REGISTERED No. M - 302
L.-7646

The Gazette of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, FRIDAY, DECEMBER 31, 2010

PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF GILGIT-BALTISTAN

GILGIT-BALTISTAN SECRETARIAT

(Law and Prosecution Department)

Gilgit, the 31st December, 2010

THE GILGIT-BALTISTAN PRE-EMPTION ACT, 2010

Act No. VII OF 2010

AN

ACT

to bring in conformity with the Injunctions of Islam the law relating to Pre-emption.

No. PS-Law-1/2008.—Preamble—WHEREAS it is expedient to enact the law relating to pre--emption, and bring it in conformity with the Injunctions of Islam, as set out in the Holy Qur'an and Sunnah, the Gilgit-Baltistan Legislative Assembly enacts the Gilgit-Baltistan Pre-emption Act No. VII of 2010 as under:—

1. Short title, extent and commencement.—(1) This Act may be called the Gilgit-Baltistan Pre-emption Act, 2010.

Price : Rs. 10.50

[3157(2010)/Ex. Gaz.]

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(2) It extends to the whole of the Gilgit-Baltistan.

(3) It shall come into force at once.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context—

(a) "immovable property" means immovable property situated in any area other than an urban area or within cantonment limits as declared by any law relating to Local Bodies or Cantonments, as the case may be, for the time being in force;

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

(c) "right of pre-emption" means a right to acquire by purchase an immovable property in preference to other persons by reason of such right; and

(d) "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 bil-iwaz' or hiba ba shart-ul-iwaz; but does not include—

(i) transfer of an immovable property through inheritance or will or gift, other than 'hiba bil-iwaz' or hiba ba-shart-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 a Revenue Officer or any local authority;

(iii) exchange of agricultural land; and

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

3. Interpretation.— In the interpretation and the application of the provisions of this Act, the Court shall seek guidance from the Holy Quran and Sunnah.

4. Act to override other laws.— The provisions of this Act, shall have effect notwithstanding anything in any other law for the time being in force.

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5. Light of Pre-emption.— (1) The right of Pre-emption shall arise in case of sale of immovable property.

6. Persons in whom the right of pre-emption vests.— (1) 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 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.

(2) Notwithstanding anything in sub-section (1), the right of pre-emption shall be exercisable only in case of 'Zaroorat' or to avoid 'Zarar'

7. 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.

Illustrations

(a) A garden is irrigated by a watercourse which opens from a small canal. If this garden is sold, the person having right of irrigation from the 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 persons having right of irrigation from the watercourse as well as the both persons having right of irrigation from the canal, shall have the right of pre-emption.

(b) 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,

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the person having right of passage shall have precedence over the person having right of passage of water.

(c) A participator in the special rights having his property, on the basis of which he 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.

8. 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 jointly, by any two or more of them jointly, by them severally.

9. Method of distribution of property where more than one person are equally entitled.— Where more than one persons 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.

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

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

11. Sale of appurtenances of land.— Where only trees or a building is sold without land, no right of pre-emption shall exist in such trees or the structures of a building but where land is sold with trees and building on it, the trees and buildings shall be deemed to be included in the land for purposes 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) 'Talab-e-muwathibat' ;

(b) 'Talab-e-ishhad'; and

(c) 'Talab-e-Khusumat'.

Explanation:

I. 'Talab-e-muwathibat' means immediate demand by a pre-emptor, 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.

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Note: Any words indicative of intention to exercise, the right of pre-emption are sufficient.

II. 'Talab-e-ishhad' means demand by establishing evidence.

III. 'Talab-e-khusumat' means demand by filing a suit.

(2) When the fact of sale comes within the knowledge of a pre-emptor through any source, he shall make talab-e-muwathibat.

(3) Where a pre-emptor has made talab-e-muwathibat under sub-section (2) he shall as soon thereafter as possible but not later than two weeks from the date of knowledge make talab-e-ishhad by sending a notice in writing attested by two truthful witnesses, under 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 talab-e-ishhad in the presence of two truthful witnesses.

(4) Where a pre-emptor has satisfied the requirements of talab-e-muwathibat under sub-section (2) and talab-e-ishhad under sub-section (3), he shall make talab-l-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 13, 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 13, the right of pre-emption shall stand transferred to his legal heirs.

16. Abatement of right of pre-emption.— (1) Where a pre-emptor taking possession of the property through 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.

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

17. Exercise of right of pre-emption by a Muslim and a 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-emptions non-transferable and indivisible.— (1) Save as provided in Section-16, 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-empt able.

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

20. Improvements made by the vendee.— A vendee has made any improvements in the immovable property before Talab-e-Ishhad is made by the pre-emptor under sub-section (3) of Section 13, 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 or property used for charitable, religious or public purpose; and

(b) property owned by the Federal or a Provincial Government or a local authority; and

(c) the property acquired by the Federal 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 one-third of the sale price of the property in cash within such period as the Court may fix:

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

Provided further that if no sale price is mentioned in the sale-deed or in the mutation, or the price so mentioned appears to be inflated, 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 costs.

(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 not to be attached.— No sum deposited in or paid into Court by a pre-emptor under the provisions of this Act 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 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 values how to 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:-

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(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 the previous sales made in the near past.

28. Government may exclude areas from Pre-emption.— The Government may, in the public interest, by a notification in the official Gazette, declare that in any local area or with respect to any sale or class or sale, no right of pre-emption shall exist or only such limited right, as it may specify shall exist.

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

(a) of the 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. Notices.— (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 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 Act.— Maters ancillary or akin to the provisions of this Act which have not been specifically covered under any provision thereof shall be decided according to Shari'ah.

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32. Application of the Civil Procedure Code and Qanoon-e-Shahadat Order,1984.— The provisions of the Code of Civil Procedure, 1908 (Act V of 1908) and Qanun-e-Shahadat Order, 1984 (P.O. X Of 1984) or any other law on the subject for the time being in force shall, mutatis mutandis, apply to proceedings under this Act.

33. Implementation of Muslim Personal Law.— In case of any type of ambiguity in the Gilgit-Baltistan Pre-emption Act, 2010, the suit of pre-emption shall be decided according to personal law of plaintiff.

34. Repeal.—(1) The Gilgit sub-division Right of Prior Purchase Regulation 1938 is hereby repealed.

(2) Notwithstanding any thing contained in this Act, the cases and appeals filed under the Gilgit sub-division Right of Prior Purchase Regulation 1938, in which judgments and decrees had been passed before enactment of the Gilgit-Baltistan Pre-emption Act, 2010, further proceeding if any relating to such cases and appeals shall, notwithstanding the repeal of the said Act to be governed and continued in accordance with the provisions thereof.

35. Rules.— Government may, by notification in the official Gazette, may make rules for carrying out the purposes of this Act.

WAZIR BAIG,
SPEAKER
Gilgit-Baltistan
Legislative Assembly.

PIR SYED KARAM ALI SHAH,
GOVERNOR,
Gilgit-Baltistan.

PRINTED BY THE MANAGER, PRINTING CORPORATION OF PAKISTAN PRESS, ISLAMABAD.
PUBLISHED BY THE DEPUTY CONTROLLER, STATIONERY AND FORMS, UNIVERSITY ROAD, KARACHI.

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