

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

to provide pre-emption law for Islamabad Capital Territory.

Whereas it is expedient to have pre-emption law in Islamabad Capital territory.

It is hereby enacted as follows:-

1. **Short title and commencement.**- (1) This Act may be called the Islamabad Capital Territory pre-emption Act, 2010.

(2) It shall extend to Islamabad Capital territory.

(3) It shall come into force at once.

(2) **Definitions.**- In this Act, unless therein any thing repugnant in the subject or context,-

(a) “Pre-emptor” means a person who has the right of pre-emption.

(b) “right of pre-emption” means a right to acquire by purchase immovable property in preference to other persons by reason of such right; and

(c) “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 bas har-ul-iwaz”:

but does not include:-

(i) transfer of an immovable property through inheritance, will or gift, other than ‘hiba bil-iwaz’ or hiba bas hart-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 revenue officer or any local authority;

(iii) exchange of agricultural land for better management;

(iv) transfer of an immovable property for a consideration other than valuable consideration, such as the transfer of an immovable property be way of dower or composition in a murder or hurt case.

3. **Interpretation.**- In the interpretation and the application of the provisions of this ordinance, the court shall seek guidance from the Holy Quran, Sunnah and Fiqah.

4. **Right of pre-emption.**- (1) The right of pre-emption shall arise in case of sale of immovable property. (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.

5. **Persons in whom the right of pre-emption vests.**- 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 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.

6. **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.

Illustration

- (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 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 the watercourse 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-emptor 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 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.

7. **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.

8. **Method of distribution of the property where more than one person are equally entitled.**- 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 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, and the other two co-shares, namely. B and C shall have equal right of pre-emption in one half of the house this one half shall be distributed between B and C in equal shares and not according to their respective shares in the house.

9. **Withdrawal of claim.**- Where there are more than one pre-emptor having sued jointly or severally and any of them withdraws his claim before the decision of the court, the remaining pre-emptor shall be entitled to the whole property:

Provided that the claim of the remaining pre-emptor was originally made for the whole property.

10. **Sales of appurtenances of land.**- Where only trees or a building is sold without land, right of pre-emption shall exist in such trees or the structure of a building, but where land is sold with trees and buildings on it, the trees and buildings shall be deemed to be included in the land for purposes of the right of pre-emption.

11. **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, specialized 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 of the stipulated 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.

12. **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-muwathlbat;
- (b) Talb-i-Ishhad;
- (c) Talb-i-Khusumat.

Explanation.- (i) "Talb-i-muwathlbat" means immediate demand by pre-emption. 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 suit.

(2) When the fact of sale comes within the knowledge of a 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 notice under section 30, or knowledge, whichever may be earlier, make talb-i-ishhad by sending a notice in 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 sub-section (3) he shall make talb-i-khusumat in the court of competent jurisdiction to enforce his right of pre-emption.

13. **Demand by guardian or agent.**- Where a person is unable to make demands under section 12, his guardian or agent may make the required demands on his behalf.

14. **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.

15. **Death of pre-emptor.**- Where a pre-emptor dies after making any of the demands under section 12, the right of pre-emption shall stand transferred to his legal heirs.

16. **Abatement of right of pre-emption.**- (1) Where a pre-emptor, before the decree of a court, alienates the property on the basis of which he claims the right of pre-emption, such right shall abate.

(2) An alienee of the property under sub-section (1) shall also not be entitled to the right of pre-emption.

17. **Exercise of right of pre-emption by a Muslim and non-Muslim against each other.**- A Muslim and a non-Muslim may exercise the right of pre-emption against each other.

18. **Right of pre-emption non-transferable and indivisible.**- (1) Save as provided in section 15, 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.

19. **Where the pre-emptor and vendee equality entitled.**- Where the pre-emptor and the vendee fall within the same class of pre-emptor and have equal right of pre-emption, the property shall be shared by them equally.

20. **Improvements made by the vendee.**- 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 12, the vendee shall be entitled to the cost of such improvements.

