

**SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882 IN THE
LIGHT OF AMENDMENT & 181ST LAW COMMISSION REPORT**

NOTE: The contents of this paper are not published anywhere.

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1. Introduction

The Section 106 – “*Duration of certain leases in absence of written contract or local usage*” of the Transfer of Property Act, 1882 and its analysis will deal into methods of understanding the Section in terms of its scope, limitations and its interplay in the light of the areas expounded in the 181st Law Commission Report. After which the applicability, of Section 106 of the Transfer of Property Act, 1882 its Limitations will be discussed. The said analysis will help the reader understand the need for the change as proposed in the Law Report. Explanatory to the phrase’s “*lease of immovable property for agricultural or manufacturing purposes*” will establish the reasoning behind time gaps for notice periods as laid down in the Sub-section (1) of the Section 106 of the Transfer of Property Act, 1882.

The need to explore the concepts of Notice to quit and the Date of Expiry of Notice, as under Section 106 of the Transfer of Property Act, 1882 will help us understand the section better in the light of leading case law. The present study is a complete study about section 106 of the Act of 1882 and the 181st Law Commissions Report.

Further this paper will explore the Section 106 of the Transfer of Property Act, 1882 and amendments through latest, important case law, that changed the course of Section 106 of Transfer of Property Act, 1882.

2. Issues:

1. What is the scheme and Legislative History of Section 106 of the Transfer of Property Act (TP ACT), 1882? Whether the Section 106 is amended before the year 2009?
2. Whether there is any Presumption under the Section 106 of act if there is any - What is the Presumption of the Section 106 of TP ACT, 1882? What is the interplay of the amendment in the light of Section-106 of TP ACT, 1882? – Comment
 - A. Whether the Concept of Notice to Quit and Date of Expiry of Notice are one and the same?

3. LITERATURE REVIEW:

The Literature Review is the critical analysis of the information/data/records/statistics regarding the research study. In respect to the present study the literature review will indicate that how the conceptual and legal analysis has been given to the research questions. It shows that how research study is a broad and critical review of the research topic. In this study the Section 106 of the Transfer of Property Act, 1882 which is taken from the book 'Law of Transfer of Property,' which is written by Vepa P. Sarathi. In this paper various precedents have been considered for detailed study. This paper also includes the analysis of Law Commissions 181st Report. In this paper it includes information which is combined and explained from many other books written by great authors and also research articles which helped in completing the research study.

1. Vepa P. Sarathi, Law of Transfer of Property, Eastern Book Company (4th ed. 2000) -

This book is of the major sources of information collected for this research paper. The language used by the author was easy to refer to and understand without any complications. This book was used to understand the concept of the section 106 of (TP ACT) Transfer of Property Act, 1882.

2. Dr. Poonam Pradhan Saxena, Property Law, Lexis Nexis (3rd ed. 2017)

This book helped in understanding the concepts of Section 106 of TP ACT, 1882. This book also helped in examining in detail about concepts of Section 106 of TP ACT, 1882.

3. Durgesh Kumar Shukla, Duration of Lease u/s 106 of The Transfer of Property Act, 1882 -

This research article helped in getting the vision and main aim in order to achieve the object of writing this paper of '*Section 106 Of the Transfer of Property Act, 1882 In TheLight Of 181st Law Commission Report & Amendment*'. It also helped to understand the concept before and after the amendment to the respective section of the act. The research study has

also been written with reference to other articles to understand the amendment of the Section 106 of TP ACT, Presumptions under this section which are namely:

A. Sanjiva Row, Transfer of Property Act, 1882 – Synopsis (Detailed Study about the (S – 106).

B. David Richardson, - Section 106 Agreements: A Short Guide

3. Manupatra and SCC online have been referred to understand the various precedents wherein the scheme of the section along with its limitations are examined very effectively.

4. CHAPTERIZATION

INTRODUCTION

The concept of Section 106 of TP ACT, 1882 is discussed in various books in various ways. The present paper mainly concentrates on the Section 106 of Transfer of Property Act – TP ACT, 1882 which provides for the Duration of Certain Leases in absence of written contracts.

