

violence and curbing its worse consequences is crucial. Sakshi – a violence intervention agency for women and children in Delhi works on cases of sexual assault, sexual harassment, child sexual abuse and domestic abuse and focuses on equality education for Judges and implementation of the 1997 Supreme Court's sexual harassment guidelines. Women's Rights Initiative – another organization in the same city runs a legal aid cell for cases of domestic abuse and works in collaboration with law enforcers in the area of domestic violence.

### References

- (1) UNICEF. 2000. Domestic Violence against Women and Girls. UNICEF Innocenti Digest. 6: 1-29.
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<http://www.domesticviolence.in/category/domestic-violence-statistics> on 22.8.2009. 10:00 a.m.
- (3) Domestic violence Wikipedia the free Encyclopedia.
- (4) Articles from internet (www.youthkiawaz.com)

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## WHETHER PRIOR LEGAL NOTICE BEFORE FILING THE SUIT AS MENTIONED UNDER SECTION 138-A OF A.P. PANCHAYAT RAJ ACT IS NECESSARY IN THE CASE OF A SUIT FOR INJUNCTION

*By*

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Section 138-A A reads "Notice of action against Gram Panchayat (1) Subject to the provisions of Section 138, no suit or other legal proceeding shall be brought against any Gram Panchayat or the Sarpanch or the executive authority or any member, officer or servant of such Gram Panchayat or against any person acting under the direction of such Gram Panchayat, Sarpanch, executive authority, member, officer or servant, in respect of any act done or purporting to be done under this Act or in respect of any alleged neglected or default in the execution of the provisions of this Act or any rule, bye law, regulation or order made under it, until the expiration of two months next after notice in writing stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of residence of the intended plaintiff,

has been left at the office of the Gram Panchayat and if the proceeding is intended to be brought against any such Sarpanch, executive authority, member, officer, servant or person, also delivered to him or left at his place of residence, and unless such notice is given, the Court shall not entertain such suit or legal proceeding. (2) Every such proceeding shall, unless it is a proceeding for the recovery of immovable property or for a declaration of title thereto be commenced within six months after the date on which the cause of action arose or in case of a continuing injury or damage, during such continuance or within six months after the ceasing thereof. (3) If any Gram Panchayat or person to whom notice is given under sub-section (1) tenders amends to the plaintiff before the proceeding is commenced and if the plaintiff does not in

such proceeding recover more than the amount so tendered, he shall not recover any costs incurred by him after such tender, and the plaintiff shall also pay all cost incurred by the defendant after such tender.”

A similar provision was made in Section 144 of A.P. Gram Panchayats Act 1964.

We do not find any decisions of our High Court whether Section 144 of Act 1964 and Section 138-A of A.P. Panchayat Raj Act 1994 is applicable to suits for injunction.

So, we have to depend upon the words used in Section 138-A and the similar sections in other Acts and the decisions delivered by High Court of Madras under the similar sections in other Acts.

*Section 156 of Madras Local Boards Act 1884* correspond to Section 225 of the Madras Local Board Act 1920. The relevant portion of Section 156 of M.L.A. is 1984 is as follows:

“No action shall be brought against any Local Board, or any of their officers, or any person acting under their direction for anything done or purporting to be done under this Act until “the expiration of one month next after notice in writing shall” have been delivered, or left at the office of the Local Board, or at “the place of abode of such person, explicitly stating the cause of action and the name and place of abode of the intended plaintiff; and, unless such notice be proved, the Court shall find for the defendant; and every such action shall be commenced within six months next after the accrual of the cause of action, and not afterwards; and if any person to whom any such notice of action is given shall, before action brought, tender sufficient “amends to the plaintiff, such plaintiff shall not recover more than the amount so tendered, and shall pay all

costs incurred by the defendant after such tender”.

(I.L.R. 16 Madras Page 317 and 318)

“The relevant portion of *Section 225(2) of Madra Local Boards Act 1920* is

“No action shall be brought against any Local Board, or against any member or servant of such Board, or against any person acting under the directions of such Board or of a member or servant of such Board, on account of any act done or purporting to be done in pursuance or execution or intended execution of this Act, in respect of any alleged neglect or default in the execution of this Act, until the expiration of two months next after notice in writing shall have been delivered or left either at the office of the Local Board or at the place of abode of such member or servant or of such person, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intended plaintiff; and unless such notice be proved to have been so delivered or left, the Court shall find for the defendant”.

*Section 261 of District Municipalities Act 1884* also corresponded generally with the necessary modifications to Section 156 of Local Boards Act 1884 in essential particulars (as observed at Page 603 of 60 MLJ).

In *ILR 16 Mad. 317*, the suit was filed against Local Board for injunction restraining it, from demolishing the plaintiff's wall in his site. It was held that previous notice of action under Section 156 Act 1884 was not necessary.

It is a Division Bench decision. It was held therein “we do not think that Section 156 Madras Act V 1884, applies. The cases contemplated in that section are suits for compensation and for damages.

The judgment in page 318, 16 of ILR Madras reads as follows. We do not think Section 156, Madras Act V of 1884, applies as cases contemplated in that section are suits for compensation and for damages, and the principle is to allow public bodies time for tender of amends to the parties as to void litigation.

