

Item No. 1
19.11.2025
Court. No. 6
GB

C.O. 3816 of 2025

Mijarul Islam
Vs.
Ruhul Khan & Anr.

*Mr. Partha Pratim Roy,
Ms. Poulami Chakraborty*

...for the Petitioner.

1. This is an application challenging an order dated May 5, 2025, passed by the learned Additional District Judge, 1st Court at Lalbagh, Murshidabad in Misc. Appeal No.61 of 2017. The Misc Appeal was allowed and the preemption application was found to be not maintainable. The judgment of the trial court was set aside.
2. Mr. Partha Pratim Roy, learned advocate for the petitioner submits that once the learned trial judge had allowed the preemption application subject to deposit of the remaining consideration amount within the stipulated time specified in the order of the learned trial judge, the question of short deposit would not arise. The preemptor/petitioner complied with the direction of the court and deposited the money. The issue of short deposit, therefore, attained finality and such point could not be raised before the learned appellate court by filing the misc. appeal.
3. Hence, the misc. appeal should not have been entertained on the ground of short deposit. The

maintainability of the preemption application could not have been decided.

4. The defect, if any, in the initial filing of the application with a short deposit of the consideration amount was cured by the order of the learned trial judge.
5. I have perused the judgment of the learned appellate court. The learned appellate court framed two issues:-
 - (1) Whether the learned trial court erred in deciding the matter in favour of the petitioner.
 - (2) Whether the order passed by the learned trial court required any interference by the appellate court.
6. The opposite party, appellant, before the learned appellate court cited the decision in ***Barasat Eye Hospital and Others vs. Kaustabh Mondal*** reported in ***(2019) 19 Supreme Court Cases 767*** and urged before the appellate court that as the petitioner had failed to deposit the entire consideration amount with 10% of the value set forth within the period of limitation prescribed under section 8 of the West Bengal Land Reforms Act, the application for preemption was not maintainable.
7. Mr. Roy further submits that the preemption application was filed in 2017 and the decision of ***Barasat Eye Hospital and Others (supra)*** was delivered in 2019.
8. Upon considering the rival contentions of the parties, the appellate court found that it was a mandatory pre-

condition under Section 8 as well as Section 9 of the West Bengal Land Reforms Act, that the entire consideration amount along with 10% of the value set forth should be deposited within the stipulated period under Section 8. The preemptor was not entitled under the law to challenge the amount of consideration money mentioned in the deed on the ground of the same being inflated, without making such deposit.

9. This Court in ***Lipika Naskar & Anr. vs. Ajoy Naskar & Ors.*** in ***C.O No. 4201 of 2023*** (reported in ***2024 Latest Caselaw 1277 Cal***) discussed and deliberated on the law and observed that it was well settled that the mandate of payment of the entire consideration money with 10% levy was a precondition for initiation of proceedings under Section 8(1) of the said Act. Such statutory mandate has been recognised by the Hon'ble Apex Court in ***Barasat Eye Hospital (supra)***. There could not be any estoppel or waiver against a statute. Moreover the preemptees raised the point of maintainability of the proceedings, before the permission to deposit the balance consideration was granted. The relevant paragraphs of ***Barasat Eye Hospital (supra)*** are quoted below:-

“28. In our view, when the inquiry is being made by the Munsif, whether in respect of the stated consideration, or in respect of any additional amounts which may be payable, the pre-requisite of deposit of the amount of the stated consideration under Section 8(1) of the said Act would be required to be fulfilled. The phraseology “the remainder, if any, being refunded to the applicant” would have to be understood in that context. The word 6

