
(2011) 05 BOM CK 0019

In the Bombay High Court

Case No : Notice of Motion No. 94 of 2010 in Public Interest Litigation No. 70 of 2009

Dr. Monica Matani

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Constitution of India, 1950 — Article 19(6)

Citation : (2011) 4 ALLMR 307 : (2011) 4 BomCR 533

Hon'ble Judges : Mridula Bhatkar, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Simran Puri, instructed by De Jure, for Respondent 9, Kiran Bagalia, for Respondent No. 2, J.J. Bhatt Anjali Chandurkar, D.J. Kakalia, Janki Thakkar and Onkar Sawarkar, instructed by Mulla and Mulla and Craigie Blunt and Caroe and Dushyant Purekar, for the Respondent

Judgement

A.M. Khanwilkar, J.—The Public Interest Litigation was filed, complaining about the construction method adopted by Respondent No. 3 in respect of Versova - Ghatkopar Section of the Metro. The reliefs claimed in the petition are as under:

- a. That this Hon''ble Court be pleased to call for the record of the case and be pleased to issue a Writ of Mandamus directing the appropriate authorities to take strict disciplinary action against Respondents-2 - 5 & 8 and their officials, as well as the management for the omissions and negligence shown by them.
- b. That the Hon''ble Court be pleased to issue a Writ of Mandamus directing the State of Maharashtra along with the Bombay Municipal Corporation and Police, to enforce these vital protocols and safety measures in Public Interest and interest of Environment as given in different standards.
- c. That this Honourable Court be pleased to issue a Writ in the nature of Mandamus to the State of Maharashtra to set some strict guidelines at par with those countries abroad for this kind of construction activity as they pose a hazard to the environment and the life and property around.

d. That this Hon''ble Court be pleased to issue a Writ in the nature of Mandamus or any other appropriate writ to the State of Maharashtra and Respondents 2, 3 and 8 in order to survey all structures in the vicinity where pile driving technique has been used without monitoring with the required equipments as per the Indian standards and the protocol with the machine. The Hon''ble Court be also pleased to suggest some corrective action in the interest of justice as deemed fit by this Hon''ble Court.

e. That the Hon''ble Court be pleased to issue a Writ of Mandamus or any like Writ to the State of Maharashtra to make some provision as thought fit by the Hon''ble Court for security and safety of buildings and structures along line of construction activities of such large infrastructure projects by providing for some means such as compulsory insurance coverage by the contractor for structures falling within range of damage of such future projects.

f. That this Honourable Court issue a Writ in the nature of Mandamus to the appropriate authorities to set reasonable restrictions, or in the way of injunction or a restraining order or any other means as found suitable, for a reasonable time frame [as is permitted by Article 19(6) of the Constitution of India] in the interest of Public safety and security, on Developers or contractors of Metro project from acquiring and commercially developing real estate around the line of construction in order to avoid any Intentional Omissions during construction.

g. Pending the hearing and final disposal of the present petition this Hon''ble Court be pleased to issue an Injunction prohibiting complete use of Vibrohammer as means of construction.

h. Pending the hearing and final disposal of the present petition this Hon''ble Court be pleased to issue an Injunction prohibiting Respondents 1 and 2 from awarding any more contracts for further Metro or other like projects till technological and strict safety specifications are in place and inquiry into the defaults of their officials is completed.

i. That the Hon''ble Court be pleased to grant any other measures as found suitable by the Hon''ble Court in this matter in the interest of justice.

j. That this P.I.L. be allowed with costs.

2. The Petitioner alleged that the contractors did not take care of various aspects of standards of international level, including the standards specified in the Manual published by Bureau of Indian Standards, in that Vibratory Hammer was used, which has caused extensive damage to the buildings in the neighborhood. That petition was heard on 6th August, 2009. At the hearing, the Respondents refuted the allegation made by the Petitioner.

