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**14.34 hrs.**

**Title:** Discussion on the Transfer of Property (Amendment) Bill, 2002. (Bill passed)

MR. CHAIRMAN : The House shall now take up Item No. 15 of the Agenda.

THE MINISTER OF LAW AND JUSTICE (SHRI K. JANA KRISHNAMURTHY): Sir, I beg to move:

"That the Bill further to amend the Transfer of Property Act, 1882, be taken into consideration."

It is a very small amendment. This amendment will go a long way in putting an end to the confusion with regard to the notice of termination of leases. There are two varieties of leases, yearly lease and monthly lease. Yearly lease means six months' time is needed for termination notice and if it is a monthly lease, a 15 days' notice has to be given.

The whole question that has arisen, throughout all the courts in the country, has been from which the date the notice should be reckoned. Different interpretations have been given. So many cases have come up on that basis. The Supreme Court also has given a verdict. The Law Commission has also made a recommendation that there should be some certainty and fixity with regard to the date from which this six months' period or 15 days' period will have to be recorded.

We have brought amendment to section 106 of the Transfer of Property Act just to give a particular time from which the date will have to be fixed. In the (Amendment) Bill that I am now moving, clause 2 reads as;

"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. "

There are literally thousands of cases pending throughout the country only on this question. What happens is that if it falls short on a day, then the case goes. Then, immediately that is dismissed. A fresh notice is issued. Again another suit is filed. In this way, thousands of cases have been pending. Now, the fixation of the period will solve this. When this amendment comes about, I am quite sure that all these cases will get disposed of properly and there will be no confusion. Since this matter relates to cases, we are also giving retrospective effect to it so that it will also bind the existing cases. It will enable the client. It will not, in any manner, affect the lessee. It will only enable the lessor. It will stop the confusion. This is the amendment. I hope the House will extend its full co-operation in supporting this Bill.

MR. CHAIRMAN (SHRI P.H. PANDIAN): Motion moved:

"That the Bill further to amend the Transfer of Property Act, 1882, be taken into consideration. "

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Sir, I support this Bill as it is a timely one. From 1965 onwards, the Supreme Court and other courts have commented upon this particular provision and interpreted it in different ways. Finally, it was settled in the judgement of the Supreme Court. But at the same time, I would like to take this opportunity to draw the attention of the hon. Law Minister that the Law Ministry has worked with some speed. Immediately on submission of the 181<sup>st</sup> Report of the Law Commission, the hon. Minister has piloted this Bill. The hon. Minister has come forward with this Bill in a very fast way. If the same fastness is applied to all the judgements, then a lot of problems can be solved. This is now coming up as a conflict between the Judiciary and the Legislature. Even many Constitutional provisions were made inapplicable or *ultra vires* or they were struck down, but all those provisions remain even now in the Statute Book. That should be considered by the Law Commission. It should find out a way whether the judgement can be applied as it is or, as the Legislature feels, the present statute is to be applied by annulling the judgement. This aspect should be considered by the Law Commission and the Law Ministry. When there are cases coming before the High Courts and the Supreme Court, they want to assert their own judgements rather than the statute which is at present without any amendment in force. Therefore, this conflict between the Executive versus Legislature and the Legislature versus Judiciary should be annulled with.

With these submissions, I would like to appreciate the Law Ministry for having taken this step. The Law Minister has come forward to solve the problems which are very much in the rural areas. Section 106 of the Transfer of Property

Act is useful only in the mofussil areas. Many statutes have come up before the State Legislatures. By way of Rent Control Act, Agricultural Rent Control Act and so many other enactments, these problems were solved by giving proper notice. A statutory notice was provided in the Acts passed by the State Legislatures. But at the same time, section 106 of the Transfer of Property Act is applicable where there is no building or where there is no superstructure. It is applicable to the vacant site or to the agricultural land or to manufacturing. Manufacturing is very important now. When this enactment had come in 1882, at that time, manufacturing was done in a small way. But now it is done in a bigger way. A lot of investments are made. If there is a contradictory agreement made or there is no mention about the time limit in the agreement between the lessor and the lessee, then this provision will be enforced by the lessor and the lessee will be evicted very quickly.