“remainder” is in reference to any amount which, on inquiry about the stated consideration, may be found to have been deposited in excess, but it cannot be left at the own whim of the applicant to deposit any amount, which is deemed proper, but the full amount has to be deposited, and if found in excess on inquiry, be refunded to the applicant. 29. We are, thus, firmly of the view that the prerequisite to even endeavour to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration, as otherwise, Section 8(1) of the said Act will not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose. 30. We are not inclined to construe the aforesaid provisions otherwise only on the ground that there are no so-called “penal provisions” included. The provisions of Sections 8 and 9 of the said Act must be read as they are. In fact, it is a settled rule of construction that legislative provisions should be read in their plain grammatical connotation, and only in the case of conflicts between different provisions would an endeavour have to be made to read them in a manner that they co-exist and no part of the rule is made superfluous. [British India General Insurance Co. Ltd. v. Itbar Singh, AIR 1959 SC 1331] The interpretation, as we have adopted, would show that really speaking, no part of either Section 8, or Section 9 of the said Act is made otiose. Even if an inquiry takes place in the aspect of stated consideration, on a plea of some fraud or likewise, and if such a finding is reached, the amount can always be directed to be refunded, if deposited in excess. However, it cannot be said that a discretion can be left to the pre-emptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of preemption. The full amount has to be deposited.”

10. Pre-emption is a weak right according to the Hon’ble Apex Court and a right to pre-emption can only be triggered off with the deposit of the entire amount. Thus, subsequent deposit of consideration money after the judgment of the trial judge will render the pre-emption application barred by the law of limitation.

Secondly, even if an objection that an inflated rate had been quoted by the preemptor is taken, the Hon'ble Apex Court held that the entire amount should be deposited as per Section 8(1) and the remaining, if any, would be refunded if upon enquiry under Section 9 it was found that an excess amount had been paid.

11. Thus, the preemptor cannot put a random amount as per his whim, as the actual sale consideration. If such practice is allowed, then a weak right will be transformed into a speculative strong right.
12. The following paragraphs from ***Barasat Eye Hospital (supra)*** are quoted below:-

“6. Now turning to Section 9 of the said Act, from which, apparently, some judgments of the Calcutta High Court have sought to derive a conclusion that an inquiry into the stated consideration is envisaged. However, the commencement of sub-section (1) of Section 9 is with “on the deposit mentioned in sub-section (1) of Section 8 being made...” Thus, for anything further to happen under Section 9 of the said Act, the deposit as envisaged under Section 8 of the said Act has to be made. It is only then that the remaining portion of Section 9 of the said Act would come into play. 27. The question now is as to what would be the nature of inquiry which has been envisaged to be carried out by the Munsif. If Section 9, as it reads, is perused, then first, the amount as mentioned in the sale transaction is to be deposited, as per sub-section (1) of Section 8 of the said Act. Once that amount is deposited, the next stage is for the Munsif to give notice of the application to the transferee. The transferee thereafter, when enters appearance within the time specified, can prove the consideration money paid for the transfer “and other sums”. Such other sums, if any, are as “properly paid by him in respect of the land including any sum paid for annulling encumbrances created prior 8 to the day of transfer, and rent or revenue, cesses or taxes for any period”. The inquiry, thus envisaged, is in respect of the amount sought to be claimed over and above the stated

sale consideration in the document of sale because, in that eventuality further sums would have to be called for, from the pre-emptor. In that context, the additional amount would have to be deposited. Even in the event that a pre-emptor raises doubts regarding the consideration amount, enquiry into the said aspect can be done only upon payment of the full amount, along with the application. In this aspect, the phrase “the remainder, if any, being refunded to the applicant” would include to mean the repayment of the initial deposit made along with the application, if considered to be excess. To give any other connotation to these sections would make both, the latter part of Section 8 of the said Act and the inception part of Section 9 of the said Act, otiose. We do not think such an interpretation can be countenanced.”

13. It is also well settled that, Section 5 of the Limitation Act will not have any application in a proceeding under Section 8 of the Land Reforms Act.

