

opinion . . . Proof on the subject is not advanced by such documents." From the report of the Civil Surgeon in the present case it would appear that he relied entirely on certain physical peculiarities, such as teeth, etc. In our opinion, the learned Assistant Sessions Judge was right in holding that there was no legal proof of the age of Mst. Bhagmania. That being so, the learned Assistant Sessions Judge was fully entitled under section 289 of the Criminal Procedure Code to direct the jury to return a verdict of not guilty which the jury were bound to follow. For the reasons given above we accept the reference, set aside the verdict of the jury and acquit Qudrat and Mst. Rasulan of the offences with which they were charged.

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Before Mr. Justice Mulla

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*Municipalities Act (Local Act II of 1916), sections 307, 318, 321—Notice to remove constructions—Failure to comply—Notice can not be called in question in criminal court—Notice issued by Executive Officer—Appeal to Board—No second appeal lies to District Magistrate from the appellate order of the Board.*

The criminal court trying a person under section 307 of the Municipalities Act, for disobedience to a notice to remove certain constructions, can never be concerned with the question as to whether the notice issued was a regular and valid notice or otherwise, and it makes no difference whether the person did or did not avail himself of the right to appeal against the notice to the District Magistrate. The procedure for challenging the validity of a notice is specifically laid down in section 318 of the Municipalities Act, and, whether that procedure has been followed or not, in no case can the validity of the notice be raised in any form before the criminal court.

The expression "any order or direction made by a Board", in section 318 of the Municipalities Act, can not refer to an order passed by the Board upon appeal from a notice issued by the Executive Officer for the removal of a construction. The Municipalities Act does not provide for a second appeal to

\*Criminal Revision No. 175 of 1939, from an order of V. Bhargava, Sessions Judge of Bulandshahr, dated the 30th of November, 1938.

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the District Magistrate from an order passed by the Board on appeal.

Mr. C. B. Agarwala, for the applicant.

Mr. Jognandan Lal, for the opposite party.

The Deputy Government Advocate (Mr. Sankar Saran), for the Crown.

MULLA, J.:—This is an application in revision by one Rai Saheb Moti Lal who has been convicted under section 307 of the U. P. Municipalities Act and has been fined Rs.10. The conviction was recorded in the first instance by a Magistrate of the second class who imposed a fine of Rs.100. The applicant went up in appeal to the District Magistrate who upheld the conviction but reduced the fine to a sum of Rs.10 only in view of the careless procedure adopted by the Municipal Board. The applicant then went up in revision to the learned Sessions Judge of Bulandshahr who has again upheld the conviction and the sentence. Hence the application in revision.

The facts of the case may briefly be stated as follows. In the town of Khurja there is a block of 17 shops which was originally owned by one Mst. Jumni Kunwar. This property was put to auction sale in execution of a decree. It was sold in two lots, one of ten shops and the other of seven shops. The former lot was purchased by one Puran Mal and the latter by the present applicant. Prior to that sale, however, a notice under section 211 of the U. P. Municipalities Act had been given by the Executive Officer of the Municipal Board, Khurja, to Mst. Jumni Kunwar asking her to remove certain projections over the municipal drain. Subsequent to the auction sale a notice was again given by the Executive Officer under that section to the two purchasers, Puran Mal and the applicant. As an important argument in the case turns upon that notice it may well be set out *in extenso* as follows: "Under section 211 of the U. P. Municipalities Act (Act II of 1916), Mst. Jumni Kunwar, widow of late L. Sohan

Lal, Vaish Churuwal, of Khurja, was served with a notice to remove the projection and structure overhanging and projecting over the municipal drain from the shops in Bazar Nanpazan Sabzimandi, vide copy of the notice enclosed herewith. She went in appeal against the notice to the Commissioner, Meerut Division, and her appeal was rejected. Since you have purchased some of these shops the compliance of the notice, so far as it relates to the shops in your possession, rests with you and therefore you are required to make the compliance of this notice within thirty days of the receipt thereof, failing which the Municipal Board may cause this work to be executed under section 307(a) of the aforesaid Act and shall recover all expenses incurred by it thereon from you in the manner provided by chapter VI of the said Act and further legal action will be taken against you under section 307(b) of the said Act for failure to comply with the above notice."

