

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 6

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Injunction against Municipal Corporation & Gram Panchayats

JITENDRA KUMAR¹ AND JUTIRANI TALUKDAR²

ABSTRACT

This study presents a quantitative assessment of the quantitative ban and the gram panchayat ban on municipal cooperation. An injunction is a court order that requires a person to do or renounce an act necessary for justice, and failing to do so would violate sincerity and conscience. Basically, the purpose of granting an injunction is to restore the party's infringement of rights, thereby causing insufficient money or compensation. It follows the principles of natural justice and fairness. The concept of an injunction is a very simple concept, and the relief granted is a preventive concept. Specifically, CRPC, CPC and the "Special Relief Law" have injunctions and regulations based on prescribed laws. Each of these regulations provides some form of prohibition depending on the situation and circumstances.

Keywords: *injunction, against municipal cooperation, gram panchayat, justice, good faith, good conscience, Natural Justice, Equity.*

I. INTRODUCTION

In the Indian law, an injunction is considered as the impartial remedy identified in the manner of the court order that obliges a person or refrains them to do a specific act. This restrictive order is kind of direction from court that refrain one of the respective parties for the purpose of equity or refraining from act, which is causing injustice to the other party. Therefore, a certain type of the conduct is forbidden through the injunction.

Evidences have shown that injunction is considered as the equity that originated from the English courts of equity and traditionally this remedy is awarded when the wrong could not be remedied through the money. Injunction is to provide the right to someone, whose right have been violated by the other party.

Therefore, while providing injunction the question of good faith and fairness are also considered by the court.

¹ Author is a student at Symbiosis Law School Pune, India

² Author is a student at Symbiosis Law School Pune, India

II. LITERATURE REVIEW OF THE TOPIC

- **P.P. Joshi, RULE OF INJUNCTIONS: Temporary Injunction comprising Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction, (2015)**

In this research article author has briefly explained about the Injunction and different types of injunction that court can pass. The article talks about different situations these injunctions can be passed. The authors in the present case have relied on the research paper to understand the meaning of injunction and the characteristic of these injunctions

- **Thammaiah Ramakrishna, An India Perspective on Establishing a Prima-Facie Case in Patent Suits, Available at SSRN 3047057 (2017).**

In this article authors have talked about patent injunction but the paper also focuses on general concept of injunction. The author has talked about application of equitable principle in granting the injunction. These inputs were used in article to explain as to when injunction can be granted and what are essential factors leading to grant of injunction and article has explained how injunction is interim remedy which can be claimed by the plaintiff and also helps in order to prevent the dissolution of the rights of the plaintiff.

- **Puneet Garg, India: Law of Injunction: Temporary Injunction, Singh & Associates (Aug 13th 2013)³**

In this Article the author has summarized the condition prevailing before passing of injunction and which has helped in the paper in further understanding the condition for the plaintiff to seek the remedy of injunction.

III. CLASSIFICATION OF INJUNCTION

In the Indian Legal System, laws pertaining to Injunction is administered by the Specific Relief Act, 1963. Talking about remedy of Injunction has been characterized into two types i.e. Permanent Injunction and Temporary Injunction.

The provision of Temporary Injunction has been given in Sec-37 of the Specific Relief Act, 1963 which states that “*Temporary Injunction remains in continuation till the further order of the court and this can be granted at the any stage of the suit*”

Whereas the procedure for this is given under Order XXXIX of the Code of Civil Procedure, 1908. This remedy being discretionary equitable relief it cannot be granted when equal effective relief is available in any other usual proceeding. The relief of restrictive order can

³ <http://www.mondaq.com>

be granted by the various courts in order to prevent the future violation of the law and to prohibit that particular person from violating the rights of any other person in the society, this can include cases like where factory is producing waste chemicals, if somebody is creating noise pollution by loud speakers etc.

An Injunction in which certain act or conduct must necessarily be done is known as Mandatory Injunction whereas an Injunction where person is prevented from doing that particular conduct or act is called Proprietary Injunction. However, there are certain cases in which both the Injunctions are pronounced, because such cases require both conduct and prohibition from that conduct by the defendant.

“When an injunction is given, it can be enforced with equitable enforcement mechanisms such as contempt. It can also be modified or dissolved (upon a proper motion to the court) if circumstances change in the future”⁴.

