

THE PUNJAB PRE-EMPTION ACT 1991

CONTENTS

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Interpretation.
4. Act to override other laws.
5. Right of pre-emption.
6. Persons in whom the right of pre-emption vests.
7. Priorities in the right of pre-emption.
8. Joint right of pre-emption how exercised.
9. Method of distribution of the property where more than one persons are equally entitled.
10. Withdrawal of claim.
11. Sale of appurtenances of land.
12. Right to revoke sale.
13. Demand of pre-emption.
14. Demand by guardian or agent.
15. Waiver of the right of pre-emption.

THE PUNJAB PRE-EMPTION ACT 1991

(Pb. Act IX of 1991)

[6 April 1991]

An Act to bring in conformity with the injunctions of Islam the law relating to pre-emption

Preamble.— Whereas it is expedient to re-enact 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 Qur'an and Sunnah;

It is hereby enacted as follows:-

1. Short title, extent and commencement.— (1) This Act may be called the Punjab Pre-emption Act 1991.

(2) It extends to the whole of the Punjab.

(3) It shall come into force at once.

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

(a) “immovable property” means immovable property situated in any area other than an urban area or within cantonment limits as declared by any law relating to Local Bodies or Cantonments, as the case may be, for the time being in force;

(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 reason of such right; and

(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 ba-shart-ul-iwaz’, but does not include—

(i) transfer of an immovable property through inheritance or will or gift, other than ‘hiba bil-iwaz’ or ‘hiba ba-shart-ul-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) exchange of agricultural land; and

(iv) 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.

3. Interpretation.— In the interpretation and the application of the provisions of this Act, the Court shall seek guidance from the Holy Qur'an and Sunnah.

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

5. Right of pre-emption.— The right of pre-emption shall arise in case of sale of immovable property.

6. Persons in whom the right of pre-emption vests.— (1) The right of pre-emption shall vest—

(a) firstly, in Shafi Sharik;

(b) secondly, in Shafi Khalit; and

(c) thirdly, in Shafi Jar.

Explanation.— I 'Shafi Sharik' means a person who is a co-owner in the corpus of the undivided immovable property sold.

II '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.

(2) Notwithstanding anything in sub-section (1), the right of pre-emption shall be exercisable only in case of 'Zaroorat' or to avoid 'Zarar'.

7. Priorities in the right of pre-emption.— Where there are more than one participators in the special rights attached to the immovable property sold, the person having a special right shall have precedence over a person having a general right.

ILLUSTRATIONS

I) 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 the water course 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 the water course as well as the person having right of irrigation from the canal shall have the right of pre-emption.

II) 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.

III) 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. 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 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. Method of distribution of the property where more than one persons are equally entitled.— Where more than one persons 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 co-sharers, 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. 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.

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

12. Right to revoke sale.— Where the vendor has stipulated in the contract of sale that it is subject to revocation by him within a 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.

13. Demand 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 order, namely—

- (a) 'talb-i-muwathibt';
- (b) 'talb-i-ishhad'; and
- (c) 'talb-i-khusumat'.

Explanation.— (I) 'Talb-i-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 pre-emptor through any source, he shall make talb-i-muwathibat.

(3) Where a pre-emptor has made talb-i-muwathibat under sub-section (2), he shall as soon thereafter as possible but not later than two weeks from the date of knowledge make talb-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 owing to lack of post office facilities it is not possible for the pre-emptor to give registered notice, he may make talb-i-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 the sub-section (3), he shall make talb-i-khusumat in the court of competent jurisdiction to enforce his right of pre-emption.

14. Demand by 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.

15. 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.