

Jammu and Kashmir Right of Prior Purchase Act, SVT. 1993 (1936 A.D.)

JAMMU & KASHMIR

India

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Act 2 of 1993

- Published on 9 April 1936
- Commenced on 9 April 1936
- [This is the version of this document from 9 April 1936.]
- [Note: The original publication document is not available and this content could not be verified.]

Jammu and Kashmir Right of Prior Purchase Act, SVT. 1993 (1936 A.D.)(Act No. 2 of 1993)[Received the assent of His Highness the Maharaja Bahadur on 9th April, 1936, 28th, Chet, 1992 and published in Government Gazette, dated 14th Baisakh, 1993 (Extra.)]Whereas it is expedient to grant the right of prior purchase under certain circumstances in certain immovable property; It is hereby enacted as follows:-

Chapter I

1. Short title and extent

(1) This Act may be called the Jammu and Kashmir Right of Prior Purchase Act, 1993.(2)It shall extend to the whole of Jammu and Kashmir State.

2. Repeal of enactments

(1) The Pre-emption Regulations 1977 is hereby repealed, and the words "right of prior purchase" shall be substituted for the word "pre-emption" wherever it occurs in any of the enactments, at present, in force within the State.(2)Nothing in this Act shall affect the provisions of Order XXI, Rule 88 of the Code of Civil Procedure and section 60 of the Jammu and Kashmir Tenancy Act, 1980.(3)All suits, appeals and proceedings pending at the commencement of this Act shall, so far as may be, be governed by the procedure laid down in this Act.

3. Definitions

In this Act, unless there is anything repugnant in the subject or context,(1)"agricultural land" means land as defined in the Jammu and Kashmir Alienation of Land Act, Svt. 1995, but shall not include the right 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,For the purposes of this Act any specific area may be considered as a town:-(a)if it is declared as such by the Government by a notification in the Government Gazette, or(b)if so found by the Court;(4)"member of an agricultural class" and "agricultural classes" shall have the meanings assigned to them respectively in the Jammu and Kashmir Alienation of Land Act, Svt. 1995;(5)"sale of land" shall not include sale in execution of a decree for money or of an order of a Civil, Criminal or Revenue Court or of a Revenue Officer;(6)any expression which is defined by section 3 of the Land Revenue Act, 1996, shall, subject to the provisions of this Act, have the meaning assigned to it in the said Act

Chapter II

General Provisions

4. Right of prior purchase, application of

The right of prior purchase 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 case of sales, and in respect such property only in case of sales or of foreclosures 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 prior purchase in respect of certain buildings

No right of prior purchase shall exit in respect of the sale of or foreclosure of a right to redeem, (a)a shop, serai or market or some other property used as a place for transaction of public business;(b)a dharmshala, place of worship or other similar building.Explanation. In determining what building comes within the preview of this section the character of the accommodation provided therein, the place where the building is situate and the main use to which it naturally and most advantageously is adopted shall among other matters be taken into consideration.Illustration(a)A building adopted to use as a shop and situate in business quarters does not cease to be a shop by reason of limited accommodation in its upper storey for residential purposes.(b)A residential house does not lose that character merely because business has been or is carried on occasionally in a part thereof.

6. No right of prior purchase in certain areas

(1) Except as may otherwise be declared, no right of prior purchase shall exist within any cantonment area. (2) The Government may declare by notification in the Government Gazette that in any local area or with respect to any property or class of property or with respect to any sale or class of sales no right of prior purchase or only such limited right as the Government may specify, shall exist.

7. No right of prior purchase in respect of certain sales

Notwithstanding anything in this Act, a right of prior purchase shall not exist in respect of any sale made by or to the State or by or to any local authority or to any company for public purposes under the provisions of the Land Acquisition Act or in respect of any sale sanctioned under section 5 of the Jammu and Kashmir Alienation of Land Act, Svt. 1995.

