1976 *Present :* **Samerawickrame, J., Weeraratne, J., and Sharvananda, J.**

V. SANGARALINGAM, Petitioner, and THE COLOMBO MUNICIPAL COUNCIL and another, Respondents

S. C. 665/70—Application for a Mandate in the nature of a Writ of Certiorari

Housing and Town Improvement Ordinance—Sections 102 (1) and 102 (4)—Erroneous exercise of jurisdiction—No excess of jurisdiction—Availability of Certiorari.

A notice served under Section 102 (1) and a decision made under Section 102 (4) of the Housing and Town Improvement Ordinance cannot be quashed by a Writ of Certiorari where the character of the complaint is an instance of an erroneous exercise of jurisdiction and not on the basis of excess of jurisdiction.

"A judicial tribunal has power to err within the limits of its jurisdiction. Such an error cannot be impeached otherwise than on an appeal to the Minister in terms of Section 102(3)".

APPLICATION FOR Writ of Certiorari

C. Ranganathan with *K. Thevarajah* for the Petitioner.

M. Tiruchelvam for the 1st Respondent.

N. Sinnetamby, Deputy Solicitor General with *D. C. Jayasooriya*, State Counsel for the 2nd respondent.

Cur. adv. vult.

March 22, 1976. SHARVANANDA, J.—

The Petitioner is the owner of premises No. 49, Jinananda Mawatha, Kotahena. By notice dated 20th October, 1969, marked 'A', the Deputy Mayor of Colombo Municipal Council, in the exercise of powers, duties and functions under Section 102 (1) and (2) of the Housing and Town Improvement Ordinance (Cap. 268) delegated to him by the Council, directed the Petitioner to effect the following repairs to the building bearing assessment No. 49, Jinananda Mawatha :—

(1) Re-erect the damaged wall without structural alterations.
(2) Attend cracks and broken plaster in other walls.
(3) Repair roof having replaced perished timber in roof.
(4) Repair doors, windows and trellis work.
(5) Attend damaged floor.
(6) Prop up building to avoid roof collapsing.

The notice stated that the building appeared to be in a state of gross disrepair and injurious to the health and safety of the occupants thereof and that if the Petitioner did not begin to comply with the requirements specified therein within seven days of its service or did not complete the work with due diligence, the authority would cause the work to be carried out and recover the expenses.

By petition dated 27th October, 1969, the Petitioner appealed to the Minister of Local Government, the 2nd Respondent, in terms of Section 102(3) of the Ordinance (Cap. 268) against the service of the aforesaid notice 'A' on the grounds that the building was an old building of mud and cabook and dilapidated during the long years by stress of weather, wear and tear and that no repairs, short of re-erection of the building, were possible and prayed that the notice "which is impossible and impracticable to comply with" be withdrawn.

In support of his appeal, the Petitioner tendered a report dated 4.11.1969 by Messrs. Ganesan and Kumarasuriyar, Architects and Engineers. The report reads as follows :—

"The old building in the above premises No. 49, was inspected in detail on 26th October, 1969. The roof of the

building is supported by cabook columns. The panel walls are of mud and brickbat construction. As this building is on a slopy land at the bottom, the ground is always oozing wet. Therefore the foundations are weakened. The panel walls have no bearing onto the columns and have separated out due to constant wetness. These walls are on the verge of collapse. No effective or lasting repairs can be carried out to this old and dilapidated building. We recommend demolition. "

The Petitioner was told that the report of Messrs. Ganesan and Kumarasuriyar would not be accepted by the Minister and that the Minister would appoint an Engineer appointed outside the Colombo Municipal Council to inspect and report to the Minister. On or about 23rd February, 1970, Mr. Marzook, Superintending Engineer, Local Government Works, made his report to the Ministry. According to that report, item 1 mentioned in the notice 'A', viz. re-erect the damaged wall without structural alterations, was not possible as the "damaged wall cannot be re-erected without structural alterations as the wall lying right angle and within the street line has been ordered by the Municipal Engineer to be demolished.....demolition of this wall will involve structural alterations. "

The Respondents have filed in these proceedings, two reports made by the Assistant Commissioner of Local Government dated 9.2.1970 and 9.3.1970., marked R1 and R2, according to which the building is in a dilapidated condition and is a threat to the lives of the occupants.

It is common ground between the parties that the building bearing assessment No. 49 is in a dilapidated condition and calls for urgent action, either by way of repair or of demolition and re-erection of the building. The dispute is as to the kind of remedy. According to the Petitioner, the building is in a ruinous state, beyond repair and that no repair, short of re-erection of the building, can be effectively done. The reports of the Engineers cited by the Petitioner lend support to the contention of the Petitioner. But the Minister, to whom these reports were available, has, in the exercise of his powers under Section 102(4) of the Housing and Town Improvement Ordinance, after necessary inquiry, dismissed the Petitioner's appeal by letter dated 16.3.1970. According to the provisions of the said Section, "the decision of the Minister on any appeal made to him under this Section shall be final and conclusive and shall not be questioned in any Court of law."

The Petitioner has, by the present application, applied to this Court for the grant of a mandate in the nature of a Writ of Certiorari quashing the order of the Deputy Mayor contained

in the notice ' A ' requiring the Petitioner to effect repairs to premises No. 49, and the order of the Minister dismissing the Petitioner's appeal on the ground that orders of the Deputy Mayor and the Minister were made without jurisdiction.

There is no dispute on the preliminary question which invests the Municipal Council with jurisdiction to exercise the powers referred to in Sec. 102(1) of the Ordinance, whether to order the taking down or securing or repairing the building, the building being admittedly "in a ruinous state, or to be likely to fall, or to be in a state of gross disrepair, or to be injurious to the health or safety of the occupants." No question of giving itself jurisdiction by an erroneous decision on a collateral issue arises on these facts. No challenge is made to that jurisdiction to make any one of the orders referred to in Sec. 102(1). The question of what is the proper order to make in such a state of affairs is a matter within the jurisdiction of the Council or of the Minister on an appeal. If the Council makes an erroneous order, viz., to effect certain repairs when the proper remedy is to order demolition of the building, it does not exceed its jurisdiction in making such an order. It is an error within jurisdiction, but not a jurisdictional error which will render the order ultra-vires. A judicial tribunal has power to err within the limits of its jurisdiction. Such an error cannot be impeached otherwise than on an appeal to the Minister in terms of Sec. 102(3). The Minister's decision on such appeal has been given the stamp of finality and is made not reviewable by Court by the terms of Sec. 104(4). Such decision cannot be quashed by Certiorari. This Court, on application for a writ of certiorari cannot exercise appellate jurisdiction over the Minister's decision. What is complained of is an instance of erroneous exercise of jurisdiction and not excess of jurisdiction which can be corrected by this Court in the exercise of its supervisory jurisdiction. The finding as to the kind of remedy went to the merits of the determination only and not collateral to the merit of the decision. The statutory power vested in the Council and in the Minister by Sec. 102(1) and (4) has been exercised bona fide and on material available to them. There is no allegation of abuse of power. The power has been validly exercised and no question of excess of jurisdiction is involved.

The application for a Writ is accordingly refused with costs.

SAMERAWICKRAME, J.—I agree.

WEERARATNE J.—I agree.

Application refused.