Therefore, that should be considered and that particular word, "manufacturing" has to be interpreted in a much more general way so that the manufacturing industry is not affected by this new provision.

I am happy that the hon. Minister of Law and Justice has taken into consideration the pending cases. Plenty of pending cases, as the hon. Minister has observed, are going to be settled simply by this enactment.

Under section 106 of the original Act, the provision in the last line: "expiring with the end of a month of tenancy" is now deleted. At the same time, the provision for 15 days' notice has been made broader. The 15 days' time starts from the date of receipt of the notice. This gives the right to the lessor. At the same time the provision for sending and receiving notices is given in a broader way, which could be very easily misused by the lessor. Now, it says:

"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."

I think, this is a very broad one. There is no registered notice mentioned here. Therefore, they can very easily send the notice under certificate of posting or they could say that they had pasted the notice in a conspicuous place or that they had given it to a servant who had just been removed or to a family member who had come just for dinner. So, there should be some focussing that it should be a registered notice. In the case of registered post, an acknowledgement is also given. Apart from the Postal Department, there are also private couriers who get the signatures and give acknowledgements. The limitation starts from the time of receipt of the notice, which is now made a focussing point. Therefore, the provision that was already in the principal Act should be given much more modernity so that it could be accepted from that date onwards or from that minute onwards the limitation starts.

Along with these observations, I would like to suggest that whenever this type of amendments are brought forward, the new developments should also be included. Now, e-commerce and electronic communications have come up and information technology is improving. So, these modes of sending notices could also be included so that the cost of sending the notices could be reduced.

With these words, I support this Bill.

MR. CHAIRMAN : Mr. Law Minister, please explain to the House what would happen to the judgement delivered in *Mangilal vs. Sukan Chand*, AIR 1965? For the last 37 years, this judgement has been in force. What would happen to the pending suits? Would the principle of *res judicata* apply? Can they institute a suit again?

SHRI K. JANA KRISHNAMURTHY: Sir, later on, there has been a Supreme Court judgement, AIR 1965 SC 101, 104. In this case, the Supreme Court has dealt with this particular subject. Once a Supreme Court judgement comes in, all other earlier judgements automatically stand superseded. In the Supreme Court judgement, it has been held that while computing the period of notice the day on which the notice is served is required to be excluded. That was the Supreme Court judgement. They are giving a *quitus*. In the lower court, they did not give a *quitus* because it was not known to the lower court advocates and clients. Still the confusion prevails. In order to see that this confusion is removed once and for all, this present amendment is being brought about. I do not think, the present amendment would in any way come in the way of either this judgement or that judgement.

It is because the Parliament makes the position very clear that the period will have to be reckoned with only from ...(*Interruptions*)

MR. CHAIRMAN : Kindly explain to the House what about the fate of the dismissed suits because the policy of *res judicata* will prevent filing a fresh suit.

...(Interruptions)

SHRI K. JANA KRISHNAMURTHI: If it is being dismissed only on the question of the date, then, naturally, he has got that opportunity to send a fresh notice and then start a fresh suit. If it has been decided on merits, *res judicata* applies, but if the court gives a finding that it had to be only on the basis of the notice, this comes to his rescue. ...*(Interruptions)*

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): This is not a correct information. ...*(Interruptions)*

MR. CHAIRMAN: I just wanted the hon. Minister to explain the position.

...(Interruptions)

SHRI VARKALA RADHAKRISHNAN : If the case is dismissed, he has to file a fresh suit. ...*(Interruptions)*

SHRI K. JANA KRISHNAMURTHI: The hon. Chairman's question was not that. ...*(Interruptions)*

MR. CHAIRMAN: Let there not be a debate on it.

...(Interruptions)

SHRI K. JANA KRISHNAMURTHI: That is why, I said that it is not a court. It is Lok Sabha.

