

IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS THE 1st DAY OF FEBRUARY 2002

(R)

BEFORE

THE HON'BLE MR. JUSTICE H. RANGAVITTALACHAR

W.P.No.12733-12736 OF 1999
& W.P.No.31905/2000

BETWEEN

1. SHARIFF M.A.
S/O.LATE HYDER SHARIFF,
AGE.59 YEARS,
PROPRIETOR OF
SAHRIF SALE & GENERAL AGENCIES,
SHARIFF ELECTRIC STORES
No.215, SAYAJI RAO ROAD,
MYSOTRE-1.
2. B.M.SIDDESHWARIAH
S/O.LATE B.MAHADEVIAIAH,
AGE.58 YEARS,
PROPRIETOR OF
PANCHACHARYA ELECTRICAL PRESS
No.215/1, 216/2,
SAYAJI RAO ROAD,
MYSORE-1.
3. JETHANAND
S/O.LATE GOBINDRAM ROOPCHAND BATHIJA,
AGE.51 YEARS,
PROPRIETOR OF
G.R.BATHIJA,
No.214, SAYAJI RAO ROAD,
MYSORE-1.
4. K.SUBRAMANYAM,
S/O.LATE R.KRISHNASWAMY,
AGE.75 YEARS,
PROPRIETOR OF
R.KRISHNASWAMY
No.213, SAYAJI RAO ROAD,
MYSORE-1.

..PETITIONER IN
W.P.No.12733-736/99

(By.Sri.PADUBIDRI RAGHAVENDRA RAO, Adv.)

AND:

1. MYSORE CITY CORPORATION
MYSORE
REP.BY ITS COMMISSIONER
OFFICE OF THE CORPORATION
OF THE CITY OF MYSORE
MYSORE.

2. THE COMMISSIONER
MYSORE CITY CORPORATION MYSORE.
3. THE CHAIRMAN,
STANDING COMMITTEE
TOWN PLANNING & DEVELOPMENT
MYSORE CITY CORPORATION
MYSORE.
4. M/s.BHAVANI ENTERPRISES,
A REGD.PARTNERSHIP FIRM,
REP.BY ITS PARTNER
SRI.M.V.CHANDRASEKHAR,
S/O.M.L.VASUDEVAN,
AGED ABOUT 58 YEARS,
No.206, II FLOOR,
BRIGADE M.M.ANNEXE,
M.M.INDUSTRIAL ESTATE,
K.R.ROAD,
YEDIYUR, BANGALORE-70.
5. G.BALAKRISHNA,
MAJOR,
S/O.S.B.GOVINDARAJA MUDALIAR,
PHOTOGRAPHER,
M/S.RAJ & BROTHERS,
No.210, SAYYAJI RAO ROAD,
MYSORE-1.
6. ARJUN GOBINDRAM BHATIJA
MAJOR,
M/s.KISHINDAS STORES,
ELECTRICAL & GENERAL
GOODS DEALERS
No.216, SAYYAJI RAO ROAD,
MYSORE-1.
7. K.K.ABOOTY
AGE. 74 YEARS,
REP.BY HIS SON &
POWER OF ATTORNEY
HOLDER M.A.MOHAMMED,
MOHAMMED PAWN BEEDA SHOP,
No.211/A, SAYYAJI RAO ROAD,
MYSORE-1.
8. SMT.LINGAMMA,
AGE.73 YEARS,
W/O.LATE M.PUTTASWAMY
REP.BY HER SON AND POWER
OF ATTORNEY HOLDER
M.P.NAGARAJ,
COBBLER,
211 NOOR ALI SHAW
MAKAN CROSS ROAD
SAYYAJI RAO ROAD,
MYSORE-1.

9. M.R.SUBBARAJA GUPTA,
AGE 66 YEARS,
S/O.LATE M.RAMACHANDRAN,
PROP: KING & COMPANY
No.216/3, SAYYAJI RAO ROAD,
MYSORE-1.

..RESPONDENT IN.
W.P.No.12733-736/99

(By.Sri.K.G.RAGHAVAN FOR R-4.)
Sri.M.PAPANNA, FOR R-1 to 3.
Sri.G.MANIVANNAN, FOR R-4.
Sri.T.N.RAGHUPATHY, FOR R-5 to 9.