14. The relevant paragraphs of the said decision in Barasat Eye Hospital (supra) are quoted below:-

“32. We also believe that to give such a discretion to the pre-emptor, without deposit of the full consideration, would give rise to speculative litigation, where the pre-emptor, by depositing smaller amounts, can drag on the issue of the vendee exercising rights in pursuance of the valid sale deed executed. In the present case, there is a sale deed executed and registered, setting out the consideration 33. We are of the view that the impugned order and the view adopted would make a weak right into a “speculative strong right”, something which has neither historically, nor in judicial interpretation been envisaged. 34. The last question which arises is whether the respondent can now be granted time to deposit the balance amount. When the direction was so passed, 9 in pursuance of the order of the appellate court, the respondent still assailed the same. The requirement of exercising the right within the stipulated time, in respect of the very provision has been held to be sacrosanct i.e. that there can be no extension of time granted even by recourse to Section 5 of the Limitation Act. [Gopal Sardar v. Karuna Sardar, (2004) 4 SCC 252] 35. As we have discussed above, once the

time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is also sacrosanct. The two go hand-in-hand. It is not a case where an application has been filed within time and the amount is deficient, but the balance amount has been deposited within the time meant for the exercise of the right. We are saying so as such an eventuality may arise, but in that case, the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right. That not having happened, we are of the view that there cannot be any extension of time granted to the respondent now, to exercise such a right. This is, of course, apart from the fact that this speculative exercise on behalf of the respondent has continued for the last fourteen years, by deposit of 50% of the amount.”

15. Even in **Abdul Matin Mallick vs. Subrata**

Bhattacharjee reported in **2022(3) ICC(S.C.) 641**.

the Hon’ble Apex Court reiterated the ratio laid down in **Barasat Eye Hospital (supra)**,. The decision was applied to a proceeding which was pending and initiated before the decision in **Barasat Eye Hospital (supra)** had been pronounced. In such a case of preemption on the ground of co-sharership, where an allegation that an inflated amount had been quoted in the sale deed was made, the Hon’ble Apex Court again followed the decision in **Barasat Eye Hospital (supra)**. The relevant paragraphs are quoted below:-

“7. Now, so far as the submission on behalf of the pre-emptors that they bona fide believed that the sale consideration mentioned in the 10 sale deed is in favour of the vendee, who is an outsider (outside the family) was higher than the actual sale consideration and therefore, they did not deposit the entire sale consideration with additional 10% of the sale consideration along with the pre-emption

application is concerned, it is to be noted that the aforesaid cannot be a ground not to comply with the condition of deposit as required under Section 8 of the 1955 Act. At the most, such a dispute can be the subject-matter of an enquiry provided under Section 9 of the Act. As observed hereinabove, the enquiry under Section 9 with respect to the sale consideration in the sale deed would be only after the condition of deposit of entire sale consideration with additional 10% as provided under Section 8 of the Act has been complied with. 8. Now, so far as the submission on behalf of the pre-emptors that the contention of nondeposit of the entire sale consideration with additional 10% of the sale consideration by the pre-emptors was not raised before the courts below and has been raised for the first time before this Court, and therefore the same be not considered/permitted to be raised now, is concerned, it is to be noted that the said contention would go to the root of the matter on maintainability of the pre-emption application as without complying with the statutory requirements as mentioned under Section 8 of the 1955 Act, the same is not maintainable. It is an admitted position that the pre-emptors had not deposited the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application as required under Section 8 of the Act in the instant case. In view of the aforesaid admitted position, we have considered the submission on behalf of the appellant on non-fulfilment of the condition mentioned in Section 8 of the Act. 9. At this stage, it is required to be noted that even the High Court in the impugned judgment and order has permitted the pre-emptors to deposit the balance sale consideration. However, faced with the decision of this Court in *Barasat Eye Hospital [Barasat Eye Hospital v. Kaustabh Mondal, (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810]* and in light of the observations made by us hereinabove that along with the pre-emption application, the pre-emptors have to deposit the entire sale consideration with additional 10% and only thereafter the further enquiry can be conducted 11 as per Section 9 of the 1955 Act and therefore, unless and until the same is complied with, the pre-emption application would not be maintainable, the High Court is not justified in permitting the pre-emptors to now deposit the balance sale consideration with additional 10% while deciding the revision application. Such a direction/permission/liberty would go against the intent of Section 8 of the 1955 Act. 10. In

