IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO. 179 OF 2016
(On appeal from the judgment dated 12.11.2015 passed by the Peshawar High Court, D.I. Khan Bench in C.R.No.165-D of 2014)

Amanullah ...Appellant

VERSUS

Muhammad Shareef Khan ...Respondent

For the Appellant: Syed Mastan Ali Zaidi, ASC

For the Respondent: Syed Abid Hussain Shah, ASC

Date of Hearing: 31.10.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Appeal with leave of this Court is brought to challenge the judgment dated 12.11.2015 passed by the Peshawar High Court, D.I. Khan Bench ("**High Court**") in C.R.No.165-D of 2014 (the year of which, as stated by the appellant in his memo of appeal, was inadvertently written as 2015 by the High Court), whereby the Civil Revision filed by the appellant was dismissed.

2. The transitory facts of the case are that the appellant, being a pre-emptor, tendered *talb-e-muwathibat* and *talb-e-ishhad* in relation to the subject property which had been purchased by the respondent. On the alleged performance of the aforementioned demands, the appellant filed a Civil Suit in D.I. Khan in 2010, which was decreed by the learned Trial Court *vide* judgment dated 28.02.2012. Thereafter, the respondent filed a Civil Appeal before the District Judge, D.I. Khan who entrusted the appeal to the Additional District Judge-I, D.I. Khan ("**ADJ**"), and *vide* judgment and decree dated 07.06.2013, the learned ADJ accepted the appeal of the respondent and dismissed the suit on

the ground that the notice of *talb-e-ishhad* was on a printed specimen. The appellant challenged the judgment and decree of the Appellate Court through Civil Revision before the High Court, however, *vide* judgment dated 12.11.2015, the learned High Court dismissed the Civil Revision, and while affirming the Appellate Court's judgment held that the notice of *talb-e-ishhad* (Ex.PW-3/2), having been tendered on a printed specimen/form, with the blank columns filled by the petition writer, was invalid.

3. The learned counsel for the appellant argued that the impugned judgments of the two Courts below wrongly held that the notice of *talb-e-ishhad* was invalid due to being on a printed form. It was further contended that the learned High Court wrongly relied on the judgment dated 17.02.2015 rendered by this Apex Court in Civil Petition No. 1015/2014 and C.As. No. 1561 and 1562/2014. It was further contended that the notice of *talb-e-ishhad* contained all the requisite details, including the names of the parties, a description of the land, the date, time and place of *talb-e-muwathibat*, as well as the names of the marginal witnesses, along with the required thumb impressions. It was argued that, in light of this, the use of common words and the printed form of the notice was not fatal, and the same was the job of the petition writer as the appellant was illiterate. It was further averred that the appellant proved his case and established the performance of *talb-e-muwathibat* and *talb-e-ishhad* through cogent and convincing evidence, a fact which both the Courts below failed to consider, and therefore both the judgments are based on misreading and non-reading of evidence.

4. The learned counsel for the respondent not only supported the findings recorded by the learned High Court in the impugned judgment, but also added that the notice of *talb-e-ishhad* did not fulfill the requisite formalities. He further contended that sending the notice of *talb-e-ishhad* on a printed or stereotyped *pro forma* is against the spirit of the law of pre-emption, and that the notice in hand contained several irrelevant and/or inapplicable entries that were struck/cut out and blank spaces that had been filled. Based on this, the printed specimen was rightly discarded by the learned Appellate Court and the learned High Court.

5. On 04.02.2016, leave to appeal was granted by this Court in the following terms:-

> "Learned counsel for the petitioner submits that the learned High Court in its impugned judgment dated 12.11.2015 has non-suited the petitioner/plaintiff for having issued notice of his Talab-e- Ishhad on a printed form. Reliance has been placed in the impugned judgment on the judgment dated 17.2.2015 of this Court passed in C.P.No.1015 of 2014 and C.A.No. 1561 & 1562 of 2014 for affirming that a notice in such a form is invalid. Learned counsel further contends that the printed form of the notice of Talab-e-Ishhad contains hand written entries of relevant particulars required under the relevant law. Even otherwise the notice in question is not a cyclostyled document and contains the factual particulars required by the law. The question whether the view of the learned Peshawar High Court that a printed form cannot be used for issuance of Talab-e-Ishhad is a matter which requires consideration. Leave to appeal is granted to consider, inter-alia, the above mentioned points".

