

THE [KHYBER PAKHTUNKHWA] PRE-EMPTION ACT, 1987.

28th April, 1987.

?IKHYBER PAKHTUNKHWA| ACT NO. X OF 1987.

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1 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

2 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

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THE [KHYBER PAKHTUNKHWA] PRE-EMPTION ACT, 1987.

28th April, 1987.

>IKHYBER PAKHTUNKHWA ACT NO. X OF 1987.

[First published after having received the assent of the Governor of the ?[Khyber Pakhtunkhwa] in the Gazette of [Khyber Pakhtunkhwa] (Extraordinary), dated the 28th April, 1987].

AN
ACT

to bring in conformity with the Injunctions of Islam the Law relating to Pre-emption.

WHEREAS, the Council of Islamic Ideology, in consultation with Preamble.

the Law Division, has recommended that it is necessary 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. (1) This Act may be called the *[Khyber Pakhtunkhwa] Preemption Short title, extent and Act, 1987. commencement.

(2) It extends to the whole of the °[Khyber Pakhtunkhwa].

(3) It shall come into force at once.

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

(a) "immovable property" includes land, building, house, shop, water tank and well;

(b) "pre-emptor" means a person who has the right of pre-emption;

(c) "right of pre-emption" means a right to acquire by purchase an immovable property in preference to other persons by reasons of such rights; and

1 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

2 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

3 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

4 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

5 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

6 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

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(d) "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-bil-iwaz or hiba bi-shart al-iwaz but does not include.—

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

(ii) a sale in execution of a decree for money or of any order of a civil, criminal, revenue or any other court or a Revenue Officer or any local authority;

(iii) the creation of any 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.

In the interpretation and the application of the provisions of this

Act, the Court shall seek guidance from the Holy Quran, Sunnah and Fiqh.

4.

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

5.

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

(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.

6.

The right of pre-emption shall vest—

(a) firstly in shafi-sharik;

(b) secondly in shafi khalit: and

(c) thirdly in shafi-jar.

Interpretation.

Act to over-ride other laws.

Right of preemption

Persons in whom the right of preemption vests.

Explanation.

I. "Shafi Sharik" means a person who is a co-owner in the coxpus of the undivided immovable property sold with other person or persons.

IL "Shafi Khalit" means a participator in the special rights attached to the immovable property sold, such as right of passage, right of passage of water or right of irrigation.

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

7. (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 participators in the special rights attached to the immovable property sold, the person having special right shall have precedence over a person having a general right.

ILLUSTRATION.

A garden is irrigated by a water course 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 water course as well as the person having right of irrigation from the canal shall both have right of pre-emption.

(3) Where there are more than one pre-emptors 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.

(4) 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 near to the immovable property sold.

8. Where a right of pre-emption vests in any class or group of persons, the right may be exercised by all the members of such class or group jointly, and if not exercised 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.

9. 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

Priorities in the right of preemption.

Joint right of pre-
emption how exercised.

Method of distribution
of the property where

amongst them in equal shares. more than one person equally entitled.

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.

10. Where there are more than one pre-emptors having sued jointly or Withdrawal of claim. 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.

11. Where only trees or a structure of a building is sold without land, Sale of appurtenances of no right of pre-emption shall exist in such trees or the structure of a land.

building, but where land is sold with trees and buildings on it, the trees and building shall be deemed to be included in the land for the purposes of the right of preemption.

112. (1) Where any person proposes to sell any immovable property in Notice of intention to respect of which a right of Pre-emption exists, he may give notice to all sell.

such persons having such right of the price at which he is willing to sell the property.

(2) The notice under sub-section (1) shall be given through any court within the local limits of whose jurisdiction such immovable property is situated and shall be deemed sufficiently given if it be stuck upon the main entrance of a mosque and on any other public place of the village, city or place where the property is situated]

13. (1) The right of pre-emption of a person shall be extinguished Demand of pre-emption. unless such person makes demand of pre-emption in the following order, namely:—

- (a) talb-i-muwathibat;
- (b) talb-i-ishhad: and
- (c) talb-e-khusumat.

Explanation

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

Note—Any words indicative of intention to exercise the right of pre-emption are sufficient.

II. "Talb-i-ishhad" means demand by establishing evidence.

III. "Talb-i-Khusumat" 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 talb-i-mawathibat.

(3) [Subject to his ability to do so, where] a pre-emptor has made talb-e-muwathibat under sub-section (2), he shall as soon thereafter as possible but not later than two weeks from the date of ribtice under section *[32], or knowledge, whichever may be earlier make talb-i-ishhad by sending a notice in writing attested by two truthful witnesses, under registered cover acknowledgement due to the vendee, confessing 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-ishhad in the presence of two truthful witnesses.

