

LAW COMMISSION OF INDIA

ONE HUNDRED EIGHTY-FIRST REPORT

ON

**AMENDMENT TO SEC. 106 OF THE TRANSFER OF
PROPERTY ACT, 1882**

MAY, 2002

D.O.No.6(3)77/2002-LC(LS)

May 9, 2002

Dear Shri Jaitley ji,

I am forwarding herewith the 181st Report "Amendment to Section 106 of the Transfer of Property Act, 1882".

2. It may be mentioned that in 1998, the Law commission forwarded to the Government of India its One Hundred Fifty-Seventh Report on Section 52: "The Transfer of Property Act, and its Amendment". The said report is awaiting implementation. In the meantime, the Commission considered it proper to take up the study of amendment of section 106 of the Transfer of Property Act, 1882, suo moto, in order to eliminate litigation in so far as it relates to computation of period of notice and to relax some of the rigid principles laid down in some judgements which have led to serious injustice and multiplicity of litigation thereby often causing hardship to litigants. While referring to the amendments made by the UP Act 24 of 1954 in Section 106, we have emphasized inter-alia, that by virtue of the amendments proposed, the notice issued by the plaintiff would not be invalidated even if the time falls short of the prescribed period, provided the suit is filed by plaintiff after expiry of the period prescribed in the section. In tenancies which are not yearly, the period of notice is proposed to be increased from fifteen days to sixty days. Further, it is being made clear that the period shall count from the date of receipt of notice.

3. The recommendations have been made with a view to remove serious injustice and prevent multiplicity of litigation in the country. We hope that the recommendations in this Report will go a long way in attaining the objectives set out above. We are also recommending that the proposed amendments be applied to pending proceedings.

4. A draft Bill is also annexed with the report to suggest the amendments in the legislative form.

With Warm regards,

Yours sincerely,

(Justice M. Jagannadha Rao)

Shri Arun Jaitley,
Hon'ble Minister for Law, Justice & Company Affairs,
Shastri Bhavan,
New Delhi.

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Report on the Amendment to sec. 106 of the Transfer of Property Act,
1882.

Ever since 1882, certain words in sec. 106 of the Transfer of Property Act, 1882, have given rise to a lot of litigation. An amendment of sec. 106 is long overdue. The purpose of the present Report is to eliminate this litigation in so far as it relates to computation of period of notice and to relax some of the rigid principles laid down in some judgments which have led to serious injustice and multiplicity of litigation. In fact, in the State of UP, by virtue of a State Amendment under the UP Act 24 of 1954, this section was amended long back. A similar amendment in the Principal Act has to be made so as to remove the hardship caused to litigants in the rest of the country.

Section 106 of the Transfer of Property Act reads as follows:

“106. Duration of certain leases in absence of written contract or local usage.- In the absence of a contract or local law or usage to the contrary, lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months’ notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month terminable, on the part of either lessor or

lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

The controversy arises in respect of the words underlined.

It will be seen that for the purpose of termination of a lease from year to year, a notice has to be issued by the lessor or the lessee, six months in advance “expiring with the end of a year of the tenancy” In the case of a tenancy from month to month, the lessor or the lessee has to terminate the tenancy by issuing a fifteen days' notice “expiring with the end of a month of the tenancy.” It is these words that have led to unnecessary litigation.

In several cases, it happens that a lessor or a lessee gives a 15 days notice, in the case of a tenancy from month to month, terminating the tenancy. Pleas in defence are taken that the notice is defective in the sense that the period of notice falls short by one day, because the person who has given the notice has not taken into account the principle accepted in Mangilal vs. Sugan Chand, AIR 1965 SC 101 that the day on which the notice is served must be excluded though not the day on which the tenancy is sought to be terminated. An issue as to validity of notice is framed

invariably in every case. Years after the notice and the filing of the suit, the court would be compelled to declare the notice invalid, though the defendant had more than the prescribed time of six months or fifteen days by the date of filing of the suit or by the date of judgment dismissing the suit.

In some other cases, there may be a dispute as to the exact date of commencement of tenancy and therefore a further dispute arises as to the date of expiry of the tenancy. The matter will be put in issue and if the date assumed or pleaded by the plaintiff, whether he is the lessor or lessee is not accepted by the court, then the notice becomes invalid, though the defendant had, in fact, more than the prescribed time by the date of filing of the suit or by the date of the judgment.