8. Right of prior purchase exists under certain conditions in agricultural and village immovable property

Subject to the provisions of sections 5, 6 and 7, a right of prior purchase shall exist in respect of agricultural land, village immovable property and urban immovable property, but every such right shall be subject to all the provisions and limitations in this Act contained.

9. Party to alienation cannot claim right of prior purchase

In the case of a sale by Joint-owners, no party to a sale shall be permitted to claim a right of prior purchase.

10. Sum deposited by persons claiming right of prior purchase not to be attached

No sum deposited or paid into Court by a person claiming right of prior purchase under the provisions of this Act or the Civil Procedure Code shall, so long as it is in the custody of the Court, be liable to attachment in execution of any decree or any order of a Civil Criminal or Revenue Court or any order of a Revenue Officer.

Chapter III

Persons in Whom the Right of Prior Purchase Vests

11. The Law determining the right of prior purchase

In respect of all sales and foreclosures, not completed before the commencement of this Act, the right of prior purchase shall be determined by the provisions of this Act.

12. Joint right of prior purchase how exercised

Whenever, according to the provisions of this Act, a right of prior purchase vests in several persons, the right may be exercised by all such persons jointly or severally.

13. Limit of exercise of right in respect of land sold by member of an agricultural class

No person other than a person who was at the date of sale a member of an agricultural class shall have a right of prior purchase in respect of agricultural land sold by another member of an agricultural class.

14. [Persons in whom right of prior purchase vests in respect of sales of agricultural land and village immovable property Notwithstanding anything contained in any law, rule or custom but subject to the provisions of section 13, the right of prior purchase in respect of agricultural land and village immovable property shall vest-

(a)where the sale is by sole owner or occupancy tenant or, in the case of land or property jointly owned or held, by all the co-shares jointly-Firstly- in the tenant cultivating such land where the sale is of agricultural land and in the tenant occupant thereof where the sale is of village immovable property; andSecondly- in the person in order of succession who but for such sale would be entitled on the death of the vendor or vendors, to inherit the land or property sold;(b)when the sale is of a share out of the joint property and is not made by all the co-shares jointlyFirstly- in the lineal descendants of the vendor in order of succession;Secondly- in the co-sharers, if any;Thirdly- in the tenant cultivating such land where the sale is of agricultural land and in the tenant occupant when the sale is of village immovable property; andFourthly- in the person not included under the above categories in order of succession, who but for such sale would be on the death of the vendor entitled to inherit the land or property sold;(c)if no person having the right of prior purchase under clauses (a) and (b) exercises it then Firstly- in the owner of the mahal wherein such agricultural land or property is situate; andSecondly- in the tenants other than those specified above] [Substituted by Act XXIII of 1959.].

15. Persons in whom right of prior purchase vests in urban immovable property

The right of prior purchase in respect of urban immovable property shall vest, Firstly - in the co-shares of 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 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 outer entrance 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 tenant occupant thereof;] [Substituted by Act XXIX of 1973, section2.]

16. Exercise of the right of prior purchase where several persons equally entitled

Where several persons are found by the Court to be equally entitled to the right of prior purchase, the said right shall be exercised-(a)[if they claim as cultivating tenants, in proportion among themselves to the area respectively held by them as such tenants and if they claim as tenant occupants in proportion among themselves to the property respectively held by them as such tenant occupants;(aa)if they claim as co-shares, in proportion among themselves to the shares they already hold in the land or property];(b)if they claim as heirs whether co-shares or not, in proportion among themselves to the shares in which but for such sale they would inherit the land or property in the event of the vendor's death without other heirs;(c)if they claim as owners of the mahal, in proportion among themselves, to the shares which they already hold in the mahal;(d)[if they claim as non-cultivating tenants, in proportion among themselves to the area respectively held by them as such tenants.] [Clause (d) substituted by Act XXXIII of 1959.][Explanation. For purposes of this section and section 14, "Cultivating tenant" means a tenant who cultivates the land himself (Khudkasht Mazaria).] [Explanation to section 16 added *ibid.*]

