

(2010) 04 MAD CK 0264

In the Madras High Court

Case No : Writ Petition No. 25306 of 2006

The Indian National Trust for Architectural and Cultural
Heritage (INTACH)

APPELLANT

Vs

The Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai, The Corporation of Chennai
and Life Insurance Corporation of India

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Archaeological Sites and Remains Act, 1958 — Section 2
Constitution of India, 1950 — Article 12, 300A, 4
Development Control Rules for Chennai Metropolitan Area Regulations, 2004 —
Regulation 22
Development Control Rules for Chennai Metropolitan Area Rules, 2004 — Rule 22
Development Regulation of Second Master Plan for Chennai Metropolitan Area
Regulation, 2026 — Regulation 31
Life Insurance Corporation Act, 1956 — Section 6

Citation : (2010) WritLR 836

Hon'ble Judges : Prabha Sridevan, J;P.P.S. Janarthana Raja, J

Bench : Division Bench

Advocate : N.L. Rajah, for the Appellant; I. Paranthaman, for Respondent-1, V. Bharathidasan, for Respondent-2 and A.L. Somayaji for V. Parthiban, for Respondent-3, for the Respondent

Judgement

Prabha Sridevan, J.—This writ petition has been filed in public interest by the Indian National Trust for Architectural and Cultural Heritage

(INTACH), a nation wide non-profit membership organisation set up in the year 1984 to protect and conserve India's vast natural and cultural

heritage. The present public interest litigation is for protection of the Bharath Insurance Building from being demolished without applying the

provisions of Rule 22 of the Development Control Rules for Chennai Metropolitan Area, 2004.

2. The Bharath Building, which is presently owned and rented out by the Life Insurance Corporation, is a landmark building recognised as a

symbol of heritage conservation's losing battle in the city and State. The history of the building may have to be set out at this juncture. The Bharat

Building's story goes back to 1868 when W.E. Smith, a pharmacist, arrived in Madras and, finding enough pharmacies and more in business in the

city, proceeded to Ooty where he set up shop. The success of the Ooty pharmacy and other branches in the Blue Mountains made Smith decide

not only to look at Madras again, but also set up a shop the city would not forget. On the site that became Bharat Insurance's, he set up facilities

that enabled W.E. Smith's to describe itself as ""wholesale and manufacturing druggists...opticians, dealers in surgical instruments...and makers of

aerated waters."" When business grew, Smith's wanted not only more built-space but also a building in keeping with the image it had gained, as

South India's leading pharmacists. And so work began in 1894, on a building that was to be inaugurated in 1897 as Kardyl Building, headquarters

of the firm that now described itself as ""W.E. Smith & Co Ltd."" A triangular building with its peak flattened, Kardyl Building was designed by J.H.

Stephens of the Madras P.W.D. and he let his vision of Indo-Saracenic architecture run riot in it. Domes, spires, 100-foot minarets, arches and

verandahs blended the Mughal with the Ottoman, the Hindu and the European Classical in a fantasy that at its inauguration was described as ""a

palatial structure...ten times the size of what was occupied originally...one of the sights of the city...a far greater show than any other building on

Mount Road."" Within, its main feature was a magnificent 60-foot by 40 showroom. It also provided rooms for doctors and dentists on its first floor

facing Mount Road, and for its European assistants facing General Patter's Road. It even ran a cafe½ and a beer bar And in its rear compound

was its aerated water factory. When competition - especially from its great rival across the street, Spencer's (more about anon) - increased,

Smith's sold its business, building and all, to Spencer's in 1925. Whereupon that growing giant incorporated Smith's pharma business into its own

and rented out all the space, including the showroom. In 1934, Spencer's finally found a buyer for the building, Bharat Insurance that had been

established in Lahore in 1896 by Lala Harikishenlal. Bharat was taken over by the Dalmia's in 1936 and when life insurance was nationalised in

1956, the numerous buildings the various life insurance companies owned in the country - including the Bharat Building - were taken over by LIC,

which became one of the biggest property owners in the country. But before that happened, in the triangular garden in front of the old building was

raised incongruously, in the art-deco styling of the time, a new, near contiguous block to the design of Prynne, Abbott and Davis, the leading

Madras architects of the day. This was called the Bharat Insurance Building; the old Kardyl Building had never really changed its name but had

begun to be referred to as the Bharat Building.

3. One of the finest examples of Indo-Saracenic architecture in the country, the Bharath Insurance building has been listed as a Grade-A Heritage

Building as per INTACH listings based on a nation-wide listing standard detailed in the draft heritage regulations formulated by the Ministry of

Environment and Forests, Government of India, in June, 1995. The building is presently owned and leased out to tenants by Life Insurance

Corporation, the third respondent herein. In the year 1998, the third respondent initiated a process of eviction of tenants in this building on the

grounds that the building was unsafe for occupation due to its dilapidated condition. A notice warning the tenants therein of the risk of

injury/damage to the property was posted in prominent parts of the building. When the petitioner learnt that a plan to demolish the building was

under consideration, the Convenor of the petitioner-Trust approached the Chairman of the third respondent; the Director of Town and Country

Planning, Chennai; the Chief Planner, Chennai Metropolitan Development Authority (CMDA), Chennai, expressing their apprehension regarding

the destruction of what the petitioner describes as a building having beauty, grandeur and uniqueness. The Government of Tamil Nadu had issued a

Government Order in the year 1999 requiring the CMDA, the first and the second respondents, to persuade owners of heritage buildings against

demolition thereof and not to issue demolition permits. There was a meeting, but the third respondent expressed dissatisfaction over the rental

returns, and since the returns were barely sufficient to meet the costs towards maintenance, the respondent was not interested in retaining the

building. According to the petitioner, the third respondent had actually restored all the heritage buildings in its possession in other cities and it is only

with regard to this building that the step to demolish it has been taken. It is in these circumstances that the present writ petition has been filed.