“This principle cannot apply when the object of the suit is to obtain a declaration of title to immovable property and for an injunction to restrain interference with immovable property”.

The I.L.R. 29 Madras 539 the suit was for damages of Rs.10/- and perpetual injunction against the Municipal Council of Kumbakonam restraining it from flooding plaintiff's land.

In that suit the defendant pleaded *inter alia* that the suit so far as the injunction was concerned was not sustainable for want of notice under Section 261 of D.T. Municipalities Act.

The D.T. Munsif held that no notice was necessary.

The D.T. Judge on appeal held that notice was necessary and dismissed the suit. The plaintiff preferred 2nd appeal.

One of the questions framed for determination was “whether the suit, insofar as the prayer for injunction is concerned is unsustainable for want of notice under Section 261(1) of Madras District Municipalities Act ?

The learned Judges referring to the words used in Section 261(1) of D.T. Municipalities Act 1884 observed at page 545 as follows “Next as regards the question of notice, I may deal with it quite shortly. Suits referred to in clause (1) of Section 261 are, by its very terms those which relate to acts “done or purporting to be done” whereas, a claim for an injunction is with reference

to what it is apprehended will be done in the future. It would not be right to impute to the Legislature an intention to insist upon the lapse of the interval involved in the provision as to notice even in regard to cases where such lapse might be attended with the completion of the threatened injury, the prevention of which is the very aim and end of the suit.

This objection also therefore fails.”

In I.L.R. 32 Mad. 371 (Full Bench) the suit was for perpetual injunction and some other relief against the Taluk Board, Kumbakonam. The Full Bench considered I.L.R. 16 Madras. 317 also and followed the reasoning in above mentioned decision in I.L.R. 29 Mad. 539 and held that Section 156(1) of Madras Local Boards Act 1884 does not apply to suits brought for an injunction and notice is not necessary in the case of such suits.

Similar to sub-section (3) to Section 138-A of A.P. Panchayat Raj Act was added to Section 261 of Act 4 of 1884. Taking into consideration the said amendment, it was held even in I.L.R. 16 Madras 317 at Page 318 that principle behind this amendment is to allow public bodies time for tender of amends to the parties to avoid litigation. Full Bench also held that this amendment made it explicit that prior notice is not necessary in the case of suit for injunction.

In 60 M.L.J. 600, the suit was filed against Union Board of Devakottai, through its president, for declaration that the defendant is not entitled to levy profession tax from the plaintiff and recovery of the tax collected. It was held therein, that the section applies only to suits for compensation and damage and hence, no prior notice under Section 225 is necessary. The said decision was given on relying the decisions in I.L.R. 32 Mad. 371 and I.L.R. 16 Mad. 317.

Section 80 of CPC applies to all forms of suits, and whatever the relief sought

including a suit for injunction. The words “the nature of the relief sought, the amount of compensation *etc.*, and the words” explicitly stating the cause of action” do not find place in Section 80 of CPC. This difference makes Section 80 of CPC applicable to suits for injunctions also, as held in 60 M.L.J. 600 at Page 606.

I also submit that the words used in Section 138-A” any act done or purporting to be done under this Act or in respect of any alleged neglect or default in the execution of the provisions of this Act or any rule, bye-law, regulation or order made under it clearly show that the act, neglect or default complained of should have been done under the provisions of A.P. Panchayat Raj Act or

rules or bye-laws, regulation or order made under it. If the act complained of does not refer to or come under any of those provisions, also prior notice is not necessary. That means, if the Act, rules *etc.*, under it do not authorise the Panchayat to do the act or default complained of, prior notice is not necessary. For this proposition we can rely upon.

(1991 (II) ALT 425 (Para 13 at P.431)  
= AIR 1992 AP 266)

The learned Judge in Para 13 of that judgment indirectly held that only when the act complained of against the Gram Panchayat comes under the provisions of Panchayat Act, then only, prior notice is necessary.

## NEED FOR REDUCING PENDENCY OF LITIGATION

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Eminent jurist, Nani Palkhivala has reflected on the irony of the judicial system, in this fashion:

“If longevity of litigation is made an item in Olympics, no doubt the Gold will come to India”

*Introduction:* A dispute has been described as a lack of compromise between the parties. There must be some issue or matter upon which the parties are unable to agree. However it is possible to resolve through an ADR procedure, issues which have yet to attain the status of an actual dispute.

The essence of ADR is to resolve conflicts, differences or disputes that exist between the parties, at the same time it will

reduce costs to the parties and burden to the Courts lessen the delay in adjudication.

### *Backlog of Cases*

Cases pending before Civil/Usual Forums

There are three crore civil cases pending in various Courts in the country.

There are 2.5 crore cases in lower Courts, 50 lakh cases in High Courts and 17,000 cases in the Supreme Court. At least 80 cases were pending a decision or hearing for the past 20 years in the Supreme Court. In addition, over five lakh cases, involving criminal and civil laws, were pending in different High Courts for over 10 years. Moreover, over eight lakh cases were