

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS
DEPARTMENT MUZAFFARABAD

Dated: 9th February, 2016

No. LD/Legis-Act/162-74/2016. The following Act of Assembly received the assent of the President on the 8th day of February 2016, is hereby published for general information.

(ACT XIV OF 2016)

An

Act

to bring the law relating to pre-emption in conformity with the Injunctions of Islam

WHEREAS it is expedient to modify the existing law relating to pre-emption so as to bring it in conformity with the Injunctions of Islam as set out in the Holy Quran and Sunnah;

It is hereby enacted as follows:-

1. Short title, Extent and Commencement.- (1) This Act may be called the Azad Jammu and Kashmir Pre-emption Act, 2016.

(2) It extends to the whole of Azad Jammu & Kashmir.

(3) It shall come into force at once and shall be deemed to have taken effect from 20.07.2015.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(a) "Government" means the Azad Government of the state of Jammu and Kashmir;

(b) "Immovable property" (sae je slatle) includes land, building, house, shop, water tank and well;

(c) "Pre-emptor" (@44) means a person who has the right of pre-emption;

(d) "Right of pre-emption" (~& @ =) means a right to acquire by purchase an immovable property in preference to other persons by reason of such right;

(e) "Sale" (@#) means permanent transfer of the ownership of an immovable property in exchange for a valuable consideration and includes transfer of an immovable property by way of hiba-bill- iwaz (2s!b ~») or hiba

bil-shart-ul-iwaz (U2 521! LANL ~8), but does not include;

(i) transfer of an immovable property through inheritance or will or gift, other than hiba bill-iwaz or hiba bil-shart-al-iwaz;

(ii) a sale in execution of a decree for money or of an order of Civil, Criminal, Revenue or any other Court or a Revenue Officer or any local authority;

(iii) the creation of an occupancy tenancy by a landlord whether for consideration or otherwise;

(iv) exchange of agricultural lands for better management; and

(v) transfer of an immovable property for a consideration other than valuable consideration, such as the transfer of an immovable property by way of dower or composition in a murder or hurt case.

Interpretation.- In the interpretation and the application of the provisions of this Act, the Court shall seek guidance from the Holy-Quran and Sunnah.

Act to override other laws.-The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

Right of pre-emption.- (1) The right of pre-emption shall arise in case of sale of immovable property.

(2) Nothing contained in sub-section (1) shall prevent a Court from holding that an alienation purporting to be other than sale is in fact a sale.

Person in whom the right of pre-emption vests;- (1) The right of pre-emption shall vest;-

- (a) firstly, in Shafi- Sharik (Soo4 a5) ;
- (b) secondly, in Shafi-khalit (215 4) ; and
- (c) thirdly, in Shafi-Jar (> e844).

Explanations.-

(i) "Shafi Sharik" means a person who is a co-owner in the corpus of the undivided immovable property sold with other person or persons;

(ii) "Shafi khalit" means a participator in the special rights attached to the immovable property sold, such as right of passage (4§ Gs) , right of passage of water or right of irrigation;

(iii) "Shafi Jar" means person who has a right of pre-emption because of owning an immovable property adjacent to the immovable property sold.

(2) Notwithstanding anything contained in sub-section (1), the right of preemption shall be exercisable only in case of zaroorat (4552) or to avoid zarar (1).

Priorities in the right _of pre-emption.- (1) Where all the classes of Pre-emptors referred to in Section 6 are the claimants, the first class shall exclude the second and the second shall exclude the third.

(2) Where there are more than one participator in the special right attached to the immovable property sold, the person having special rights shall have precedence over a person having general rights.

Illustration

(D A garden is irrigated by a watercourse which opens from a small canal. If this garden is sold, the person having right of irrigation from watercourse shall have precedence over a person having right of irrigation from the canal. But if such garden is irrigated from the small canal, the person having right of irrigation from watercourse as well as the person having right of irrigation from the canal both shall have right of pre-emption.

dD Where there are more than one pre-emptor and one has right of passage and the other has right of passage of water attached to the immovable property sold, the person having right of passage shall have precedence over the person having right of passage of water.

(iD) A participator in the special rights having his property on the basis of which he claims to be the pre-emptor nearer to the immovable property sold shall have precedence over the pre-emptor having such property not so nearer to the immovable property sold.

Joint right of pre-emption how exercised.- Where a right of pre-emption vests in any class or group of persons, the right may be not exercised by all the members of such class or group jointly, and if not exercise by them all jointly, by any two or more of them jointly, and if not exercised by any two or more of them jointly, by them severally.

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Method of distribution of the property where more than one person equally entitled.- Where more than one person are found by the Court to be equally entitled to the right of pre-emption, the property shall be distributed among them in equal shares.

Illustration

'A' has one half share in a house, 'B' has one third and 'C' has one sixth share in such house. If 'A' sells his one half share, the other two partners, namely 'B' and 'C' shall have equal right of pre-emption in one half of the house and this one half shall be distributed between 'B' and 'C' in equal shares and not according to their respective shares in the house.