W.P.No.12733-736/99

THIS W.P.IS FILED PRAYING TO QUASH THE NOTICE
DT.8-4-85 AT ANN-A BY R-2, THE ORDER DT.14-1-99 BY R-1
VIDE ANN-G. & ETC.,

BETWEEN

1. D.JAGADESH
S/O DODDA MALLAIAH,
AGE.22 YRS, OCC: PRIVATE SERVICE,
R/O 54, 3rd CROSS
MEDAR'S BLOCK,
NEW BAMBOO BAZAAR
MYSORE.

..PETITIONER IN
W.P.No.31905/2000

(By.Sri.ESHWARAPPA, SENIOR Adv. For
Smt.AKKAMAHADEVI, M.C.Adv.)

AND :

1. THE MYSORE CITY CORPORATION
MYSORE
REP.BY ITS COMMISSIONER,
OFFICE OF THE CORPORATION
OF CITY OF MYSORE
MYSORE.
2. THE COMMISSIONER
MYSORE CITY CORPORATION
MYSORE.
3. THE CHAIRMAN
STANDING COMMITTEE
TOWN PLANNING AND DEVELOPMENT
MYSORE CITY CORPORTION
MYSORE.
4. M/S.BHAVANI ENTERPRISES
A REGISTERED PARTNERSHIP FIRM,
REP.BY ITS PARTNER
M.V.CHANDRASHEKAR

S/O M.L.VASUDEVAN,
AGE.60 YRS
R/O 206, II FLOOR, BRIGAADE
M.M.ANNEXE, M.M.INDUSTRIAL ESTATE
K.R.ROAD, YEDIYUR
BANGALORE-70.

5. A.M.SHERIFF
S/O LATE HYDER SHERIFF
AGE.60 YRS,
PROP:SHERIFF OIL AND GENERAL
AGENCY, M/S SHERIFF ELECTRICAL STORES
No.215, SAYYAJI RAO ROAD
MYSORE-1.
6. B.M.SIDDESWARAIAH
S/O LATE B.MAHADEVAAIAH
AGE.60 YRS,
PROP:- PANCHA CHAYA ELECTRICALS
PRESS, No.215/1, AND 216/2,
SAJJAJI RAO ROD
MYSORE-1.
7. JETHANAND
S/O LATE GOBINDRAM
ROOPCHAND BATHIJI
AGE.52 YRS, PROP:C.R.BATHIJA,
No.214, SAYYAJI RAO ROAD,
MYSORE-1.
8. K.SUBRAMANYAM,
S/O LATE R.KRISHNASWAMY
AGE.76 YRS, PROP:R.KRISHNAMURTHY
No.213, SAYYAJI RAO ROAD,
MYSORE-1.
9. M.R.SUBBARAJU GUPTA,
MAJOR, S/O LATE M.RAMACHANDRAN
PROP: KING AND CO,
No.216/3, SAYYAJI RAO
ROAD, MYSORE-1.
10. B.BALAKRISHNAN
S/O S.V.GOBINDA RAJ
MUDALIYAR, MAJOR
PARTNER: RAJ & BROS,
SAYYAJI RAO ROAD CROSS
MYSORE-1.
11. M/S.KRISHNA DAS STORES
PARTNERSHIP FIRM
ELECTRICAL AND GENERAL GOODS
MERCHANT,

No.216, SAYYAJI RAO ROAD,
MYSORE-1.

12. K.K.ABUKUTTI
MAJOR, MOHAMMAD PAN SHOP
SAYYAJI RAO ROAD
MYSORE-1.
13. Smt.LINGAMMA AND OTHERS
CARE OF Sri.M.P.NAGARAJU
LEATHER SHOP
No.211, NEW SAYYAJI RAO ROAD
MYSORE-1.

...RESPONDENT IN
W.P.No.31905/2000

(By.Sri.M.PAPANNA FOR R-1)
Sri.M.R.VIJAYAKUMAR, HCGP FOR R-2.
Sri.PADUBIDRI RAGHAVENDRA RAO,
FOR R-5 to 9 & 11 to 13.
R-3 & 10 Served.

W.P.No.31905/2000

THIS W.P.IS FILED PRAYING TO QUASH VIDE ANX.D
DT.14.1.99 PASSED BY THE RESPONDENT AND ANX.E DT.8.4.85
ISSUED BY R2.& ETC.,

These W.P.'s having been reserved for Orders
the court Pronounced the following.

..ORDER.

ORDER

The tenants of a commercial premises situate at Sayyaji Rao Road, Mysore have filed these writ petitions challenging the notice issued by the Commissioner, Mysore City Corporation purporting to exercise his powers u/s.322(1) of the Karnataka Municipal Corporation Act (Hereinafter referred to THE ACT for brevity), and the order of the Standing Committee, Mysore City Corporation dtd.14.1.1999, passed in Appeal, confirming the action taken by the Commissioner.

