

RAJASTHAN PRE-EMPTION ACT, 1966

Preamble - RAJASTHAN PRE-EMPTION ACT, 1966

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[Act No. 01 of 1966]

[01st February, 1966]

PREAMBLE

An Act to consolidate and amend the law relating to pre-emption in the State of Rajasthan.

Be it enacted by the Rajasthan State Legislature in the Sixteenth Year of the Republic of Indiaas follows; --

Chapter I - PRELIMINARY

Section 1 - Short title, extent and commencement

- (1) This Act may be called the Rajasthan Pre-emption Act, 1966.
- (2) It extends to the whole of the State of Rajasthan.
- (3) It shall come into force at once.

Section 2 - Definitions

In this Act, unless the subject or context requires otherwise,--

- (i) "co-sharer", used in relation to any immovable property, means any person entitled as an owner or a proprietor to any share or part in such property, whether his name is or is not recorded as such owner or proprietor in the record of rights or in any register prepared in accordance with law;
- (ii) "foreclose" and "foreclosure" refer to the passing of a final decree for foreclosure under rule 3 of Order XXXIV of the Code of Civil Procedure, 1908 (Central Act 5 of 1908);

- (iii) "house" means any hut or building and includes any compound or enclosure appertaining thereto;
- (iv) "immovable property" means land or house property, wherever situated in the State;
- (v) "land" includes things attached to the earth, or permanently fastened to anything attached to the earth, when sold or foreclosed alongwith the land to which they are attached but not otherwise;
- (vi) "purchaser" includes a person who has acquired immovable property under a final decree for foreclosure;
- (vii) "sale" means a transfer of ownership in immovable property in exchange for a price paid or promised or partly paid and partly promised;
- (viii) "transfer" means a sale, or a mortgage where the final decree for foreclosure in respect thereof has been passed.

Chapter II - PRE-EMPTION

Section 3 - "Right of pre-emption" defined

The "right of pre-emption" is the right accruing under section 4 of this Act, upon a transfer of any immovable property, to acquire such property and to be substituted as the transferee thereof in place of and in preference to the original transferee and "pre-emptor" means a person having a right of pre-emption.

Section 4 - Cases in which right of pre-emption accrues

Subject to the provisions contained in section 5, the right of pre-emption shall, upon the transfer of any immovable property, accrue to the persons mentioned in section 6.

Section 5 - Cases in which right of pre-emption does not accrue

(1) The right of pre-emption shall not accrue—

- (a) upon the transfer of a shop, katra, sarai, musafirkhana, dharamshala, temple, mosque or other similar buildings; or

(b) upon a sale—

- (i) by or to the Central or State Government, or
 - (ii) by or to any local authority, or
 - (iii) to any company under the provisions of Part VII of the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act 24 of 1953), or
 - (iv) for the purpose of a manufacturing industry; or
- (c) on a transfer to any of the persons mentioned in section 6, to any person who has an equal or inferior right of pre-emption; or
- (d) in the case of a transfer by joint owners, to a party to such transfer; or
- (e) in respect of—
- (i) any sale in execution of a decree of a civil or revenue court, or
 - (ii) any sale in default of payment of land revenue or of any sum legally recoverable as in arrear of land revenue:

Provided that, in the case contemplated by sub-clause (iv) of clause (b) the right of pre-emption shall accrue, subject to the other provisions of this Act, on the expiry of one year from the date of the registration of the sale-deed, in case such sale is made without a registered deed from the date of taking physical possession of the immovable property sold if such property has not been used in good faith for the purpose for which it was ostensibly purchased.

(2) Nothing in this Act shall -

- (a) affect the provisions of rule 88 of Order XXI of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) or the provisions of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1965) or of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956), or of the Rajasthan Colonisation Act, 1954 (Rajasthan Act 27 of 1954), or
- (b) confer on any person, the right of pre-emption in respect of any immovable property which such person is not entitled to purchase; under any law for the time being in force.

Section 6 - Persons to whom right of pre-emption accrues

(1) Subject to the other provisions of this, Act, the right of pre-emption in respect of any immovable property transferred shall accrue to, and vest in, the following classes of persons, namely: --

- (i) co-sharers of or partners in the property transferred,
- (ii) owners of other immovable property with a stair-case or an entrance or other right or amenity common to such other property and the property transferred, and
- (iii) owners of property servant or dominant to the property transferred.

(2) Among the different classes of persons mentioned in sub-section (1), persons of the first class will exclude those of the other classes, persons of the second will exclude those of the third class.

(3) Among persons of the same class claiming the right of preemption the person nearer in relationship to the person whose property is transferred will exclude the more remote.