We shall refer to an example. A tenancy was from month to month and started on the 1st of Jan., 2000, notice terminating the tenancy was issued on 31.12.1999 and served on 1.1.2000 and the notice stated that the tenancy would stand terminated w.e.f. 15.1.2000. If the day on which the notice was served namely, 1.1.2000 has to be excluded as per the judgment of the Supreme Court in Mangilal vs. Sugan Chand, AIR 1965 SC 101, the notice would be short by one day. The suit may have been filed (say) on 1.7.2001 for eviction and let us assume that the defendant raised a plea that the notice was deficient by one day. The suit might (say) go to trial and let us assume that it is dismissed in April, 2002. Even though between 31.12.1999 and 1.7.2001 or in fact, by April 2002, the lessee had several months of time at his disposal to move out, the suit is liable to be dismissed as the law stands today. The lessor, in such circumstances,

would have to file a fresh suit after 15.4.2002, giving fresh notice under sec. 106 once again.

A similar situation obtains if the lessor has pleaded a particular date of commencement of tenancy and the lessee pleaded another and the lessee's plea was accepted. This technicality has been leading to too much of an injustice to the plaintiff though no prejudice at all is caused to the defendant. Such questions can arise even in suits filed by a lessee against the lessor.

The purpose of the provision in sec. 106 is to terminate the relationship of lessor and lessee before the lessor sues for possession. He has no right of entry till the tenancy is disrupted. Further, the idea is that every lessee must have some reasonable notice before he is asked to vacate the premises.

If these were the purposes behind section 106 but in fact, the lessee had, by the date of suit or the date of dismissal of suit years later, more than the period specified, in the statute, it is nothing but injustice to the lessor if he is compelled to file a fresh suit. Any procedure that leads to multiplicity of court cases must be avoided.

Though the Privy Council decided that notice may be for a longer period (see Benoy Krishna Das vs. Salscicioni, AIR 1932 PC 279), it has also decided in another case that "where a notice falls short of the requisite period, the mere fact that the tenant is actually allowed to hold the property for the full length of the period for which notice ought to have been given and a suit for ejection against him is brought only afterwards, will not

cure the defect in the notice so as to make it effectual for the purpose of terminating the tenancy” (see Gooderham & Worts Ltd. vs. Canadian Broadcasting Corpn. AIR 1949 PC 90. In Dattonpant vs. Vithalrao AIR 1975 SC 1111 the facts were as follows: the notice was served on the tenant on 21.11.1968 purporting to terminate the tenancy by the 8th December, 1968 treating the month of tenancy as commencing from the 9th day of a month and ending on the 8th day of the month following. It was held that the notice did not expire with the end of the month of tenancy. The end of the month of the tenancy was the 9th day and not the 8th day. Thus it was held that there was no valid and legal termination of the contractual tenancy.

Similarly, the Supreme Court of India in Maya Chanda & others v. Krishnan Lal Dey & Anr. 1969(II)SCWR 478 has decided that a notice which does not expire at the end of a year or a month of the tenancy will be invalid. The above decision does not specifically refer to sec. 106 but it is obvious that the Court was having sec. 106 in mind when it declared the notice invalid.

Realising that this method of interpretation was leading to injustice compelling the lessors to file fresh suits after several years have lapsed and after giving a fresh notice, the UP legislature had, by UP Act 24 of 1954, omitted the words “expiring with the end of a year of the tenancy” and the words “expiring with the end of a month of the tenancy”. It had also increased the period of notice of 15 days in the case of monthly tenancies to 30 days. This was w.e.f. 30.11.54.

After the said UP amendment, the first part of sec. 106 reads as follows:

“In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year terminable, on the part of a lessor or lessee, by six months’ notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by thirty days’ notice.”

The section as amended in UP and as proposed to be amended by us applies to notices by lessor or by the lessee. We, therefore, propose that in the case of leases from year to year the words “expiring with the end of a year of the tenancy” and in the case of leases from month to month, the words “expiring with the end of the month of the tenancy” be omitted.

