

19 SCOB [2024] HCD 116

**HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Civil Revision No. 5301 of 2001

Shaikh Ali Iman

... Preemptee-Petitioner

Vs.

**Hazari Lal Mondal being dead his legal
heirs Subodh Kumar Mondol and
others**

... Preemptors-Opposite parties

Mr. Abul Kalam Azad with

Mr. Munshi Abdul Hamid, Advocates

...For the preemptee-Petitioner

Mr. Mrinal Kanti Biswas, Advocate

...For the Preemptors-Opposite parties

Judgment on : 28th February 2021

Present:

Mr. Justice Muhammad Khurshid Alam Sarkar

Editors' Note:

In this case while adjudicating the issue as to whether the pre-emptor had knowledge about the transfer of property within the statutory limitation, the High Court Division held that it is the legal presumption that the transfer notice was duly served to the pre-emptor. If in fact, it was not, then it has to be proved in the trial court producing the dispatch book/register of the Registering or other concerned Officer or by examining the process server. The High Court Division also held that the trial Court must frame issue relating to service of notice while adjudicating preemption cases. Finally, the High Court Division issued some guidelines for the subordinate Courts to be followed while dealing with pre-emption cases.

Key Words:

Section 89 and 96 of the State Acquisition and Tenancy Act; preemption cases; preemptor; preemptee; notice of transfer; dispatch book/register;

Section 89 of the SAT:

No sale of a property, in which existence of co-sharers would be apparent from the records, can be completed without serving notice upon the co-sharers inasmuch as the law forbids the Registering Officer to register a sale-deed without obtaining the notice together with the process-fees from the seller and, thereafter, the Registering Officer is duty bound to transmit the notice to the Revenue Officer who shall, then, serve the said notice by registered post. And, in the light of use of the word 'shall' by the Legislature in each of the steps mentioned in Section 89 of the SAT Act, the legal presumption is that all the State/Government functionaries have performed their duties assigned under Section 89 of the SAT Act. If any preemptor claims that s/he was never served with the notice under Section 89 of the SAT Act, then, in turn, the preemptee shall have to prove its service. However, for an effective adjudication of a preemption case, the preemptor may either apply to the trial Court for production of the 'dispatch book/register' of the Registering Office and that of the Revenue Office of the relevant dates or may apply to the Court for examining the process-server of the Revenue Office to prove contrary to the legal presumption. If the office/person responsible for serving notice under Section

89 of the SAT Act proves before the Court the fact of serving the said notice upon the preemptor, then, it would be for the notice receiver, being a preemptor in a preemption case, to rebut before the trial Court by any other ocular evidence with corroboration that he has never received the notice under Section 89 of the SAT Act. ... (Para 12)

Sections 89 and 96 of the SAT:

It is mandatory for the preemptor to satisfy the Court by adducing ocular evidence that the preemptor has never received the notice under Section 89 of the SAT Act, against the legal presumption of due accomplishment/performance by the Government officials; without first proving as above, Section 96 of the SAT Act does not directly/automatically entitle a preemptor to avail the second limitation of time i.e. ‘within four months (currently two months) from the date of knowledge of transfer’.

...(Para 13)

The preemptor is at liberty to claim damage/compensation from the learned Advocates whom he had engaged at the trial Court and the appellate Court:

The above ground of the lawyer’s mistake apparently sounds logical inasmuch as it is a pertinent issue for consideration of this Court that when a litigant, being not conversant with the legal provisions, engages a lawyer and if because of the latter’s incompetency or negligence, the litigant loses a legal right, whether this Court should interfere with the impugned Judgment. Since it was the professional duty of the learned Advocates for the preemptor at the trial Court and at the appellate Court to apply for production of the ‘dispatch book’ of the Sub-Registry Office as well as that of the Revenue Office, and because of not performing their professional duty diligently, the preemptor has been deprived of contesting and establishing a legal right, this Court is of the view that the preemptor shall be at liberty to claim damage/compensation from the learned Advocates whom he had engaged at the trial Court and the appellate Court.