6. Heard the arguments and thoroughly perused the record. The Islamic concept of *Shufaa* or pre-emption advocates a right possessed by the owner of certain immovable property, for the quiet and peaceful enjoyment of that immovable property, to obtain, in substitution for the buyer, possession of certain other immovable property not belonging to him, on such terms as those on which the immovable property was sold to the aforesaid buyer. The foremost rationale of this right is to safeguard the privacy of quantified area and to discourage the entry of strangers or outsiders into said area, keeping in mind the probable agitation or inconvenience which may be caused by the introduction of a stranger into the land. According to the *Hidaya* (*infra*), the grand principle of pre-emption denotes the conjunction of property, with the object of preventing the vexation arising from a disagreeable neighbor. Pre-emption can therefore be regarded as the benefit of obtaining immovable property in preference and primacy to other persons by reason of such right. It is pertinent to note that the right of pre-emption is but a feeble right as it necessarily requires dispossessing another of his property merely to prevent an apprehended inconvenience or breach of privacy. Being a feeble right, the pre-emptor may be deemed to have relinquished the right in the event of acquiescence, estoppel or waiver, emphasizing the importance of complying with the indispensable course of action laid out for asserting the demand under pre-emption laws. The philosophy of this right has been dealt with in great detail under Islamic Jurisprudence. D. F. Mulla's book *Principles of Muhammadan Law* expounds that the

right of *shufaa* or pre-emption is a right whereby the owner of an immovable property possesses or acquires, by purchase, another immovable property that has been sold to another person. Similarly, the *Hidaya: Commentary on the Islamic Laws* by Sheikh Burhanuddin Abi Al Hasan Ali Marghinani (Translated by Charles Hamilton), Volume II (at pages 356 – 357) provides that:

> *Shuf'ah,* in the language of the law, signifies the becoming proprietor of lands sold for the price at which the purchaser has bought them, although he be not consenting thereunto.
>
> This is termed *Shuf'ah,* because the root from which *Shuf'ah* is derived signifies conjunction, and the lands sold are here conjoined to the land of the *Shuf'ah,* or person claiming the right of pre-emption.
>
> The right of Shuf'ah appertains:
>
> I. To a partner in the property of the land sold.
>
> II. To a partner in the immunities, and appendages of the land (such as the right to water and to road); and,
>
> III. To a neighbour. The right of *Shuf'ah* in a partner, is founded on a precept of the Allah's Messenger who has said, "The right of *Shuf'ah* holds in a persons who has not divided of and taken separately his share". The establishment of it a neighbour also founded on a saying of Allah's Messenger "The neighbour of a house has a superior right to that house; and the neighbour of lands has superior right to those; and if he absent, the seller must wait his return; provided however, that they both participate to the same road", and also. "A neighbour has a right, superior to that of a stranger, in the lands adjacent to his own".

7. In line with clause (d) of Section 2 (Definitions Clause) of the Khyber Pakhtunkhwa Pre-emption Act, 1987 ("**1987 Act**"), 'sale' means a permanent transfer of the ownership of an immovable property in exchange for a valuable consideration and includes the transfer of an immovable property by way of *hiba bil-iwaz* or *hiba ba-shart-ul-iwaz* but, according to the exceptions provided therein, it does not include a transfer of an immovable property through inheritance or will, or any gift other than *hiba bil-iwaz* or *hiba ba-shart-ul-iwaz*. According to the taxonomy of pre-emptors laid out in Section 6 of the 1987 Act, the right of pre-emption first vests in *Shafi Sharik*, which refers to a person who is a co-owner in the corpus of the undivided immovable property sold with other person(s). In this scenario, the co-sharers have a preferential entitlement to pre-empt against any other category of pre-emptors. If the co-sharers are brothers or sisters and want to sell the property, the other is entitled to claim pre-emption and in such eventuality, the co-sharers shall be given preference and first choice against any other group or category of pre-emptors for the reason that they are blood relations. The next genre is *Shafi Khalit* which signifies

a participator in the special rights attached to the immovable property sold, such as the right of passage, the right of passage of water and/or the right of irrigation. In the absence of a co-sharer (i.e., *Shafi Sharik*), *Shafi Khalit* is eligible and entitled to pre-empt on the strength of their participation in any of the aforesaid rights in order to retain and preserve their easements of way and water on private land, provided that the right to way and/or discharge water is a private right and not a collective right to use public thoroughfares or accesses, such as roads, large waterways or channels, etc., which does not vest in any right of pre-emption. The third category is *Shafi Jar* which denotes a person who has a right of pre-emption because of owning an immovable property adjacent to the immovable property sold. The term *Shafi Jar* refers to the owner of contiguous acreage who can pre-empt as a neighbor, but only in absence of *Shafi Sharik* and *Shafi Khalit*. Further, the right of pre-emption can be claimed by the possessor of the adjoining immovable property as *Shafi Jar*, but this right cannot be claimed or asserted by a tenant or a person who may be in possession of property but does not have ownership.

