

Pre-emption Under State Acquisition & Tenancy Act., Non-Agricultural Tenancy Act., Muslim Law and Land Reform Ordinance.

1. A deed of sale cannot be converted as a deed of nadabi and the same cannot be frustrated the right of pre-emption.
| *6 XP(AD) 49, 6 XP(AD) 172*
2. If the share of pre-emptor **separated by mutation and sub-division of tenancy and opening new khatian in respect of mutation from original joint khatian** the pre-emptor co-sharership ceased from joint tenancy and holding. The pre-emptor had no legal character and locus standi to exercise right of pre-emption against pre-emptee. | *4 XP(AD) 194*
3. Mere knowledge or proposal for transfer is not sufficient to defect the right of the pre-emptor which accrues after the sale is effected. | *4 XP 18*
4. Prior to sale of the case land, the pre-emptor purchased the land from the case jote become a co-sharer and he has absolute right or pre-emption. | *2 XP(AD) 324*
5. Petitioner not entitled to pre-emption as a co-sharer by purchase since he got his purchased land mutated as separate khatian. | *1 XP 1*
6. Limitation: It is true that only co-sharers by inheritance are entitled to filed an application for pre-emption under the section 96 of S.A. & T. Act. but co-sharers must come within time from the date of knowledge of the transfer. | *19 MLR(AD) 263*
7. An Exchange Land in not Pre-emptable: The HCD observed that it is for the court to decide not only on the documents itself, but also on all materials on record to ascertain whether a certain transaction is an exchange or out and out a sale. Considering facts and circumstances of the case, it appears to the HCD that the transaction is question is not an out and out sale but a deed of exchange and therefore, the pre-emptors are not entitled to pre-empt the case land U/S 96. | *6 ALR 248, PLD 1968(Lah) 428, 30 IC 322, 15 MLR 41, 4 LM(AD) 6*
8. Sec-96(2): The requirement as to making of parties is undoubtedly positive. It is the duty of the pre-emptor to implied the necessary parties as I have already observed above that this requirement of law should be enforced keeping in view the provisions of Order 1 rule 9 and 10 if the pre-emptor , after getting an opportunity, fails to amend his application by impleading the necessary parties as pointed out by the pre-emptee, and on evidence of it is found that the application suffers from defect of parties, in that event the application cannot succeed and must be dismissed. | *33 DLR(AD) 13, 43 DLR(AD) 82, 2 BLC(AD) 134, 60 DLR 353*
9. When it is proved by any evidence that pre-emptee opposite party spent an amount of taka 85,00/= for digging a pond, constructing several huts and also a boundary fencing in the case land in that case pre-emptee is entitled to get the improvement cost. | *19 MLR(AD) 203*
10. A sale in pursuance of **decree for specific performance of contract** is pre-emptable. | *32 DLR(AD) 183*