4. On the directions of this Court, a Committee of Experts had inspected the building and filed a report on the feasibility of renovation and

restoration of the said building. The Committee appointed by the High Court consisted of a Chief Engineer (Retd.), a civil engineer nominated by

the Dean, I.I.T., Chennai and the Superintendent, Archaeological Survey of India. They suggested several measures for restoration of the building.

Against the interim orders calling for a report, the third respondent went before the Supreme Court. On 2.11.2007, the Supreme Court dismissed

the SLP with the following observations:

Having heard the learned Counsel for the parties, we are of the opinion that as the Committee has submitted its report, in the fitness of things, the

question as to whether the building in question should be demolished or not should be determined by the High Court at the earliest. Learned

Counsel appearing on behalf of the Corporation states that no list is maintained by the Corporation in respect of the heritage buildings. We would,

therefore, request the High Court to consider the desirability of disposing of the entire matter as expeditiously as possible and preferably within a

period of four weeks from date. All the contentions of the parties shall remain open.

The Life Insurance Corporation had engaged experts and their reports are dated 12.1.2007, 9.1.2008 and 11.1.2008. According to their reports,

the economic life of the building had come to an end and therefore, it may be demolished and a new building could be put up on the same

architectural lines as the existing building so that the aesthetics of heritage will not be lost. When the matter came up on 21.10.2009, we granted

liberty to the petitioner to engage the expertise of anyone who is a heritage engineer or architect to explore the possibility of restoration of the

building wholly or in part. A report has been filed on 27.10.2009. The opinion of the experts is that it is possible for the third respondent to use the

structure for customer service, conference and meeting halls etc.

5. On 19.12.2009, this Court directed the Government to form a Heritage Conservation Committee within three months, if possible, since such a

committee has been formed at least in the State of Maharashtra, whose opinion

is sought for, when the question of demolition of heritage buildings is in issue.

6. On 1.4.2010, by G.O. Ms. No. 85, Housing and Urban Development (U.D.I) Department dated 1.4.2010, the Government, accepting the

proposal of the Member Secretary, CMDA, appointed the Heritage Conservation Committee with the composition of the following members

under Special Rule 2(i) of the Special Rules for Conservation of Heritage Buildings contained in Annexure-XXV under Regulation 31 of the

Development Regulation of Second Master Plan for Chennai Metropolitan Area, 2026:

Chief Planner, Chennai Metropolitan Development Authority Chairman

Superintending Archaeologist, Archaeological Survey of India Member

Archaeologist nominated by the Tamil Nadu State Archaeology Member Department

Superintending Engineer (Building) nominated by the Chief Member Engineer (Building), Public Works Department

Senior Architect, Public Works Department Member

A Heritage Building/Precincts Conservation Expert nominated by Member the INTACH, Chennai Chapter

Chairman of the UBTACH, Chennai Chapter Member

Professor of History nominated by the Head of History Department, Member University of Madras

Environment Expert nominated by the Director of the Centre for Member Environmental Studies, Anna University

Thiru. Alandur R.S. Bharathi, Former Member, Chennai Member

Metropolitan Development Authority, representing general public or NGO

Professor of Architecture nominated by the Director, School of Member Architecture & Planning, Anna University

Senior Planner (DDP), Chennai Metropolitan Development Member/ Convenor Authority

7. Mr. N.L. Rajah, learned Counsel appearing for the petitioner submitted that in *Rajeev Mankotia Vs. Secretary to the President of India and others*, , the Supreme Court had referred to the preservation of heritage buildings as a manifestation of our cultural heritage and the protection of monuments of State importance by the State Governments as well. The learned Counsel submitted that in that case, the Supreme Court had taken note of the Ancient Monuments Act and Archaeological Sites and Remains Act, 1958. The definition of "ancient monument" u/s 2(a) of the said Act will well apply to the present building and it would be a heritage building. He submitted that by destruction and demolition of heritage buildings, the future generation is losing its link with the past. He also referred to *Life Insurance Corporation of India and Union of India and another Vs. Prof. Manubhai D. Shah and Cinemart Foundation*, , where the Supreme Court held that the Life Insurance Corporation is a State for the purpose of Article 12 of the Constitution of India. Learned Counsel submitted that, therefore, the third respondent is bound to act reasonably without arbitrariness. He further submitted that when the third respondent had taken part in the meeting with CMDA and the Heritage characteristic of the building had been acknowledged, it is not now open to the third respondent to resile from the position and insist on demolition. He submitted that the respondents may rely on *Indian National Trust for Art and Cultural Heritage (INTAVH) Vs. Chennai Metropolitan Development Authority and Others*, , but on facts, there are several distinguishing features and that cannot be relied on for demolishing this building. He also referred to the Convention concerning the Protection of the World Cultural and National Heritage of the United Nations Educational, Scientific and Cultural Organisation (UNESCO). He referred to a news item where the Union Minister had promised that the Bharath Insurance Building will not be pulled down. Learned Counsel referred to Rule 22 of the Development Control Rules for Chennai Metropolitan Area, 2004 which provided that if a building or premises is not covered under the Archaeological Monuments Act, but still, in the opinion of the Authority, is of historical or archaeological interest and is in danger of demolition or alteration likely to affect its character by a development, the Authority may impose such conditions as are necessary for preservation of the said building.