An important point to be noted about this notice, which shall have to be referred to again, is that it does not relate to any specific shops in the applicant's possession. All that it tells the applicant is that he had purchased some of the shops belonging to Mst. Jumni Kunwar to whom a notice under section 211 of the U. P. Municipalities Act had previously been given and requires the applicant to comply with the terms of the said notice with reference to any shops that might be in his possession. The applicant filed an appeal from this notice to the Municipal Board under the provisions of section 60 of the Municipalities Act. This appeal was filed on the 16th November, 1936, though the notice referred to above was issued on the 29th October, 1936. An attempt was made by learned counsel for the Municipal Board to argue the point that this appeal was barred by time and hence there was no valid appeal pending before the Board at any time. This point was, however, never raised by the Municipal Board in any one of the courts below and I am not prepared to take cognizance of it at this stage. I shall assume for the purposes of the

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case that the appeal was validly filed before the Municipal Board. The fact remains that it was not decided by the Board until the 8th November, 1937, on which date it was dismissed and the notice issued by the Executive Officer was confirmed. In the meantime a dispute had arisen between the applicant and Puran Mal relating to the exact location of the shops respectively purchased by them. It appears that the applicant had been put in possession of seven shops which according to Puran Mal had really been purchased by him. This dispute resulted in an objection under order XXI, rule 100 being filed by Puran Mal in which he claimed possession of the seven shops over which the applicant had been given possession. The objection was decided in favour of Puran Mal, and as found by all the courts below the applicant was dispossessed of the seven shops over which he originally obtained possession. The order of the civil court allowing Puran Mal's objection was passed on the 14th August, 1937, that is, long before the decision of the applicant's appeal by the Municipal Board. It is not quite clear whether the applicant placed that decision of the civil court before the Municipal Board at the hearing of the appeal. But the fact remains that the appeal was dismissed and the notice issued by the Executive Officer was confirmed. The applicant treated the notice as one relating to the seven shops over which he was in possession at the time he received it, and he consequently thought that he could not comply with its terms in consequence of the order of dispossession passed by the civil court. The notice was not therefore complied with and the Municipal Board in these circumstances instituted a complaint against the applicant under section 307 of the U. P. Municipalities Act. The applicant appears to have taken some objections to the validity of the notice in the criminal court and further pleaded that it was not possible for him to comply with the notice in view of his dispossession in consequence of the civil court's order. All the courts below held, in view of certain decisions of this

Court, that the applicant was not entitled to question the validity of the notice. It appears, however, that the appellate court as well as the learned Sessions Judge were of opinion that it was open to the applicant to appeal from the order passed by the Municipal Board to the District Magistrate under the provisions of section 318 of the U. P. Municipalities Act and as he had failed to avail himself of that remedy it was not open to him to challenge the validity of the notice in the criminal court. The courts below seem to be of the opinion that the decisions of this Court which they have referred to lay down the principle that where a person does not avail himself of the remedy provided by the Municipalities Act he cannot challenge the validity of the notice in a criminal court. I may state at once that in arriving at that conclusion the courts below have not correctly interpreted the decisions of this Court. The principle which they lay down is that there is a procedure provided by the U. P. Municipalities Act for challenging the validity of a notice issued under the provisions of that Act. That procedure may end with an appeal to the Municipal Board or it may involve an appeal to the District Magistrate. Whatever the procedure may be, that alone has to be followed by a person who is aggrieved by a notice issued under the provisions of the Municipalities Act. And it is only in the course of that procedure that the validity of the notice can be questioned and decided. The criminal court trying a person under section 307 of the U. P. Municipalities Act can never be concerned with the question as to whether a notice issued under the provisions of the U. P. Municipalities Act was a regular and valid notice or otherwise. If the applicant in the present case had appealed to the District Magistrate from the order of the Board he would not by doing so have acquired a right to challenge the validity of the notice in the criminal court. I am assuming for a moment that he could appeal to the District Magistrate from the order passed by the Board. As a matter of fact the position is just the

