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**(1959) 11 MP CK 0004**  
**In the Madhya Pradesh High Court**  
**Case No : S.A. No. 171 of 1957**

Ramnarayan Ramchandra

APPELLANT

Vs

Municipal Commissioner, Indore

RESPONDENT

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**Date of Decision :** 05-11-1959

**Acts Referred:**

Indore City Municipal Act, 1909 — Section 71

**Citation :** (1960) J LJ 939 : (1959) MPLJ 697

**Hon'ble Judges :** H.R. Krishnan, J

**Bench :** Single Bench

**Advocate :** M.B. Rege, for the Appellant; Jhanjaria, for the Respondent

**Final Decision :** Dismissed

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## Judgement

H.R. Krishnan, J.

This is an application by the Plaintiff from the judgment of the 1st appellate Court dismissing his suit in toto. The points for decision are mainly two: (1) Whether the Courts are competent to consider the justification of the Municipal Commissioner in declaring any building to be in a ruinous or dangerous state for the purpose of Section 71 of the Indore Municipal Act ? and (2) Whether the structures found to have been put up by the Plaintiffs are really "new constructions" for the purposes of Section 45(5) of the Act or happened to be only "repairs not amounting to new constructions".

Though the litigation has been protracted, the facts of the case are simple. The Plaintiff-Appellant is the owner of a house (which is admittedly old) within the Indore Municipal area. As long ago as 1952, the Commissioner of the Municipality received a report from his city engineer that this house was ruinous and in a dangerous condition. Therefore he noticed the owner u/s 71 of the Act to demolish it, cautioning him as usual that on his failure to do so the Municipality would itself get it demolished. Meanwhile the house owner did something which he obviously hoped would make the house safer; this certainly

consisted of a few props fixed under certain beams, and according to the Municipality, reconstruction of parts of two walls. But these were according to the latter fresh construction, made without its sanction; so it ordered that these also should be removed, not as a dangerous structures u/s 71, but as unauthorised construction u/s 45(5) of the Act. Accordingly they noticed for the removal of this structure also. The practical effect would be the demolition of the entire house as it was practically impossible to remove the new structures only without getting down the house which in any case was old and shaky. The latter in any event had to be removed under the order u/s 71.

The house owner went up in appeal to the Committee but got no relief; and accordingly filed a suit for permanent injunction on the Municipality restraining it from removing the house and the structures. In regard to the notice u/s 71, the Plaintiff's case was that though old, and though the walls are out of plumb at certain places, it is not really dangerous and ruinous, and the Commissioner has come to that conclusion in an arbitrary manner. In regard to the notice u/s 45 his case was that these were not really new constructions but merely repairs. The Municipality contested both the allegations.

The trial Court held that they were not proved to be dangerous because the City Engineer who had reported did not use instructions of measurement, but only gave his general impression. But in regard to the unauthorised construction it held that they were not merely repairs and accordingly held that the unauthorised constructions should be removed. There were two first appeals, one by the house owner and the other by the Municipality. The house owner's appeal was dismissed and the Municipal Commissioner's appeal was allowed on the ground that Section 71 left the matter entirely to his discretion and it is not for the Courts to decide whether or not the Commissioner was justified in coming to the conclusion that the building was ruinous or dangerous. The house owner has now come up in second appeal.

In regard to the condition of the house both parties examined expert witnesses, the Municipality, its City Engineer, Mr. Dravid, who is a degree-holder in engineering accustomed in the course of his official duties to inspect and form his estimate about the condition of house. The engineer examined by the Plaintiff is not so well qualified being the holder of a diploma. But that is not the real question. The real point is that both of them were agreed that the house is not in a sound condition, that the walls are out of plumb, and on the southern side the wall is projecting in the lane. Both of them have gone to the spot and made a general inspection but have not used any instruments or taken measurements. Neither of them have gone up any of the walls and let down plumb lines and measured out the actual deviation from the vertical over a definite height. At the same time it is not right to say that their inspection, and at all events the inspection by City Engineer with which we are more particularly concerned, was off-hand or perfunctory. He has examined each of the walls and if he did not get on and get any deviation actually measured, it was because the condition was

obvious. Similarly if he did not measure by what length the walls were slopping on the southern side it was unmistakable. He was definitely of the view that the building was ruinous and in a dangerous condition; in other words, it might come down at any time, killing or causing serious injury, either to occupants who are tenants of the house owner or to passers-by.