Therefore, above are some significant characteristics of Injunction which allows Hon’ble court to manage the action and behaviour of different parties in the different cases. As mentioned above that such laws relating to the remedy of Injunction are governed by Order 39 of Code of Civil Procedure, 1908 and the section 36 and 42 of the Specific Relief Act, 1962, but along with them in our legal system we have section 94(c) of the CPC, 1908 as the supplemental provision which is used while granting temporary injunctions.⁵

The relief of temporary Injunction can be availed by the plaintiff from the court in the cases where the defendant is violating the rights of that plaintiff i.e. threat to dispose the property, unauthorised trespass etc. Cases where property is of immovable nature, in such a scenario Hon’ble court may refrain the act and prevent the dispossession of the property of the plaintiff in order to prevent any kind of harm that can be caused to plaintiff in relation to the property and the property dispute.

Hence, the remedy of the temporary injunction is considered as the interim remedy which can be claimed by the plaintiff and also helps in order to prevent the dissolution of the rights of the plaintiff.⁶ In the landmark case of Gujarat Bottling Co. Ltd. V. Coca Cola Co. the Hon’ble court gave certain guiding principles which must be taken into consideration while granting

⁴P.P. Joshi OF INJUNCTIONS: Temporary Injunction including Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction, (2015)., LAW OF INJUNCTIONS: Temporary Injunction including Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction, (2015).

⁵ What is an Injunction? Indian Findings (2019) <https://www.indiafilings.com/learn/what-is-an-injunction/>.

⁶Thammaiah Ramakrishna, An India Perspective on Establishing a Prima-Facie Case in Patent Suits, Available at SSRN 3047057 (2017).

the relief of temporary injunctions.⁷

While pronouncing the judgment apex court held that firstly, what is essential and significant to apply the test of prima facie, secondly whether the balance of convenience is in favour of plaintiff and thirdly, whether the plaintiff may undergo the irreparable injury if the temporary injunction is no provided.⁸

Considering and analysing the number of cases it can be easily understood that temporary injunction cannot be sought for those right may come in to force in future, which signifies the fact that injunction can injunction could not be prohibit a party from filling a suit.⁹

IV. ANALYSIS AND CRITICAL THOUGHT

The Hon'ble Supreme Court and held that *“the guidelines as to what are three essential ingredients that have to be present and fulfilled in order to grant a temporary injunction, which are prima facie case, balance of convenience and irreparable loss.”*¹⁰

Now let us understand the all these essential ingredients given in the case of **Dalpat Kumar V/s Prahlad Singh:**

- ✓ Prima Facie Case: The phrase Prima Facie is nothing but anything which seems to be the truth when it is seen or heard for the first time i.e. at the first sight, in other words it that apprehension or mental thinking which comes in the mind without examining the facts and circumstances. Our Hon'ble Supreme Court on various occasions has defined the meaning of the term *“Prima Facie.”*

However, in the leading case it was held that the meaning of the term *“prima facie”* would not suggest that concerned aggrieved person should be having clear and direct case which in his apprehension and in all possible outcomes will succeed in the court and at the end of the trial order of will be given in his favour only.¹¹

This is nothing but the contention which the aggrieved person is asking, and require deliberation in quality and in his mind this contention can never be rejected, as doing this would be unjust and against the basic principles of law. Hon'ble court while dealing matters has to consider whether the concerned party who has approached the court by filing a suit has a valid and reasonable case and at the same time it must also take care of the fact that is what

⁷ AIR 1995 SC 2372

⁸PuneetGarg, India: Law of Injunction: Temporary Injunction, Singh & Associates (13 August 2013) <http://www.mondaq.com/india/x/257586/Civil+Law/LAW+OF+INJUNCTION+TEMPORARY+INJUNCTION>

⁹Seema Arshad Zaheerv&Ors.V., Municipal Corporation of Greater Mumbai &Ors., (2006) 5 Scale 263.

¹⁰Dalpat Kumar V/s Prahlad Singh AIR 1993 SC 276.

¹¹ Prakash Singh V/s State of Haryana 2002 (4) Civil L.J. 71 (P.H.).

is the reasonable and probable status of the such suits succeeding, if the suit is process in the trial.