Withdrawal of claim.- Where there are more than one pre-emptors having sued jointly or severally and any of them withdraws his claim before the decision of the Court, the remaining pre-emptors shall be entitled to the whole property:

Provided that the claim of the remaining pre-emptors was originally made for the whole property.

Sale of appurtenances of land.- Where only trees or a structure of a building is sold without land, no right of pre-emption shall exist in such trees or the structure of a building, but where land is sold with trees and buildings on it, the trees and buildings shall be deemed to be included in the land for the purposes of the right of pre-emption.

Right to revoke sale.- Where vendor has stipulated in the contract of sale that it is subject to revocation by him within the period, not exceeding sixty days, specified in such contract, the right of pre-emption shall not be exercised until such period has expired:

Provided that option of defect in, or inspection of the property or the stipulation as to the vendee's right to revoke the contract of sale shall not be a bar to the exercise of the right of pre-emption.

Demands of pre-emption.- (1) The right of pre-emption of a person shall be extinguished unless such person makes demands

of pre-emption in the following act, namely:-
(a) talb-i-muwathibat (G4) 5< Wb);

(b) talb-i-ishhad (24-5) Gb) ;and

(c) talb-i-khusumat ("4 s23 Wb);
Explanation.

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(i) "Talbi-i-muwathibat" means immediate demand by a pre-emptor in the sitting or meeting (majlis) (o4=«) in which he has come to know of the sale declaring his intention to exercise the right of pre-emption.

Note: Any word indicative of intention to exercise the right of pre-emption are sufficient.

(ii) "Talbi-i-ishhad" (-45) lb) means demand by establishing evidence, as laid down in fiqh.

(iii) "Talbi-i-khusumat" («52% cls), means demand by filing a suit.

(2) When the fact of sale comes within the knowledge of a pre-emptor through any source, he shall make talbi-i-muwathibat.

(3) Where a pre-emptor has made talbi-i-muwathibat under sub-section (2), he shall immediate thereafter as soon as possible but not later than two weeks from the date of notice under Section 31, or of knowledge which ever may be earlier make talbi-i-ishhad by sending a notice in writing, attested by two truthful witnesses, under registered cover acknowledgement due to the vendee, confirming his intention to exercise the right of pre-emption:

Provided that in areas where due to lack of post office facilities, it is not possible for the pre-emptor to give registered notice, he may make talbi-i-ishhad in the presence of two truthful witnesses.

(4) Where a pre-emptor has satisfied the requirements of talbi-i-muwathibat under sub-section (2) and talbi-i-ishhad under sub-section (3), he shall make talbi-ikhusumat in the Court of competent jurisdiction to enforce his right of pre-emption.

Demand by the guardian or agent.- Where a person is unable to make demands under Section 13, his guardian or agent may

make the required demands on his behalf.

Waiver of the right of pre-emption.- The right of pre-emption shall be deemed to have been waived if the pre-emptor has

acquiesced in the sale or has done any other act of omission or commission which amounts to waiver of the right of pre-emption.

Death of pre-emptor.- Where a pre-emptor has died after making any of the demands under Section 13, his right of pre-emption shall stand transferred to his legal heirs.

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Abatement of right of pre-emption.- (1) Where a pre-emptor, before the decree of a Court, alienates his property on the basis of which he claims the right of pre-emption, such right of pre-emption shall abate.

(2) An alienee of the property under sub-section (1) shall also not be entitled to the right of pre-emption.

Exercise of the right of pre-emption by a Muslim and a non-Muslim against each other.- A Muslim and a non-Muslim may exercise the right of pre-emption against each other.

Right of pre-emption not transferable _and_ indivisible.- (1) Save as provided in Section 16, the right of pre-emption shall not be transferable and indivisible.

(2) The claim for pre-emption shall be made on the whole property pre-emptible.

Where the pre-emptor_ and vendee equally entitled.- Where the pre-emptor and the vendee fall in the same class of pre-emptors and have equal right of pre-emption, the property shall be shared by them equally.

Improvements made by the vendee.- Where a vendee has made improvements in the immovable property before talb-i-ishhad is made by the pre-emptor under sub-section (3) of Section 13 the vendee shall be entitled to the cost of such improvements.

Improvement made in the status of the vendee defendant after institution of the suit.- Any improvement, made in the status of a vendee defendant after the institution of suit for pre-emption shall not affect the right of pre-emptor/plaintiff.

No right of pre-emption in respect of certain properties.- (1)

No right of pre-emption shall exist in respect of sale of or purchase of,-

(a) waqf property or property used for charitable, religious or public purpose; or

(b) a property owned by the Government or a local authority; and

(c) a property used for a factory or industrial undertaking.

(2) A property acquired by the Government or a local authority in pursuance of any law shall not be pre-emptible.