3. At the same time, without prejudice to their contentions on merits, Respondent No. 3, in particular, volunteered that, as a mark of good gesture, the damage caused to the premises of the Petitioner will be repaired. MMRDA as well as Respondent No. 3 gave assurance to the Court that the project will be

executed strictly in terms of the contract and specified standards, and all measures and precaution will be taken to ensure that the property belonging to the Petitioner or public is not damaged. Further, the said Respondents also assured the Court that they will not use the Vibratory Hammer Technique to execute the work in future and the use of the said technique has already been discontinued. On the basis of this assurance given by MMRDA and Respondent No. 3, the petition came to be disposed of.

4. After the disposal of the petition, the Petitioner moved the Court for clarification and modification of the order dated 6th August, 2009 by way of praecipe. However, that praecipe was withdrawn on 28th August, 2009.

5. The petition was again moved on 1st October, 2009 by the Respondents for extension of time to complete the repair work in respect of the premises of the Petitioner. In the meantime, the Society, of which the Petitioner happens to be member, wanted to intervene. The Court noted that the applications filed by the Petitioner and intervener were not on record. Thus, it was ordered that the same will be heard on the next date.

6. The matter, accordingly, appeared before the Court on 5th November, 2009. However, it was noticed that the Chamber Summons filed by the Society was not circulated to the Court. The Court directed Respondents No. 2 and 3 to carry out repairs where the damage has been caused "if at all" as a result of the work carried out by them in and around the damaged property.

7. In order to ascertain the correctness of the allegations made by the Society and the Petitioner, the Court directed MMRDA to appoint an officer not below the rank of Chief Engineer to inspect the building and ascertain whether the alleged damage to the building has been caused as a result of work carried out by Respondents No. 3 and 4 or is attributable to natural damage caused to the building, which is stated to be an old one. The Court, further, observed that, if the finding in the said enquiry was to be against Respondents No. 3 and 4, in that event, the said Respondents would be responsible to carry out repairs to the property of the private individuals in the Society. On the other hand, if the finding was to be in favour of Respondents No. 3 and 4 to the effect that the damage caused to the building is not attributable to the work carried out by them by usage of Vibratory Hammer Technique, but was on account of natural damage caused to the building, the Respondents would not be liable to carry out any further repairs. In that case, however, the private individuals or Society would be free to take recourse to appropriate remedy to establish their claim, and ask for relief as may be permissible by law against the said Respondents. Those proceedings would be decided on their own merits, in accordance with law.

8. Pursuant to the above said order, M/s. S.N. Dube and Associates Pvt. Ltd. was appointed by Respondent No. 2 to visit the building, assess the nature of damage to the property and the cause for the said damage. The said Structural Engineers submitted their report to Respondent No. 2, which was considered as tentative

findings. That aspect was placed before the Court on 23rd February, 2010.

9. In the meantime, the Chamber Summons filed by Respondent No. 9-Society was allowed, and the Society was ordered to be impleaded as a Respondent No. 9 in petition.

10. On 23rd February, 2010, Respondent No. 9-Society took out Notice of Motion No. 94 of 2010 under consideration, praying for the following reliefs:

a) That this Hon'ble Court be pleased to pass an Order directing the Respondent No. 2 along with their structural consultants who submitted their report dated 11 Jan 2010, and the representatives of Respondent No. 3 and 4 to visit the building premises of the Respondent No. 9 urgently and investigate the recent aggravated deterioration of the building and report thereon;

b) This Hon'ble Court be pleased to direct the Respondent No. 7 to immediately conduct a structural audit of the building of the Respondent No. 9 forthwith, with Respondent No. 2, and tender the report of the said structural audit before this Hon'ble Court at the earliest;

c) This Hon'ble Court be pleased to direct the Respondents No. 2 and 7 to take immediate steps to assist all residents of the Respondent No. 9 in the event evacuation becomes necessary and provide them with necessary transit accommodation nearest to the site of the building of Respondent No. 9;

d) This Hon'ble Court be pleased to direct the Respondent No. 3 and 4 to immediately carry out urgent repairs to the building of the Respondent No. 9 to arrest further deterioration and avert possible collapse thereof, and to carry out such repairs forthwith under intimation by way of periodical reports to this Hon'ble Court.

