical monuments of national and international importance

² (2012) 2 SCC 562

(Jantar Mantar in New Delhi) and the importance of development of infrastructure is understandable, but it is not possible to approve the fiat issued to the Central Government to review the prohibition contained in the Notification dated 16 June 1992. The Court noted that this Notification declared a specified area around the protected monuments to be a prohibited area or regulated area for mining operations and construction. The Court pointed out that the Central Government had issued the relevant notification for implementing the policy enshrined in Article 49 of the Constitution and the 1958 Act, namely, to preserve and protect ancient and historical monuments, archaeological sites, and remains of national importance.

46. The Court noted that in the name of development and accommodating the need for multistoried structures, the High Court could not have issued a mandamus to the Central Government to review/reconsider the Notification dated 16 June 1992 and that too by ignoring that after Independence a large number of protected monuments have been facing the threat of extinction and if effective steps are not taken to check the same, these monuments may become a part of history.

47. In **Rajeev Mankotia Vs. Secretary to the President of India and others**³, the Hon'ble Supreme Court was

³ (1997) 10 SCC 441

concerned with the Viceregal Lodge at Shimla, a harbinger of the colonial past, with its architectural grandeur and beauty reminiscent of the Elizabethan era, built by the 17th Viceroy, Earl Dufferin, between 1888 and 1889. Again, in the context of the 1958 Act, the Hon'ble Supreme Court held that it would be manifest that all ancient and historical monuments and all archaeological sites and remains or any structure, erection or monument or any tumulus or place of interment shall be deemed to be ancient and historical monument or archaeological sites and remains of national importance and shall be so declared for the purpose of Ancient Monuments Act if they have existed for a century; and in the case of a State monument, of State importance covered by the appropriate State Act.

48. The Court observed that the basis for these provisions is that an ancient monument must be of historical, cultural, archaeological, sculptural, monolithic, or artistic interest, existing for at least a century, and of national or State significance. In other words, either of these criteria must be met, and the monument should be protected, preserved, and maintained as a national or State monument. This not only fosters pride among the people but also provides insight into the glorious past of our structures, culture, sculpture, artistry, archaeological value, and the wisdom

and vision of our ancestors. Such monuments should be preserved and perpetuated so that future generations can learn from the skills, traditions, culture, and civilisation of our ancestors. They will benefit by understanding our art, architecture, and aesthetic sensibilities, which the creators of the past embodied, and continue this tradition for posterity. The preservation and protection of ancient monuments are therefore the responsibilities of the Union of India and the relevant state governments, which must work to protect, preserve, and maintain these sites, either through preservation or restoration to their original condition.

49. The Court disposed of the Writ Petition filed by **Rajeev Mankotia** by directing the authorities to ensure that proper maintenance and preservation are undertaken as an ongoing process to protect the historical heritage and that necessary repairs are effected from time to time. Directions were issued to the Government of India to maintain all national monuments under the respective Acts and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. The Court held that they are

the pride of Indians and places of public visit. Directions were also issued to State Governments regarding monuments of State importance. The Court noted that the Petitioner had served a great cause of national importance by putting in efforts to have the Viceregal Lodge preserved and maintained. The Court noted that but for the Petitioner's painstaking efforts, the Viceregal Lodge would have desecrated into a five-star hotel and in no time, and "We, the people of India" would have lost our ancient historical heritage.

50. In The Indian National Trust for Architectural and Cultural Heritage (INTACH) Vs. The Chennai Metropolitan Development Authority and ors.⁴, the Division Bench of the Madras High Court was concerned with the protection of Bharath Insurance Building constructed in 1897. This building is one of the finest examples of Indo-Saracenic architecture in the country and is listed as a Grade-A Heritage Building according to INTACH listings, which are based on a nationwide listing standard detailed in the draft heritage regulations formulated by the Ministry of Environment and Forests, Government of India, in June 1995. Since a proposal to demolish this building was made, the Petitioner INTACH instituted a Petition for the protection of this heritage building, describing it as one that possesses beauty, grandeur, and uniqueness.