17. Provisions of sections 14 and 16 applicable to foreclosures *mutatis mutandis*

In the case of foreclosure of the right to redeem village immovable property, the provisions of sections 14 and 16 and in the case of a foreclosure of the right to redeem urban immovable property, the provisions of section 15 and 16 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 IV Procedure

18. Notice to persons having right of prior purchase

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 person have a right of prior purchase, he may give notice to all such persons of the price at which he proposes to sell such land or property, or of the amount due in respect of the mortgage, the case as may be. Such notice shall be given through any Court within the local limits of whose jurisdiction such land or property is situate and shall be deemed sufficiently given if it is served in accordance with the provisions of Order V of the Code of Civil Procedure.

19. Notice by a person claiming right of prior purchase to vendor

The prior right of any person shall be extinguished unless such person shall, within the period of three months from the date on which notice under section 18 is duly given and served, 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 prior purchase. Such notice shall state whether the person intending to exercise the right 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 proceeding shall be filed.

20. Suit to enforce right of prior purchase

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

21. Plaintiff may be called upon to make deposit or file security

(1) In every such suit the Court shall, at, or at any time before, the time of settlement of issues, require the plaintiff to deposit in the Court such sum as in the opinion of the Court equal to 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 of a sum not exceeding such probable value within such time as the Court may fix in such order. (2) In the case of an 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 fix to make the deposit or furnish the security under sub-section (1) or (2), his plaint shall be rejected or his appeal dismissed, as the case may be. (5) (a) If the plaintiff withdraws any amount deposited in the aforesaid manner, his suit or appeal shall be dismissed. (b) If any security 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 the market value of the property.

22. Special conditions relating to sale of agricultural land

No decree shall be granted in a suit to enforce right of prior purchase in respect of the sale of agricultural land until plaintiff has satisfied the Court—(a) that the sale in respect of which right is claimed is not in contravention of the Alienation of Land Act; (b) that he is not debarred by the provisions of section 18 of this Act from exercising the right of prior purchase.

23. Procedure if sale contravenes Land Alienation Act

In a suit to enforce the right of prior purchase in respect of a sale of agricultural land if the Court finds that the sale is in contravention of the Alienation of Land Act the Court shall dismiss the suit.

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

(1) If in the case of a sale the parties are not agreed as to the price at which the person having right of prior purchase shall exercise his right, 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 or 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.

25. Fixing of price for purposes of suit in case of foreclosure

If in the case of a foreclosure the parties are not agreed as to the amount at which a person having a right of prior purchase shall exercise his right, 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 purposes of the suit the market value of the property.

26. 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 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.

27. Concurrent hearing of suits

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

28. Copy of decree to be sent to Deputy Commissioner; his power to apply for revision

(1) The Court shall send to the Deputy Commissioner concerned a copy of every original decree granting right of prior purchase other than a decree granting right of prior purchase 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 suit would lie, or if no appeal lies, to the Court to which a revision would lie for revision of the decree on the ground that the decision of the Court of first instance is contrary to the provisions of the Alienation of Land Act.(2)Such an application shall not be liable to stamp duty 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 V Limitation

29. Limitation

In any case not provided for by Article 10 of the Second Schedule of the Limitation Act, Svt. 1995, the period of limitation in a suit to enforce a right of prior purchase shall be one year(a)in the case of a sale of agricultural land or village immovable property; from the date of attestation (if any) of the sale by a Revenue Officer having jurisdiction in the register of mutations maintained under the Land Revenue Act; orfrom the date on which the vendee takes under the sale physical possession of any part of such land or property, whichever date shall be earlier;(b)in the case of a foreclosure of the right to redeem village property or urban immovable property, form the date on which the title of the mortgage to the property becomes absolute;(c)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.[Existing clause (a) renumbered as Clause (aa) and a new clause (a) inserted by Act XXXII of 1959.]