8. Mr. A.L. Somayaji, learned senior counsel appearing on behalf of the third respondent submitted that the Life Insurance Corporation is bound by Section 6 of the Life Insurance Corporation Act, 1956 to carry on its business in a manner that renders the business profitable. The funds are public funds. The Corporation is accountable to the public. According to the learned senior counsel, the building in question is sadly dilapidated and is in a state of imminent danger of falling down. Learned senior counsel also submitted that there is no historical value attached to the building. It has always been used for commercial purposes. Learned senior counsel submitted that the Rajiv Mankotia's case cited supra cannot be applied to the present case. That was the Viceregal Lodge where several historic events had taken place and that is not so in the instant building. Learned senior counsel referred in detail to the various reports by the experts who had been engaged by them who have all testified to the fact that the building had become obsolescent economically and that there would be no prudence in retaining the building. The learned senior counsel submitted that the experts who had given their report to save the building had not actually examined the building and they were not civil engineers; they were only architects. Whereas, these three experts who had been engaged by the third respondent, viz., C.H. Gopinatha Rao, Former National President, Institution of Valuers; Prof. A.R. Santhakumar, Emeritus Professor & Dean of Civil Engineering; and Ln. A. Sivasankaran, Former Chairman, Institution of Engineers are all highly competent persons of professional excellence and they have all recommended demolition after inspection of the building after going into the details with regard to each and every aspect of the building, including the beams, the joists, the brick walls etc. The learned senior counsel submitted, therefore, their report definitely deserves more weight than the report filed by the petitioner. Learned senior counsel submitted that demolition permission had been obtained as early as on 4.11.2004, but they have been prevented from demolishing the building for nearly six years thereafter. He produced the Concept Draft of the proposed building, which according to him, will be grant, economically viable and along the same lines as the existing building and therefore, will satisfy both the economic objectives as well as the aesthetic objectives. Learned senior counsel submitted that the decision of this Court in 2003 (4) C.T.C. 513 (supra) is a case where the same

petitioner had filed the writ petition and sought for restraint of demolition of the building known as Madras Club House. The same points were

raised there too, viz. that it is a heritage building and cannot be demolished. The Division Bench went into the issue and held that the owner of a

building cannot be restrained from exercising her rights over her property and it would amount to deprivation of her rights under Article 300A of

the Constitution of India. It was also submitted that when there is no law relating to heritage buildings, the Court cannot be used to direct statutory

authorities to do something which has no sanction of law and therefore, no mandamus can be issued as sought for in the present case.

9. We have seen the photographs, the various reports in this regard and also the provisions of law.

10. The Tamil Nadu Ancient and Historical Monuments and Archaeological Sites and Remains Act (25 of 1966) was enacted to provide for the

preservation of ancient and historical monuments and archaeological sites and remains other than those of national importance, for the regulation of

archaeological excavations and for the protection of sculptures, carvings and other like objects. Section 2 of the said Act reads thus:

Section 2. Definitions.--In this Act, unless the context otherwise requires,--

(a) "Ancient monument" means any structure, erection or monument or any tumulus or place of interment, or any cave, rock-sculpture; inscription

or monolith, which is of Historical archaeological, or artistic interest and which has been in existence for not less than one hundred years and

includes-

(i) the remains of an ancient monument,

(ii) the site of an ancient monument,

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such

monument,

(iv) the gardens, if any, appurtenant to an ancient monument, and

(v) the means of access to, and convenient inspection of an ancient monument; but does not include any ancient or Historical monument declared

by or under law made by Parliament to be of national importance;

(b) "antiquity" includes--

- (i) any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship,
- (ii) any article, object or thing detached from a building or cave,
- (iii) any article, object or thing illustrative of science, art, crafts, literature religion, customs, morals or politics in bygone ages,
- (iv) any article, object or things of Historical interest, and
- (v) any article, object or things declared by the Government, by notification to be an antiquity for the purposes of this Act,

which has been in existence for not less than one hundred years;

(c) "archaeological officer" means any officer appointed by the Government, by notification; to be an archaeological officer for the purpose of this

Act for such area as may be specified in the notification;

(d) "archaeological site and remains" means any area which contains or is reasonably believed to contain ruins or relics of Historical or

archaeological importance which have been in existence for not less than one hundred years, and include-

- (i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and
- (ii) the means of access to, and convenience inspection of, the area; but does not include any archaeological site or remains declared by or under

law made by Parliament to be of national importance;