Few facts relevant for the purpose of this case as found from the records are as under:

In the Sayyaji rao Road, Mysore which is a busy area, there is situate a commercial cum residential building bearing No.209 to 215 and 215/1, 216/2 and 216/3 consisting of about 12 shops. Various portions of this building are occupied by the appellants as tenants, doing business. This building had originally belonged to one Atiguppe Suryanarayana Shetty. The said Suryanarayana Shetty sold the property to one Bhavani Enterprises, respdt.4 herein by means of a registered sale deed dtd.16.3.1984.

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Subsequent to the purchase of the property, it appears on a representation given by the purchaser that the building is old, dilapidated, the Corporation authorities of Mysore had an inspection of the building conducted by its Asst. Executive Engineer who opined that the building was in a dilapidated condition. On the basis of this report, a notice came to be issued on 8.4.1985 to the owner of the building directing him to demolish the same on the ground that the building is in a dilapidated condition;

The tenants coming to know of this action initiated by the Corporation authorities filed an appeal u/s.444 of the act before the standing committee of the Corporation (Hereinafter referred to as the Committee for brevity), Mysore simultaneously also approaching the Civil Court for protection of their possession of the premises by filing a suit in O.S.225/85; The civil court initially had granted an injunction in favour of the tenants subsequently it appears that the suit came to be dismissed.

The "committee", had allowed the appeals of the tenants. Against the said order of the "committee", the 4th respdt. herein who was not made a party in the appeal before the "Committee", had challenged the said order by filing a writ petition

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in W.P.17148/88. Learned Single Judge of this Court allowed the writ petition holding that the writ petitioner was a necessary party to the appeal filed by the tenants before the Standing Committee as, he would be primarily liable for any damage caused to any person on account of the building falling down. Learned Single Judge also rejected the contention of the tenants that the writ petitioner did not had the locus standi to challenge the order of the standing committee thus remanded the matter to the file of the standing committee to rehear the appeal after notice; The said order of the learned Single Judge dtd.13.11.1996 came to be challenged by the tenants by filing a writ appeal in W.A.No.10139/96. The Division Bench of this Court dismissed the appeal by its order dtd.18.6.1997 concurring with the view of the learned Single Judge.

After the matter was remanded, the standing committee though was exercising the appellate powers on account of the serious contentions raised by the rival parties, and also having regard to the interest of the tenants who were carrying on the business, conducted a detailed enquiry by permitting the parties even to lead evidence and also making a spot inspection to get as correct a picture as possible regarding the nature of the building. After this exercise, by its reasoned order dtd.14.1.1999,

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dismissed the appeals. It has noted "that the building was about 70 to 75 years old, built of mud brick wall with surakhi plaster. That the building is dilapidated and is situated in a crowded place, and the nature of the building is such that it is likely to pose danger to the public at large".

This order of the Committee together with the notice is challenged again by these writ petitioners.

During the hearing of this writ petition, apart from the writ petitioners several other tenants also got impleaded by making an application as respondents 5 to 9.

When the matter was being heard in part, on 6.3.2000, on a request made by the parties, the learned Single Judge who heard the matter ordered for the appointment of a Committee of experts consisting of Chief Engineer, Karnataka State Construction Dr.C.S.Vishwanath, TOR STEEL RESEARCH FOUNDATION, and Dr.M K L N Shastri, Structural Expert in Civil Engineering and former Head of the Department, Visveshwariah College of Engineering, Bangalore, on the agreement of the learned counsel appearing for the contesting parties to make a spot inspection and report about the condition of the building. Pursuant to which, the committee made a spot inspection and

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submitted its report dtd.8.5.2000 together with photographs of the building in question and with its opinion. The committee has opined as follows:

"The building in Sayyaji Rao Road, Mysore comprises shop NOs.209 to 216/3 was inspected in detail on 25th March 2000. The observations and inferences have been listed above. Following are the conclusions arrived at:

1. The entire first floor of the building is structurally unsound and not safe for occupation. The floor, in toto, need to be demolished from occupant's/public's safety point of view.

2. The front region of the ground floor comprising of shops(i) M/s.R.Krishnaswamy (Shop No.213) (ii) M/s.G R Bathija (Shop No.214) (iii) M/s.Shariff Sales & General Agencies (Shop No.215) (iv) M/s.Kishendas (Shop No.216) and (v) The central passage leading to M/s.Panchacharya Press, are structurally intact. This region of ground floor can be safely occupied with minor rectifications to masonry walls and ceiling.