...(Para 17)

Guidelines for the learned Judges of the sub-ordinate judiciary for dealing with the preemption cases under Section 96 of the SAT Act:

I find it to be the Constitutional as well as statutory duty of this Court, to lay down some guidelines for the learned Judges of the sub-ordinate judiciary for dealing with the preemption cases under Section 96 of the SAT Act and, also, the necessary directions for the relevant State-functionaries:

- (1) In all the preemption cases under Section 96 of the SAT Act, if the preemptor denies the fact of receiving notice under Section 89 of the SAT Act, the learned Judges of the trial Court must frame an issue as to whether or not notice under Section 89 of the SAT Act was served upon the preemptor by the concerned Registering Officer and the Revenue Officer.**
- (2) The Registrar of the High Court Division of the Supreme Court of Bangladesh is directed to circulate this Judgment to all the learned District Judges of the country with a direction upon them to arrange an in-house meeting/workshop for 2(two) hours in order to apprise and enlighten all the learned Judges about the guidelines set out hereinbefore in this Judgment.**
- (3) The Secretary, Ministry of Land is directed to prepare a Form/format of the Notice under sub-Sections (4) & (5) of Section 89 of the SAT Act to be used by the Revenue Officers of Bangladesh as compliance with the above-mentioned provisions of Section 89 of the SAT Act. He is further directed to disseminate the said notice to all the Upazillas of the country with an Office**

Order that the Revenue Officers must serve notice under Section 89 of the SAT Act immediately after being informed about the transfer of a land by the Registering Officers, failure of which negative remarks shall be recorded in their respective service books.

- (4) The Inspector General of Registration under the Ministry of Law is directed to circulate a gazetted notice to all the Registering Officers of the country directing that they must comply with the provisions of Sub-Sections (4) & (5) of Section 89 of the SAT Act without fail with a consequential order that in case of failure to serve notice under the provision of Section 89, they shall face disciplinary action for gross negligence in performing their duties.**
- (5) The Secretary, Ministry of Land, the Registrar of the High Court Division of the Supreme Court of Bangladesh and the Inspector General of Registration are directed to file affidavits of compliance on or before 05/05/2021.**

...(Para 21)

JUDGMENT

Muhammad Khurshid Alam Sarkar, J:

1. Instant Rule was issued at the instance of the preemptee-petitioner ((hereinafter referred to either as preemptee or the petitioner) and the same is directed against a Judgment of reversal, being Judgment and Order dated 28.05.2001 passed by the learned Additional District Judge, 3rd Court, Khulna in Miscellaneous Appeal No. 19 of 1999, reversing the Judgment and Order dated 09.02.1999 passed by the Court of Assistant Judge, Fultala, Khulna in Miscellaneous Case No. 9 of 1995.

2. The background facts of filing this revisional application are that the predecessor of this application's opposite parties, late Hazari Lal Mondal, as the preemptor, filed the above-mentioned preemption case on 19.04.1995 making the averments that he is a co-sharer of the suit-Jote of 1.65 acres of land and the other two co-sharers Fatik Mondol and Ramala Bala Mondol (opposite party Nos. 2 & 3) have sold the suit land through registered sale deed No. 824 of 1991 dated 12.06.1991 to the preemptee without serving notice upon the preemptor and other co-sharers; that the suit land is situated in 'Bil Dakatia' which was under water for nearly 12 years and no one could cultivate the land; that in the year 1995, some land were ready for cultivation and when on 17.03.1995, the preemptee came to possess the land upon disclosing for the first time that he purchased the property, the preemptor came to know from the preemptee about the sale of the suit land on the said date of 17.03.1995; that thereafter the preemptor went to the sub-Registrar's office and got a certified copy of the sale deed on 18.03.1995 and came to know clearly that opposite party Nos. 2 and 3 had sold the suit land on 12.06.1991 to the preemptee through registered sale-deed No. 824 of 1991 at a price of Tk. 10,000/- (ten thousand) only; that the preemptee is not a co-sharer of the Joma and he is a stranger and he never made the transaction known to the preemptor or any other person before 17.03.1995 and he did never possess the suit land; that the preemptor is a farmer owning 5 bighas land and he deposited the value of the land and compensation money. So, by filing the Miscellaneous Case, he prayed for preemption and cost.