The Section 106 of the act prescribes a time period which provides the end date lease period. The end date is separate and it is decided on the purpose for which the land on lease is given. The purpose might be for any of them as mentioned under the Section 106 and nothing else.

The Section in general understanding provides that a land which leased for manufacturing and agricultural purposes is a year – year rent basis and the land which is leased for any other purpose will be month – month basis. The period or the date of expiry is the question involved and it became difficult for the court to decide as it is being interpreted by the parties to suit very conveniently because of which the other parties are suffering. So to avoid the Law Commission has suggested a change and has amended the law and there was amendment to the law which got approved by the Law Commission in the year 2009 and the same Law Commissions Report is analysed in this paper along with the respective Section.

It is further so that the – legal analysis, case law explanatory and the subjective interpretation of the topic mentioned above form the basis in explaining the topic in an all comprehensive manner.

EXPLANATION AND BRIEF OF ISSUES

Issue: Whether the Section 106 is amended before the year 2009? What is the scheme and Legislative History of Section 106 of the Transfer of Property Act (TP ACT), 1882?

The scope¹ of Section 106 of the Transfer of Property Act, 1882 (TP ACT) it's of the widest amplitude this section also establishes a rule for duration of leases which are not governed by the contract or a territorial/local law or usage, i.e. where the period of lease is not specified and thus then thereafter various amendments were proposed some were passed and approved whereas some are not. Section 106 of the Transfer of Property Act, 1882 lays down a general rule that a lease of immovable property for agricultural or manufacturing purpose shall terminate on (6) six months' of prior notice by either the lessor or lessee, while (15) fifteen days is the time period in the case of a lease of immovable property for a purpose other than agricultural one.

“Every notice under this section has to be in writing, signed by or on behalf of the person giving it; either sent by post or is delivered personally.”

This section has been amended and altered several times. By the amendment act of 1929, “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” has been substituted with “tendered or delivered personally to the party who is intended to be bound by it”.

“By local acts, the following two changes have been brought in the section. Firstly, ‘expiring with the end of a year of the tenancy’ and ‘expiring with the end of a month of the tenancy’ have been omitted. Secondly, the words ‘fifteen days’ and ‘notice’ have been substituted by the words ‘thirty days’ and ‘notice’.

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.

¹Durgesh Kumar Shukla, Duration of Lease u/s 106 of The Transfer of Property Act,1882,
<https://www.legalbites.in/duration-lease-transfer-property-act-1882/>

There are various controversies related to section 106 and all of this started with the wrong interpretation of the case of *Mangilal vs. SuganChand*². 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. Also In this case where the lessee plea was accepted regarding period when the tenancy or the date on which tenancy begins. This technicality has been directing to too much of an injustice to the plaintiff though no prejudice at all is caused to the defendant. These all are also of the case of *Mangilal vs. SuganChand*³. In *Dattonpant vs. Vithalrao*⁴ similar principle was applied which clearly led injustice to the lessor.

ANALYSIS OF THE 181ST LAW COMMISSIONS REPORT –(COMMENT).

Issue: Whether there is any Presumption under the Section 106 of act if there is any - What is the Presumption of the Section 106 of TP ACT, 1882? What is the interplay of the amendment in the light of Section-106 of TP ACT, 1882? – Comment

A. Whether the Concept of Notice to Quit and Date of Expiry of Notice are one and the same?

The Presumption under the Section 106 of Transfer of Property Act, 1882: The section authorizes that, in the absence of a contract or the local law or any usage to the contrary the lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year-year basis and a lease for any other purpose shall be deemed to be a lease from month-month. This presumption⁵ applies only, when there is no satisfactory evidence as to the period of the duration of the lease. It is open to the Court to draw necessary presumption from the mode of payment of rent that the tenancy was a monthly one this was held in the case of *A. Ram v. S.P. Sen*.⁶

²Mangilal Vs. Sugan Chand - AIR 1965 SC 101

³ Ibid

⁴Dattonpant vs. Vithal Rao - AIR 1975 SC 1111

⁵Durgesh Kumar Shukla, Duration of Lease u/s 106 of The Transfer of Property Act,1882,

<https://www.legalbites.in/duration-lease-transfer-property-act-1882/>

⁶A. Ram v. S.P. Sen, 1971 BLJR 684 (688)

Where a lease is for three years and was un-registered it is invalid and it will be a lease from month to month basis only. The court in the case of *Ram Karan Gupta v. III ADJ Moradabad*⁷ held the same.⁸

If the rent payable is yearly rent, the presumption may be drawn that the tenancy is an annual tenancy and such a tenancy can be created only by a registered recorded instrument. The madras high court in the case of *Periswamy v. Arunjadeswaraswami Temple*⁹, held that where there is such a case, when a registered instrument is not executed, does come within the Section of 106 and the tenancy can be determined by notice even if the lease was for a non-agricultural or non-manufacturing purpose.

