

CHAPTER 74

THESAWALAMAI PRE-EMPTION

Ordinance
No. 59 of 1947.

AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW OF PRE-EMPTION RELATING TO LANDS AFFECTED BY THE " THESAWALAMAI ".

[1st July. 1948.]

Short title.

1. This Ordinance may be cited as the *Thesawalamai* Pre-emption Ordinance.

Restrictions on the right of pre-emption.

2. (I) When any immovable property subject to the *Thesawalamai* is to be sold, the right of pre-emption over such property, that is to say, the right in preference to all other persons whomsoever to buy, the property for the price proposed or at the market value, shall be restricted to the following persons or classes of persons :—

- (a) the persons who are co-owners with the intending vendor of the property which is to be sold, and
- (b) the persons who in the event of the intestacy of the intending vendor will be his heirs.

(2) For the purposes of this Ordinance, the term " heirs " means all descendants, ascendants and collaterals up to the third degree of succession, and includes—

- (a) children, grandchildren and great-grandchildren;
- (b) parents, grandparents on both the paternal and the maternal sides and great-grandparents on all sides ;
- (c) brothers and sisters whether of the full or of the half-blood ;
- (d) uncles and aunts, and nephews and nieces, both on the paternal and the maternal sides, and whether of the full or of the half-blood.

Mode of exercising right of pre-emption,

3. The right of pre-emption shall not be exercised save in accordance with the provisions of this Ordinance.

4. The right of pre-emption shall not be exercised except in a Case where the property which is to be sold consists of an undivided share or interest in immovable property, and shall in no case be permitted where such property is held in sole ownership by the intending vendor.

Cases in which the right is permitted.

5. (1) Notice of an intention or proposal to sell to any person not entitled to the right of pre-emption under this Ordinance any property to which section 4 applies shall be signed by the intending vendor before a notary public. The notice shall be attested in triplicate, but the registration of it shall not be obligatory.

Mode of publication of notice.

(2) The notice shall set out the actual price offered by the prospective purchaser, but it shall not be necessary to disclose in addition the name of the prospective purchaser.

(3) A certified copy of the notice shall be forwarded forthwith by the intending vendor to the Mayor or Chairman, as the case may be, of the local authority within whose administrative limits the land is situated.

(4) The Mayor or Chairman to whom the certified copy is forwarded shall record the particulars set out therein in a register to be kept by him for that purpose, and shall cause such certified copy to be posted immediately on the notice-board of his office.

(5) A certificate under the hand of the officer that the notice has been duly posted on his notice-board shall be conclusive evidence of the publication of the notice for the purposes of this Ordinance.

THESA WALAMAI PRE-EMPTION

[Cap.74

Time-limit for exercising the right by private treaty.

6. (1) Within three weeks of the date of publication of a notice under section 5, any person to whom the right of pre-emption is reserved by this Ordinance, may either tender the amount stated in such notice and buy the property from the intending vendor, or enter into an agreement to buy it.

(2) Any conveyance of the property executed by the intending vendor within the period of three weeks specified in subsection (1), in completion of a sale of which he has given notice under section 5 or of a sale to any person other than one to whom the right of pre-emption is reserved by this Ordinance, shall be null and void and of no effect whatsoever in law.

Proceedings for enforcing the right within the time-limit.

7. (1) If a tender made under section 6 is not accepted by the intending vendor, and if the land remains unsold, the person making the tender may, on condition that he has first deposited in court the amount stated in the notice and tendered by him to the intending vendor, apply to court within the period specified in section 6, by way of petition duly stamped and verified by affidavit, for an order directing the intending vendor to sell the land to the applicant.

(2) Where the applicant alleges in his petition and proves by his affidavit, that the amount stated in the notice by the intending vendor is fictitious, the deposit of such smaller sum as may be alleged in the petition to be the reasonable price or the market value of the land, shall be deemed to be sufficient compliance with the condition in subsection (1) as to the deposit of money in court.

(3) In the event of any smaller sum being deposited under subsection (2), the court shall, without prejudice to such issues relating to the value of the land as may have to be dealt with at the inquiry into the petition, hold a preliminary inquiry as to the sufficiency of the sum deposited by the applicant, hearing such evidence as it may deem necessary for this purpose.