(e) "Director" means the Director of Archaeology and includes any officer authorised by the Government, by notification, to exercise the powers

conferred on, and discharge the duties imposed upon, the Director under this Act;

(f) "Government" means the State Government;

(g) "maintain" with its, grammatical variations and cognate expressions includes the fencing covering in, repairing, restoring and cleaning of a

protected monument, and the doing of any act which may be necessary for the purpose of preserving a protected monument or of securing

convenient access thereto;

(h) "Owner" includes-

- (i) a joint owner invested with powers of management on behalf of himself and other joint owners and the successor-in-office of any such owner,

and

(ii) any manager or trustee exercising power of management and the successor-in-office of any such manager or trustee;

(i) "protected area" means any archaeological site and remains which is declared to be a protected area under this Act;

(j) "protected monument" means any ancient monument which is declared to be a protected monument under this Act.

According to the learned Counsel for the petitioner, this Act defines "'ancient monument'" quite widely and therefore, nothing could prevent this

Court from invoking the provisions of that Act to protect this building. According to the learned senior counsel, that would really relate to

archaeological excavations and preservations of ancient and historical monuments, this building is neither. The description of ancient monument

includes "'any structure which has been in existence for not less than 100 years'". There should be "'historical, archaeological or artistic interest'". It is

an inclusive definition as seen from the above. According to the learned senior counsel appearing for the third respondent, the building has no

archaeological value nor historical value since no historical event took place and there is no historical connection to the building. But we are not

quite sure if we can rule out the possibility of including it as a structure of artistic interest.

11. In the city of Chennai especially, many of the historic buildings belong to the genre of Indo-Saracenic Architecture, including our High Court

and therefore, perhaps a hundred years ago, the city skyline was dotted with impressive grand buildings that have the same character, namely the

Indo-Saracenic character. There is no dispute that the building in question is more than a hundred years old. The Madras University, the National

Gallery, the General Museum, the Senate House, the Chennai Central and the Egmore Railway Stations and some Government Offices like the

Public Works Department and Ezhilagam housed in historic buildings, are examples of other buildings. They are characterised by the Hindu and

Mughal elements of Gothic Arches, Domes and Minarets. These buildings were developed by the British architects like Chisholm.

12. The Indo-Saracenic architecture is described as a combination of the features of Hindu, Islamic and Western elements. This itself is in a sense

a record of our history. Nothing more is required to show its heritage value; because it records our rich past.

13. The reports filed by the third respondent declare in one voice that it would be uneconomical to restore the Bharath Insurance Building and retain the same and that in the present stage, it is completely unhygienic and not fit for entry (vide report of Mr. C.H. Gopinatha Rao). According to the report filed by Prof. A.R. Santhakumar, the building is completely dilapidated; the brick work has lost its bearing capacity and the masonry is crumbling and therefore, the building should be scientifically and immediately demolished. He has taken samples and according to him, wooden samples show manifestation of termites; the mortar samples show that there is no calcium content; and the brick samples show that the adhesion between mortar and brick is nearly zero. In the report filed by Mr. A. Sivasankaran, it is stated that due to the efflux of time, the weathering action and the efflorescence of saline action, the extended cantilever portion of the building has fallen down and there are large wide vegetation growth across the building and construction of a new building would facilitate earning rental revenue.

14. At the same time, even in Mr. C.H. Gopinatha Rao's report, we find that he has observed, ""the only merit for considering this building as a heritage building is the aesthetic design of the elements"". So, even according to the report filed by the expert chosen by the Life Insurance Corporation, the building has heritage value.

15. From the typed set of papers, we see that the third respondent had issued letters to tenants asking them to vacate since they had already obtained permission for demolition of the building. On 27.8.1999, the Superintending Engineer, Planning and Designs Circle, Public Works Department had addressed a letter to the third respondent after inspection of the building. He had given even on that date, the details of the repairs to be immediately undertaken to safeguard the building from further deterioration. The suggestions are:

1. The lime mortar used in the masonry walls is found to have lost its binding property due to ageing and also due to exposure to adverse weather conditions. The lime mortar shall thoroughly scrapped to the required depth and the joints are to be painted with fresh mortar.
2. The bricks of the masonry walls are also found to be weathered in some places in the external locations and that same may be replaced with

new bricks.

3. The large vegetarian growths seen all round the building shall be effectively removed and care shall be taken to prevent regrowth of such plants.

4. The repairs in the ornamental dome structure located on the terrace of the building shall be carried out immediately failing which such

arrangements are likely to dislodge and fall even with the slightest disturbance.

5. The first floor corridor and its roof located on the east side (facing General Patters Road) are in dilapidated condition and, in fact, a major

portion of the same has already collapsed. This corridor and its roof are to be restored to match its original appearance.

6. The teak wood joists of the Madras terrace roof are found to be in sagged condition due to the entry of moisture from the roof. The Madras

terrace roof shall be repaired wherever there are cracks. The weathering course may be relaid with proper gradient as to prevent entry of moisture

through the terrace. The worn out tarfelt sheets may be replaced afresh. The clogged rain water downfall pipes and spouts are to be cleaned and

maintained in good condition.

7. The large cracks seen in the masonry walls such as in library and reading room etc. and over the arch openings are to be treated suitably.