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

14. Where a person is unable to make demands under section 13, his guardian or agent may make the required demands on his behalf.

15. 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.

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

1 Amended by Khyber Pakhtunkhwa Act No. X of 1992.

2 Amended by Khyber Pakhtunkhwa Act No. X of 1992.

Waiver of the right of
preemption

Death of preemptor.

17. (1) Where a pre-emptor before the decree of a Court has alienated his property on the basis of which he is entitled to the right of pre-emption, his 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.

18. A Muslim and a Non-Muslim may exercise the right of pre-emption against each other.

19. (1) Save as provided in section 16, the right of pre-emption shall be non-transferable and indivisible.

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

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

21. Where a vendee has made any 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.

22. Any improvement made in the status of a vendee defendant after the institution of suit for pre-emption 'otherwise than through inheritance], shall not affect the right of pre-emptor Plaintiff.

23, (1) No right of pre-emption shall exist in respect of sale or purchase of—

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

(b) a property by the Federal or a Provincial Government or a local authority" [.]

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1 Amended by Khyber Pakhtunkhwa Act No. X of 1992.

2 Amended by Khyber Pakhtunkhwa Act No. X of 1992.

3 Omitted by Khyber Pakhtunkhwa Act No. X of 1992.

Abatement of right of preemption.

Exercise of the right of preemption by a Muslim and a Non Muslim against each other.

Right of preemption non transferable and

indivisible

Where the preemptor
and vendee equally
entitled.

Improvements made by
the vendee.

Improvement made in
the status of the vendee
defendant after
institution of the suit.

No right of pre-emption
in respect of certain
properties.

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

24. td) In every suit for pre-emption the Court shall require the plaintiff to deposit in such Court one-third of the sale price of the property in cash within such period as the Court may fix;

Provided that if no sale price is mentioned in the sale deed or in the mutation, the Court shall require the deposit of one-third of the probable value of the property.

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

(3) Where the plaintiff withdraws the sum deposited 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.

25. (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.

26. No sum deposited in or paid into Court by a pre-emptor under the provisions of this Act shall, while it is in 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.

27. (1) Where in the case of a 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 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.

1 Amended by Khyber Pakhtunkhwa Act No. X of 1992.

Plaintiff to deposit sale price of the property.

Deposit or refund of excess price.

The sum deposited by
pre-emptor not to be
attached.

Fixing of price for
purposes of suit in case
of sale.

(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.

28. 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 of 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 neighbourhood; and

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

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30. Any party to a proceeding under this Act may, in addition to, or instead of, an advocate engage an Alim who is qualified as such from a Deeni Madrasah approved by the Provincial Government for this purpose.

31. The period of limitation for a suit to enforce a right of pre-emption under this Act shall be 7[one hundred and twenty 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 paragraph (a) or paragraph (b) or paragraph (c).

32. (1) The Registrar registering the sale deed or the Revenue Office attesting the mutation of a sale shall, within two weeks of the registration or attestation, as the case may be, give public notice in respect of such registration or attestation.

(2) The notice under sub-section (1) shall be deemed sufficiently given if it be struck up on the main entrance of a mosque and on any other

1 Deleted by Khyber Pakhtunkhwa Act No. X of 1992.

2 Amended by Khyber Pakhtunkhwa Act No. X of 1992.

Appearance of Ulema in
addition to or instead of
advocates.

Limitation.

Notice.

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 such city.

(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 or attestation of mutation.

33. 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 Shari'ah.

34. The provisions of the Code of Civil Procedure, 1908 (Act V of 1908), and the law on evidence in vogue shall, mutatis mutandis, apply to the proceedings under this Act.

35. (1) The '[Khyber Pakhtunkhwa] Pre-emption Act, 1950 ?[Khyber Pakhtunkhwa] Act XTV of 1950), is hereby repealed.

(2) In the cases and appeals filed under the Law referred to in subsection (1) in which judgements and decrees passed by the Courts have become final, further proceedings if any relating to such cases and appeals, shall, notwithstanding the repeal of such law be governed and continued in accordance with the provisions thereof.

(3) All other cases and appeals not covered under sub-section (2) and instituted under the law, referred to in sub-section (1) and which immediately before the commencement of this Act were pending before a Court shall lapse and suits of the pre-emptors shall stand dismissed, except those in which right of pre-emption is claimed under the provisions of this Act.

36. Government may, in consultation with the Council of Islamic Ideology, by notification in the official Gazette, make such rules as it may consider necessary to carry out the purposes of this Act.

1 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

2 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

Matters ancillary or akin to the provisions of this Act.

Application of the Civil procedure Code and the law on evidence.

Repeal.

Rules.