We shall refer to two cases decided in UP after the 1954 Amendment. It was held that by virtue of the aforesaid amendment carried out in U.P., the notice issued by the plaintiff will not be invalidated even if the time falls short of the prescribed period, provided the suit is filed by the plaintiff after expiry of the period prescribed in the section. A short note on judgment of the Allahabad High Court in (1980) UPLT(NOC)11, in regard to the law as amended in U.P. reads as follows:-

“Section 106 (as amended by the UP Act) – plaintiff describing cause of action to be arising two days before the expiry of 30 days

time – relief claimed not invalidated as the suit was filed much after the date.”

We propose to amend such 106 of the Principal Act, so as to make similar notices valid. Again, it has been observed by the Commission that there exist contrary views of High Courts as to the commencement of the period mentioned in respect of the notice under section 106. The said contrary view is reflected in Gorakh Lal v. Maha Prasad Narain Singh, AIR 1964 All. 260 (FB). Similar contradictory views can also be noticed in other High Courts. The Supreme Court had decided in Mangilal v. Sugan Chand AIR 1965 SC 101 that the date of service of notice has to be excluded in computing the period. We propose putting this as need in legislative form in as much as, even after the Judgment of the Supreme Court in 1965, litigants have been filing suits without noticing this principle decided by the Supreme Court. We, therefore, propose to recommend amendment of section 106 providing that the period mentioned in respect of the notice shall be computed from the date of receipt of notice. In order to bring the aforesaid proposals in legislative form, a draft Bill is annexed with the Report, which incorporates amendments to sec. 106.

We further propose to give retrospectivity to the extent that the omission of these words ‘expiring with the end of a year of tenancy’ and ‘expiring with the end of a month of the tenancy’ shall be applicable to all notices issued before the date of commencement of the amending Act, where such suits or other legal proceedings have been filed by the lessor or by the lessee by the date of commencement of the amending Act, unless of course the suits have been filed before the date of commencement of the amending Act and the dismissal of the suit or proceeding has become final.

We also propose to substitute the words 'fifteen days' by 'sixty days' in the case of monthly tenancies, in respect of notices to be issued after the commencement of the amending Act. This will be a reasonable period of notice to either party. Fifteen days period appears to be too short.

We are also recommending that the proposed amendments be applied to pending proceedings.

We hope that, once these amendments are brought into force, unnecessary rounds of litigation will be avoided and justice will be done to the plaintiff who had issued the notice, be he the lessor or lessee.

We, therefore, recommend the amendments to the Transfer of Property Act, 1882 in the manner mentioned below. The draft Bill could be on the lines of the draft Bill annexed with the report.

We recommend accordingly.

(Justice M. Jaganadha Rao)
Chairman

(Dr. N.M. Ghatate)
Member

(T.K. Viswanathan)
Member-Secretary

Dated: 09.05.2002

THE TRANSFER OF PROPERTY (AMENDMENT) BILL 2002

A
BILL

further to amend the Transfer of Property Act, 1882

Short title

1. This Act may be called the Transfer of Property (Amendment) Act 2002.

Amendment of section 106

2. In the Transfer of Property Act 1882, (hereinafter referred to as the principal Act), section 106 shall be renumbered as subsection (1) thereof and, -

- (a) in subsection (1) as so renumbered, for the words, “ six month’s notice expiring with the end of a year of the tenancy and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen day’s notice expiring with the end of a month of the tenancy.”, the following shall be substituted, namely:-

“six month’s notice and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by sixty days notice.”.

- (b) after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:-

“ (2) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(3) The period mentioned in the notice under sub-section (1) shall commence from the date of receipt of notice.”

Transitory provisions

3. Notwithstanding anything contained in any contract between the lessor and the lessee, the provisions of section 106 of the principal Act, as amended by section 2, shall apply-

- (a) to all notices which are the subject matter of suits and proceedings pending at the commencement of this Act;
- (b) to all notices which have been issued before the commencement of this Act but where no suit or proceedings has been filed before the date of such commencement.

Provided that in the case of clauses (a) and (b), clause (a) of section 2 shall apply subject to the modification that for the words “sixty days” the words “fifteen days” had been substituted.