view of the above and for the reasons stated above, the present appeals succeed. The impugned judgments and orders passed by the High Court [Abdul Matin Mallick v. Subrata Bhattacharjee (Banerjee), 2019 SCC OnLine Cal 3853] , [Subrata Bhattacharjee (Banerjee) v. Abdul Matin Mallick, 2021 SCC OnLine Cal 3548] and that of the first appellate court are hereby quashed and set aside. Consequently, the pre-emption application submitted by the original pre-emptors — Respondents 1 to 3 herein stands dismissed. Respondents 1 to 3 — original pre-emptors are permitted to withdraw the amount, which they might have deposited either along with the preemption application and/or any subsequent deposit pursuant to the orders passed by the High Court.”

16. In **C.O. No. 451 of 2023** in the matter of **Chitta Ranjan Mishra vs. Subrata Majhi and ors.**, this court held that the decision of the Hon’ble Apex Court in **Barasat Eye Hospital (supra)** was a binding precedent and the same would have a retrospective effect. The following paragraphs are quoted below:-

“Upon a meaningful reading of the decision, it is evident that the object of the said decision was to put to rest the controversy in respect of exercise of such a weak right, especially in the matter of short deposits. The Apex court took note of the fact that the decision would have a far larger ramification, as many cases were pending before this High Court on this point. Secondly, the law was in existence since 1955, but the interpretation of the same in respect of the requirement to deposit the consideration 12 amount was finally put to rest in the decision of Barasat Eye Hospital (supra). It was a law declared on the point and will have a retrospective effect. The Hon’ble Apex Court was of the view that if short deposits were allowed, a weak right would give rise to speculative suits. In the decision of Abdul Matin (supra), a similar view was taken by the Hon’ble Apex Court upon relying on the decision in Barasat Eye Hospital (supra). The Hon’ble Apex Court was dealing with Misc. Preemption Case No.8 of 2012 which had been filed before the trial court. The Misc. preemption case was dismissed by the trial

court. Misc. Appeal No.7 of 2014 was preferred. The Misc. Appeal was allowed and the order of the learned trial court was set aside. The application for pre-emption was allowed on the ground of co-sharership. The first appellate court allowed deposit of the balance consideration money. Aggrieved, the pre-emptee approached the High Court. The High Court dismissed the revisional application by upholding the order of the first appellate court and also upholding the decision of the first appellate to allow a belated deposit of the balance consideration money. Such order was challenged in Civil Appeal No.3500 of 2022. In such a pending proceeding, the decision of *Barasat Eye Hospital (supra)* was referred to and it was held that the learned lower appellate court was not justified in permitting the preemptor to deposit the balance consideration money with additional 10% and the High Court was also not justified in upholding such decision. Thus the Apex Court applied the decision of *Barasat Eye Hospital (supra)* even in a pending preemption case of 2012, and set aside the order of the High Court passed in C.O.4266 of 2016. The decision of *Barasat Eye Hospital (supra)* was rendered in 2019. In the decision of *Assistant Commissioner, Income Tax Rajkot v. Saurashtra Kutch Stock Exchange Ltd.*, reported (2008) 14 SCC 171, the Hon'ble Apex Court held as follows:- '35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.' In the decision of *P.V. George and Others v. State of Kerala and others*, reported in (2007) 3 SCC 557, the Hon'ble Apex Court held that the law declared by a court will have retrospective effect if not otherwise stated to be so specifically."

17. The decision of the Hon'ble Apex Court was a law declared on the point that deposit of the full consideration as stated in sale deed together with further deposit of 10% was a precondition to filing an application under Section 8(1) of the West Bengal Land and Land Reforms Act, 1995. The conflicting legal position was clarified, interpreted, rectified and altered. The decision has a retrospective effect and will apply to pending proceedings.
18. This court in the decision of ***Swajit Sankar Mookherjee vs. Sri Goutam Ghosh & Ors.***, passed in **C.O. 1705 of 2023** reported in **2024 (3) ICC 47** again discussed the law relating to preemption and the relevant paragraphs are quoted below:

“45. Sections 8 and 9 should be read in a way that they could co-exist and no part would be made superfluous. It was not a discretion left to the pre-emptor to put whatever amount in his opinion was the appropriate consideration. The full amount had to be deposited along with 10%. If the pre-emptor was allowed to deposit his own value and take a plea that the consideration money was inflated, it would amount to transformation of a weak right to a speculative strong right. Something, which neither historically nor in judicial interpretation had been envisaged.