11. Sec.-24 of N.A.T. Act. and Sec.-96 of S.A. & T. Act are different | **33 DLR(AD) 323**
12. When pre-emption case was filed, **kabala was not registered**- it was however registered when the case came up in the appeal, at the appellate stage. But at that stage the kabala was registered, the defect about the **document not being registered was cured**- case remand to the lower court. | **34 DLR(AD) 220, 34 DLR 264, 34 DLR 402**
13. Question of **benami transfer** cannot be decided in proceeding U/S 96. | **35 DLR(AD) 334**
14. A decree in a partition suit does not rebuilt in splitting up the land which can be done U/S 117 of S.A. & T. Act. Therefore, right of pre-emption **not extinguished by partition decree**. | **35 DLR(AD) 230**
15. Decree in a collusive decree conveying the land back to the vendor - **No automatic right of pre-emption**. | **35 DLR(AD) 225, 35 DLR 222**
16. With land being transferred to the vendor, there is no sale and no cause for pre-emption would arise. | **37 DLR 324**
17. Separation of jama and separation of holding or sub-division of holding is not the same thing, holder of separation of jama can right to pre-emption. | **7 XP(AD) 66**
18. Sec.-96(3): When admittedly the preemptor did not deposit in the value of exchange deed which they claim to be sail deed and the statutory compensation there on, the pre-emption application was not at all maintainable and the case was liable to be dismissed in view of the provision of the section. | **6 LNJ(AD) 130**
19. Sec.-115 of Evidence Act with sec.-96 of S.A. & T. Act: Right of Pre-emption which is a statutory right cannot be given up or taken away of waived be mere allegation that the pre-emptor was present in the sub-register's office at the time of execution and registration of the deed in question. | **44 DLR(AD) 62, 52 DLR 289**
20. The pre-emption right does not exist before and so it is not enforceable before sale. | **60 DLR(AD) 73, 4 CLR(AD) 449**
21. Pre-emption cannot be refused on the ground on that a sub-tenancy has been recorded in S.A Khatian when the document mention the land by C.S Khatian and C.S. plots. | **3 BLD(AD) 105, 2 BCR(AD) 431**
22. The pre-emption not at all required to file a separate suit for the declaration that the deed in question was **not an ewaj deed, but was an out and out sale deed**, as the question could very well be raised and The suit was filed on mis-conception of law by the Bar at the woe of pre-emption. | **23 BLC(AD) 123**
23. The prayer for pre-emption of the original pre-emptor and the co-pre-emptor of the case land are allowed in equal share. **The original pre-emptor shall be entitled to withdraw the money deposited by him in excess of his proportion**. | **3 LM(AD) 266**
24. Application U/S-96 of the Act. can be rejected on the ground of long laps of time, **if statutory period of limitation, making the statutory deposit and impleading all the necessary parties** and of course subject to the fulfillment of other requirements of law as regards the right of pre-emption of the pre-emptor..... | **3 LM(AD) 466**
25. Sec.-96(1) with sec.-89(4): The language of sec.- 89(4)and sec.-96(1) of the Act. is explicit that notice is to be served on co-sharer(s) of the holding on the date of presentation of the deed for registration and only such co-sharer(s) is competent to seek the pre-emption. | **23 BLT(AD) 111**
26. Sec.96(10)(c) with T.P. Act. sec.-54: Whether a kabala deed executed for the purpose of discharging the obligation of payment of **dower-debt** is pre-emptable. | **23 BLT(AD) 111**
27. The year of the deed co-sharers as admitted by the pre-emptor, having not been made parties in that case, remand order cannot made from HCD for remand of the case to the appellate court below for scrutiny of the question of defect of parties. | **1 ADC 134**
28. Sec.-96 with N.A.T. Act sec.-177(1)(c): The application so filed seeking pre-emption was quite maintainable since the same was filed within the time prescribed by law and there was deposit of amount mentioned in the kabala as well as the statutory compensation or other words deposits that was made in seeking pre-emption was not short of the amount that was required to be deposited for the purpose of maintainability of the petition and the same was not bad for defect of parties. | **1 ADC 247**

29. Sec.-96 with C.P.C. order-7 rule-11: To defeat the pre-emption... when the nature of transaction become doubtful on the specific allegation for the interest of justice matter is required to be tested by adducing evidence.... | **1 ADC 254**
30. As a matter of fact, some of S.A. recorder tenant as appeared from the khatian filed in this case have been omitted. In view of legal position the application for the pre-emption was not legally maintainable for **non-impleading necessary parties** in the pre-emption preceding. | **2 ADC 558**
31. Sec.-96 with Evidence Act. sec.-91 and 92: In this case the contest is between the pre-emptor and the pre-emptee as to whether the kabala in question was a sale or an ewaz. **The pre-emptor was not a party to the document.** She is perfectly at liberty to question the nature of the transaction and the pre-emption cannot has full jurisdiction to entertain the pre-emptee's challenge. | **2 ADC 838**
32. Agricultural land along with non-agricultural land situated in rural area outside municipal area, pre-emption applicable U/S-96 of the S.A. & T. Act., as beside land situated within municipal area nature of agricultural land under Non-Agricultural Tenancy Act. principle sec.- 24 of NAT Act. non-maintainable in rural area outside municipal area. | **4 XP(AD) 117, 16 MLR(AD) 1**
33. The character of the land which are within the urban or municipal area is determined keeping in view the purpose for which such land is likely to be used. The homestead and the adjuncts thereto of an agricultural raiyat in the rural area can hereby be considered no-agricultural land in the absence of establishing that said land was taken settlement for non-agricultural purpose. | **26 BLD(AD) 53, 26 BLD(AD) 63**
34. In a suit for pre-emption under Muslim law, the plaintiff to prove that he immediately demand of jumping the ceremony of talab-e-mowasibat and immediately on coming to know the sale and also talab-e-ishad in presence of witness. | **7 XP 58**
35. In a pre-emption, issue arises where vendor is a Muslim and purchaser is a Hindu, Law of pre-emption is not applicable under Mohammadan law. | **7 XP 198**
36. Sec.-96 with Mullah Mohamedan Law Art.-236: Whether Mohamedan Law is applicable against non-Muslim particularly against Hindu for pre-emption. | **23 BLT(HCD) 173**
37. At the time of selling land. if the land is admitted as Agricultural land then there is no bar U/S-6 of this ordinance to allowing the pre-emption U/S-96 of the S.A. & T. Act. | **5 XP(AD) 188**