21. **Improvement made in the status of the vendee defendant after institution of the suit.**- Any improvement made in the status of a vendee-defendant after the institution of a suit for pre-emption shall not affect the right of pre-emptor plaintiff.

22. **No right of pre-emption in respect of certain properties.**- (1) No right of pre-emption shall exist in respect of sale of.

- (a) Waqf property of property used for charitable,
- (b) Property owned by the Federal Government or Provincial Government or a local authority; and
- (c) Property used for a factory on an industrial undertaking.

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

23. **Plaintiff to deposit sale price of the property** .- (1) In every suit for pre-emption, the court shall require the plaintiff to deposit in such court on third of sale price of the property in cash within such period as the court may fix:

Provided that such period shall not extend beyond thirty days of the filling of the suit:

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

- (2) Where the plaintiff fails to make a deposit, under sub-section (1) within the period fixed by the court, or withdraws the sum so deposited by him, his suit shall be dismissed.
- (3) Every sum deposited under sub-section (1) shall be available for the discharge of cost.
- (4) The probable value fixed under sub-section (1) shall not affect the final determination of the price payable by the pre-emptor.

24. **Deposit or refund of excess price.**- (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.

25. **Sum deposited by pre-emptor no to be attached.**- No sum deposited in or paid into court by a pre-emptor under the provisions of this ordinance 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.

26. **Determination of price.**- (1) Where the parties do not agree 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 was fixed in the 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.

(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.

27. **Market value how be determined.**- 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, namely:-

- (a) the price or 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 neighborhood; and
- (d) the value of similar property as shown by previous sales made in the recent past.

28. **Additional price.**- (1) The pre-emptor shall also pay additional price at the rate of ten percent for every year over and above the sale price finally determined by the court.

(2) The amount mentioned in sub-section (1) shall be calculated from the date of the sale till the date on which the pre-emptor applies for the execution of the decree on its having attained finality.

(3) No decree shall be executed unless the sale price determined under section 26 and the additional price calculated under this section are deposited by the pre-emptor.

29. **Limitation.**- The period of limitation for a suit to enforce a right or pre-emption under this Ordinance shall be four months from the date-

- (a) of a registration of the sale deed;
- (b) of the attestation of the mutation, if the sale is made otherwise than through a registered sale deed;
- (c) on which the vendee takes physical possession of the property if the sale is made otherwise than through a registered sale deed or a mutation; or
- (d) of knowledge by the pre-emptor, if the sale is not covered under paragraph (a) or paragraph (b) or paragraph (c);

30. **Notice.**- (1) The officer registering the sale deed or 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 to have been sufficiently given if it is displayed on the main entrance of a mosque and on any other public place of the village or place where the property is situated.

(3) The charges for the notice under sub-section (2) shall be recovered from the vendee by the officer registering the sale or attesting the mutation, as the case may be, at the time of such registration or attestation.

31. **Matters ancillary or akin to the provisions of this Ordinance.**- Matters ancillary or akin to the provisions of this Ordinance which have not been specifically covered under any provision thereof shall be decided according to shariah.
32. **Application of the Civil Procedure Code, 1908 and Qanoon-e-Shahadat, 1984.**- The provisions of the Code of Civil Procedure, 1908 (Act V of 1908) and Qanoon-e-Shahadat, 1984 (P.O. 10 of 1984) or any other law on the subject for the time being in force shall mutatis mutandis, apply to the proceedings under this Ordinance.
33. **Rules.**- The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.
34. **Repeal.**- The Punjab pre-emption Act, 1913 (Punjab Act, 1 of 1913), in its application to the Islamabad Capital Territory, is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The bill seeks to have pre-emption law for Islamabad Capital Territory. The provisions Punjab pre-emption Act 1913 were declared by Federal Shariat Court to be against the injunction of Islam. The province had legislated pre-emption laws for their respective provinces in 1991 whereas as no law of pre-emption was legislated for Islamabad Capital Territory in the terms of judgment of Federal Shariat Court. Hence this Bill.

Sd/-
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