⁴ 2010 Writ LR 836 (Madras)

51. The Madras High Court, after taking note of various statutory provisions, noted that as far as the heritage buildings in Madras and elsewhere in the State are concerned, many of them have been lost because of the indiscriminate demolition in the name of development of buildings without any regard for the architectural values thereof. The Court noted that UNESCO's Convention concerning the Protection of the World Cultural and Natural Heritage defines "cultural heritage" to include monuments, architectural works, works of monumental sculpture, and other similar items. Article 4 of the Convention requires every State Party to ensure identification, protection, conservation, presentation and transmission of the cultural heritage to future generations. Even a World Heritage Committee was formed under this Convention.

52. The Court noted that sometimes, in an enthusiastic effort "to clean up" a temple or a heritage building, persons who undertake this effort do sand blasting, which damages the quality of the pillars or the structures as such. Therefore, the Government was directed to prevent such activities even under the name of renovation of heritage buildings without seeking necessary approval of the Heritage Conservation Committee whenever an ancient monument, whether it is a structure or erection of historic, archaeological or

artistic value as described under the relevant Tamil Nadu legislation. Several directions were issued in relation to the Bharath Insurance Building, emphasizing that preservation of heritage buildings is a manifestation of our cultural heritage.

53. Though **Narender Anand** (supra) and **Rajeev Mankotia** (supra) were decisions in the context of the 1958 Act, still, the observations therein are by no means irrelevant for the issues raised in this Petition. Even the Petitioners' building, which is admittedly more than 100 years old and has Special Architectural, ornamental and decorative features, including the invaluable stained glass, deserves to be maintained and protected by all concerned.

54. Therefore, the 1st, 2nd, and 3rd Respondents must conduct themselves and their activities in a manner that does not harm or unduly destroy the Heritage Structures. Any construction or development that ignores the preservation of Heritage Structures or results in wanton destruction or damage cannot be regarded as lawful or appropriate unless all legal formalities and procedures are followed. The 1st, 2nd, and 3rd Respondents also cannot adopt a perpetually denialist stance or hurriedly carry out construction or developmental activities that affect Heritage Areas or Heritage Structures. There are cases where such Heritage Areas or Structures are

irreversibly harmed or destroyed, and the authorities responsible for such destruction or those whose lack of oversight caused it often plead fait accompli. This conduct cannot be tolerated.

55. In the present case however, whatever may have been the approach and the attitude of MMRCL before the petitioner filed this petition, once this Petition was filed and interim orders were made by this Court, at least from the material placed on record by both the parties up to now, we find it difficult to uphold the allegations of callousness or disregard to the concerns expressed by the Petitioners regarding their Heritage Building.

56. The recommendations made by the Expert Committee constituted by this Court were substantially complied with. During the construction, even the Petitioners do not appear to have expressed any concerns to the Expert Committee constituted by this Court or filed any Interim Applications complaining about breaches, excessive vibrations or damage. Express liberty was granted to the Petitioners to approach the Expert Committee with their grievances during the progress of the construction works after the vacation of the interim orders in our order dated 29 November 2017. This order also records that this petition will be kept pending until the construction works, which include drilling and tunnelling, are completed.

57. The Petitioners, in their affidavit filed on January 10, 2025, have acknowledged that the works were concluded in 2023. Even Mr Khandeparkar, on behalf of the MMRCL, submitted that the works have long ago been completed, as stated by the Petitioners themselves. At least from the material placed on record, prima facie, we find it difficult to accept the Petitioners' belated contention about some serious damage to the Petitioners' building on account of the works which, according to the Petitioners, were completed in 2023.

58. Therefore, if the Petitioners have any serious grievances about any damage to their building, which damage, they can establish or at least they propose to establish is attributable to the construction works on the Metro Line III project undertaken by MMRCL and its contractors, it would be open to the Petitioners to file appropriate proceedings before the appropriate Court for claiming reliefs like compensation etc. However, based on the material on record, it will not be possible for this Court to examine such issues and grant the Petitioners relief of either restoration of the allegedly damaged Heritage Structure or compensation.

59. On 4 July 2025, during the final hearing, Ms Behramkamdin attempted to produce some photographs, which she claimed were part of a report prepared by a private engineer, architect, or consultant. Some of the

pictures show cracks in the building and other similar issues. Based upon such material, which was not even backed by a copy of the full report or any affidavit, it would not be appropriate for this Court to take cognizance of such issues or further, link such issues with the MMRCI's works on the Metro Line III project and consider prayers for compensation or restoration. There is no clear prayer for damages or compensation.

