02.02.2026
Sl. No.05
Court No.06
Cp

C.O. 4371 of 2025

Nepal Chandra Saha Roy & Anr.
vs.
Najira Gazi & Ors.

Mr. Debasis Roy, Sr. Advocate
Ms. Srijata Mukherjee

... for the petitioners.

1. This is an application challenging an order dated November 17, 2025, passed by the learned Civil Judge (Junior Division), 6th Court, Alipore, District – South 24 Parganas, in Misc. Case No.38 of 2025.

2. By the order impugned, the learned court rejected an application filed by the petitioners seeking a direction upon the manager of the bank to freeze the amount of Rs.98,36,959/- standing in the name of Nepal Chandra Saha Roy, bearing SBI Account No.33723306251, IIM Joka Branch and Tapan Chandra Saha Roy bearing SBI Account No.11408480426, Kulerdari SBI Branch. The learned court held that Section 8 of the West Bengal Land Reforms Act mandated that consideration amount along with 10% had to be deposited by the petitioners along with the application for preemption. Thus, the prayer of the

petitioners for freezing the bank account, was not allowed. The court held that freezing the account was not equivalent to the statutory mandate to deposit the consideration money along with 10% thereof under Section 8 of the West Bengal Land Reforms Act.

3. Mr. Roy, learned senior advocate for the petitioners, submits that the bank rules did not permit the petitioners to withdraw the money in cash at a time and, as such, the prayer was made before the learned court for freezing of the account.

4. In my view, the prayer was in the nature of attachment of the account of the petitioners. This is not a situation in which such order by the court would absolve the petitioners from the statutory mandate of compulsory deposit of the consideration money along with 10% thereof along with the application for preemption. The law mandates that the consideration amount along with the 10% of the consideration money must be deposited with the application for preemption, at least within the period of limitation as has been prescribed by the statute. The right of

preemption does not trigger unless such amount is deposited.

5. On November 17, 2025, the court had no authority under the law to pass orders to freeze the amount as prayed for by the petitioners towards compliance of the statutory mandate under Section 8 of the West Bengal Land Reforms Act. The relevant decisions of the Hon'ble Apex Court are discussed below in support of the contention that there was no scope for the court to allow the application by freezing the account of the petitioners, in lieu of deposit of the money in court. The full amount must be deposited as per law.

6. The relevant paragraphs of ***Barasat Eye Hospital & Ors. Vs. Kaustabh Mondal*** reported in ***(2019) 19 SCC 767*** :-

> 29. <u>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</u>.
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> 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. <u>In fact, it is a settled rule</u>

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."

7. ***Abdul Matin Mallick vs. Subrata Bhattacharjee (Banerjee)*** reported in ***AIR 2022 SC 2175*** was also dealing with the issue of short deposit by a non-notified co-

sharer, and the objection was with regard to inflated amount quoted in the sale deed. The Hon'ble Apex Court applied the law declared in ***Barasat Eye Hospital (supra)*** in the said case as well. The said ratio was applied to a pending proceeding. The relevant portions of ***Abdul Matin Mallick (Supra)*** are quoted below:-

> "**2.1.** That the disputed property in question, which was the subject-matter of application for pre-emption before the Appropriate Authority under the West Bengal Land Reforms Act, 1955 (hereinafter referred to as "the 1955 Act") belonged to one Khudiram Bhattacharya, who died on 17-4-2001 leaving behind him, surviving his widow Purnima Bhattacharya who also died on 14-8-2001 and three sons, namely, Subrata, Debabrata and Ratan (the pre-emptors herein) and two daughters Kalyani and Alpana, the vendors of the pre-emptee (appellant herein). On the death of Khudiram Bhattacharya and his widow, the aforesaid three sons and two daughters inherited the property in question each having undivided 1/5th share therein. The daughters of the original owner — Khudiram Bhattacharya sold their undivided 2/5th share in the property in question to the appellant herein — pre-emptee, Abdul Matin Mallick vide registered sale deed dated 23-11-2011. The sale in favour of the appellant by the daughters of the said Khudiram Bhattacharya was sought to be pre-empted by the sons of said Khudiram Bhattacharya on the ground that their sisters have transferred their undivided share in the property in question to the appellant, a stranger to the said property without serving statutory notice under sub-section (5) of Section 5 of the 1955

Act. The said application under Section 8 of the 1955 Act was registered as Misc. Pre-emption Case No. 8 of 2012 before the learned trial court.

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6.1. Thus, as observed and held by this Court in the aforesaid judgment in Bishan Singh [Bishan Singh v. Khazan Singh, AIR 1958 SC 838] , the right of pre-emption is "a very weak right". That being the character of the right, any provision to enforce such a right must, thus, be strictly construed. [Barasat Eye Hospital [Barasat Eye Hospital v. Kaustabh Mondal, (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810]]

6.2. The submission/contention on behalf of the pre-emptee that, as in the present case, along with the pre-emption application, the pre-emptors did not deposit the entire sale consideration with 10% additional sale consideration, and therefore their pre-emption application was not required to be further considered and no further enquiry as contemplated under Section 9 of the 1955 Act would be maintainable is concerned, identical question came to be considered by this Court in Barasat Eye Hospital [Barasat Eye Hospital v. Kaustabh Mondal, (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810] wherein at paras 23 to 33, it is observed and held as under : (SCC pp. 779-81)

6.3. <u>Therefore, deposit of the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application is a statutory and mandatory requirement and it is a precondition before any further enquiry as contemplated under Section 9 of the Act is held. In the present case, admittedly, the pre-emptors had not deposited the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application. The aforesaid aspects have not been considered either by the first appellate court or even by the High Court in this case</u>.

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7. <u>Now, so far as the submission on behalf of the pre-emptors that they bona fide believed that the sale consideration</u>

<u>mentioned in the 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.</u> 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 non-deposit 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 <u>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 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</u>. 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 pre-emption application and/or any subsequent deposit pursuant to the orders passed by the High Court.

8. In the decision of ***Chitta Ranjan Misra vs. Subrata Majhi and others decided in CO 451 of 2023*** this Court discussed the scope and the effect of the decision in

Barasat Eye Hospital (supra). This Court held that the law laid down in ***Barasat Eye Hospital (supra)*** was a law declared and it had a retrospective effect. The relevant portions 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 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.
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> 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. The decision of the Hon'ble Apex Court was a law declared on the point that deposit of the full amount stated as the sale consideration 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."

9. The revisional application stands dismissed accordingly.

10. Although Mr. Roy submits that the petitioners had filed the application at the very inception and the delay was on the part of the court to dispose of the application, in my view, the said application did not merit any consideration at the first instance as the same was misconceived. Furnishing the pre-deposit is a pre-condition and a statutory mandate as discussed hereinabove. There is also no scope to permit belated deposit beyond the period of limitation prescribed under the statute. The right of preemption has not yet triggered off in case of the petitioners. Applications of such kind only triggers

speculative, litigations, which is harassive for the person who purchases the property, having invested such a huge amount.

11. There shall be no order as to costs.

12. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)