**डॉ. रघुवंश प्रसाद सिंह (वैशाली) :** सभापति महोदय, आपने बहुत ही बढ़िया परिपाटी शुरू की है कि जो विधेयक आया, उसमें आशंका हुई, चूंकि आप कानूनविद हैं, इसलिए असली पाइंट पर आपने सवाल उठा दिया कि सम्पत्ति अंतरण विधेयक, 1882 आया है, पुराने कानून की धारा 106 में संशोधन माननीय मंत्री जी ने लाने का कट किया है और दावा किया है कि मांगीलाल बनाम सुगन चन्द मामले में जो सुप्रीम कोर्ट का फैसला 1965 में हुआ और विधि आयोग की 181वीं रिपोर्ट के आधार पर ये विधेयक लाये हैं कि वॉ वाला जो पट्टा होता था, उसका छः महीने के अन्दर नोटिस जारी करके और महीने वाले को 15 दिनों के नोटिस पर उसे बेदखल किया जा सकता था, हटाया जा सकता था। लेकिन नोटिस ही तामील नहीं हो और 15 दिन बीत जाते थे या छः महीने बीत जाते थे, क्योंकि नोटिस तामील होने की प्रक्रिया हमारे यहां बहुत जटिल है। इन्होंने कहा है कि नोटिस अपने हस्ताक्षर से भेजेगा, वह प्राप्त करेगा अथवा उसका कोई आदमी प्राप्त करेगा या उसका नौकर प्राप्त करेगा और कोई नहीं मिलेगा तो लौट आयेगा, जो नोटिस तामील करने वाला गया। फिर उसकी अवधि का क्या होगा, इसका सरकार ने प्रावधान नहीं किया, इसे भी स्पष्ट करें।

दूसरे इन्होंने कहा कि भूतलक्षी प्रभाव से हम इसे लागू करेंगे। अगर भूतलक्षी प्रभाव से लागू होता तो जो मामले अभी चल रहे हैं, उसमें यह कानून फिट हो जायेगा, लेकिन जो बहुत से मामले किन्हीं तकनीकी कारणों से खारिज हो गये, उसके लिए इस विधेयक में कोई प्रावधान नहीं है। इसमें फिर कन्फ्यूजन होगा, फिर मामला टलेगा और सरकार ने जो चिन्ता व्यक्त की है कि चूंकि इससे वादोंकी संख्या बढ़ गई थी, मामले बढ़ गये थे और बहुत से मामले तकनीकी आधार पर खारिज कर दिये गये। माननीय मंत्री जी ने सूचना दी है कि विधि आयोग ने इस धारा से यह निर्का निकाला कि अनेक वाद इस विधि की स्थिति की अनभिज्ञता से फाइल किये गये हैं और ये वाद केवल इसी तकनीकी आधार पर खारिज कर दिये गये हैं। जो वाद खारिज कर दिये गये, उनका क्या होगा, इस मामले में यह विधेयक चुप है।

सरकार की जो मूल चिन्ता है कि मामले बहुत बढ़ गये थे, उससे राहत मिलेगी, इस कानून के बन जाने से मामलों की संख्या में कमी आयेगी। नोटिस तामिलात की अवधि को हटा दिया गया है, नोटिस मिलने के बाद, छः महीने अथवा 15 दिन मानी गई है तो वह ठीक है, लेकिन जो वाद खारिज हो गये, उनका क्या होगा? इसमें नोटिस तामील होने में कठिनाइयां आयेंगी और नोटिस तामील नहीं होगा तो तामील करने वाला लिख देगा कि कोई नहीं मिला तो उन मामलों का क्या होगा? इन दोनों मामलों पर सरकार को स्थिति साफ करनी चाहिए, नहीं तो धन का अन्तरण विधेयक है, धन के अन्तरण में कितना विवाद होता है, धन के लिए सारे झगड़े होते हैं, इन मामलों से कोर्ट कचहरी भरी रहती हैं। इसमें पट्टेदारी का है, टैम्परेरी ट्रांसफर ऑफ प्रापर्टी का है कि कोई जमीन लेकर उस पर खेती करे,

अथवा उसमें कोई मैनुफैक्चरिंग करे, कोई लीज पर लेता है, लीज छुड़ाने के लिए पट्टेदार अथवा पट्टाकर्ता दोनों को कहा गया है कि यह चाहें तो छुड़ा सकते हैं, वह चाहें तो छोड़ सकते हैं, लेकिन उसके लिए नोटिस देना होगा। नोटिस में जो तकनीकी पेंच है, उसका समाधान होगा। लेकिन इस कानून से जो तकनीकी पेंच