60. This, however, is not to shut out the Petitioners' claims in the above regard. Therefore, though we do not propose to consider such issues in this Petition, we grant the Petitioners liberty to adopt such proceedings as they may be advised for claiming compensation, restoration, etc.

61. Regarding the collapse of one of the limestone finials, however, we have no serious doubts about the connection to MMRCI's Metro Line III project works. The record shows that the Petitioners' building had been renovated only in 2014-15. This finial collapsed on 25 August 2017, when the Petitioners were constantly complaining about the vibrations and the failure to monitor them. Petitioners have pleaded in detail as to how the works abruptly commenced in June 2017, even without the proper installation of the monitoring instruments. The Petitioners were compelled to institute this Petition by 7 September 2017, and this Court passed

an interim order on 15 September 2017, directing the Respondents not to carry out any construction works in front of the Petitioners' institute and the garden on the ground floor. This Court also appointed an Expert Committee, vide the order dated September 15, 2017.

62. The Expert Committee submitted its report recommending precautionary measures. It is only after the precautionary measures recommended by the Expert Committee were put in place by the Respondents that this Court, by its order dated 29 November 2017, vacated the restraint and allowed MMRCL to resume the works on the Metro Line III project in front of the Petitioners' building. Still, to ensure that there is proper monitoring and the MMRCL or its contractors are not oblivious to the concerns expressed by the Petitioners, this Petition was kept pending till the works could be completed. Further, the Petitioners were also given liberty to express their concerns to the Expert Committee. The Expert Committee was tasked with examining such concerns and addressing them appropriately.

63. Fortunately, the MMRCL, without prejudice to its rights and contentions and without accepting any liability, has now agreed to reconstruct/replicate the limestone finial previously forming a part of the

Petitioners' building at its own cost and expense, subject to the following conditions:-

(i) The Petitioners providing MMRCL with all drawings, photographs, plans, etc. and extending full co-operation for such reconstruction/restoration/replication works qua the fallen limestone finial.

(ii) The Petitioners obtaining all prior requisite permissions, sanctions, approvals, NOCs, etc. from the concerned authorities, including the Heritage Authorities for reconstruction/restoration/replication of the fallen limestone finial.

64. Accordingly, we accept the statement made on behalf of MMRCL and direct the MMRCL that it shall, consistent with its statement, complete the work of reconstruction/restoration/replication of the fallen limestone finial previously forming a part of the Petitioners' building at its own cost and expense, subject to the Petitioners complying with the above two conditions. This work shall be completed by MMRCL within a maximum of eight months from the date of the Petitioners obtaining the last of the requisite permissions, sanctions, approvals, and NOCs from the competent authorities. The Petitioners must also cooperate with MMRCL or its appointed contractors by providing the requisite access, etc., for the completion of these works.

65. The concerns now raised by the Petitioners across the Bar mainly relate to the damage they believe might be caused to their building once the Metro Line III project becomes operational. Upon examining the structure of the present Petition and its pleadings, it is clear that the Petition was initiated due to concerns about damage to the petitioners' building from the construction, drilling, and tunnelling activities for the Metro Line III project. These works are complete, although the Metro Line III is still to be made operational.

66. Shashikant Lakshman Damse's Affidavit filed on 10 January 2025 on behalf of MMRCL, states the following:-

"4. ...

h. I say that during the construction phase, no adverse observations were noticed in the structural stability of the building, the readings of the existing cracks or vibrations due to construction activities was within limits.

i. I say that in or around September 2021 the excavation for station box with controlled blasting and piling work for the Hutatma chowk station of MML-3 in the vicinity of the J.N. Petit Building was completed. However, Respondent No. 3 continued with the monitoring devices till early 2023.

j. As on date, the civil construction of the metro station on Dr D.N. Road and road restoration work stands complete.

8. I further state that the alignment of the Metro Tunnel is not directly under the Subject Building. The tracks run approximately 4-5 metres away horizontally and around 25 metres below ground level from the Subject Building. Hereto annexed and marked as Exhibit "E" are diagrams/sketches of the metro

alignment.