(4) Where two or more persons of the same class, claiming the right of pre-emption, are equally entitled thereto in all respects, the court may—

(a) determine, by drawing lots, the person in whose favour pre-emption may be decreed, or

(b) after taking into consideration the circumstances of the case and the respective requirements of all such persons,--

(i) determine which of such persons may be allowed to exercise the right in preference to the rest, or

(ii) direct the division of the property equally among all such persons, each of them paying an equal share of the consideration for the transfer.

Section 7 - Power to exclude

(1) Whenever the State Government considers it expedient to do so on account of the prevalence or non-prevalence of any law or custom in any locality or in the interests of the general public of such locality or for the protection of the interests of any

scheduled tribe in such locality or because of the existence of any other ground which the State Government considers to be reasonable and adequate in the particular circumstances obtaining in such locality, it may, by notification in the Official Gazette, declare that, in any local area or with respect to any immovable property or class of immovable property therein or with respect to any transfer or class of transfers therein no right of pre-emption, or only such limited right as the State Government may specify in the notification, shall accrue.

- (2) The notification issued under sub-section (1) shall be laid, as soon as may be after it is so issued, before the House of the State Legislature while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or of the session immediately following, the House of the State Legislature makes any modification in such notification or resolves that such notification should not be issued, such notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

Chapter III - PROCEDURE

Section 8 - Notice to pre-emptors

- (1) When any person proposes to sell, or to foreclose the right to redeem, any immovable property, in respect of which any persons have a right of pre-emption, he shall give notice to all such persons as to the price at which he is proposing so to sell or as to the amount due in respect of the mortgage proposed to be foreclosed, as the case may be.
- (2) Such notice shall be given through the civil court, within the local limits of whose jurisdiction the property concerned is situated shall clearly describe such property, shall state the name and other particulars of the purchaser or the mortgagee and shall be served in the manner prescribed for service of summons in civil suits.

Section 9 - Loss of right of pre-emption on transfer

Any person having a right of pre-emption in respect of any immovable property proposed to be sold shall lose such, right unless within two months from the date of the service of such notice, he or his agent pays or tenders the price specified in the notice given under section 8 to the person so proposing to sell:

Provided that the right of pre-emption shall not be so lost if the immovable property in question is actually sold for an amount smaller than that mentioned in the notice or to a person not mentioned in the notice as purchaser.

Section 10 - Loss of right of pre-emption on foreclosure

When the right of pre-emption accrues in respect of the foreclosure of a mortgage, any person entitled to such right shall lose the same unless within two months from the date of service of the notice given under section 8, he pays or tenders to the mortgagee or his successor in title the amount specified in such notice;

Provided that the right of pre-emption shall not be so lost if the amount claimed by the mortgagee was not really due on the footing of the mortgage or was not claimed in good faith.

Section 11 - Suit to enforce right of pre-emption

(1) When a transfer has been completed, a suit to enforce the right of pre-emption shall, subject to the provisions contained in section 19, lie, and may be brought by any person entitled thereto, on any one or more of the following grounds, namely:—

- (a) that no due notice was given or served as required by section 8;
- (b) that a tender was made under section 9 or section 10 but was refused;
- (c) that, in case of a sale, the price stated in the notice given under section 8 was not specified or was not mentioned in good faith;
- (d) that, in the case of a mortgage sought to be foreclosed, the amount claimed by the mortgagee was not really due on the footing of the mortgage or was not claimed in good faith;
- (e) that the amount so claimed by the mortgagee exceeds the fair market value of the property mortgaged;
- (f) that the property proposed to be transferred was not property described in the notice given under section 8;
- (g) that the property in question has been transferred to a person other than the purchaser mentioned in the said notice:

Provided that no such suit shall lie under this Act in respect of a portion only of the immovable property transferred unless the plaintiff has a right of pre-emption

in respect of only a portion of such property.

- (2) Where, in any suit on the basis of a sale, the court finds that the price alleged to have been paid was not fixed in good faith or was not actually paid, the court shall ascertain the actual price paid, (the burden of proving which shall lie on the purchaser) or shall fix such price as appears to it to be the fair market value of the immovable property sold:

Provided that when the price alleged to have been paid represents entirely or mainly a debt greatly exceeding in amount the fair market value of the property sold, the court shall determine such market value which shall be the price for the purposes of the suit.

- (3) Where, in any suit on the basis of a foreclosed mortgage, the court finds that the amount of the decree has been inflated by fraud or collusion and that the amount claimed by the mortgagee was not really due on the footing of the mortgage or was not claimed in good faith or exceeds the fair market value of the property mortgaged, the amount to be paid to the mortgagee shall not exceed what the court finds to be such market value.

- (4) For the purpose of determining the fair market value of any property, the court may consider the following among other matters as evidence of such value:--

- (a) the estimated amount of the average annual net assets of the property;
- (b) the amount of the taxes assessed thereon;
- (c) the value of similar property in the neighbourhood;
- (d) the value of the property in question as shown by previous transfers.