However, this region cannot withstand loads from any upper floor and hence no upper floor can be constructed above after demolition of existing first floor, unless the foundation, columns/masonry are redesigned/reconstructed to bear the loads from upper floor/floors.

3. The rear region of ground floor, housing (i) M/s Panchacharya Press and accompanying residence (Shop Nos.215/1, 216/1, 216/2, (ii) Brook Bond Ltd.(vacated), (iii) M/s.King's Readymade Garments (Shop No.216/3), (iv) M/s.Raj & Bros, (Shop No.210); and (v) M/s.Rangayya & Sons (Shop No.211) is structurally unsound. This area is not safe for occupation. This area also needs to be demolished from occupant's/public's safety point of view".

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On the basis of the above facts, ~~and~~ arguments were submitted by the learned counsels for the rival parties which I will presently refer:

Sri Padubidri Raghavendra Rao, and other learned counsel appearing for the writ petitioners submitted by reading provisions of Sec.322 of the Act, which gives power to the Commissioner, the exercise of which has given rise to this contentious litigation, that unless there is a clear finding on facts that the building is "In a runious condition", no notice of demolition could have been issued. Admittedly, in the case either the standing committee or the Commissioners appointed by this Court have held that the building is in a "Runious COndition". When the livelihood of the tenants are threatened, unless conditions mentioned in Sec.322 clearly exist, the public authorities should not resort to exercise of such a power.

It was also submitted that the very fact that even after the notice of demolition was issued in the year 1985, the building continues to exist without collapsing amply demonstrates that the building is not in a "runious condition".

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The report submitted by the committee of experts, as ordered by this Court, also came to be seriously commented upon by the learned counsel Sri Padubidri Raghavendra Rao, Sri M P Eshwarappa and the counsels appearing for respdts.5 to 9, on the ground that though this court had ordered all the 3 experts to make a spot inspection and report, the 3rd member of the committee viz., The Chief Engineer, Karnataka State Construction Corporation did not participate in inspection and therefore the report cannot be relied upon. Similarly the findings of the standing committee was also found fault on the ground, that members of different standing committees had taken different views regarding the condition of the building which itself demonstrates the falseity of the notice. In this context, learned counsel, referred to the opinion of some of the members of the standing committee expressed to the Mayor to the effect that the building was quite strong and habitable. It was also submitted by the learned counsel for the petitioners that in the facts of the present case, the Commissioner should have choosen the alternative of ordering only repairs and not ordered for demolition. Learned counsel Sri Padubidri Raghavendra Rao referred to the following decision in support of some of the contentions referred to:

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1989(2) Bangalore Law Journal, 129 at para.8

1973(2) Mysore Law Journal, Page 158

1981(1) KLJ, 522

Sri M P Eshwarappa , who appears for the writ petitioner in W.P.31905/00, submitted that his client was the owner of the property; The standing committee should have issued a notice to him before hearing the appeal which was not done. The impugned order of the "Committee" is therefore violative of principles of natural justice. He also supported the other contentions of the writ petitioners/tenants; The contention that he is a owner of the property is not supported by any document, besides is also seriously disputed by the purchaser - Bhavani Enterprises; That apart, the petitioner never made any attempt though was aware of the proceedings to get impleaded. Therefore contention that he is the owner and was entitled to be heard cannot be accepted. However, having regard to the contentions raised, I permitted the learned counsels to argue on merits also.

In answer to the above contention, Sri Raghavan - learned counsel appearing for the 4th respdt. submitted, that having regard to the nature and purpose of power spelt in Sec.322 of the Act, the commissioner is the authority who has to decide about the condition of the building and the necessary

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action to be taken to protect the public safety. It was submitted that ultimately it is the Commissioner who has to take a decision, as he is answerable for failure to exercise power, if any public injury is caused. Learned counsel relied on the decision of the Bombay High Court in NATHUBAI DHULAJ FIRM vs MUNICIPAL CORPORATION, Bombay - AIR 1959 Bom., 322.

In so far as the contention that the commissioner should have only ordered for repairs, learned counsel submitted that choosing of the alternatives has to be left to the discretion of the commissioner, as he is better equipped to decide and that cannot be a ground for interference with the order. Learned counsel relied on the decision of the Supreme Court in TATA CELLULAR vs UNION OF INDIA AIR 1996 SC, 11 in particular the passage occurring at Para.108. The same would be referred to at the appropriate place.