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other way. In this case the notice had been issued by the Executive Officer and not the Municipal Board. Both the Executive Officer and the Board can issue a notice under section 211 of the U. P. Municipalities Act. The former can do so only in cases where no question of compensation arises. In all cases in which a question of compensation has to be considered it is only the Board that can issue a notice under section 211. Now section 318 which provides for an appeal to the District Magistrate from an order passed by the Board runs as follows: "Any person aggrieved by any order or direction made by a Board under the powers conferred upon it by sections 118(1), 186, 205(1), 208, 211, 222(6), 241(2), 245, 278, 285 or under a bye-law made under heading 'G' of section 298 may within thirty days from the date of such direction or order, exclusive of the time requisite for obtaining a copy thereof, appeal to such officer as the Local Government may appoint for the purpose of hearing such appeals or any of them or failing such appointment to the District Magistrate." Now the question is whether the expression "any order or direction made by a Board" can possibly refer to an order passed by the Board upon appeal from a notice issued by the Executive Officer. In my judgment the answer is clearly in the negative. The Act does not in my opinion provide for a second appeal to the District Magistrate from an order passed by the Board on appeal. It was not therefore open, in my judgment, to the applicant to file an appeal before the District Magistrate. But as I have stated above, that does not affect the legal position at all. The position still remains that the criminal court cannot enter into the question of the validity of a notice issued under the provisions of the Municipalities Act. Learned counsel for the applicant strenuously contended that it was open to the criminal court to consider the question whether the notice was one that had been validly issued under any of the provisions of the U. P. Municipalities Act. As I have already stated I do not agree

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with that contention, which is not in my opinion supported by the decisions of this Court in *Emperor v. Baijnath Ram* (1), *Municipal Board, Moradabad v. Shiam Lal* (2) and *Municipal Board, Moradabad v. Habib Ullah* (3). As I was a party to one of these cases, namely *Emperor v. Baijnath Ram*, I can definitely state that it was never the intention of that decision to lay down that the criminal court could enter into the question as to whether a notice had been validly issued under any of the provisions of the Municipalities Act. It was clearly held in that case that the procedure for challenging the validity of a notice is specifically laid down in the Municipalities Act and the question of validity cannot be raised in any form before the criminal court. It is not necessary for me to discuss the other two cases because I find that in the present case even if the criminal court had entered into the question of validity it could not have arrived at any conclusion other than that the notice when issued was perfectly valid. It is admitted that the applicant had purchased certain shops and was in possession of some shops at the time when the notice was issued to him.

Now the question is whether the conviction of the applicant under section 307 of the U. P. Municipalities Act in these circumstances is correct or otherwise. An argument that has been strenuously pressed by learned counsel for the applicant and which appears to have considerable force behind it is that in view of the order passed by the civil court dispossessing the applicant he was incapable of complying with the terms of the notice and he cannot therefore be said to have failed to comply with the notice within the meaning of section 307 of the U. P. Municipalities Act. I am prepared to concede that the language of section 307 necessarily implies that the person who fails to comply and thus renders himself liable to the penalty provided by the law must have the power to comply. It would obviously be highly unreasonable in my judgment to hold a person

(1) (1935) I.L.R. 58 All. 480.

(2) [1937] A.L.J. 180.

(3) I.L.R. [1939] All. 500.

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guilty of not complying with the notice when under the law he has not the power to do so. The point, however, remains in the present case that the applicant's conviction cannot be set aside merely upon that ground. As I have stated above, the notice issued to the applicant in the present case did not specifically relate to any particular shops. All that it said was that the applicant had purchased some shops and it directed the applicant to comply with the notice with regard to any shops that might be in his possession. It is true that the applicant appears to have been dispossessed of certain shops over which he originally obtained possession; but the fact remains that he and Puran Mal were the only two purchasers of the whole block of shops and all that happened in consequence of the proceeding in the civil court was that he got seven shops other than those over which he had originally been given possession. It is true that there is no definite evidence on the record that he actually came into possession of the seven shops other than those from which he was dispossessed. But the fact remains that he was declared to be the owner of seven shops and he must be presumed to have been in possession of the shops other than those which came originally into his possession and from which he was dispossessed by the order of the civil court. It was therefore possible for him to comply with the terms of the notice and his failure to do so brings him within the clutches of the law. I must, however, express my disapprobation of the dilatory procedure adopted by the Municipal Board in this case and I endorse the remarks made by the courts below. I think therefore that the sentence passed upon the applicant in this case should only be nominal and nothing more. The result, therefore, is that I dismiss this application in revision and uphold the applicant's conviction under section 307 of the U. P. Municipalities Act but reduce the fine imposed upon him to one anna only. The fine, if any, paid by the applicant over and above an anna shall be refunded.