Hence, the case of the plaintiff must be out of the scope of any technical flaws and at the same time suit filed by plaintiff must have merits in it. For Instance, that the initial plaint filed before the Hon'ble court should be free of any flaws and technical aspects like jurisdiction, maintainability, limitation, court fees etc. must be taken care of well, as all these comes under the category of legal irregularities and they must be removed by the proper examination of the court.

- ✓ **Balance of Convenience:** Injunction is granted if the person suffers excessive loss. In the landmark case, Hon'ble Supreme Court has said "a temporary injunction can be granted only if the who seeking injunction has a concluded right, and he is capable of being enforced by way of injunction and there has to be a balance between the remedy sought by the plaintiff and the situation and condition of the defendant."¹²This becomes very essential to maintain a balance between the relief given to the plaintiff against the injury that will be done to the defendant.

However, in order to ensure a balance of convenience, it is necessary that the case of parties is compared and a comparative balance has to be made between the malice or problem of inconvenience which is to be caused will be greater or the withholding of injunction will cause greater loss to the party than granting it.

- ✓ **Irreparable Loss:** As the term itself says that any loss which can be restored back no matter how much of monetary compensation is order by the court.

In the landmark case, where Hon'ble Supreme Court of India held that "Court have to analysis the amount of loss caused and suffered by defendant and plaintiff respectively, and further it will also examine the future loss incurred by the plaintiff if the order of in the favour of plaintiff is not granted. The court will also analysis the fact that whether the loss suffered by plaintiff is reparable by monetary compensation i.e. Amount of money equal or more than the value of the property. Furthermore, the court will also analysis the consequence faced by defendant if the order is passed, subsequently it has to be seen that which loss will be greater and irreparable."¹³

Considering above, the party which would suffer greater loss be said having balance of the convenience in the favour and accordingly, the court will pass or refuse to pass the order.

¹² Agricultural Produce Market Committee V. GirdharbhaiRamjibhaiChhaniyara, AIR 1997 SC 2674.

¹³ Best Sellers Retail India (P) Ltd. v. Aditya NirlaNuvoLtd,(2012) 6 SCC 792.

However, there are endless damages which cannot be repaired at any cost but for them court does not regard them as “irreparable loss.” For Instance, it is said to be caused mental injury if somebody outrages the feeling or causes loss to anything which is of sentimental value.

On the contrary, there are damages which can be repaired or restored back into its existing state which causing substantial loss to that object, but in the court of it is still considered as Irreparable loss.

Irreparable damage does not mean that the damage can never by repaired or brought in the original state. It only means that the damage caused cannot be adequately compensated by money.¹⁴

Further, an injury is permanent where it is nonstop and repeated or when a remedy can be sought of under law by a number of suits.

V. ANALYSIS THE INJUNCTION AGAINST MUNICIPAL COOPERATION AND GRAM PANCHAYAT

- Injunction against local/statutory bodies or government

Section 80 of the Code of Civil Procedure Deal with two types of cases. Prosecute the government and prosecute public officials. In any case, the first type of notice must be issued under Article 80, while the second type of notice under Article 80 is only for litigation for any act allegedly performed by the public official in his official capacity. Circumstances are necessary. This part is mandatory, its terms are essential, and no exceptions are allowed. However, Article 80(2) stipulates that if urgent or emergency relief needs to be given in the proceedings, the notice can be waived. In any case, without notifying the state or the relevant public officials, such relief shall not be granted by temporary order or other means.

In case of *Noor Mohammad Shameer Shaikh V. Maharashtra Housing and Development Board and Others*,¹⁵ wherein it is held that “when the pre-suit statutory notices, as required under section 527 of the Mumbai Municipal Corporation Act and also under section 164 of Maharashtra Co-operative Societies Act, are mandatory legal provisions. The similar case of ***Harikishanlal V. State of Jammu & Kashmir*¹⁶** also stated the same.

In cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the

¹⁴ M. Gurudas and Ors. V. Rasaranjan and Ors, AIR 2006 SC 3275.