Before deciding the rival contentions, it is necessary to keep in mind the nature and purpose of power shelt in Sec.322 of the Act and the limitations of this Court to interfere with such orders in exercise of its powers under Art.226 of the Constitution.

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Chapter 16 of the Act deals with the "Nuisances". Sec.322 to 341 in this chapter deal with the precautions a Municipal Officer is required to take to prevent, injuries to life, health and property of the citizens where dangerous conditions exist regarding any structures, trees, tanks and similarly precautions to be taken when a owner of a property resorts to constructions of buildings or sinking of wells, tanks or undertakes quarrying etc. The entire chapter spells out the duties of a Public Officer towards the citizens viz., to protect them from being harmed. The Act advisidly, entrusted the power to a responsible Officer of the status of the Commissioner, for exercising this power, as he would have the necessary competence to appreciate about the state of affairs of the building and its condition. It has also to be noted that the non-exercise of power under this chapter is also fatal. In the words of Prof.De Smith "May amount to breach of public law duty and may even given rise to liability in tort to those who have suffered forceable loss". See.Judicial Review of Administration Action by Prof.De Smith, 4th Edition, Page.321.

Sec.322 of the Act is one such precautionary measure, the Commissioner has to take to prevent the citizens from any harm by allowing a dilapidated building to remain. Section 322 of the Act under

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which the commissioner exercised the powers which is the cause for the bitterly fought litigation is extracted herein:

"Sec:322: Precautions in case of dangerous structures:-

(1) If any structure be deemed by the Commissioner to be in a ruinous state or dangerous to passers by or to the occupiers of neighbouring structures, the Commissioner may, by notice require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.

(2) If immediate action is necessary, the Commissioner may himself, before giving such notice or before the period of notice expires fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 470.

(3) If in the Commissioner's opinion the said structure is imminently dangerous to the inmates thereof, the Commissioner shall order the immediate evacuation thereof and any persons disobeying may be removed by any police officer" ..

A reading of the above section indicates that different remedial measures can be taken, depending upon the condition of the building. If by ^{the} condition of the building the safety of the inmates is threatened he may order them to be evacuated immediately or if he can't wait to follow the procedure of giving notice to the owner, he may resort to any of the alternatives of either pulling

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down the structure or attend to repairs or fence the building or take such measures as appears best for him in the circumstances. But in other cases, where the building can last for a certain time, he may call upon the owner by notice either to pull out the structure or repair or do such other acts as to ward off the danger. Thus the section gives the discretion to the Commissioner to work out the alternatives and act in best interest of all the concerned. In other words, the Act makes Commissioner the sole authority to decide about the manner of exercising the power, the steps to be taken to protect the people. He is the sole arbiter to decide when and how to exercise the power, subject to the limitation that it should be within the bounds of "Reasonableness". It is only when he crosses these bounds, he acts ultravires in the words of Prof. Wade (See. "Administrative law by Prof. Wade-Seventh Edition, page 399". What is reasonable exercise of discretion is also succinctly stated by the Learned Author at Page 400 of the same book referred to which is extracted herein for ready reference:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that

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must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *Short v. Poole Corporation* gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another".

Similar is also the view of the Bombay High Court while referring to the nature of power a Commissioner has to exercise like the one on hand in Natubai's case referred to; The Court has held: -

'Whether a building should be pulled down or repaired is a matter of which the authority is the sole Judge and so long as the authority keeps himself within the limits of the authority given to him by Sec.354, his discretion is absolute. The authority must act bonafide. He must not act capriciously or from an improper motive. But if he considers the facts objectively and comes

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to a particular conclusion, his satisfaction would not then be opened to challenge".

No doubt, where the premises is in occupation of tenants, and the exercise of the power has the effect of depriving the tenants of their livelihood if they are carrying on business as in the present case, a some what serious review of the action of the Commissioner is undertaken by the Courts, to assure itself that the power exercised by the Commissioner was in the best interest of all and advanced the object of the act.

In this case, the Commissioner's Act was reviewed by the Standing Committee in appeal thoroughly. Infact the Standing Committee even took upon itself a reassessment of facts by permitting the parties to lead evidence also, conducted a spot inspection, and thereafter confirmed the action of the Commissioner as proper.