The fact, that a tenant has been since long in possession may give rise to an inference that he is a tenant from year to year, or month to month, as the case may be. And where it is agreed that instead of paying rent, lessee will give his services, the presumption is that the lease is from month to month.

Concept of Notice to Quit and Date of Expiry of Notice¹⁰

Explanation of Concept of Notice to Quit:

As per section 106 of the Transfer of Property Act, 1882, a notice to quit must be issued by the lessor to the lessee in order to end or to terminate the lease agreement. The lease agreement can be terminated by issuing a notice prior of 15 days in cases of monthly tenancy which deals with 'any other purpose'. If the lease is for agricultural or manufacturing purpose, the notice to quit can be served by giving a prior notice of (6) six months as it is a yearly basis agreement.

There is a list of conditions which need to be fulfilled and procedure in which a notice is to be served. The following conditions are:

In the case of *Atal v. Kedar*, it was held that – “The notice must be candid and unequivocal. The notice terminating the tenancy must be with respect of the property leased, and not in respect of the proportion of the lease and if made it would be considered invalid.

⁷ Ram Karan Gupta v. III ADJ Moradabad, 2006 SCC OnLine (All) 501 or (2006) 63 ALR 758 (All)

⁸ Ibid – while deciding the case the Hon'ble Supreme Court had also clarified by referring to *Ram Kumar Das v. Jagadish Chandra Deb Dhabal Deb and Ors.* – AIR 1952 SC 23 that “A lease would be presumed to be one from month to month under Section 106 of the Act notwithstanding the reservation of a yearly rent if it is not for an agricultural or manufacturing purpose but yearly rent is reserved and it is made by an oral agreement and delivery of possession and by registered deed” p.759

⁹ Periswamy v. Arunjadeswaraswami Temple, AIR 1967 Mad 257

¹⁰Vepa P. Sarathi, Law of Transfer of Property, Eastern Book Company (4th ed. 2000), pp. 319 - 321

“It should be signed by or on behalf of the person giving it. Similarly, if the notice of the lessor is signed by his attorney or by his sons after his death is considered to be valid.”

The notice must indicate with certainty the intention on the part of the person giving it to terminate the existing tenancy.

Notice to quit may be served personally or by post. Although the publication of a notice in a local new-paper or publishing the notice in any other public domain, like telegraph is not a valid notice. In the same way in case of a corporation, the notice must be sent to an authorized certified officer. A registered notice is always be presumed to be serving of the notice.

Affixing the notice to the property is the last alternative. The only thing which has to be taken care of is that the notice should be regarding the whole of the property if not in proportion the notice would be ineffective.

Explanation of Concept Date of Expiry of Notice¹¹

This section clearly provides for - that if the lease is from year to year and a notice will expire with the end of the year of the tenancy. And, if the lease is from month to month, a notice will expire with the end of the month of the tenancy. The only thing which has to be taken care of is that the time should not be less than the recommended or approved or prescribed time in the statutory provision although the time can be exceeded.

The notice should expire at the end of the year or the month otherwise it would be invalid as decided in the very case of *Maya Chanda & others v. Krishnan Lal Dey & Anr*¹².

Therefore, The Concept of Notice to Quit and Date of Expiry of Notice are both different and the Concept of Date of Expiry of Notice suggests that a contract of Tenancy expires after a certain period and it is also to be noted that it is a month-month expiry or the year-year expiry. The concept of the Notice to Quit is a concept which helps a person to quit from the tenancy by giving a notice prior to the end of tenancy period as mentioned or prescribed by law. Hence the concepts differ from each other.