¹⁵ Noor Mohammad Shameer Shaikh V. Maharashtra Housing and Development Board and Others, 2014 (1) Mh.L.J.92

¹⁶ Harikishanlal.Vs.. State of Jammu & Kashmir (1994) 4 S.C.C 422

structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of the plaintiff and a temporary injunction will be issued to preserve status quo.¹⁷

In case of **Abdul Hasan Shaikh Mansuri V. Municipal Corporation of Mumbai & Ors**¹⁸, Hon'ble High Court directed all the Municipal Authority to consider issuance of appropriate directions to all its officers concerned that in a suit of such kind a statement be made on the first date of hearing of the suit before the court on behalf of the authority that they will follow the due process of law on which basis the suit can be disposed of. It is further observed that, such suit can be disposed of by Court on the date of hearing on the statement made on behalf of authority that due process will be followed. The Hon'ble High Court had given a word of caution that courts should restrict grant of Ad-Interim orders only to a limited time and in the meantime call upon the local authorities to file their reply and then decide the said application by giving priority to such matters. Further it would be desirable in such cases that at the time of granting ad-interim reliefs the court should appoint a commissioner to inspect the construction. This would help to curb the practice of misusing the interim order passed by the courts.

In case of **Sopan Maroti Thopate vs. Pune Municipal Cooperation**¹⁹, the guidelines are laid down about procedure to be followed before taking action under section 351 of the Bombay Municipal Corporation Act or under section 260 of Bombay Provincial Municipal Corporation Act.

Injunction in case of Bank Guarantee there cannot an injunction against the bank from paying the amounts covered by bank guarantee furnished unconditionally in the absence of fraud. Only on the ground of fraud and in case of irreversible injury the bank guarantee can be stayed.²⁰

Whenever the reliefs were sought against a statutory body, the said statutory body should be shown as a party, if not it is not tenable under law as its legal in nature it can be taken at any stage even if parties failed to take such plea. The Hon'ble High court in a decision reported in **Medikonda Sambasiva Rao and another; Panchayat Secretary, Grampanchayat and ors**²¹ held that It is evident from the cause title, that the appellants claimed the relief against the

¹⁷ Seema Arshad Zaheer and others Vs Municipal Corporation of Greater Mumbai and others, (2006) 5 SCC 282)

¹⁸ Abdul Hasan Shaikh Mansuri Vs Municipal Corporation of Mumbai & Ors, 2007 ALL MR 97

¹⁹ Sopan Maroti Thopate..vs..Pune Municipal cooperation 1996 (1) Mh.L.J 963

²⁰ (U.P. Cooperative Federation Ltd. V. Sing Consultants and Engineers (P. Ltd.) [1988(1) S.C.C. 174)

²¹ 2014 (4)A LD 713

Secretary of Gram Panchayat, and not Gram Panchayat, as such. It is too well known that the Gram Panchayat is a creature under the **A.P. Gram Panchayat Act**, since replaced by **A.P. Panchayat Raj Act**. Whenever, citizen intends to claim relief against Gram Panchayat, it is that very statutory body, which must be shown as a party. The Gram Panchayat may be represented by Sarpanch, or Panchayat Secretary, depending on the facts and circumstances of the case. However, claiming relief against the Secretary, without making the Gram Panchayat, a party, becomes untenable in law. Though this objection was not raised in the suit or in the appeal, it can be taken into account, at this stage also, being purely legal in nature.”

VI. CONCLUSION

Considering that India’s mandatory injunction law is defined in the 1963 "Article 37 Special Relief Act". This section discusses temporary injunctions. In view of the above, it can be concluded that the parties cannot regard the granting of a temporary injunction as a matter of rights, nor can they be arbitrarily rejected by the court. However, the principle of the court’s exercise of discretion is the principle mentioned above and depends on the facts and circumstances of each case. The party seeking relief must not only establish the superficial reasons, but also cause irreparable losses in the case of refusing to grant relief, and the balance of convenience is in his favor. Therefore, the provisions of Order No. 39 of the Civil Procedure Law formulated by the Hon'ble Supreme Court in response to the **M. Gurudas and Ors case are reasonable. VS. Rasaranjan and Ors** can be summarized as "While considering the injunction, the court will pass an order based on superficial considerations, convenient balance and irreparable harm".

Thus, the paper concludes nu saying an injunction is a reasonable remedy and works on the maxim a person who comes to the court must come clean hands. Permitting injunction order is completely on the court but this independence is to be equitable based on Judicial Moralities.