e) That pending the hearing and final disposal of the Notice of Motion, this Hon'ble Court be pleased to pass interim orders directing the Respondents No. 2, 3 and 4 to visit forthwith the building of the Respondent No. 9 and conduct investigation, and further to report the further deterioration of the structure of the building to this Hon'ble Court, and take all steps necessary to arrest further damage.

f) That pending the hearing and final disposal of the Notice of Motion, this Hon'ble Court be pleased to pass interim orders directing the Respondent No. 7 to forthwith conduct a structural audit of the building of the Respondent No. 9 with the Respondent No. 2, and submit the report to this Hon'ble Court.

g) That pending the hearing and final disposal of the Notice of Motion, this Hon'ble Court be pleased to pass interim orders directing the Respondents No. 2 and 7 to take all steps to protect life and property of the residents of the Respondent No. 9 by assisting them in evacuation if deemed necessary and provide them transit accommodation at the nearest site to their building.

h) For interim and ad-interim reliefs in terms of prayers (e), (f) and (g) above;

i) Any other and further reliefs deemed fit and proper in the nature and circumstance of the case.

11. To assuage the grievance of Respondent No. 9 and the Petitioner, the Division Bench of this Court, on 23rd February, 2010, while taking note of the fact that the findings recorded in the report of M/s. S.N. Dube and Associates Pvt. Ltd. were tentative findings, directed Respondent No. 2 to forthwith appoint a Structural Engineer to carry out the structural audit of the building, and passed consequential directions. Pursuant to the said order, Respondent No. 2 appointed M/s. Structwel Designers and Consultants Pvt. Ltd. to carryout structural audit of the building in question. The said Structural Engineers submitted its Report dated 9th April, 2010 about the structural audit of the building in question. The said report was considered by this Court on 9th April, 2010. The Court took notice of the fact that the said expert had opined that the distress seen in the building was due to original poor quality construction, inaccurate / incorrect maintenance / non-approved alterations / repairs carried out to the structure intermediately, age related. Further, the use of Vibratory Hammer by Respondent No. 3 has not contributed to distress. The Court accepted the said report, and, while disposing of the subject Notice of Motion No. 94 of 2010, observed that it would be open to Respondent No. 9-Society or the Petitioner to take recourse to such other remedy as may be permissible in law.

12. Respondent No. 9, thereafter, filed a review petition against the above-said order dated 9th April, 2010 passed in Notice of Motion No. 94 of 2010. The principal grievance in the Notice of Motion was about the genuineness of the report of M/s. Structwel Designers and Consultants Pvt. Ltd. We do not think it necessary to burden this order by referring to the issues raised in the said review petition. Suffice it to observe that the Respondents had raised the issue of maintainability of the Review Petition as well as the Notice of Motion as filed by Respondent No. 9-Society in the disposed of petition.

13. However, Respondents No. 2 to 5, through their respective counsel, in deference to the observations made by the Court, submitted that, if the only objection of the review Petitioner was regarding exclusion of the report of M/s. Structwel Designers and Consultants Pvt. Ltd. from consideration, without prejudice to their rights and contentions, the said Respondents would agree for appointing an independent agency to be appointed by the Court to undertake the task of structural audit of the building in question. On that basis, the review petition was disposed of by recalling the order dated 9th April, 2010 passed in the present Motion. The operative part of the said order dated 23rd August, 2010 reads thus:

(a) The order dated 9th April 2010 passed in Notice of Motion No. 94 of 2010 is recalled. Instead, the said Notice of Motion is restored to the file to its original number to be proceeded from the stage of appointment of Structural Engineer to carry out detailed investigation into the relevant questions as to whether the damage caused to the Gautam Niwas building is a result of the vibratory hammer

technique used by the Respondents No. 4 and 5 or whether it is natural damage caused to the building being old structure or otherwise. Secondly, as to the extent of damage caused to the said building.

(b) We appoint IIT, Mumbai to undertake structural audit of Gautam Niwas building and submit its report containing findings and conclusions on the aforesaid two aspects within six weeks from today.

(c) We direct the original Writ Petitioner, Review Petitioner as well as Respondents 2 to 5 to extend full cooperation to the representatives of IIT, Mumbai during the investigation regarding structural audit of Gautam Niwas building and to furnish all necessary information and documents as may be called upon by the representative of IIT, Mumbai within specified time, if any.