8. The lime plastering of inside faces of the masonry walls are found to be damaged and peeled off due to ageing in many locations. Such damaged

plasterings are to be thoroughly scrapped and re-plastered in conformity with the original condition.

9. The doors, windows, roof and floor timbers are to be painted after thoroughly scrapping the old painting.

The Committee appointed by the High Court had also given the following suggestions to restore the building and in the interest of safety:

1. Suitable horizontal bracing shall be given to the pillars in the north-west corridor (facing Anna Salai) at first floor level.

2. The debris of the demolished Madras terrace roof in this region which has accumulated on the first floor passage should be removed carefully,

to reduce the load.

3. The fallen minarets should be taken aside and preserved for possible reuse during restoration.

It is indeed unfortunate that though as early as in 1999, the third respondent

knew that further deterioration of the building had to be arrested, they just allowed the building to deteriorate and are now citing the deterioration for demolishing the building.

16. In the Second Master Plan for Chennai which came into force on September 2, 2008, there are special rules for conservation of heritage

buildings:

Annexure XXV

[DR No. 31]

Special Rules for conservation of Heritage Buildings

1. This regulation will apply to those buildings, artefacts, structures, and/or precincts of historical and/or aesthetical and/or architectural and/or

cultural value (hereinafter referred to as Listed Buildings/Heritage Buildings and Listed precincts/Heritage precincts) which will be listed in

notification(s) to be issued by the Government and will not apply to those which have been covered in the notification of Central or State

Archaeological Department under their Act/Rules.

2. Restriction on Development/Redevelopment/Repairs, etc.:

(i) No development or redevelopment or engineering operation or additions, alterations, repairs, renovations including the painting of buildings,

replacement of special features or demolition of the whole or any part thereof or plastering of said listed/heritage buildings or listed/heritage

precincts shall be carried out except with the prior written permission of the Member Secretary, Chennai Metropolitan Development Authority.

The Member Secretary, Chennai Metropolitan Development Authority shall in consultation with the Heritage Conservation Committee to be

appointed by Government (hereinafter called "the said Heritage Conservation Committee).

Provided that in exceptional cases for reasons to be recorded in writing the Member Secretary, Chennai Metropolitan Development Authority may

over rule the recommendation of the Heritage Conservation Committee.

Provided that the powers to over rule the recommendation of the Heritage Conservation Committee shall not be delegated by the Member

Secretary, Chennai Metropolitan Development Authority or any other Officer.

(ii) In relation to religious buildings in the said list, the changes, repairs,

additions, alterations and renovations required on religious grounds

mentioned in sacred texts, or as a part of holy practices laid down in religious codes shall be treated as permissible, subject to their being in

accordance and consonance with the original structure and architecture, designs, aesthetics and other special feature thereof.

Provided that before arriving at his decision, the Member Secretary, Chennai Metropolitan Development Authority shall take into consideration the

recommendations of the Heritage Conservation Committee.

3. Preparation of list of Heritage Buildings and Heritage Precincts: The list of buildings, artefacts, structures and precincts of historic, and/or

aesthetical and/or cultural value etc. to which these regulations apply shall be notified by the Government after its approval on its merits with or

without modifications.

The draft list of buildings, artefacts, etc. to which these regulation shall apply shall be prepared by the authority in consultation with the Heritage

Conservation Committee and also addressing the owners of the said listed building/precincts giving an opportunity to represent regarding the

proposed notifications and further notifying in newspapers inviting objections/suggestions from the general public, and it shall be forwarded to

Government. The Government may accord approval for the said list with or without modifications as may be decided on its merits and notify the

same in Tamil Nadu Government Gazette, and also in local newspapers.

This list may be supplemented, altered, deleted, or modified from time to time by the Government on receipt of the proposals from the Authority or

suo motu by the Government after following the procedures of giving opportunity to the owners/lessees and also the general public stated above

after notification in the Tamil Nadu Government Gazette.

4. Power to Alter, Modify or Relax Regulations: With the approval of Government and after consultation with the said Heritage Conservation

Committee, the Member Secretary, Chennai Metropolitan Development Authority shall have the power to alter, modify or relax the provisions of

other Regulations of the Development Regulations of Chennai Metropolitan Area (hereinafter referred to as ""the said Regulations"")) if it is needed

for the conservation, preservation or retention of historical, aesthetical, cultural or architectural quality of any listed Buildings/Heritate Buildings or

listed Precincts/Heritage Precincts.

5. Hearing etc. to persons likely to be affected: Provided that in case any alterations, modifications or relaxations of any of the provisions of the

Development Regulations, will cause undue loss to the owners or persons who have development right over the Heritage Buildings/Heritage

Precincts, the Member Secretary, Chennai Metropolitan Development Authority shall give an opportunity of hearing to the said owner or persons

who have development right over the Heritage Buildings and to the public, before taking final decision in the matter.