(4) Any order made by the court after an inquiry under subsection (3) shall be final and conclusive; and where such order directs any further sum to be deposited,

compliance with the order shall be a condition precedent to the issue of any order *nisi*, interlocutory order, notice, or process, in the matter of the petition.

(5) Every petition under this section shall be disposed of according to the rules of summary procedure laid down in Chapter XXIV of the Civil Procedure Code; and in the event of the non-appearance or other default of the intending vendor, the court may, if after due inquiry it is satisfied that the application should be allowed, execute a conveyance of the property to the applicant, and the provisions of section 333 of that Code shall *mutatis mutandis* apply to any conveyance so executed.

(6) Any conveyance of the property, in completion of the proposed sale, executed by the intending vendor after the service on him of an order *nisi* or interlocutory order and before the final order is made in any proceedings taken under this section, shall be null and void and of no effect whatsoever in law.

8. (1) After the completion of a sale of which notice has been given under section 5 or of any sale of which notice has not been given under that section, the right of pre-emption shall not be enforced except by way of regular action, to which the purchaser shall also be made a party.

Remedy after the completion of the proposed sale.

(2) An action to enforce the right of pre-emption under subsection (1) may be instituted on any of the following grounds:—

- (i) that the notice required by section 5 was not given or that the notice given was irregular or defective ;
- (ii) that the price set out in the notice was fictitious or not fixed in good faith;
- (iii) that at the time of, and for three weeks after, the publication of the notice, the person seeking to enforce the right was absent from the district and that within a reasonable time after the lapse of the said period of three weeks and before the completion of the

THESA WALAMAI PRE-EMPTION

proposed sale, he tendered to the intending vendor the purchase amount stated in the notice, and that such tender was not accepted.

Time-limit to action for enforcing right.

9. No action to enforce a right of pre-emption on the ground that the notice required by section 5 was not given or that the notice given was irregular or defective shall be instituted or maintained—

- (1) if the actual purchaser of the land is also a person who at the time of the purchase had the right of pre-emption over the property purchased by him; or
- (2) if more than one year has elapsed from the date of the registration of the purchaser's deed of transfer.

Registration of *lis pendens* to be compulsory.

10. No precept or order for the service of notice or summons shall be issued in any proceedings or action for enforcing a right of pre-emption, until proof is furnished to the court of the registration of the proceedings or action as a *lis pendens* in accordance with the provisions of the Registration of Documents Ordinance.

Deposit of purchase money as proof of plaintiffs bona fides.

11. At any time after the institution of an action to enforce a right of pre-emption, the court may in its discretion order the plaintiff to deposit the purchase amount set out in the notice given under section 5 ; and if the plaintiff makes default in depositing the amount within such period, or further periods not exceeding three months in the aggregate, as the court may allow, his action shall be struck off the roll of pending cases.

12. No person seeking to enforce a right of pre-emption by way of petition or by regular action, shall be permitted to take over the property for a less amount than that stated in the notice given under section 5 or recited as the consideration in the deed of transfer executed by the vendor:

The minimum price payable by the plaintiff.

Provided, however, that if the amount so stated or recited is proved to the satisfaction of the court to be fictitious, the court may ascertain the actual price paid and the market value, and allow the property to be pre-empted by the plaintiff for the price actually paid or at the market value, whichever of these is the larger.

13. All co-owners and heirs within the meaning of section 3 shall be deemed to have an equal right to pre-empt any share or interest in property sold without due publication of the notice required by section 5, and there shall be no preference or precedence among them;

Equality of rights of all persons entitled to pre-empt;

Provided, however, that in the event of any competition among such co-owners and heirs, the court may accept the highest offer made by any of them, if such offer is also larger than the actual price paid or the market value, whichever of these is the larger.

and auction in case of competition among them.

14. So much of the *Thesawalamai* and Repeal of the Ordinance No. 4 of 1895, entitled " An Ordinance relating to the publication of intended sales or other alienations of Immovable Property affected by the *Thesawalamai* of the Northern Province of Ceylon" as is inconsistent with the provisions of this Ordinance, is hereby repealed.