(d) We further direct the Respondent No. 3 MMRDA to initially pay the expenses and charges of IIT, Mumbai as may be demanded, forthwith. However, the question as to who should finally bear the said expenses and charges will be considered at the appropriate stage while disposing of the Notice of Motion.

(e) We clarify that this arrangement is without prejudice to the rights and contentions of the parties and without going into the allegations contained in the Review Petition.

(f) Petition disposed of accordingly with no order as to costs.

14. As a consequence of the above order, the present Notice of Motion has been revived for the limited purpose of obtaining the opinion of IIT, Mumbai, regarding the structural audit of the building in question and, in particular, to submit its findings and conclusions on two issues formulated in order dated 5th November, 2009, viz., (1) whether the damage caused to the property is the result of work carried out by Respondents No. 3 and 4 or (2) the damage to the building is attributable to the natural damage caused, which is age-related. During the interaction with the officers of IIT, it transpired that, in the first instance, the Vibratory Hammer, which was used by Respondent No. 3, will have to be re-used to measure the intensity of the vibration level so as to ascertain whether such vibration intensity could be the cause of damage to the building. On the other hand, Respondents No. 2 and 3 were opposed to the idea of re-use of the Vibratory Hammer at the site, as, according to them, permanent structure has already been constructed and use of Vibratory Hammer may cause immediate or long term damage to the said structure. According to them, howsoever minor damage to be caused to the said structure would not be in public interest, as the structure was to be used for Mumbai Metro Project, which is a public infrastructure project to operate the Railway carrying lakhs of commuters daily. In view of the objection taken by Respondents No. 2 and 3, the issue was kept open to be considered by the experts of IIT.

15. After due deliberations, the officials of IIT submitted their report to the Prothonotary & Senior Master of this Court along with covering letter dated 27th

January, 2011. The said covering letter and the accompanying note and the methodology for structural audit of the building in question are reproduced herein for the sake of convenience. The same read as under:

Date 27.1.2011

To Ms A. Rodrigues, B.A., L.L.B. Registrar, O.S./ Prothonotary and Senior Master, High Court, Bombay -400 032

Reference: 1) Order of Honourable High Court after hearing on 22nd December 2010

2) Site Visit of Prof. R.S. Jangid to Gautam Nivas on 20.01.2011.

Review Petition No. 33 of 2010 in Notice of Motion No. 94 of 2010 in P.I.L. No. 70 of 2009

Subject: Structural audit of "Gautam Nivas" Building at Andheri (W), Mumbai

Dear Ms Rodrigues,

This is in reference to the order of Honourable High Court after hearing on 22nd December, 2010 by Hon"ble Justice Shri A.M. Khanwilkar and Shri A.A. Bangale. A site visit was made by Prof. R.S. Jangid to Gautm Nivas on 20.01.2010 along with Mr. S.R. Patil, Executive Engineer, MMRDA to get the input from the site to work out the final methodology / mechanism for Structural audit of "Gautam Nivas". Based on the input collected from the site, the matter was discussed in the Department and the final methodology to be adopted for the structural audit of Gautam Niwas Building is enclosed. In our opinion, this is the mechanism which can give the true reason for the damage in the Gautam Nivas Building because the building is old and "AS-Build Drawings" are not available. It is kindly requested that the necessary arrangement be made to proceed with the structural audit. It is also requested that the appointed nodal officer shall respond more promptly in this matter to complete the job within the time limit specified by the Honourable Court. With Regards,

Yours faithfully Sd/(R.S. Jangid) Department of Civil Engineering, IIT Bombay, Powai, Mumbai - 400 076

Methodology for Structural Audit of "Gautam Nivas" Building at Andheri (W), Mumbai

On the basis of the site-visit made on 20.01.2011, it is proposed to conduct structural audit of the building in the following two parts with specific requirements / details mentioned as below:

PART- A: MEASUREMENT OF VIBRATION LEVEL

Firstly, the intensity of the vibration level produced by the Vibratory Hammer used by the MMOPL (Respondent No. 3 herein) in the vicinity of the Gautam Nivas will be measured to assess whether such vibration intensity can cause the

damage to the building. Followings will be required for the measurement of the vibrations:

1. The Vibratory Hammer used for the MMOPL shall be operational with the same speed and peak load used as during earlier operations. The location for running the Vibratory Hammer has now been identified to be between the piers P8-P9 as shown in the enclosed Photograph taken during the site visit on 20.1.2011 (Please refer Figure 1).
2. The superstructure shall not be placed on Piers P8 and P9 until the Vibration measurement work is completed as this will obstruct in operation of Vibratory Hammer.
3. The necessary spots / places in the Gautam Niwas shall be made available to install the vibration measuring devices / sensors to record the ground vibrations.
4. Necessary space shall also be provided for placing the instruments being used for the measurement of vibrations.
5. The vibration tests will be carried out under the evacuated condition of the building. The operation will be stopped if the vibration levels are found to exceed the allowable limits to prevent any further damage to building.
6. The vibration measurement tests will be conducted during the months of May - June (During other time our equipments are required for the teaching / learning of our students).

PART-B: STRUCTURAL AUDIT OF THE BUILDING

Secondly, depending upon the outcome of the Part-A and if the measured vibration levels are substantial, the structural auditing of the Gautam Niwas will be carried out. This activity will not be required if the outcome of the Part-A is that the vibration levels are not substantial. The following will be required for the structural auditing of the building

1. The Gautam Nivas will be visually inspected to see and record the distress and their nature in the structural members of the building.
2. Non-destructive tests (NDT) to assess the current strength of the structural members of the building and correlation of it with the observed distress (if any). The NDT test will include the Ultrasonic Pulse Velocity and Rebound Hammer test.
3. At the places where the NDT is to be carried out (which will be finalized after the preliminary visit along with visual inspection), necessary arrangements / permission shall be made for removal of plaster of structural members. Typically this involves the removal of plaster in the beams, slabs and columns of the building.
4. The structural auditing will require about 2-3 days of the testing at the site.
5. The outcome of this exercise will give the relative structural strength of the

building and possibility of being damaged by the intensity of the measured vibration levels.

It is kindly requested to make the necessary arrangements for carrying the proposed activities. The IIT consultation charges for each part of the exercise will be Rs. 5 lacs plus applicable service taxes.

(emphasis supplied)

16. From the covering letter, it is noticed that the opinion of IIT is that the usage of Vibratory Hammer technology was essential, as that alone can give the true reasons for the damage to the building in question. The contents of this covering letter also indicate that this was insisted by IIT also, because the building is old and "As-Build Drawings" were not available.

17. This report was placed before the Court on 2nd February, 2011. In the light of the argument canvassed before the Court, we asked the parties to have a joint meeting with the IIT officials in the Office of the Executive Engineer of MMRDA so as to explore the possibility of some other alternative mechanism than the one already indicated by the IIT officials, as the Respondents were skeptical about re-use of Vibratory Hammer on the site at this distance of time.

18. Accordingly, after joint meetings held between the officials of MMRDA, Respondent No. 3 Company and the representatives of the Society, the officials of IIT, by another communication dated 25th February, 2011 addressed to the Prothonotary and Senior Master of this Court, informed as follows:

This is concerning to the orders passed by the Hon''ble High Court on 10th February, 2011, in the matter of Review Petition No. 33 of 2010 in notice of motion No. 94 of 2010 in PIL No. 70 of 2009.

After detailed analysis of various possibilities, we have come to a conclusion that except for the method proposed by us any other method would be speculative in nature and can be argued either way. We, therefore, suggest that the Hon''ble Court may be pleased to direct all concerned parties to facilitate us to conduct the tests as proposed by us.

However, if for any reasons, it is not possible then we request you to kindly relieve us from this assignment.

Thanking you,

(emphasis supplied)

19. This communication was placed before us on 28th March, 2011. After hearing the counsel appearing for the respective parties, we passed the following order:

1. We have perused the latest opinion of the Department of Civil Engineering, IIT Bombay, Powai, Mumbai dated 25th February, 2011. No doubt, the opinion recorded by the IIT is that the method of reuse of vibrohammer is the only appropriate method and any other method would be speculative in nature.