पैदा होगा, उसका क्या होगा, इसे सरकार साफ करे।

SHRI SURESH KURUP (KOTTAYAM): Mr. Chairman, Sir, the purpose of the provision of Section 106 in the T.P. Act is that the relationship of the lessor and the lessee should be terminated before the lessor sues for possession. He has no right of entry before the tenancy is disrupted. Further, an opportunity should be given to the tenant; sufficient time should be given to the tenant by this notice before he is asked to vacate the premises. Without a notice under Section 106, the tenant should not be asked to vacate and for that too, 15 clear days' notice should be there.

The hon. Supreme Court, in a decision given in 1965 in *Mangilal vs. Sugan Chand* made it clear that when computing the 15 days, the day on which the notice is served should be excluded and their Lordship also mentioned that this Section is meant to benefit the lessee so that maximum benefit should be given to the lessee in interpreting this and they deliberately interpreted it in such a way that maximum benefit should be given to the lessee.

Of course, I welcome this amendment. This will be a small step in preventing multiplicity of litigation in various courts. But I would like to point out that a Section which is beneficial to the tenant, which was interpreted by the Supreme Court to benefit the tenant, is being amended. In fact, it is going to benefit the landlord. I would like to make that point.

Of course, the Law Commission has strongly recommended that this multiplicity of litigation should be put to an end and they should be clarified in such a way that anything regarding this notice should be settled. But my point is that since the Supreme Court has interpreted deliberately that this is the settled position that this Section should be interpreted in this way, by amending this, we are going to favour the landlord.

MR. CHAIRMAN : It is after 37 years.

The hon. Minister to reply now.

SHRI K. JANA KRISHNAMURTHY: Sir, I would like to clarify the doubts raised by one of our hon. Members. If the amendment is properly read, the confusion need not be there. In amendment 2, it says : "shall commence from the date of receipt of the notice" and not sending of the notice. When you say "from the date of receipt of the notice", it is for the lessor who tries to terminate the lessee and he is required to send a notice and show that the notice has been served on that particular date. So, doubts like whether a person is there to receive or not, whether it reaches him or not, cannot come because the amendment clearly says it is from the date of receipt of the notice. Unless there is proof that there is a receipt of the notice, the court will not accept that a notice has been sent.

So, under these circumstances, the apprehensions raised by the hon. Members may not hold good inasmuch as the amendment specifies the date and that specified date is the date of receipt of this notice, when it was served.

The second thing is that it is not in favour of any landlord. This amendment has not been brought here either to favour the landlord or to disfavour the tenant. The simple question is when the lease has been entered into, whether it is a yearly lease or it is a monthly lease - yearly lease requires six months' notice and monthly lease requires 15 days' notice - whether it can be terminated and whether it is properly terminated, for which the notice is to be given. All the merits of the case etc. will be looked into by the court. The court for this purpose only sees whether the notice has been sent, whether it has been properly sent and from that time, 15 days or six months are to be calculated, etc. So, it does not go to favour or disfavour either the tenant or the lessee.

With regard to some comments on the courts that the Supreme Court or High Court is coming in conflict with the Executive etc., I think, that is not the matter to be discussed in this context today for the simple reason that the court is supreme in its own way. It has got the right to interpret its own law and if, after the interpretation by the High Court or the Supreme Court in a particular branch of law, the Parliament in its wisdom feels that an amendment should be brought, we can always bring an amendment. If it is in consonance with the law and the constitutional law, no court will set it aside. It has always upheld it.

I think, with these explanations, I seek the permission of this House to fully extend their total co-operation for this Amendment Bill so that these amendments to the Transfer of Property Act can be passed.

MR. CHAIRMAN : The question is:

"That the Bill further to amend the Transfer of Property Act, 1882, be taken into consideration. "

*The motion was adopted.*

MR. CHAIRMAN: The House will now take up clause-by-clause consideration of the Bill.

The question is:

"That clauses 2 and 3 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 and 3 were added to the Bill.*

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

SHRI K. JANA KRISHNAMURTHY: Sir, I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

*The motion was adopted.*

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