6. Grant of Transferable Development Rights in cases of loss of Development Rights: If any application for development on a private land is

refused under this Regulations or conditions are imposed while permitting such development therein which deprive the private owner/lessee who is

not a Government or a quasi Governments department or agency or a religious institution or a trust a society, or a charitable institution etc., of any

unconsumed FSI otherwise, the private owner/lessee could have availed considering the land use, road width, setback, etc., as per Development

Regulations the said owner/lessee shall be compensated by grant of Development Rights Certificate as may be prescribed by Government from

time to time, on transfer of the right to CMDA through a registered gift deed. The extent of TDR for which Certificate to be granted may be

determined by the Member Secretary, Chennai Metropolitan Development Authority, if required in consultation with the Heritage Conservation

Committee, and will not be awarded unless sanctioned by the Government.

7. Maintaining Sky Line: Buildings included in Listed Heritage Precincts shall maintain the sky line in the precincts (without any Multistoreyed

development) as may be existing in the surrounding area, so as not to diminish or destroy the value and beauty of the said listed Heritage

Buildings/Heritage precincts. The development within the precincts shall be accordance with the guidelines framed by Member Secretary, Chennai

Metropolitan Development Authority in consultation with Heritage Conservation Committee.

8. Restrictive Covenants: Restrictions existing as on date of this notification imposed under covenants, terms and conditions on the leasehold plots

whether by State Government or by Chennai Municipal Corporation or any other

Government or quasi Government agency including Hindu

Religious and Charitable Endowment Board, Wakf Board shall continue to be imposed in addition to Development Regulations. However, in case

of any conflict with the heritage preservation interest, the said Regulations shall prevail.

9. Repair Fund: Buildings included in the said list shall be repaired by the owners/lessees of the said buildings themselves with a view to give

monetary help for such repairs to a limited extent in deserving cases where the owner/lessee could not repair it, a separate fund may be created,

which would be kept at the disposal of Member Secretary, Chennai Metropolitan Development Authority, who will make disbursement from the

funds in consultation with Heritage Conservation Committee.

10. Grading of the Listed Buildings/Listed Precincts: In the last column of the said list of Heritage buildings, Heritage precincts, "Grades" such as I,

II or III have been indicated. The meaning of these Grades and basic guidelines for development permissions are as follows:

Listing does not prevent change of ownership or usage. However, such usage should be in harmony with the said listed precinct/buildings. Care will

be taken to ensure that the development permission relating to these buildings is given without delay.

Rule 22 of the Development Control Rules for Chennai Metropolitan Area, 2004 reads thus:

22. Preservation of buildings of historical or architectural interest:

(a) If a building or premises not covered under the Archaeological Monuments Act, in the opinion of the Authority is of historical or architectural

interest and is in danger of demolition or alteration likely to affect its character by a development, the Authority may impose such conditions as it

may deemed fit for the preservation of such building while granting planning permission.

As rightly pointed by the learned Counsel for the petitioner, these rules were not in force when 2003 (4) C.T.C. 513 (supra) was decided. Now,

these rules have not only come into force, the Government has also constituted a Heritage Conservation Committee. So the above decision will not

bind us. We see no reason why we should allow the building to be demolished without at least an attempt on the part of the Committee to try to

conserve as much of the heritage building, if not the entire heritage building.

17. A report has been filed based on the inspection done on 27.10.2009 by Ms. Kalpana Ahmed and Ms. Tara Murali. On page 1 of the report,

we find the exterior of the building which is infested with vegetation, but the interior of the building shows that the roof and the domes are of really

artistic value. It is true that the floor is covered with water, perhaps because the window panes have been broken and rain water has come in. The

report indicates that the condition of the structure shows no cracks indicating that there has been no damage to the foundation or other signs of

distress. We have suggested that where the roots are found to have entered the walls, in view of the massive thickness of the masonry walls, they

can be removed and set right. Some of the pictures, however, show that the floor slabs have collapsed and one can see from the top floor right into

the bottom. As far as the exterior elements are concerned, the report is that the turrets/domes barring one are standing without any signs of damage

and the stone pillars are in excellent condition. The plaster and terracotta motifs are capable of restoration, where required and the cast iron

components can be replaced. Their opinion is that the vast building, with its large roomed interior, can be used for several current needs. They

have given the following suggestions for restoration:

Cost of Restoration--

- i) A detailed study must be done to give an accurate estimate of restoration costs.
- ii) Costing can also be done only if modern amenities that are required are clearly specified.

Funding support for restoration--

- a) As a public limited company of the Government of India, LIC would be able to raise funds for restoration from within.
- b) Funding for heritage buildings is also available under JNNURM.
- c) Funding for heritage buildings is also available from Ministry of Culture.

Protection and upkeep of building in the immediate future--

- i) The unstable areas of the building are only due to careless demolition and neglect. It is imperative that the structure is protected from further deterioration from the elements and also properly propped and supported.
- ii) It is also imperative that materials removed from building and at site be

carefully kept pending restoration.

iii) Unauthorised entry must be prevented so that no pilferage takes place.

iv) The entire premises needs to be cleaned and spruced. All unwanted plants and bushes (only outside the building) must be removed carefully

without any damage to the building.

18. As far as the heritage buildings in this city and elsewhere in the State are concerned, we have already lost much because of the indiscriminate

demolition in the name of development of buildings without any regard about the architectural values thereof. The UNESCO's Convention

concerning the Protection of the World Cultural and National Heritage defines ""cultural heritage"" to include monuments, architectural works, works

of monumental sculptures etc. Article 4 of the Convention requires every State Party to ensure identification, protection, conservation, presentation

and transmission of the cultural heritage to future generations. It is relevant to note that the World Heritage Committee was also formed under this

Convention.