9. I further state that the Metro Line 3 is operational over an approximate distance of 22 Kilometres. The Noise and Vibration Levels measured at certain identified locations where the Metro Line 3 is operational, are well within the prescribed limits as per the RDSO Guidelines. Also, the maximum noise levels observed is 20dB (A) against the maximum limit of 40 dB (A) prescribed for silence zone in night-time the Noise Pollution (Regulations and Control) Rules, 2000, and the maximum vibration value of 55 VdB was recorded at surface ground level against the maximum limit of 72 VdB prescribed in the above guidelines.

10. It is also worthwhile to mention that Respondent No.3 has installed special sleepers on the track bed which reduces vibrations."

67. The above statements suggest that the alignment of the Metro Tunnel is not directly under the Petitioners' building. The tracks run approximately 4 to 5 meters away horizontally and around 25 meters below ground level from the Petitioners' building. Even diagrams and sketches of the metro alignment were enclosed along with this affidavit. The MMRCL affidavit claims that noise and vibration levels measured at certain identified locations where the Metro Line III is operational are well within the prescribed limits as per the RDSO guidelines.

68. Additionally, the affidavit states that the maximum noise level observed is 20dB(A), which is less than the maximum limit of 40dB(A) prescribed for the silence zone during nighttime in the Noise Pollution (Regulation and Control) Rules, 2000. The Affidavit also claims that the maximum vibration value of 55 VdB was recorded at

surface ground level against the maximum permissible limit of 72 VdB prescribed in the RDSO Guidelines. The Affidavit also states that the MMRCL has installed special sleepers on the track bed, which reduces vibrations.

69. At this point, it is not for us to either accept or reject the above statements. However, we do not believe it is appropriate to address the Petitioners' concerns about damage to their building once the Metro Line III becomes operational or functional, based on the assertions in the present Petition or the accompanying materials. The claims in the MMRCL affidavit, if accurate, would, to some extent, alleviate the concerns currently raised by the Petitioners.

70. Based upon the averments in the present Petition or its structure, we do not think that it would be appropriate to entertain, much less deal with Petitioners' apprehensions of the likelihood of damage to their building once the Metro Line III project becomes operational or functional. At least at this stage, that would be too speculative. However, suppose the Petitioners have any concerns in this regard once the Metro Line III project becomes operational. In that case, they can always initiate the filing of appropriate proceedings and seek the necessary relief. Such liberty can always be granted and is always available to the Petitioners.

71. Accordingly, we dispose of this Petition by making the following order: -

A) We direct the MMRCL, consistent with the statement made on its behalf, to reconstruct/restore/ replicate the limestone finial previously forming a part of the Petitioners' building at its own costs and expenses, subject to the following conditions: -

(i) The Petitioners providing MMRCL with all drawings, photographs, plans, etc. and extending full co-operation for such reconstruction/ restoration/ replication works qua the fallen limestone finial.

(ii) The Petitioners obtaining all prior requisite permissions, sanctions, approvals, NOCs, etc. from the concerned authorities, including the heritage authorities for reconstruction/restoration/ replication of the fallen limestone finial.

B) The above works of reconstruction, restoration, and replication of the fallen limestone finial must be completed by the MMRCL within eight months from the date the Petitioners obtain the last of the requisite permissions, sanctions, approvals, or NOCs from the competent authorities.

- C) Suppose the Petitioners have any grievances regarding the damage to their building caused by the construction, drilling, and tunnelling activities on the Metro Line III project. In that case, they are free to initiate appropriate proceedings before the suitable forum seeking relevant reliefs. All contentions of all parties concerning this matter are explicitly kept open.
- D) If the Petitioners have any concerns regarding the safety and preservation of their building once the Metro Line III project becomes operational or functional, they are at liberty to file appropriate proceedings. All contentions of all parties in this regard are expressly kept open.
- E) The observations, if any, in this judgment and order regarding the apprehensions expressed by the Petitioners or the claims of damages caused to the Petitioners' building due to the construction works on the Metro Line III project are only prima facie and based on the limited material put on record by the parties. Therefore, it is clarified that such observations are not intended to prejudice the Petitioners or the Respondents if they initiate or defend any proceedings under the liberties now granted. It is further clarified that all contentions

of all parties in this regard remain explicitly open.

F) We make no order for costs.

72. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)