Section 71 provides:

Where any building.....is deemed by the Commissioner to be in a ruinous state, or in any way was dangerous, the Commissioner may by notice.....

The test, therefore, is that the Commissioner should come to the finding that the building is ruinous or dangerous and when he has done so the Courts cannot substitute their assessment of the danger, for that of the Commissioner. The house owner, however, is entitled to be satisfied that there is no ulterior purpose in the notice, and that the Commissioner has, before arriving at the conclusion, got a report by a competent specialist which may be and usually is an engineer. It may be he himself is an engineer, but at all events there should have been something like an inspection. The house owner is not entitled to anything like an opportunity to show cause but is certainly entitled to challenge the Commissioner's decision in appeal to the Appeal Committee. This he has done in the present case. But he cannot invite the Court to substitute its opinion. He can certainly point out that there has been no inspection, or application of an expert mind, and there is an ulterior purpose in the notice.

Besides referring to some passages in Maxwell, and in Craies' books on Interpretation of Statutes, the Appellant has cited the ruling reported in Lalbhai v. The Municipal Commissioner, Bombay 10 Bom. LR 821 . This case arose out of the City of Bombay Municipal Act, wherein the provisions are similar the wording being "it appears to the Commissioner". "The primary object of the section is the safety of the public, to secure which, the Commissioner must of necessity be given very wide powers. But it does not follow that those powers must be exercised arbitrarily or without due consideration of the provisions of the section and the right of individuals. In the first place it must "appear to the Commissioner" that the structure is in a ruinous condition or likely to fall or in any way dangerous to any person occupying, resorting to or passing by such structure. The Commissioner's action when it appears is judicial, he should exercise his discretion; the discretion must not be arbitrary. It imports the exercise of judgment, wisdom and skill as contra-distinguished from unthinking folly, heady violence or rash injustice". The same view has been held in Budhu Mohan and Another Vs. Corporation of Calcutta and Another, In the present case the Commissioner was not issuing a fiat without data. He had the Engineer's report and as it happens it is a common ground that the walls of the house are out of plumb and especially on the southern side it was projecting into the lane.

The Engineer brought by the house owner while accepting in general, the condition of the house is, however, optimistic, he feels that though there are

defects it is good enough for another 20 years. The Commissioner, however, was not prepared to be so optimistic. "Ruinous" or "dangerous" means that the house may come down at any time. It does not mean it must come down or that, the fact that it has not come down for some years makes it less dangerous. It is a well-known fact that walls out of plumb stay on for years and suddenly come down without any apparent immediate cause. If the Commissioner acting on due inquiry and with data is not prepared to be optimistic, it is not of the business of the Court, to thrust its opinion where the law clearly points that it is necessary for the Commissioner to deem that the building is ruinous or dangerous. The responsibility for the safety of the public is his, and not the Courts.

Thus this is not the case when the Commissioner acted arbitrarily or with an ulterior purpose. The Plaintiff-Appellant fails on ground No. 1.

Coming to the ground No. 2, I note that this is practically concluded by the concurrent findings of fact. Out of the constructions mentioned in the notice, the props by themselves do not constitute new construction. They are in essence repairs; but the reconstruction of the walls, that is the removal of the old material and putting in of new is certainly new construction.

It does appear that Plaintiff did this so as to make the house safe. Feeling that the Commissioner was unlikely to approve of any tempering with his building which he deemed already to be ruinous, he went ahead without sanction, the Appellant has certainly contravened the provisions of Section 45.

The result is that the appeal is dismissed with costs. The pleader's fee according to rules payable to the Respondents.