19. Some times, in an enthusiastic effort ""to clean up"" a temple or a heritage building, we have seen that the persons who undertake this effort do

sand blasting which actually damages the quality of the pillars or the structures as such. Therefore, the Government shall issue rules to prevent

persons from undertaking any repair even under the name of renovation of heritage buildings without seeking the 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 in the Tamil Nadu (25 of 1966). The CMDA must take the recommendation of the Committee for conserving the heritage buildings in

the Chennai Metropolitan Area. The Government shall also enact rules so that such heritage buildings, wherever in the State, shall not be

demolished except after obtaining the conditions similar to the ones provided for under the Development Control Rules.

20. A question was posed by the learned senior counsel for the third respondent, whether a building would become heritage building merely

because it is hundred years old. For that, we can seek inspiration from the Tamil Nadu Act which is to the effect, ""a building which has

archaeological, artistic or historic value and is more than hundred years old"".

The Government may also think of defining heritage buildings and as far as possible listing them, so that the owners of the heritage buildings may know that the building in their occupation or possession or ownership is a heritage building and the Government may think of enacting provisions as in the Tamil Nadu Act, where an owner of a protected monument, before altering the it, obtains the permission from the Government, or if the Government decides to notify a monument as a protected monument or protected place, hears the objection of the owner. Similar provisions may be made with regard to the heritage buildings also, so that the public interest of protecting heritage and the private interest of ownership of property under Article 300A of the Constitution can be balanced. It is possible even for the owners of this heritage building to get economic mileage out of this building if they preserve and protect it as a place of tourist interest, which persons can visit.

21. After the constitution of the Heritage Conservation Committee, we find that the State is taking an earnest interest to protect heritage buildings in the State. So, we deem it appropriate to issue directions not only with regard to the building in question, but also in general.

22. In a batch of writ petitions relating to hoardings, viz. W.P. Nos. 7143 of 2006 etc. [Kanagaraj v. the District Collector Chennai], by order

dated 10.8.2006, the First Bench of this Court appointed a Committee headed by Justice E. Padmanabhan, Retired Judge of the Madras High

Court to survey, identify and enumerate places of historical importance/aesthetic value/popular places of worship in and around the city of Chennai.

The Committee under E. Padmanabhan J. As Chairperson consisted of the following members:

Mrs. K. Kalpana, Conservation Architect

Mr. S. Muthaiah, Historian

Mrs. R. Jaya, I.A.S., the then Collector of Chennai

Dr. A. Ananda Kumar, I.A.S., Deputy Commissioner, Corporation of Chennai

Mr. Sunil Kumar, I.P.S., Additional Commissioner of Police, Chennai

23. The report filed by the Committee is exhaustive, of a very high quality and shows the meticulous care and interest with which the Committee

has compiled it. The Committee has, with a "heavy heart", pointed out that

""neither the public nor the administration nor the authorities are conscious of the value in maintaining the heritage buildings, places of historical importance or aesthetic value and popular places of worship, which is a disappointment. All of them will have to be educated and informed of the values of such historical and monumental buildings. Though certain voluntary organisations have taken up this issue at various levels, it is of little impact. The administration has to change its attitude in these aspects, by appropriate and stringent measures. That apart, the enforcing authorities should be made aware of the values heritage buildings bring to the cultural background of the State and strictly enforce the regulations."" The members of the Committee were also ""pained"" to note that several heritage and ancient buildings have been brought down by the public as well as the authorities and this continued unabated. The Committee has urged the High Court to take note of the situation and to pass appropriate orders to save the heritage and monumental buildings and places of public importance in this ancient city of Chennai.

24. The Committee has chosen historic and commercial/institutional buildings of socio-cultural and aesthetic value. The Committee has collected information for enumeration of such buildings from various Government Departments, including the Archaeological Survey of India, the Hindu Religious and Charitable Endowments Department, the Wakf Board and other such religious organisations. The Committee has also used the INTACH files as a source of information and has assigned grades to buildings/places according to their level of importance. The buildings/places coming under Grade-1 are characterised by their excellence in architectural style, design, technology and material usage and/or aesthetics and they may be associated with a great historic event, personality or movement or institution. Similarly, the Committee has graded buildings as Grade-2a and Grade-2b. The total number of buildings/places enumerated by the Committee is 467. They may include buildings or structures within the same complex, as for instance Sl. Nos. 3 to 19, which are buildings located within the Fort Saint George complex. The report has also included temples, mosques and churches.

25. We recommend to the Heritage Conservation Committee to issue notices in respect of all the buildings shown under Sl. Nos. 1 to 467 in the

report filed by the Committee headed by Justice E. Padmanabhan. The notice may be issued either separately for each building, or jointly, as in the

case of buildings located within the same complex, indicating that that particular building is a heritage building. Priority may be given to those

buildings which belong to private owners (individuals, Trusts, Corporations, etc.) so that there are no attempts on their part, to alter or renovate or

demolish such "listed buildings" without consultation or prior permission of the Heritage Conservation Committee. The Heritage Conservation

Committee shall take steps to publicly notify these structures as buildings/places of heritage value or assign whatever nomenclature the Committee

deems it fit. It is relevant to note that the Bharath Insurance Building, which is the building in question, is graded as Grade-1. Rule 22 of the

Development Control Rules for Chennai Metropolitan Area, 2004 shall be strictly enforced with regard to the buildings so listed.