Subsequently, this Court also, at the instance of the tenants and the landlord and with their consent, appointed 3 persons well versed in their fields to inspect the building and make a report. The Committee Members by and large agreed with the action taken by the Commissioner and also the Order

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of the Standing Committee, except to the extent that in the ground floor certain portions are strong and habitable without posing any danger either to the inmates or to the passers-by. Though this report was commented upon by the tenants, as if this Court is hearing a first Appeal. It has to be stated, that when this Court seeks information, by either appointing Commissioners or otherwise in accordance with law, it is only to assure itself that the findings arrived by the authorities are objectively reached and not arbitrarily. This exercise is rarely undertaken. When 3 experts in the field chosen by the tenants themselves make a spot inspection (though one of them did not personally visit the spot) and submit a report alongwith the photographs and reasons, there cannot be any reason not to accept the same.

In so far as the contention of the tenants that the proposed notice issued by the Commissioner was in the year 1986, the very fact that the building has not collapsed till now is a clear proof that the building is not in a ruinous condition and therefore the action of the Commissioner, cannot be sustained is concerned, it can best be answered by quoting, paragraph 8 of the opinion of M P Chandrakanth Urs

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J., as he then was in the case of BABU HEGDE AND ANR vs TOWN MUNICIPAL COUNCIL, PUTTUR reported in 1989(2) Bangalore Law Journal, 129.

"It is true that many buildings are considered to be dangerous and are desired to be demolished in public interest. But for one reason or the other, they are not demolished and they continue to stand without collapsing. In some cases, though a building looked good, though old may collapse and cause public injury including death. Even, new constructions sometimes for various reasons collapses though they are not declared dangerous. That a building is in dilapidated condition is an opinion to be formed by the Town Municipal Council in terms of Sec.213 of the Act".

Thus, these cannot be the reasons to upset a decision properly made by a Commissioner. This Court cannot sit in appeal to review the decisions on such reasons. It is an Engineering expertise that can answer when the building can stand or collapse.

The contention of the tenants, is that the Commissioner should have first examined the feasibility of directing the landlord to repair the building before ordering the same to be pulled down. In this case according to the tenants, with some repairs the building could be made strong and habitable without posing any danger.

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The answer to the contention is that the power to choose the alternative in such cases where the public danger is to be prevented has to be left to the discretion of the power exercising authority and this Court, in such cases, cannot decide which alternatives should have been chosen. The Supreme Court in D P MAHAJAN vs JAVAGAL MUNICIPAL COUNCIL, 1991 SC, 1153 referred to with approval in TATA CELLULAR's case while examining the Judicial review of reasonableness in Administrative Law, has stated quoting Prof.Wade as follows:

"The Court must therefore resist the temptation to draw the bounds too tightly merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the Legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the Courts function to look further into merits".

It must therefore be left to the discretion of the Commissioner to choose the best alternative, required to a given case, keeping in mind the precaution he should take to protect the inmates of the structure or the neighbouring persons or the passers-by. Provided such a choosing of the alternative, is not done for extraneous reasons or with a malafide purpose or for collateral purposes. If there is

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nothing to suspect on record the motive of the power exercising authority and if the decision is arrived at objectively, this Court ordinarily will not review such decisions also. No material is produced to show that the exercise of the power by the Commissioner was motivated or for any extraneous circumstances.

In so far as the contention that there is no finding that the building is in ruinous condition, the report of the Committee referred to above clearly indicates the nature of the condition of the building. The word "Ruinous" is defined in the Websters III New International Dictionary meaning, "Condition to cause ruin", pernicious; "Ruin" is defined as falling down. Thus if the building is likely to fall down then the condition of the building can be said to be "Ruinous". Therefore there is no merit in this contention.

From the discussions made above, I find no merit in the contentions advanced by petitioners.

Having regard to the fact that the interests of the tenants are involved in, and having regard to the report of the Committee, the following order is passed:

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"The Commissioner, Mysore Municipal City Corporation shall order for demolition of such portions of the property which is held to be dangerous for living in the report of the Committee, In so far as, the remaining portion of the premises, which in the opinion of the committee is habitable and does not pose any danger, the tenants shall not be disturbed from their possession".

In so far as W.P.31905/00 is concerned, the petitioner contends that he is the real owner of the property, and not M/s.Bhavani Enterprises. His objection is that the writ petition filed by M/s.Bhavani Enterprises should not be entertained; It is for the petitioner to prove his title before a competent Civil Court. Reserving the said liberty for the petitioner, this petition is rejected.

All petitions disposed off in terms of the above.

Sd/-
Judge