3. The opposite party No. 1 (preemptee-petitioner) submitted written objection contending, inter alia, that the case is not maintainable, barred by limitation and bad for defect of parties; that the recorded tenants sold share at the highest price and handed over possession to the preemptee; that one relative of the preemptor, Nira Mondol, was present at

the time of sale and the preemptee along with Nira Mondol had met the preemptor with a proposal to buy the land from the sellers but he refused and, then, the preemptee purchased the land; that the seller also went to the preemptor and proposed to sell the land to the preemptor and when he refused to purchase the land, the seller sold the same to the preemptee; that from the date of purchase, the preemptee is possessing and enjoying the suit land without any hindrance; that the preemptor knows everything about the sale of case-land, because the preemptee mutated his name and paid rent and in the recent survey his name was recorded; that the preemptors are not co-sharers and they are not tillers/cultivators and they have over 100 bighas of land. So, the case should be dismissed with cost.

4. On perusal of the application for preemption, written objections and evidence adduced by both the parties, the trial Court arrived at the decision that the application for pre-emption is liable to be rejected on the ground of the preemptor's failure to approach the Court within the four months time from the date of his knowledge of transfer of the case-land and, accordingly, the pre-emption case was dismissed. The preemptor-opposite party preferred an appeal being Miscellaneous Appeal No. 19 of 1999 and the learned Additional District Judge allowed the appeal by reversing the Judgment and Order passed by the trial Court.

5. Mr. Abul Kalam Azad, the learned Advocate appearing for the preemptee takes me through the evidence adduced by the PW1 and submits that since the PW1 himself has submitted the certified copy of the mutation of the land in question as exhibit-2 in the trial Court, no further evidence is required to prove the date of knowledge of sale of this property. In an effort to elaborate his submission on this count, he submits that from the aforesaid exhibit-2 it is evident that the Mutation Case of the land in question was registered as Mutation Case No. 10/92-93 and, therefore, the preemptor was competent to file the case only within four months of the date of knowledge in the year 1993. Then, the learned Advocate for the preemptee, by taking me through the deposition of all the PWs, submits that the deposition of the PW1 with regard to the place of knowledge is contradictory with that of the PW2 and PW3 inasmuch as the PW1 states that their father came to know for the first time about the sale upon seeing the preemptee in the case-land, whereas the PW2 and PW3 stated that they saw the preemptee to survey/measure the case-land. Mr. Azad continues to submit that there is no mentioning about presence of any person who would corroborate the father of PW1's claim as to disclosure by the preemptee about the purchase of the case-land. He argues that since the PW1 has admitted the fact of the seller's migration to India from this country permanently in the year 1991, the normal presumption is that the preemptor had the information about the transfer of this property by the seller. By referring to the case of Abdul Mazid Howlader & Another Vs Lehajuddin Howlader and Others 16 BLD(AD) 197, he submits that since the case was filed long after 4 (four) years of sale of the case-land, a heavy burden lay on the preemptor to discharge the onus of proof that he did not have the knowledge about the transfer of property. Mr. Abul Kalam Azad, the learned Advocate for the preemptee, then, takes me through the Judgment of the trial Court and that of the appellate Court and submits that the appellate Court's Judgment is not a proper Judgment of reversal. He submits that while the learned Judge of the trial Court has judiciously dealt with all the issues of the case, the learned Judge of the appellate Court in a slipshod manner reversed the decision of the trial Court by simply trying to find out the loopholes of the OPWs.

6. Per contra, Mr. Mrinal Kanti Biswas, the learned Advocate for the preemptor-opposite parties, by taking me through the depositions of the PWs and DWs submits that the date of

knowledge as to transfer of the case-land has sufficiently been proved by the PWs inasmuch as it has been admitted by the DWs that the case-land was under water for more than 12 years and the preemptor came to know about the transfer lately on 17.03.1995 only when the preemptee had been in the case land and disclosed to the preemptor about the fact of purchasing the case-land. Mr. Biswas next submits that there is no contradiction in the depositions of PWs as to the date of knowledge of transfer of the case-land, rather the deposition of PW1 is corroborated by that of the other PWs inasmuch as when the preemptee had been in the case-land to measure the same, the preemptor had asked the preemptee about the reason of his presence in the case-land and, that is how, the depositions of each of the PWs have been substantiated. With regard to the arguments placed by the learned Advocate for the petitioner as to the mutation-document, which has been marked as exhibit-2, the learned Advocate for the preemptor Mr. Biswas argues that though the exhibit-2 contains the Mutation Case Number as 10/1992-93, but there is no date of passing any Order by any officer on this Mutation Case. In elaborating his above count of submissions, the learned Advocate for the preemptor submits that the preemptor obtained this copy only on 14.01.1998, which is long after the filing of this preemption case, and, further, the said copy was submitted by the preemptor in the Court to show his standing as a co-sharer in the Khatian.

