

Punjab Pre-Emption Act, 1913

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An Act to amend the Law relating to Pre-emption in the Punjab
Whereas it is expedient to amend the Law relating to pre-emption in the Punjab; it is hereby enacted as follows

CHAPTER 1 PRELIMINARY

1. Short title and Commencement :-

- (1) This Act may be called the Punjab Pre-emption Act, 1913.
- (2) It extends to that part of Union Territory of Delhi which is described in Schedule A to Delhi Laws Act, 1912.

2. Repeal of Certain enactments :-

- (1) The Punjab Pre-emption Act, 1905, is hereby repealed.
- (2) Nothing in this Act shall affect the provisions of Order 21, rule 88, of the Code of Civil Procedure, 1908, or section 53 and 54 of the Punjab Tendency Act, 1887.
- (3) Notwithstanding anything to the contrary in section 4 of the Punjab General Clauses Act, 1898, the Courts shall in all suits, appeals and proceedings pending at the commencement of this Act give effect, so far as may be, to the procedure prescribed by this Act.

3. Definitions :-

In this Act, unless a different intention appears from the subject or

context.

(1) 'agricultural land' shall mean land as defined in the Punjab Alienation of Land Act, 1900 (as amended by Act I of 1907) but shall not include the rights of a mortgagee, whether usufructuary or not, in such land;

(2) 'village immovable property' shall mean immovable property within the limits of a village, other than agricultural land;

(3) 'urban immovable property' shall mean immovable property within the limits of a town other than agricultural land. For the purposes of this Act, a specified place shall be deemed to be a town (a) if so declared by the Chief Commissioner by notification in the Official Gazette, or (b) if so found by the Courts;

(4) 'member of an agricultural tribe' and 'group of agricultural tribe' shall have the meanings assigned to them respectively under the Punjab Alienation of Land Act, 1900.

(5) sale shall not include

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

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

(6) any expression which is defined by section 3 of the Punjab Land Revenue Act, 1887, shall, subject to the provisions of this Act, have the meaning assigned to in the said section.

CHAPTER 2

GENERAL PROVISIONS

4. Right of Pre-emption :-

Application of The right of pre-emption shall mean the right of a person to acquire agricultural land or village immovable property or urban immovable property in preference to other persons, and it arises in respect of such land only in the case of sales and in respect of such property only in the case of sales or of foreclosure of the right to redeem such property. Nothing in this section shall prevent a Court from holding that an alienation purporting to be other than a sale is in effect a sale.

5. No Right of Pre-emption in respect of certain buildings :-

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

foreclosure of a right to redeem

(a) a shop, serai to katra;

(b) a dharmsala, mosque or other similar building.

6. Exists in Agricultural Land and Village immovable property :-

A right of pre-emption shall exist in respect of agricultural land and village immovable property, but every such right shall be subject to all the provisions and limitations in this Act contained.

7. Exist under certain conditions in urban immovable property :-

Subject to the provisions of section 5 a right of pre-emption shall exist in respect of urban immovable property in any town or sub-division of a town when a custom of pre-emption is proved to have been in existence in such town or sub-division at the time of commencement of this Act, and not otherwise.

8. Chief Commissioner may exclude areas from pre-emption :-

(1) Except as may otherwise be declared in case of any agricultural land in a notification by the Chief Commissioner, no right of pre-emption shall exist within any cantonment.

(2) The Chief Commissioner may declare by notification that in any local area or with respect to any land or property or class of land or property or with respect to any sale or class of sales, no right of pre-emption or only such limited right as the Chief Commissioner may specify, shall exist.

9. Exclusion of Pre-emption in respect of certain alienations :-

Notwithstanding anything in this Act, a right of pre-emption shall not exist in respect of any sale made by or to Government or by or to any local authority or to any company under the provisions of Part VII of the Land Acquisition Act, 1894, or in respect of any respect of any sale sanctioned by the Deputy Commissioner under section 3 (2) of the Punjab Alienation of Land Act, 1900.

10. Party to alienation can not claim pre-emption :-

In the case of sale by joint- owners, no party to such sale shall be permitted to claim a right of pre-emption.

11. 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 or of the Code of Civil Procedure shall, while it is in the custody of the Court, be liable to attachment in execution of a decree, or order of a Civil, Criminal or Revenue Court or of a Revenue Officer.

CHAPTER 3

PERSONS IN WHOM THE RIGHT OF PRE-EMPTION VESTS

12. The Law determining the right of pre-emption :-

In respect of all sales and foreclosures not completed before the commencement of this Act the right of pre-emption shall be determined by the provisions of this Act; but in respect of sales and foreclosures completed before the commencement of this Act, the right of pre-emption shall be determined by the law in force at the time of such completion.

13. Joint right of pre-emption how exercised :-

Whenever according to the provisions of this Act 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.

14. Limit of exercise of right in respect of land sold by member of an agricultural tribe :-

No person other than a person who was at the date of sale a member of an agricultural tribe in the same group of agricultural tribes as the vendor shall have a right of pre-emption in respect of agricultural land sold by a member of an agricultural tribe.