In the case of *Puwada Venkateswara v. C V Ramana*¹³ - The defendant – appellant had taken the house on rent for a period of five years. It was for the purpose to run as anlodging house. After the lease has expired, according to the landlord respondent the appellant had continued to hold over as a tenant on the same terms. The respondent filed a petition in court of law contending that under Section 10 of Andhra Pradesh Buildings act

¹¹Vepa P. Sarathi, Law of Transfer of Property, Eastern Book Company (4th ed. 2000), pp. 319 - 321

¹² *Maya Chanda & others v. Krishnan Lal Dey & Anr.*, 1969(II)SsWR 478

¹³ *Puwada Venkateswara v. C V Ramana*, (1976) 2 SCC 409

before the rent controller board where his plea was rejected. The High Court has also rejected his plea in the revision petition.

In appeal to the Supreme Court the appellant contended that under section 106 of the act the notice was not served on him. dismissing the appeal, the Hon'ble Supreme Court following the decision in *Ravel & Co. v. K C Ramachandran*¹⁴ held that the act provides for the purpose of eviction of tenants it is independent and no recourse to the provisions of the section 106 was necessary.

Explanation of Section 106 of the Transfer of Property Act, 1882-

Even before we proceed to understand the section, clause after the other- it is important that we understand and have a comprehensive overview of the said Section 106, of the Transfer of Property Act, 1882. (As on date)

The importance of Agreement and assent for continuance of lease was discussed in the case of *Shanti Prasad Devi v. Shankar Mahto*¹⁵.

Under the section 106 of the act the notice will not become invalid as merely something was added to it. The same was held in the case of *Mangilal v. Sujan Chand*¹⁶.

The Section 106 of the Transfer of Property Act, 1882 also clarifies that the lease for the manufacturing purposes, which was not from year-year, will not need six- months' notice for termination. It will fall in the second part of the Section 106 of the Transfer of Property Act, 1882 requiring fifteen-days' notice for termination. A lease from month-month or a lease other than a lease from year-year is terminable by fifteen-days' notice - was held in the case of the *Prasanna v. S. Nagalaxmi*¹⁷.

¹⁴ Ravel & Co. v. K C Ramachandran, (1974) 1 SCC 424

¹⁵ Shanti Prasad Devi v. Shankar Mahto, AIR 2005 SC 2905 (2908)

¹⁶ Mangilal v. Sujan Chand, AIR 1965 SCC 101

¹⁷ Prasanna v. S. Nagalaxmi - AIR 2010 Kar 66.

Section 106 - Duration of certain leases in absence of written contract or local usage¹⁸

“¹⁹[106.Duration of certain leases in absence of written contract or local usage

(1)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 either 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 less or or lessee, by fifteen days' notice”.

(2) “Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice”.

(3)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.

(4)Every notice under sub-section (1) 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.]

ANALYSING THE REPORT AND COMMENT ON IT IN THE LIGHT OF THE AREAS EXPOUNDED IN THE - 181st LAW COMMISSION REPORT, DATED: 09.05.2009.

¹⁸ Transfer of Property Act, 1882, as amended by Act No. 3 of (2003).

¹⁹For the amendment of the Section 106 of the Transfer of Property Act, 1882 See - *Substituted by Act 3 2003, section 2, for Section - "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, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either less or or lessee, by six months' 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 year to year, terminable, on the part of either less or or lessee, by six months' 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 less or 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.”

Understanding the Section and its interplay in the light of the areas expounded in the 181st Law Commission Report, dated: 09.05.2009²⁰:-

1. The 181st Law Commission Report (hereinafter Law Report) purports to show that the essence of it is to eliminate the litigation that arises due to compulsive interpretation that arises out of certain words, phrases-when read together in the Section 106 of the Transfer of Property Act,1882 (hereinafter TP Act,1882)

2. The Section reads as follows – erstwhile:

“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.”²¹

3. The above extract of the Section as mentioned in the Law Report, shows that the pleas in the defences are taken based on the underlying defect in the Section, such a defect lies well within the underlined words of the extract.

4. However, all the defence pleas were based on the then Apex court ruling in **Mangilal V. Sughan Chand**²². The decision came up with a ruling that the day on which the notice was served has to be excluded from the period of fifteen days of notice, or from the six months’ notice period whichever being appropriate on a case to case basis.