7. Mr. Biswas, in an endeavour to put forward the practical scenario of Bangladesh, contends that the Sub-Registry Office and the Revenue Office of this country usually do not bother to serve notices under Section 89 of the SAT Act. He therefore prays for sending the case back on remand in order to enable the preemptor to prove the fact that he never received the notice under Section 89 of the SAT Act from the Revenue Office. With regard to the submissions advanced by the learned Advocate for the purchaser that the preemptor was aware of the selling of this property long ago as he had knowledge about the seller's migration to India from this country, Mr. Biswas submits that the PW1 never made any deposition to the effect that Fotik (the seller) had migrated to India permanently. In an endeavour to explain the preemptor's deposition on the aforesaid issue, he submits that preemptor is the son of the original preemptor who simply stated that the seller had visited India with Nagendranath. In corroboration of his submissions, the learned Advocate for the preemptor refers to the case of Abdul Sattar Vs. Osimuddin, 42 DLR 24 and submits that mere obtaining information about transfer of any immovable property does not trigger counting of limitation period. He submits that the limitation period starts only after having definite information of sale of property to a stranger, by obtaining certified copy of the registered deed of sale of the co-sharer's land.

8. After hearing the learned Advocates for both the sides, perusing the revisional application and counter affidavits together with their annexures, examining the Lower Court Record (LCR) and reading the relevant statutory laws and case-laws, it appears to this Court that the first issue to be adjudicated upon by this Court is - whether the preemptor-opposite parties had filed the case within the statutory period as prescribed in Section 96 of the State Acquisition and Tenancy Act, 1950 (shortly, SAT Act); i.e. the first issue is about limitation and the second issue is whether a litigant/party (here in this case, the preemptor) may seek any remedy from this Court as to the bonafide mistake of his lawyer at the trial Court or if the mistake is committed by the learned Judge of the trial Court and appellate Court.

9. Given that the case was filed invoking Section 96 of the SAT Act (under the provisions of the old law i.e. before the amendment of the said Section on 20.09.2006), quotation of the same would assist the Court in effectively adjudicating upon this revisional application. The

old version of Section 96 of the SAT Act consisted of as many as 12 (twelve) sub-Sections with a few Provisos and the amended version is enacted with as many as 18 (eighteen) sub-Sections with 2(two) Provisos. Therefore, for the sake of brevity, quotation of the same is being avoided. Instead, I read the entire provisions of both the old and amended versions of Section 96 of the SAT Act. From an inquisitive reading of both the versions concurrently, it appears to me that in a case under Section 96 of the SAT Act, there may be many issues, such as; (i) whether the case-land is sold to the preemptor or the preemptor (transferee) has got the case-land as gift or by exchange or by partition or through usufructuary mortgage or vide waqf or as the dedication for religious/charitable purpose, (ii) whether the preemptor is a co-sharer/contiguous land-owner (by the new law, the categories of the co-sharer by purchase and the contiguous land-owner have been omitted/dropped/discontinued; only the co-sharers by inheritance are currently entitled to claim preemption), (iii) whether the case has been filed within the prescribed time (previously the time was four months and presently the time is two months from the date of serving notice under Section 89 of the SAT Act), (iv) if it is proved that no notice was served under Section 89 of the SAT Act, then, whether the preemptor approached the Court within four months (presently two months) from the date of knowledge of transfer (previously, preemptor was allowed to file preemption case after lapse of even infinite time if the reason for the delay was plausible; but currently no preemption case shall be allowed after three years from the date of registration of the sale deed), (v) whether the preemptor shall encounter the impediment i.e. incompetent under Section 90 of the SAT Act to purchase the case-land, (vi) whether the preemptor has deposited the appropriate amount of money in the Court, (vii) whether all the co-shares have been impleaded as the parties of the case, (viii) whether the preemptor has deposited the appropriate amount of money in the Court and (ix) whether the sold-land (case-land) is a homestead (newly inserted in the amended law that no preemption case shall be filed for the sold homestead).

