

REVISIONAL CRIMINAL.

Before Mr. Justice LeRoussignol.

GHASITA—Petitioner,

versus

THE CROWN, THROUGH MUNICIPAL COMMITTEE,
SIALKOT—Respondent.

Criminal Revision No. 1587 of 1922.

Punjab Municipal Act, II of 1911, section 175—whether notice of removal of a projection or obstruction must be accompanied by a tender of compensation.

Held, that the requisition open to the Municipality under section 175 of the Punjab Municipal Act of 1911, for removal of a projection or obstruction is subject to the payment of compensation, i.e. the tender of compensation must accompany the notice.

Nauna Mal v. Municipal Board of Hathrass (1), and *Chippal v. Municipal Committee of Simla* (2), distinguished.

Application for revision of the order of A. W. J. Talbot, Esquire, District Magistrate, Sialkot, dated the 31st August 1922, modifying that of Rai Sahib Lala Mathra Das, Magistrate, 2nd Class, Sialkot, dated the 19th May 1922, convicting the petitioner.

J. G. SETHI, for Petitioner.

NIJAZ ALI, for Respondent.

LE ROUSSIGNOL J.—The petitioner was ordered by the Municipal Committee, Sialkot, to demolish a roof. The notice to him issued under section 175 of the Municipal Act of the Punjab which runs:—

“The Committee may, subject to the payment of reasonable compensation, by notice require the owner..... to remove, etc.”

The petitioner has been convicted for failing to comply with this notice and urges that the conviction is bad inasmuch as no compensation was assessed far less paid before or simultaneously with the service of the notice.

In my opinion the contention has force. Respondent has referred to *Nauna Mal v. Municipal*

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Board of Hathrass (1), and to *Chippal v. The Municipal Committee of Simla* (2), but these authorities are not in *pari materia* and refer to other statutes, of which the language differs from that of the Municipal Act now under consideration.

The language of section 173 indicates that the requisition open to the Municipality is subject to the payment of compensation, *i.e.* the tender of compensation must accompany the notice.

This procedure affords the persons concerned an opportunity for appealing to the Deputy Commissioner on the subject of the reasonableness of the tender and also for securing an assessment of the value of the obstruction before it ceases to exist.

I accept the petition and acquit the petitioner. The fine, if already recovered, shall be remitted.

C. H. O.

Revision Accepted.

(1) (1912) 20 Indian cases 406.

(2) 24 P. R. (Cr.) 1890.