*46. In paragraph 34 of the decision in **Barasat Eye Hospital (supra)** the Hon'ble Apex Court also considered whether an extension of time could be given and held that if the application for pre-emption was filed within the period of limitation with a deficit amount and the balance amount had also been deposited within the period of limitation, the situation could have been different. But, extension of time to deposit the amount beyond the period stipulated by law, was not permissible and no extension could be granted. The right of pre-emption would be triggered off only upon deposit of the balance*

consideration, but the balance consideration could not be allowed to be deposited beyond the period of limitation. Section 5 of the Limitation Act, was not applicable in a proceeding under Section 8 of the West Bengal Land Reforms Act. The court was not left with any discretion to extend the time to deposit the consideration amount. Section 149 of the Code of Civil Procedure would not apply in this case. Relevant paragraphs of **Barasat Eye Hospital (supra)** are quoted below:-

“34. The last question which arises is whether the respondent can now be granted time to deposit the balance amount. When the direction was so passed, in pursuance of the order of the appellate court, the respondent still assailed the same. The requirement of exercising the right within the stipulated time, in respect of the very provision has been held to be sacrosanct i.e. that there can be no extension of time granted even by recourse to Section 5 of the Limitation Act. [Gopal Sardar v. Karuna Sardar, (2004) 4 SCC 252]

35. As we have discussed above, once the time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is also sacrosanct. The two go hand-in-hand. It is not a case where an application has been filed within time and the amount is deficient, but the balance amount has been deposited within the time meant for the exercise of the right. We are saying so as such an eventuality may arise, but in that case, the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right. That not having happened, we are of the view that there cannot be any extension of time granted to the respondent now, to exercise such a right. This is, of course, apart from the fact that this speculative exercise on behalf of the respondent has continued for the last fourteen years, by deposit of 50% of the amount.”

29. We are, thus, firmly of the view that the pre-requisite to even endeavour to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration, as otherwise, Section 8(1) of the said Act will not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose.

30. We are not inclined to construe the aforesaid provisions otherwise only on the ground that there are no so-called “penal provisions” included. The provisions of

Sections 8 and 9 of the said Act must be read as they are. In fact, it is a settled rule of construction that legislative provisions should be read in their plain grammatical connotation, and only in the case of conflicts between different provisions would an endeavour have to be made to read them in a manner that they co-exist and no part of the rule is made superfluous. [British India General Insurance Co. Ltd. v. Itbar Singh, AIR 1959 SC 1331] The interpretation, as we have adopted, would show that really speaking, no part of either Section 8, or Section 9 of the said Act is made otiose. Even if an inquiry takes place in the aspect of stated consideration, on a plea of some fraud or likewise, and if such a finding is reached, the amount can always be directed to be refunded, if deposited in excess. However, it cannot be said that a discretion can be left to the pre-emptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of pre-emption. The full amount has to be deposited.

31. We may also note that, as a matter of fact, the pre-emptor in the present case i.e. the respondent has not filed any material to substantiate even the plea on the basis of which, even if an inquiry was held, could a conclusion be reached that the stated consideration is not the market value of the land.

32. We also believe that to give such a discretion to the pre-emptor, without deposit of the full consideration, would give rise to speculative litigation, where the pre-emptor, by depositing smaller amounts, can drag on the issue of the vendee exercising rights in pursuance of the valid sale deed executed. In the present case, there is a sale deed executed and registered, setting out the consideration.”

19. Under such circumstances, the application is dismissed. The learned appellate court rightly allowed the appeal.

20. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)