10. Since in this case, the core issue is about the statutory time-limit of filing the case, I find it useful to quote the relevant part of Section 96, namely, sub-Section (1) of Section 96 of the SAT Act. Section 96(1) of the SAT Act (as it was before the amendment of this law by Act No. xxxiv of 2006) runs as follows;

96. Right of pre-emption: (1) If a portion or share of a holding of a raiyat is transferred, one or more co-sharer tenants of the holding may, within four months of the service of the notice given under Section 89, or, if no notice has been served under Section 89, within four months of the date of the knowledge of the transfer, apply to the Court for the said portion or share to be transferred to himself or themselves; and if a holding or a portion or a share of a holding is transferred, the tenant or tenants holding land contiguous to the land transferred may, within 4 months of the date of the knowledge of such transfer, apply to the Court for the holding or portion or share to be transferred to himself or themselves. (emphasis supplied)

11. It would not be difficult for any reader to have an understanding that there are two time-schedules for filing preemption cases, covering two different situations; the first time-schedule for filing a preemption case is 4 (four) months from the date of serving the notice under Section 89 of the SAT Act. So, the first situation arises when the notice is served upon the preemptor under Section 89 of the SAT Act. Given the employment of the words, ‘...four months of the service of notice given under Section 89’, there is no scope for any one to read or interpret or assume that ‘four months from the date of receipt of the notice’ is the limitation of time for filing a preemption case. And the second situation is – when the notice under

Section 89 of the SAT Act has not been received by the preemptor, but the preemptor has come to know about the transfer of property by some other means and, in that scenario, the time schedule for filing a preemption case is 4 (four) months from the date of knowledge about transfer of the land. So, clearly the clock of limitation of time starts immediately after 'serving notice' under Section 89 of the SAT Act. To this end, I find it pertinent to look at the provisions of Section 89 of the SAT Act, which is quoted below;

89. Manner of Transfer: (1) Every such transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, and a Registering Officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein and unless it is accompanied by-

(a) a notice giving the particulars of the transfer in the prescribed form together with the process fee prescribed for the transmission thereof to the Revenue-officer; and

(b) such notices and process fees as may be required by sub-Section (4).

(2)(not relevant)

(3)(not relevant)

(4) If the transfer of a portion or share of such a holding be one to which the provisions of section 96 apply, there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer and for affixing a copy thereof in the office of the Registering Officer or the Court house or the Office of the Revenue Authority, as the case may be.

(5) The Court, Revenue Authority or Registering Officer, as the case may be, shall transmit the notice referred to in clause (a) of sub-section (1) to the Revenue-officer and shall serve the notice on the co-sharer tenants referred to in sub-section (4) by registered post and shall cause a copy of the notice to be affixed in the Court house or in the Office of the Revenue Authority or of the Registering Officer, as the case may be : (underlined by me)

12. From a plain reading of the provisions of Section 89 of the SAT Act, it is vividly clear that no sale of a property, in which existence of co-sharers would be apparent from the records, can be completed without serving notice upon the co-sharers inasmuch as the law forbids the Registering Officer to register a sale-deed without obtaining the notice together with the process-fees from the seller and, thereafter, the Registering Officer is duty bound to transmit the notice to the Revenue Officer who shall, then, serve the said notice by registered post. And, in the light of use of the word 'shall' by the Legislature in each of the steps mentioned in Section 89 of the SAT Act, the legal presumption is that all the State/Government functionaries have performed their duties assigned under Section 89 of the SAT Act. If any preemptor claims that s/he was never served with the notice under Section 89 of the SAT Act, then, in turn, the preemptee shall have to prove its service. However, for an effective adjudication of a preemption case, the preemptor may either apply to the trial Court for production of the 'dispatch book/register' of the Registering Office and that of the Revenue Office of the relevant dates or may apply to the Court for examining the process-server of the Revenue Office to prove contrary to the legal presumption. If the office/person responsible for serving notice under Section 89 of the SAT Act proves before the Court the

fact of serving the said notice upon the preemptor, then, it would be for the notice receiver, being a preemptor in a preemption case, to rebut before the trial Court by any other ocular evidence with corroboration that he has never received the notice under Section 89 of the SAT Act.