15. Person in whom right of Pre-emption vests in respect of agricultural land and village immovable property :-

Subject to the provisions of section 14 the right of pre-emption in respect of agricultural land and village immovable property shall vest

(a) where the sale is a sole owner or occupancy tenant or, in the case of land or property jointly owned or held, is by all the co-sharers jointly, in the persons in order of succession, who but for such sale would be entitled, on the death of the vendors, to inherit the land or property sold;

(b) where the sale is of a share out of joint land or property, and is not made by all the co-sharers jointly, firstly, in the lineal descendents of the vendor in order of succession. secondly, in the co-sharers, if any, who are agnates, in order of succession; thirdly, in the persons, not included under firstly or secondly, above, in order of succession, who but for such sale would be entitled, on the death of the vendor, to inherit the land or property sold; fourthly, in the co-sharers :

(c) if no person having a right of pre-emption under clause (a) or clause (b) seeks to exercise it, firstly, when the sale affects the superior or inferior proprietary right and the superior right is sold in the inferior proprietors, and when the inferior right is sold, in the superior proprietors; thirdly, in the owners of the estate; fourthly, in the case of the proprietary right in such land or property, in the tenants (if any) having rights of occupancy in such land or property; fifthly, in any tenant having a right of occupancy in any agricultural land in the estate within the limits of which the land or property is situated.

Explanation. In the case of sale by a female of land or property to which she has succeeded on a gift word 'agnates' in this section shall mean the agnates of the person through whom she has so succeeded.

16. Person in whom right of pre-emption vests in urban immovable property :-

The right of pre-emption in respect of urban immovable property shall vest.

firstly, in the co-sharers in such property, if any ;

secondly, where the sale is of the site of the building or other structure, in the owners of such building or structure;

thirdly, where the sale is of a property having a stair-case common to other properties, in the owners of such properties;

fourthly, where the sale is of property having a common entrance from the street with other properties, in the owners of such properties;

fifthly, where the sale is of a servient property, in the owners of the dominant property, and vice versa;

sixthly, in the person who own immovable property, contiguous to

the property sold.

17. Exercise of right of pre-emption where several persons equally entitled :-

Where several pre-emptors are found by the Court to be equally entitled to the right of pre-emption, the said right shall be exercised -

(a) if they claim as co-sharers, in proportion among themselves to the shares they already hold in the land or property;

(b) if they claim as heirs, whether co-sharers or not, in proportion among themselves to shares in which but for such sale they would inherit the land or property in the event of the vendor's decease without other heirs.

(c) if they claim as owners of the estate or recognised sub-division thereof, in proportion among themselves to the shares which they would take if the land or property were common land in estate or the sub-division as the case may be;

(d) if they claim as occupancy tenants in proportion among themselves to the areas respectively held by them in occupancy right;

(e) in any other case, by such pre-emptors in equal share.

18. Provisions of sections 15 and 17 applicable to foreclosure mutatis mutandis :-

In the case of a foreclosure of the right to redeem village immovable property, the provisions of sections 15 and 17 and in the case of a foreclosure of the right to redeem urban immovable property, the provisions of sections 16 and 17 shall be construed by the Court with such alterations, not affecting the substance, as may be necessary or proper to adapt them to the matter before the Court.

CHAPTER 4
PROCEDURE

19. Notice to pre-emptors :-

When any person proposes to sell any agricultural land or village immovable property or urban immovable property or to foreclose the right to redeem any village immovable property or urban immovable property, in respect of which any persons have a right of pre-emption, he may give notice to all such persons of the price

at which he is willing to sell such land or property or of the amount due in respect of the mortgage, as the case may be. Such notice shall be given through any Court within the local limits of whose jurisdiction such land or property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupal or other public place of the village, town or place in which the land or property is situate.

20. Notice by pre-emptor to vendor :-

The right of pre-emption of any person shall be extinguished unless such person shall, within the period of three months from the date on which the notice under Section 19 is duly given or within such further period, not exceeding one year from such date, as the Court may allow, present to the Court a notice for service on the vendor or mortgagee of his intention to enforce his right of pre-emption. Such notice shall state whether the pre-emptor accepts the price or amount due on the footing of the mortgage as correct or not, and if not, what sum he is willing to pay. When the Court is satisfied that the said notice has been duly served on the vendor or mortgagee, the proceedings shall be filed.

21. Suit for pre-emption :-

Any person entitled to a right of pre-emption may, when the sale or foreclosure has been completed, bring a suit to enforce that right.

21A. Suit for pre-emption :-

22. Plaintiff may be called on to make deposit or to file security :-

(1) In every suit for pre-emption the Court shall at, or at any time before, the settlement of issues, require the plaintiff to deposit in Court such sum as does not, in the opinion of the Court, exceed one-fifth of the probable value of the land or property, or require the plaintiff to give security to the satisfaction of the Court for the payment, if required, of a sum not exceeding such probable value within such time as the Court may fix in such order.

