

Himachal Pradesh Pre-Emption Act, 2010

HIMACHAL PRADESH

India

Himachal Pradesh Pre-Emption Act, 2010

Act 10 of 2011

- Published on 22 January 2011
- Commenced on 22 January 2011
- [This is the version of this document from 22 January 2011.]
- [Note: The original publication document is not available and this content could not be verified.]

Himachal Pradesh Pre-Emption Act, 2010(Act No. 10 of 2011)(As Assented to by the Governor on 22nd January 2011)An Act to re-enact the law relating to right of pre-emption in the State of Himachal Pradesh. the Sixty-first Year of the Republic of the India as follows:-Chapter-I Preliminary

1. Short title and extent.

(1)This Act may be called the Himachal Pradesh Preemption Act, 2010.(2)It shall extend to whole of the State of Himachal Pradesh.

2. Definitions.

- In this Act, unless a different intention appears from the subject or context,-(a)"agricultural land" shall mean land as defined under clause (7) of section 2 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (8 of 1974), but shall not include the rights of a mortgagee, whether usufructuary or not, in such land;(b)" sale" shall not include-(i)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; and(ii)the creation of an occupancy tenancy by a landlord, whether for consideration or otherwise;(c)"urban immovable property" shall mean immovable property falling within the limits of a municipality, other than agricultural land;(d)"village immovable property" shall mean immovable property falling within the limits of a village, other than agricultural land; and(e)any expression which is defined by section 4 of the Himachal Pradesh Land Revenue Act, 1954 (6 of 1954) or section 2 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (8 of 1974), shall, subject to the provisions of this Act, have the meaning assigned to it in the said section.Chapter-II General Provisions

3. Right of pre-emption.

- 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 foreclosures of the right to redeem such property: Provided that nothing in this section shall prevent a court from holding that an alienation purporting to be other than a sale is in fact a sale.

4. No right of pre-emption in certain cases.

- No right of pre-emption shall exist in respect of the sale of or foreclosure of a right to redeem-(i) a serai or katra; and (ii) a dharamshala, mosque or other similar building.

5. Right of pre-emption exists in agricultural land, urban immovable property and Village immovable property.

- Subject to the provisions of this Act, a right of pre-emption shall exist in respect of village immovable property and agricultural land.

6. State Government may exclude areas from pre-emption.

(1) Except as may otherwise be declared by the State Government, by notification, in the case of any agricultural land, no right of pre-emption shall exist within any cantonment. (2) The State Government may, by notification in the Official Gazette, declare 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 that State Government may specify, shall exist.

7. Exclusion of pre-emption in respect of certain alienation.

- Notwithstanding anything in this Act, a right of pre-emption shall not exist in respect of any sale made by or to the State Government or by or to any local authority or to any company under the provisions of Part - VII of the Land Acquisition Act, 1894 (1 of 1894).

8. Party to alienation cannot claim pre-emption.

- In the case of a sale by jointowners, no party to such sale shall have the right to claim pre-emption.

9. Sum deposited by pre-emptor not to be attached.

- No sum deposited in or paid in to court by the pre-emptor under the provisions of this Act or of the Code of Civil Procedure, 1908 (5 of 1908), 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-III Persons In Whom the Right of Pre-Emption Vests

10. The law determining the right of pre-emption.

- In respect of all sales and foreclosures not completed on the date of commencement of this Act, the right of pre-emption shall be determined under the provisions of this Act.

11. 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.

12. Right of pre-emption to vest in co-sharer and tenant.

- The right of pre-emption in respect of agricultural land, village immovable property and urban immovable property shall vest-(a)where the sale is by a sole owner, in the tenant, who holds under tenancy of the vendor the land or property sold or a part thereof;(b)where the sale is of a share out of a joint land or property and is not made by all the cosharers jointly-(i)firstly, in the other co-sharers;(ii)secondly, in the tenant who hold under tenancy of the vendor or vendors, the land or property sold or a part thereof; and(c)where the sale is of land or property owned jointly and is made by all the co-sharers jointly, in the tenants, who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

13. 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 the 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; and(c)in any other case, by such pre-emptors in equal shares.

14. Provisions of sections 12 and 13 applicable to foreclosures mutatis mutandis.

- In the case of a foreclosure of the right to redeem village immovable property or urban immovable property, the provisions of sections 12 and 13 shall be construed by the court with such alterations, not affecting the substance, as may be necessary or proper to adopt them to the matter before the court.

Chapter-IV Procedure

15. Notice to pre-emptors.

(1)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 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.(2)Such notice shall be given through any court within the local limits of whose jurisdiction such land or property or any part thereof is situated, 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.

16. Notice by pre-emptor to vendor.

(1)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 15 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.(2)When the court is satisfied that the said notice has been duly served on the vendor or mortgagee, the proceedings shall be filed.

17. Suits 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.

18. 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 sub-section (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 subsection (2), his plaint shall be rejected or his appeal shall be dismissed, as the case may be.(5)If any sum so deposited is withdrawn by the plaintiff, the suit or appeal shall be dismissed.(6)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.(7)The estimate of the probable

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

19. 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 that the sale in respect of which pre-emption is claimed is not in contravention of the Himachal Pradesh Land Revenue Act, 1954 (6 of 1954) or the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (8 of 1974).

20. 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 Himachal Pradesh Land Revenue Act, 1954 (6 of 1954) or the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (8 of 1974), the court shall dismiss the suit.

21. 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 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.

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

23. "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; and(f)the value of the land or property as shown by previous sales or mortgages.

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

25. Postponement of decision of pre-emption suit in certain cases.

(1)If in any suit for pre-emption any person bases a claim or plea on a right of pre-emption derived from the ownership of agricultural land or other immovable property, and the title to such land or property is liable to be defeated by the enforcement of a right of pre-emption with respect to it, the court shall not decide the claim or plea until the period of limitation for the enforcement of such right of preemption has expired and the suits for pre-emption, if any, instituted with respect to the land or property during the period have been finally decided.(2)If the ownership of agricultural land or other immovable property is lost by the enforcement of a right of pre-emption, the court shall disallow the claim or plea based upon the right of the pre-emption derived therefrom.
Chapter-V
Limitation

26. Limitation.

- In any case not provided for by article 10 of the "Second Schedule" of the Indian Limitation Act, 1908(IX of 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-(a)in the case of a sale of agricultural land or of village immovable property,(i)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 Himachal Pradesh Land Revenue Act, 1954 (6 of 1954); or(ii)from the date of which the vendee takes under the sale physical possession of any part of such land or property; whichever date shall be the earlier;(b)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 mortgage to the property becomes absolute; and(c)in the case of sale of urban immovable property, from the date on which the vendee takes under the sale physical possession of any part of the property.