13. And, when the Court shall be satisfied that actually no notice under Section 89 of the SAT Act was ever served upon the co-sharers, that would be the second situation under Section 96 of the SAT Act and, only in that scenario, the question of application of the second time-schedule under Section 96 of the SAT Act comes into play. Because, given the employment of the expression by the Legislature 'if no notice has been served under Section 89', it is mandatory for the preemptor to satisfy the Court by adducing ocular evidence that the preemptor has never received the notice under Section 89 of the SAT Act, against the legal presumption of due accomplishment/performance by the Government officials; without first proving as above, Section 96 of the SAT Act does not directly/automatically entitle a preemptor to avail the second limitation of time i.e. 'within four months (currently two months) from the date of knowledge of transfer'.

14. In this case, since the sale-deed has been registered by the Registering Officer i.e. Sub-Register of the concerned jurisdiction, it shall be presumed by the Court that the Sub-Register has registered the sale-deed only after being furnished with the notice containing the particulars (name and address) of the preemptor together with process fees for sending the same to the preemptor's address by registered post through the Revenue Officer and, further, it shall be the presumption of the Court that the concerned Revenue Officer has also served the notice upon the preemptor duly, for, the PW1 himself has proved the document of mutation as exhibit-1. Had it been the preemptor's case that he never received any notice from the Revenue Officer, it was incumbent upon the preemptor to apply for the production of the 'dispatch register' of the Revenue Officer as well as that of the Sub-Register. Since, evidently the preemptor neither applied to the Court for production of the dispatch registers of the sub-Registry Office and Revenue Office, nor did examine any relevant witness/es to nullify the legal presumption; further, since from the evidence (Exhibit 1) produced by the PW1 himself that after completion of transfer of the case-land, the mutation took place in the year 1993, this Court finds that notice was duly served by the Revenue Office and, accordingly, this Court has no option other than to hold that the preemptor did not approach the Court in filing the preemption case within 4 (four) months from the date of service of notice under Section 89 of the SAT Act.

15. Now, let me take up the second issue, namely, whether this case is worthy of sending back to the trial Court for giving an opportunity to the preemptor to call for the 'dispatch registry' of the Revenue Office and Sub-Registry Office and/or examine the process-server as a witness.

16. It was the submission of the learned Advocate for the preemptor that while it was the duty of the learned Advocate of the preemptor at trial Court to apply for production of 'dispatch book/register' of the Revenue Office, the learned Presiding Judge of the trial Court can not also shrug off his duty to call for the said document on his own towards ensuring fair disposal of the case, in that it is a fact directly linked with the statutory provision; and it was his argument that enjoyment of a right of a citizen engraved in a statute can not be deprived, simply because of the mistake committed by the lawyer dealing with the case or because of the ignorance of the learned trial Judge as to the status of a law endowing a specific right on a litigant party.

17. The above ground of the lawyer's mistake apparently sounds logical inasmuch as it is a pertinent issue for consideration of this Court that when a litigant, being not conversant with the legal provisions, engages a lawyer and if because of the latter's incompetency or negligence, the litigant loses a legal right, whether this Court should interfere with the impugned Judgment. Since it was the professional duty of the learned Advocates for the preemptor at the trial Court and at the appellate Court to apply for production of the 'dispatch book' of the Sub-Registry Office as well as that of the Revenue Office, and because of not performing their professional duty diligently, the preemptor has been deprived of contesting and establishing a legal right, this Court is of the view that the preemptor shall be at liberty to claim damage/compensation from the learned Advocates whom he had engaged at the trial Court and the appellate Court.

18. Also, as per the *ratio* laid down in the case of Akram Ali Vs Khasru Miah 19 ALR (HCD) 124, the learned Judges of the trial Court and the appellate Court ought to have considered the said issue as one of the vital issues inasmuch as when a statute sets out a legal condition for adjudication of a suit/case, the Court is duty bound to deal with the said law-point, even if the said legal issue is not raised or pointed out by the parties of the suit/case. The learned Judges of the trial Courts should bear in their minds that they are duty bound to frame issues of a suit/case, not only on the basis of the pleadings (i.e. plaint, written statements, application and written objections), but also with reference to the list of the documents submitted before them with the pleadings of the parties and, also, on the basis of the laws involved in the particular suit/case. And, further, they are competent to recast the issues even after taking deposition of the witness with the exhibits, if submitted, subject to allowing the parties of the suit/case to make out their respective cases on the issues recast by the Court by producing their new or corroborative evidence. After completion of deposition and cross-examinations of all the PWs and DWs, the learned Judges of the trial Courts are empowered to call for any documentary and/or oral evidence, if they consider it to be vital for fair and effective adjudication of a suit/case, as laid down in the afore-cited case of Akram Ali Vs Khasru Miah 73 DLR 82 (relevant para-75).