However, from the earlier opinions and the correspondence which are presented before us, we are unable to discern that the IIT has addressed itself to the concern expressed by the MMRDA and the private Respondent that reuse of vibrohammer to ascertain the cause of damage to the building was on account of use of vibrohammer or otherwise, may involve possibility of latent damage to the structure already erected in the neighborhood of the building which will be used for public utility service. Unless, the IIT were to opine that there was absolutely no possibility of even latent damage being caused to the building or the structures in the neighborhood where the reuse of vibrohammer will be done, the question of experimenting reuse of vibrohammer does not arise.

2. Realising this position, Counsel for the review Petitioner would contend that in that case the IIT may be requested to give clear finding as to whether there would be any possibility of latent damage to be caused due to the reuse of vibrohammer which damage may go undetected in the immediate future but which will affect the safety of the structures in the neighborhood in the long run. Only after that finding/opinion is made available to the Court, further directions as may be required can be considered.

3. We are conscious of the last paragraph of letter dated 25th February, 2011 wherein IIT has expressed that they may be relieved from this assignment. But considering the public interest involved, we would once again request IIT to submit further opinion in the above terms. For the time being, we would defer the hearing of this matter till 20th April, 2011.

4. We make it clear that we are not expressing any opinion on the correctness of the grievance or for that matter, the stand of the Respondents either way.

(emphasis supplied)

20. The officials of IIT, after due deliberations, have submitted another letter dated 15th April, 2011 addressed to the Prothonotary & Senior Master of this Court as follows:

Indian Institute of Technology Bombay Powai, Mumbai 400 078, India

Date: 15.4.2011

To Ms A. Rodrigues, B.A., L.L.B. Registrar, O.S./ Prothonotary and Senior Master, High Court, Bombay - 400 032

Subject: Structural audit of "Gautam Nivas" building at Andheri (W), Mumbai

Dear Ms Rodrigues,

This is concerning to the orders passed by the Hon"ble High Court on 28th March, 2011, in the matter of Review petition No. 33 of 2010 in notice of motion No. 94 of 2010 in PIL No. 70 of 2009.

We have carefully perused the order passed by Hon"ble Bombay High Court and we are of the opinion that even the possibilities of latent damage being caused

cannot be assessed without the reuse of vibrohammer. We request MMRDA and MMOPL to submit the design acceleration levels of the erected public utility structures so that the same can be compared during re-use of vibrohammer in a controlled manner and opinion on the possible damage.

However, if all parties do not agree on re-use of vibrohammer in a controlled manner for any reason, we request Hon''ble Court to kindly relieve us from this assignment.

We would also like to kindly inform the Hon''ble Court that we have been Consultants to both MMRDA as well as MMOPL in the past.

The Hon''ble Court may kindly give us further guidance in the matter.

Thanking you,

Yours faithfully, Sd/- (Professor R.S. Jangid) Department of Civil Engineering, IIT Bombay, Powai, Mumbai-400 076.

(emphasis supplied)

21. In substance, we were more than convinced that, unless IIT was to opine that there was not even remotest possibility of immediate or, for that matter, distant latent damage to the structure already constructed and to be used for public utility service, the question of permitting re-use of Vibratory Hammer at the site cannot be countenanced. Even on fair reading of the reports submitted by IIT, we are not convinced that the possibility of latent damage is totally ruled out, i.e., damage, which may go undetected to the public infrastructure project, which has already been constructed, would go undetected in the immediate future but which may have safety and durability implications in the long term. The opinion of IIT, however, is more focused on the issue that, by re-use of Vibratory Hammer alone, it would be possible to measure and assess the position as to whether such vibration intensity could have caused damage to the building in question i.e. Gautam Niwas.

22. In the present proceedings, we cannot allow re-use of Vibratory Hammer, unless the experts' opinion were to unambiguously state that, by adopting such mechanism, the possibility of immediate and/or even distant latent damage to the public infrastructure project, which has already been constructed on the site, is totally ruled out. Indeed, Respondent No. 9 and the Petitioners would argue that the opinion of IIT re-assures the position that re-use of Vibratory Hammer would be done in controlled manner under the supervision of the experts of IIT.