5. The said decision of the Supreme Court was overruled in the year 1979 by – **V. Dhanapal Chettiar V. Yesodai Ammal**²³ in which the Appeal before Supreme Court was on the ground Whether a notice under Section 106 of the TP Act, 1882 was necessary to be given. The

²⁰<http://lawcommissionofindia.nic.in/reports/181rpt.pdf>

²¹ Ibid – pp. 4-5

²² Mangilal Vs. Sughan Chand AIR 1965 SC 101

²³ V. Dhanapal Chettiar Vs. Yesodai Ammal AIR 1979 SC 1745.

Apex court ruled that *where contract is put to an end it has to be terminated by notice to quit as mentioned in S.106 but whereas a lease of immovable property determines in any one of modes prescribed under S.111 then the Contract of lease comes to an end the Landlord can exercise his right of re-entry.*

6. From the above two judgments it is clear that time and again the Parties to the lease when before a Court of law have received similar responses as in *Mangilal Vs. Sugan Chand*, however the State of UP has been successful in eradicating, the said problem by coming up with an amendment under the UP Act 24 of 1954. This Law Report has identified the need for change to end the hardship of the litigants.
7. In short, the repetitive reference to *Mangilal Vs. Sugan Chand*²⁴; is to implore that the defects in keeping the date of service of notice out of the computation period. The interpretation was given by the Hon'ble Judge in the amendment report was regard to the expiring period of the tenancy. Under the section the controversy arose in "expiring with the end of a year of the tenancy" and it has become impossible in cases of month-month tenancy.
8. Therefore, the Hon'ble court in *Maya Chanda & others v. Krishnan Lal Dey & Anr.*²⁵ 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.
9. The Law Commission Report also suggests for the same which has been decided by the Ho'ble Supreme Court *Mangilal v. Sugan Chand*²⁶ that the date of service of notice has to be excluded in the computing the period.

²⁴ Supra note 22

²⁵ *Maya Chanda & others v. Krishnan Lal Dey & Anr.* 1969 (II) SC WR 478

²⁶ Supra note 22

5. CONCLUSION & SUGGESTIONS

The concept of Section 106 of the Transfer Property Act, 1882 is under the Concept of Leases of Immoveable Property. It is the law which has to be followed as per the above - mentioned criteria when a land or the property is being leased. This concept requires lot of command over the subject of law and the person to lease the land on rent must be very well versed with this section of law. To lease a property on rent and not for agricultural or manufacturing purposes the lease period is different and for the two purposes it is different. The present study includes the analysis of the 181st Law Commissions Report in which the Law Commission has brought the change in the Section 106 of the above said Act. In this study certain questions were raised regarding the Section 106 of TP ACT , 1882 and were answered along with opinion of researcher on the 181st Law Commissions Report.

To conclude under the Section 106 of Transfer of Property Act (TP ACT), 1882 the Concept is explained in detail and the very essential part of this section is in regard to when the lease period comes to end and when the prior notice has to be given. It is explained in depth under the Section 106 of Transfer of Property Act (TP ACT), 1882 in Law of Transfer of Property written by Vepa P. Sarathi. The concept has also been supported by the case laws related to the topic. The research methodology adopted has also been explained in detail and each topic has been provided with references for the purpose of understanding.

6. LIST OF REFERENCES

LIST OF CASES

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2. Dattohpant vs. Vithal Rao - AIR 1975 SC 1111
3. A. Ram v. S.P. Sen, 1971 BLJR 684 (688)
4. Ram Karan Gupta v. III ADJ Moradabad, 2006 SCC OnLine (All) 501 or (2006) 63 ALR 758 (All)
5. Ram Kumar Das v. Jagadish Chandra Deb Dhabal Deb and Ors. – AIR 1952 SC 23
6. Periswamy v. Arunjadeswaraswami Temple, AIR 1967 Mad 257
7. Maya Chanda & others v. Krishnan Lal Dey & Anr., 1969 (II) SsWR 478
8. Puwada Venkateswara v. C V Ramana, (1976) 2 SCC 409
9. Ravel & Co. v. K C Ramachandran, (1974) 1 SCC 424
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