19. Given that apparently the learned Judge of the trial Court has not framed the issue on serving notice under Section 89 of the SAT Act, my primary view is in favour of sending this case back to the trial Court for framing an issue as to whether the preemptor was served with the notice under Section 89 of the SAT Act. However, in the light of the production of the document as to the mutation of the case-land by the plaintiff himself as exhibit-1, my ultimate final view is that the preemptor, in fact, was issued with the notice under Section 89 of the SAT Act and, that is why, his lawyers have not hammered on the said issue in the lower Courts.

20. It follows that since the preemptor did not file the preemption case within four months of being served with the notice under Section 89 of the SAT Act, the preemption case is destined to be dismissed. Even, for the sake of argument, if this Court remands the case and the preemptor succeeds in establishing the above-discussed legal point at the trial Court that he was never issued with the notice under Section 89 of the SAT Act, in that scenario, his case would depend upon proving that he has filed the preemption case 'within four months of the date of knowledge of transfer'. Given that the aforesaid factual issue has already been adjudicated upon by the trial Court upon finding that the preemptor had the knowledge of the transfer in question, this Court is also in agreement with the trial Court's above-mentioned findings, particularly in view of clear admission by the PW1 that he was aware of the sellers'

migration to India immediately after the sale of the case-land; a very vital material evidence which the appellate Court failed to appreciate and assess.

21. Thus, I find merit in the Rule. However, before parting with this Judgment, it appears to me to be pertinent and useful and, in fact, I find it to be the Constitutional as well as statutory duty of this Court, to lay down some guidelines for the learned Judges of the subordinate judiciary for dealing with the preemption cases under Section 96 of the SAT Act and, also, the necessary directions for the relevant State-functionaries:

- (6) In all the preemption cases under Section 96 of the SAT Act, if the preemptor denies the fact of receiving notice under Section 89 of the SAT Act, the learned Judges of the trial Court must frame an issue as to whether or not notice under Section 89 of the SAT Act was served upon the preemptor by the concerned Registering Officer and the Revenue Officer.
- (7) The Registrar of the High Court Division of the Supreme Court of Bangladesh is directed to circulate this Judgment to all the learned District Judges of the country with a direction upon them to arrange an in-house meeting/workshop for 2(two) hours in order to apprise and enlighten all the learned Judges about the guidelines set out hereinbefore in this Judgment.
- (8) The Secretary, Ministry of Land is directed to prepare a Form/format of the Notice under sub-Sections (4) & (5) of Section 89 of the SAT Act to be used by the Revenue Officers of Bangladesh as compliance with the above-mentioned provisions of Section 89 of the SAT Act. He is further directed to disseminate the said notice to all the Upazillas of the country with an Office Order that the Revenue Officers must serve notice under Section 89 of the SAT Act immediately after being informed about the transfer of a land by the Registering Officers, failure of which negative remarks shall be recorded in their respective service books.
- (9) The Inspector General of Registration under the Ministry of Law is directed to circulate a gazetted notice to all the Registering Officers of the country directing that they must comply with the provisions of Sub-Sections (4) & (5) of Section 89 of the SAT Act without fail with a consequential order that in case of failure to serve notice under the provision of Section 89, they shall face disciplinary action for gross negligence in performing their duties.
- (10) The Secretary, Ministry of Land, the Registrar of the High Court Division of the Supreme Court of Bangladesh and the Inspector General of Registration are directed to file affidavits of compliance on or before 05/05/2021.

22. In the result, the Judgment and Order dated 28.05.2001 passed by the learned Additional District Judge, 3rd Court, Khulna is set aside and the Judgment and Order dated 09.02.1999 passed by the learned Assistant Judge, Fultala, Khulna is restored and upheld. However, there shall not be any Order as to costs.

23. Let the matter be posted in the list on 05/05/2021 to ensure the compliance by the Registrar of the High Court Division of the Supreme Court of Bangladesh, the Inspector General of Registration and the Secretary, Ministry of Land.