(2) In any appeal the Appellate Court may at any time exercise the powers conferred on a Court under sub-section (1).

(3) Every sum deposited or secured under sub-section (1) or (2) shall be available for the discharge of costs.

(4) If the plaintiff fails within the time fixed by the Court or within

such further time as the Court may allow to make the deposit or furnish the security mentioned in sub-section (1) or (2), his plaint shall be rejected or his appeal dismissed as the case may be.

(5)

(a) If any sum so deposited is withdrawn by the plaintiff, the suit or appeal shall be dismissed.

(b) If any security so furnished for any cause becomes void or insufficient, the Court shall order the plaintiff to furnish fresh security or to increase the security, as the case may be, within a time to be fixed by the court, and if the plaintiff fails to comply with such order, the suit or appeal shall be dismissed.

(6) The estimate of the probable value made for the purpose of sub-section (1) shall not affect any decision subsequently come to as to what is the market value of the land or property.

23. Special conditions relating to sales of agricultural land :-

No decree shall be granted in a suit for pre-emption in respect of the sale of agricultural land until the plaintiff has satisfied the Court

(a) that the sale in respect of which pre-emption is claimed is not in contravention of the Punjab Alienation of Land Act, 1900 ; and

(b) that he is not debarred by the provisions of Section 14 of this Act from exercising the right of pre-emption.

24. Procedure on determination of the said issues :-

In a suit for pre-emption in respect of a sale of agricultural land, if the Court finds that the sale is in contravention of the Punjab Alienation of Land Act, 1900, the Court shall dismiss the suit.

25. Fixing of price for purposes of suit in case of sales :-

(1) If in the case of a sale the parties are not agreed as 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 as the price for the purposes of the suit the market value of the land or property.

(2) If the Court finds that the price was fixed in good faith or paid, it shall fix such price as the price for the purposes of the suit :

Provided that when the price at which the sale purports to have taken place represents entirely or mainly a debt greatly exceeding in amount the market value of the property, the Court shall fix the market value as the price of the land of the property for the purposes of the suit, and may put the vendee to his option either to accept such value as the full equivalent of the consideration for the original sale or to have the said sale cancelled, and the vendor and vendee restored to their original position.

26. Fixing of price for purposes of suit in cases of foreclosure :-

If in case of a foreclosure, the parties are not agreed as to the amount at which the pre-emptor shall exercise his right of pre-emption, the Court shall determine whether the amount claimed by the mortgagee is due under the terms of the mortgage, and whether it is claimed in good faith. If it finds that the amount is so due and is claimed in good faith, it shall fix such amount as the price for the purposes of the suit; but if it finds that the amount is not so due, or, though due, is not claimed in good faith, it shall fix as the price for the purposes of the suit the market value of the property.

27. "Market value" how to be determined :-

For the purpose of determining the market value, 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 or the amount really due on the footing of the mortgage, as the case may be;
- (b) the amount of interest included in such price, value or amount;
- (c) the estimated amount of the average annual net assets of the land or property;
- (d) the land revenue assessed upon the land or property;
- (e) the value of similar land or property in the neighbourhood;
- (f) the value of the land or property as shown by previous sales or mortgages.

28. Concurrent hearing of suit :-

When more suits than one arising out of the same sale or foreclosure are pending, the plaintiff in each suit shall be joined as

defendant in each of the other suits, and in deciding the suits, the Court shall in each decree state the order in which each claimant is entitled to exercise his right.

29. Copy of decree to be sent to Deputy Commissioner, application for revision :-

(1) The Court shall send to the Deputy Commissioner a copy of every original decree granting pre-emption other than a decree granting pre-emption in respect of a building or site of a building in a town or sub-division of a town, and the Deputy Commissioner may, within two months from the date of the receipt of such copy, apply to the Court to which the appeal in the pre-emption suit would lie, or if no appeal lies, to the Divisional Court for revision of the decree on the ground that the decision of the Court of first instance is contrary to the provisions of the Punjab Alienation of Land Act, 1900.

(2) No stamp shall be required upon such application, and the provisions of the Code of Civil Procedure as regards appeals shall apply as far as may be to the procedure of the Appellate Court on receipt of such application.

(3) No appearance by Or on behalf of the Deputy Commissioner shall be deemed necessary for the disposal of the application.

CHAPTER 5
LIMITATION

30. Limitation :-

In any case not provided for by Article 10 of the First Schedule of the Indian Limitation Act, 1908, the period of limitation in a suit to enforce a right of pre-emption under the provisions of this Act shall, notwithstanding anything in Article 120 of the said schedule, be one year

(1) In the case of a sale of agricultural land or of village immovable property, from the date of the attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutations maintained under the Punjab Land Revenue Act, 1887, or from the date on which the vendee takes under the sale physical possession of any part of such land or property : whichever date shall be the earlier ;

(2) in the case of a foreclosure of the right to redeem village immovable property or urban immovable property, from the date

on which the title of the mortgagee to the property becomes absolute;

(3) in the case of a sale of urban immovable property, from the date on which the vendee takes under the sale physical possession of any part of the property.