Section 12 - Consolidation of suits

Where more suits than one are pending for pre-emption in respect of the same transfer, the plaintiff in each suit shall be made a defendant in respect of the other suits and all the suits shall be consolidated and disposed of by a single decree which shall determine the extent to which, the order in which, and the terms and conditions under which, each plaintiff shall be entitled to preemption.

Section 13 - Decree to fix time for payment

If the court finds for the plaintiff, the decree shall specify a date on or before which the purchase money or the amount to be paid to the mortgagee shall be paid.

Section 14 - Effect of non-payment

If the purchase money or amount is not paid into the court before it rises on the day fixed by

it under section 13, the plaintiff's suit shall stand dismissed and he shall, so far as relates to such sale or mortgage, lose his right of pre-emption over the property to which the decree relates and shall also bear the costs of the defendants unless the court, for reasons to be recorded at the time of passing the decree, otherwise directs.

Section 15 - Effect of loss of right of pre-emption prior to decree

No decree for pre-emption shall be passed in favour of any person unless he has a subsisting right of pre-emption at the time of the decree, but where a decree for pre-emption has been passed in favour of a plaintiff, whether by a court of the first instance or of appeal, the right of such plaintiff shall not be affected by any transfer or loss of his interest occurring after the date of such decree:

Provided that no voluntary transfer made in favour of the purchaser after the institution of a suit for pre-emption shall defeat any right which the plaintiff had at the date such institution.

Section 16 - Associating in suit co-plaintiff with inferior rights

Where a person having a right of pre-emption sues jointly with a person not having such right, he shall lose his right; and, where a pre-emptor of a higher, class sues jointly with a pre-emptor of a lower class, he shall have no right higher than that of such, pre-emptor of the lower class.

Section 17 - Joint purchase by persons one of whom is liable to pre-emption

Where property is jointly purchased or foreclosed by two or more persons against one of whom only there is a right of pre-emption, such right may be claimed as against all of them.

Explanation.--This section does not apply where each such person acquires a defined interest.

Section 18 - Survival of right of suit on death of plaintiff

If the plaintiff in a pre-emption suit dies at any time before the decree has become final, the suit shall not abate if the cause of action is subsisting.

Chapter IV - MISCELLANEOUS PROVISIONS

Section 19 - Transfer of property to pre-emptor or acquisition of right by original transferee prior to suit

No suit for pre-emption shall lie where prior to the institution of such suit, the transferee has transferred the property in dispute to a person, having a right of pre-emption equal or superior to that of the plaintiff, or has acquired an indefeasible interest in the property which, if existing at the date of the transfer, would have barred the suit.

Section 20 - Date on which pre-emptor's right accrues

A person who has obtained a decree for pre-emption in respect of any property shall acquire no title to that property until he pays into court the sum of money required to be paid in accordance with the pre-emption decree, but, upon such payment being made, any alienation of the property made by the original transferee or by any person claiming through him shall be voidable at the option of the decree-holder with effect from the date of such payment.

Section 21 - Special provision for limitation

- (1) Subject to the provisions contained in the proviso to sub-section (1) of section 5, the period of limitation, in any case not provided for by article 97 of the First Schedule to the Limitation Act, 1963 (Central Act 36 of 1963), for a suit to enforce the right of pre-emption under this Act shall, notwithstanding anything contained in article 113 of the said schedule of the said Act, be one year from the date on which,--

(a) in the case of a sale made without a registered sale-deed, the purchaser takes under the sale physical possession of any part of the property sold, and

(b) in the case of a foreclosure, the final decree for foreclosure is passed.

- (2) The period of limitation for a suit to enforce a right of preemption which has accrued before the commencement of this Act shall, notwithstanding anything contained in the said Limitation Act, in no case exceed one year from the commencement of this Act.

Section 22 - Saving of rights previously accrued

Except as provided in sub-section (2) of section 21, nothing in this Act shall affect any right, privilege, obligation or liability acquired, accrued or insured in respect of any transfer made before the commencement of this Act.

Section 23 - Abolition of other rights of pre-emption

No right of pre-emption shall be enforced in respect of any transfer made after the commencement of this Act except in accordance with the provisions of this Act.

Section 24 - Repeal

- (1) The following enactments are hereby repealed to the extent specified against each of them, namely:--
1. The Ajmer Laws Regulation, 1877. Chapter II.
 2. The Bikaner State Pre-emption Act, 1919. The whole.
 3. The Marwar Law of Pre-emption, 1922. The whole.
 4. The Bharatpur State Pre-emption Law, 1922. The whole.
 5. The Banswara State Law of Pre-emption, 1924. The whole.
 6. The Dungarpur State Law of Pre-emption, 1939. The whole.
 7. The Alwar State Pre-emption Act, 1946. The whole.
- (2) All other corresponding laws, including rules, notifications and orders, in force in any other part of the State, are also hereby repealed.