23. In the context of this submission, we called upon the counsel for Respondent No. 9 and the Petitioner to produce material to indicate as to when the immediate or distant latent damage to the structure is possible by use of Vibratory Hammer. In response, the Petitioner has produced before us an article downloaded from the Internet purported to be a report regarding the Real Time Measurement Of Property Vibration Values On Adjacent Property During

Construction.

23. Our attention is invited to the observation in the said report that several agencies and investigators have provided threshold vibration values, below which no structural distress, or increase on existing distress, should occur. Table 1 appended to the said document illustrates the findings of several researchers with regard to "human perception" of vibrations and the potential for damage to structures. In our considered opinion, Table 1, which is pressed into service, is only in respect of Vibration Levels v. Perception / Damage Levels. It does not specifically deal with the issue of possibility of latent damage to the structure which may go undetected in the immediate future, but may have safety and durability implications in the long term.

25. The Petitioner would, however, argue that, if the Vibratory Hammer is used at the intensity of 25 mm/s ppv (peak particle velocity), there is no possibility of any damage. However, the material pressed into service does not clearly mention that, on usage of Vibratory Hammer at the intensity of 25 mm/s ppv, there is no possibility of any latent damage, which may go undetected in the immediate future, and may have safety and durability implications in the long term. Besides, it is also not clear from this material that the threshold vibration values up to 25 mm/s ppv would be sufficient to arrive at a firm conclusion that the use of Vibratory Hammer by Respondent No. 3 at the site was itself the cause of alleged damage to the building in question i.e. Gautam Niwas. Indeed, IIT has identified the site where the experiment would be conducted, i.e., between Pillars 8 and 9.

26. In this context, it was submitted by the Petitioner that Pillars 8 and 9 are inaccessible to general public, and, therefore, the argument of Respondent No. 3 that there would be danger to the life of thousands of persons was inappropriate. At the same time, the Petitioner had to fairly concede that even Pillars 8 and 9 were part of the public infrastructure project, on which the Metro Railway was eventually to be operated to carry commuters daily.

27. In this view of the matter, the question of acceding to the request of Respondent No. 9 or, for that matter, the Petitioner to direct Respondents No. 2 and 3 to agree to allow IIT to carry on "experiment" of re-use of Vibratory Hammer at the proposed site does not arise.

28. As has been noted earlier, the petition has already been disposed of in terms of order dated 6th August, 2009. Indeed, even thereafter, this Court has been passing certain directions in the said disposed of petition. That cannot take the matter any further. The fact remains that the petition is already disposed of. In such a disposed of petition, the question of entertaining the reliefs as claimed in the subject Notice of Motion, albeit, at the instance of Respondent No. 9-Society, which, in effect, is seeking substantive relief, cannot be countenanced.

29. Considering the nature of controversy and the complexity of the disputed issues raised, we would dispose of this Motion, with liberty to Respondent No. 9 as well as the Petitioner to pursue such other remedy as may be permissible in

law. In those proceedings, they will have to establish their claim and ask for relief as may be permissible in law against the concerned Respondents, which proceedings will have to be decided on their own merits, in accordance with law. All questions in that behalf are left open.

30. While parting, we place on record our appreciation for the co-operation and assistance given by IIT, Mumbai, pursuant to request made by the Court. As regards the costs incurred by IIT, Mumbai, till now to undertake the task assigned by the Court or its professional charges, if any, Respondent No. 3-Company shall be liable to bear the same entirely. This, however, does not mean that we have recorded any adverse finding against the Respondents on merits of the controversy.

31. We also place on record our appreciation for the keen interest taken by the Petitioner, who is a practising doctor by profession, to raise issues of public interest by doing extensive research on technical matters relating to Technology, Engineering and Construction to highlight the possibility of damage being caused to the structures in the neighborhood where the contractors employed by MMRDA were operating Vibratory Hammer Technology during the construction of public infrastructure project.

32. The Motion is disposed of in the above terms.