26. We would have enumerated all the buildings/places listed in the report filed by the Committee headed by Justice E. Padmanabhan as a

Schedule to this judgment but for the fact that some of items listed even under Group-1 are really not buildings, e.g., the Guindy National Park, and

some are buildings not having any heritage value, but are buildings of importance, e.g., the Kamarajar Kalai Arangam, which has been included

because it is one of the largest auditoriums in the city, even though it has been built only in the 1980s. Therefore, we leave it to the decision of the

Heritage Conservation Committee, but the Committee shall send notices to the private owners in the cases of all buildings which are close to a

hundred years old and are, therefore, buildings of heritage value.

27. In the second report prepared as per the directions issued by this Court on 19.12.2009, there are recommendations as to how the building in

question can be renovated and from where funds could be obtained. The said recommendations which have been extracted above are reiterated

here:

Cost of Restoration:

- i) A detailed study must be done to give an accurate estimate of restoration costs.
- ii) Costing can also be done only if modern amenities that are required are clearly specified.

Funding support for restoration:

- a) As a public limited company of the Government of India, LIC would be able to raise funds for restoration from within.
- b) Funding for heritage buildings is also available under JNNURM.
- c) Funding for heritage buildings is also available from Ministry of Culture.

Protection and upkeep of building in the immediate future:

- i) The unstable areas of the building are only due to careless demolition and neglect. It is imperative that the structure is protected from further deterioration from the elements and also properly propped and supported.
- ii) It is also imperative that materials removed from building and atg site be carefully kept pending restoration.
- iii) Unauthorised entry must be prevented so that no pilferage takes place.
- iv) The entire premises needs to be cleaned and spruced. All unwanted plants and bushes (only outside the building) must be removed carefully without any damage to the building.

28. In the light of our consideration of the various reports, the regulations and also the judgments of the Supreme Court, we allow the writ petition with the following directions:

(1) The third respondent-LIC is restrained from demolishing the Bharath Insurance Building without complying with Regulation 22 of the Development Control Rules for Chennai Metropolitan Area, 2004.

(2)The Heritage Conservation Committee shall assess the value and the feasibility of retaining the Bharath Insurance Building. As far as possible, the building must be saved. Respondents 1 and 2, with the consultation of the Heritage Conservation Committee, shall issue directions for protection of the building in question from complete demolition or save as much part of it as possible. This decision may be taken within three months from the date of receipt of a copy of this order.

(3) If the Heritage Conservation Committee feels that it will not be possible to retain whole of the building, then efforts should be taken at least to retain the turrets/domes, the stone pillars and to restore the plaster and terracotta motifs, as suggested by the Committee which had inspected the building on 27.10.2009.

(4) The Bharath Insurance Building is spread over an extent of 1172.17 sq.mts., as seen from the report submitted by Mr. A. Sivasankaran. The

third respondent wants to demolish the building and utilise the land for locating its branch office. Therefore, the Heritage Conservation Committee

can also explore the retention of the first hall and development of the remaining portion of the land, as the third respondent desires. However, the

primary object should be to retain the whole of the heritage building or as much a part of it as possible, keeping in mind the observations of the

experts regarding the condition of the building.

(5) The Heritage Conservation Committee shall recommend to the Government to take steps to notify buildings listed by it as heritage buildings and

within a period of three months, cause notices to be issued to the concerned, especially the private owners, in respect of the buildings listed in the

report filed by the Committee headed by Justice E. Padmanabhan so that there is no threat of demolition or destruction or alteration to such

buildings, thereby diminishing their heritage value, without the permission of the Heritage Conservation Committee.

(6) As the next step, the Government may take up the job of listing such of those buildings enumerated under Grade-2a and Grade-2b in the

report filed by the Committee headed by Justice E. Padmanabhan, after getting the opinion of the Heritage Conservation Committee regarding the

desirability of notifying such buildings as heritage buildings.

(7) The Heritage Conservation Committee shall also assess and may give directions as to how the buildings mentioned in the report filed by the

Committee headed by Justice E. Padmanabhan may be conserved or may even be identified as places of tourist importance, so that both the

residents of Chennai, as also other visitors, become aware of the heritage.

(8) Respondents 1 and 2 shall also give immediate directions to protect all such buildings/places in the entire State of Tamil Nadu, wherever they

may be, e.g., the 150 year old "Kudhirai Vandi Court" in Coimbatore, the first ever Court of Coimbatore has become the home of anti-social

elements because of disuse and heritage conservationists are anguished by its present condition.

(9) We record our deep appreciation of the excellent report prepared by Justice E. Padmanabhan, J. and the members of the said Committee. If

the heritage buildings of Chennai are saved from demolition it will be both because of the untiring efforts of the petitioner and the report mentioned

above. The petitioner may ensure that the notices referred to above are sent without any delay.

(10) The State Government has also responded by forming the Committee without further delay.

There shall be no order as to costs. Consequently, M.P. No. 1 of 2009 is closed.