Plaintiff to deposit sale price of the property.- (1) In every suit

for pre-emption the Court shall, require the plaintiff to deposit in

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such Court one-third of the sale price of the property in cash and for the remaining two-thirds furnish bank guarantee to the satisfaction of the Court within such period as the Court may fix:

Provided that such period shall not extend beyond thirty days of the filing of the suit:

Provided further that if no sale price is mentioned in the sale deed or the price so mentioned appears to be inflated, the Court shall order the deposit of one-third of the probable value of the property and bank guarantee for the remaining two thirds of such probable value:

Provided further that the plaintiff may, in view of bank guarantee, deposit the required amount in cash.

(2) Where the plaintiff fails to deposit one-third of the sale price or the probable value of the property under sub-section (1) within the period fixed by the Court, his suit shall be dismissed.

(3) Where the plaintiff withdraws the sum deposited by him under sub- section (1), his suit shall be dismissed.

(4) Every sum deposited under sub-section (1) shall be available for the discharge of costs.

(5) The probable value fixed under sub-section (1) shall not affect the final determination of the price payable by the pre-emptor.

Deposit or refund of excess price.- (1) Where a Court passes a decree in favour of a pre-emptor on payment of a price which is in excess of the amount already deposited by the pre-emptor, the Court shall require the pre-emptor to deposit the remaining amount within thirty days of the passing of the decree.

(2) Where a decree is passed for a lesser amount than the amount already deposited by the pre-emptor, the Court shall refund the excess amount to such pre-emptor.

The sum deposited by pre-emptor not to be attached.- No sum deposited in or paid into Court by a pre-emptor under the provisions of this Act shall, while it is in the custody of the Court, be liable to attachment by any Civil, Criminal, Revenue or any other Court or a Revenue Officer or a local authority.

Determination of price.- (1) Where in case of sale the parties

are not agreed to the price at which the pre-emptor shall exercise his right of pre-emption, the Court shall determine whether the price at which the sale purports to have taken place has been

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fixed in good faith or paid, and if it finds that the price was not so fixed or paid, it shall fix the market value of the property as the price to be paid by the pre-emptor.

(2) If the Court finds that the price was fixed in good faith or paid, it shall fix such price to be paid by the pre-emptor.

Market _value_ how to be determined.- For the purpose of determining the market value of a property, the Court may consider the following, among other matters as evidence of such value;

(a) the price or value actually received or to be received by the vendor from the vendee;

(b) the estimated amount of the average annual net profits of the property;

(c) the value of similar property in the neighborhood; and

(d) the value of similar property as shown by previous sales made in the near past.

Limitation.- Notwithstanding anything contained in the Limitation Act, 1908 (Act IX of 1908), the period of limitation for a suit to enforce a right of pre-emption under this Act, shall be 120 days from the date.

(a) of the registration of the sale deed ; or

(b) of the attestation of the mutation, if the sale is made otherwise than through the registered sale deed ; or

(c) on which the vendee takes physical possession of the property, if the sale is made otherwise than through the registered sale deed or the mutation; or

(d) of knowledge by the pre-emptor, if the sale is not covered under the Clause (a) or Clause (b) or Clause (c).

Notice.- (1) The officer registering the sale deed or attesting the mutation of a sale shall, within two weeks of the registration give public notice in respect of such registration.

(2) The notice under sub-section (1) shall be deemed to have been sufficiently given if it is displayed on the main entrance of a mosque and on any other public place of the village, city or place

where the property is situated:

Provided that if the property is situated in a city, the notice shall also be given through a newspaper having large circulation in the city.

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(3) The charges for the notice under sub-section (2) shall be recovered from the vendee by the Registrar or the Revenue Officer, as the case may be, at the time of registration.

Matters ancillary or akin to the provisions of this Act.-

Matters ancillary or akin to the provisions of this Act, which have not been specifically covered under any provision thereof shall be decided according to the injunction of Islam as set out in the Holy Quran and Sunnah.

Application of the Civil procedure Code and the Qanoon-e-Shahadat Order.- Unless otherwise expressly provided under this Act, the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) and the Qanoon-e-Shahadat Order 1984, shall, Mutatis Mutandis, apply to the proceedings under this Act.

Repeal and Saving.- (1) The Azad Jammu and Kashmir Right of Prior Purchase Act, 1993 (Bikrimi) is hereby repealed.

(2) Notwithstanding anything contained in this Act, in cases and appeals filed under the Prior Purchase Act, 1993 (Bikrimi) in which judgments and decrees have been passed before the enforcement of this Act and have become final, further proceedings relating to such cases and appeals, if any, shall be governed and continued in accordance with the provisions thereof.

Powers to make Rules.- The Government may, by notification in the official Gazette, make such rules as it may consider necessary to carry out the purposes of this Act.

Sd/-

(Ch. Muhammad Nawaz)
Section Officer Law