In case of transfer of land, pre-emption simply means right to purchase first. In other words, the act of buying a plot of land before of ahead of others. Section 96 of The State Acquisition and Tenancy Act, 1950 and section 24 of The Non-Agricultural Tenancy Act, 1949 have described the provisions for pre-emption. Section 96 of The State Acquisition and Tenancy Act, 1950 was substituted by section 2 of The State Acquisition and Tenancy (Amendment) Act, 2006. However, provisions of pre-emption under section 96 of The State Acquisition and Tenancy Act, 1950 and section 24 of The Non-Agricultural Tenancy Act, 1949 shall not take away the right of pre-emption conferred on any person by the Mohammadan Law as per section 96(17) of The State Acquisition and Tenancy Act, 1950 and section 24(10) of The Non-Agricultural Tenancy Act,1949.

A clear conception of the terms “holding” and “co-sharer” is necessary for a better understanding of pre-emption. As per section 2(13) of The State Acquisition and Tenancy Act, “holding” means a parcel or parcels of land or an undivided share thereof and forming the subject of a separate tenancy. Assume “X” dies leaving three sons A,B,C and a land of same holding consisting of 6 plots. Each son will get his part as per the law of inheritance. Now three sons have sold a plot to some “D”. Now ABCD are co-sharer of the land of the same holding. While ABC have became co-sharer by inheritance, D has became co-sharer by purchasing. However, if ABC and D performs mutation in their names of the respective plots, it will be no longer land of the same holding.

***When pre-emption is applicable:***
As per section 96(1) of The State Acquisition and Tenancy Act, 1950 : If a portion or share of a holding of a raiyat is sold to a person who is not a co-sharer tenant in the holding. As per section 24(1) of The Non-Agricultural Tenancy Act, 1949: If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred.
***Who can apply:***
As per section 96(1) of The State Acquisition and Tenancy Act, 1950 : one or more co-sharer tenants of the holding : a co-sharer tenant in the holding by inheritance; and a person to whom sale of the holding or the portion or share thereof. As per section 24(1) of The Non-Agricultural Tenancy Act, 1949: one or more co-sharer tenants of such land. They may apply to the Court for the said portion or share to be sold to himself or themselves.

***Amendment made:*** Earlier as per section 96(1) of the State Acquisition and Tenancy Act, the tenant or tenants holding lands contiguous to the land transferred have the competency to apply for pre-emption. However, after the amendment of 2006, contiguous land holders have no such power.

***Time limit for application:***As per section 96(1) of The State Acquisition and Tenancy Act, 1950 : within two months of the service of the notice given under section 89, or, if no notice has been served under section 89, within two months of the date of the knowledge of the sale. Earlier, the time limit was four months. After 2006 amendment, it is now two months. As per section 24(1) of The Non-Agricultural Tenancy Act, 1949: within four months of the service of notice issued under section 23 and, in case no notice had been issued or served, then within four months from the date of knowledge of such transfer.
***Deposits Needed:***
The applicant will have to deposit the following amounts to the Court at the time of application:
***Earlier provisions of section 96 of the SAT Act:***
- the amount of consideration/value of the transferred land mentioned in section 89 or in the deed of transfer.
- compensation at the rate of ten per centum of the said value.
***New provisions of section 96 of the SAT Act***:
- the amount of consideration/value of the transferred land mentioned in section 89 or in the deed of transfer.
- compensation at the rate of twenty-five centum of the said value.
- Eight per centum simple annual interest upon the value of the transferred land (for the period of executing transfer deed to filing pre-emption case).
***Provisions under section 24 of the NAT Act:***
- the amount of consideration/value of the transferred land mentioned in section 23.
- compensation at the rate of five per centum of the said value.
***Further Deposits May Be Needed:***
After serving notices to the parties to the suit, taking hearing, holding enquiry and fixing by the Court, the applicants shall have to make further deposits for follows if necessary:
***Provisions under section 89 of the SAT Act (earlier and new provisions are same):***
A further sum, if necessary, to cover consideration money actually paid, other sums paid by the purchaser for rent, expenses incurred in annulling encumbrances or making any improvement of the land.
***Provisions under section 24 of the NAT Act:***Such amount as the purchaser spent for rent, incurred in annulling encumbrances, in erecting any building or structure or making other improvement together with six and quarter per centum annual interest.
***Passing of Order:***
The Court shall determine who are entitled and pass order for pre-emption on following conditions:
***Section 96 of SAT ACT (Earlier):***
- if orders are passed in favour of more than one applicant, the Court shall apportion the land as it deems equitable.
- Purchaser be paid out of the deposit the amount of consideration money, ten per centum of such amount as compensation, amount spent for rent, incurred in annulling encumbrances or making other improvement.
***Section 96 of SAT ACT (New):***
- if orders are passed in favour of more than one applicant, the Court shall apportion the land as it deems equitable.
- Purchaser be paid out of the deposit.
***Section 24 of NAT ACT :***
- if orders are passed in favour of more than one applicant, the Court shall apportion the land as it deems equitable.
- Purchaser be paid out of the deposit.
***Where Pre-emption is not applicable:***
As per section 24(11) of The Non-Agricultural Tenancy Act, 1949: Nothing in this section shall apply to- (a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or (b) a transfer by exchange, or partition, or (c) a transfer by bequest or gift (including heba but excluding heba-bil-ewaz for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or (d) a wakf in accordance with the provisions of the Muhammadan Law, or (e) a debottor or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.
***Case Laws:***
(1) Section 24 of Non-Agricultural Tenancy Act and section 96 of State Acquisition and Tenancy Act is applicable for pre-emption of land falling within the municipal area. (Md. Abdur Rouf and others Vs. Ahmuda Khatun and others 1 BLD (AD) 269).
(2) Pre-emption may be allowed only in the case of transfer of the land to a co-sharer tenant. (S.M.Basiruddin Vs. Zahurul Islam Chowdhury (1983) 35 DLR (AD) 230).