8. In the case in hand, the right of pre-emption had to be declared and asserted in accordance with the prerequisites and preconditions laid down under Section 13 of the 1987 Act, with a step-by-step fulfillment of the mandatory rudiments. The first and foremost stipulation is that of *talb-e-muwathibat*, which means an 'immediate demand by a pre-emptor in the sitting or meeting (Majlis) in which he has come to know of the sale, declaring his intention to exercise the right of pre-emption'. It literally connotes a 'demand of jumping', meaning that the demand is required to be made instantaneously and without any delay upon discovering the factum of sale. *Talb-e-ishhad* on the other hand denotes a 'demand by establishing evidence', which is required to be made 'in writing' in the presence of witnesses; the demand is also confirmatory in nature as it requires the pre-emptor to reiterate or ratify the making of the first demand (i.e., *talb-e-muwathibat*). It is well-settled that the second demand cannot be operative or efficacious unless the first demand is made promptly and lawfully. The last demand, *talb-e-khusumat*, means 'demand by filing a suit' and ripens the claim of pre-emption. Thus, where, despite the pre-emptor's compliance with the requisite formalities and tendering of *talb-e-*

muwathibat and *talb-e-ishhad*, the superior right of pre-emption is not accepted, the pre-emptor may approach the court of law for redress.

9. As noted above, *talb-e-muwathibat* is required to be made by a pre-emptor in the sitting or meeting (*majlis*) in which he has come to know of the sale, declaring his intention to exercise the right of pre-emption. The terms 'sitting', 'meeting' and '(*majlis*)' are the keywords for fulfilling, conscientiously, the will of the legislature, which is deemed not to waste its words or to say anything in vain. Thus, a construction which attributes redundancy to the legislature cannot be accepted, except for compelling reasons. On the one hand it is not permissible to add words or to fill in a gap or lacuna in the law, and, on the other hand, an effort should be made to give meaning to each and every word used by the legislature [Ref: Principles of Statutory Interpretation, Justice G.P. Singh, Seventh Edition (At pages 58, 59 & 66)]. It is also a well-settled principle of construction that the words in a statute are designedly used, and an interpretation must be avoided, which would render the provision either nugatory or part thereof otiose [Ref: N.S. Bindra's Interpretation of Statutes (LexisNexis), Eleventh Edition (At pages 160-161)]. The intention of the legislature must be primarily ascertained from the language used. This obviously means, as a general rule, that the courts have no power to add to, or to change, alter, or eliminate the words which the legislature has incorporated in a statute, not even in order to provide for certain contingencies which the legislature failed to meet, or to avoid hardship flowing from the language used, or to advance the remedy of the statute. But, as a rule of thumb, it should always be kept in mind that full effect should be given to every word of the statute, if at all possible; that the court should always seek to harmonize and make every part of the statute operative. In other words, no part of a statute, whether it be a sentence, clause, phrase, or word, should be considered as mere surplusage or as devoid of meaning, if it can possibly be avoided. Words may be disregarded only in order to conform with or to effectuate the legislative intent, and not to alter or change it [Ref: Crawford's Statutory Construction, 1998 Edition (At pages 337-338)].

10. So for all practical purposes, the courts, while dealing with and deciding cases involving the right of pre-emption, must consider, painstakingly and sequentially, the tendering of each of the demands

or *talbs* to reach a just and proper conclusion. In other words, the court must determine whether the pre-emptor, before approaching the court of law, complied with all the requisite formalities at his end which are conditions precedent for the institution of a suit. The keywords, “meeting”, “sitting”, and the word “(*majlis*)” enclosed in parentheses brought into play under Section 13 of the 1987 Act are defined in different lexicons as under:-

Words and Phrases (Permanent Edition), Volume 27 (At page 4)

A "meeting" is an assembling of a number of persons for purpose of discussing and acting upon some matter or matters in which they have a common interest. American Brass Co. v. Ansonia Brass Workers' Union or conduct of Local 445, Intern. Union of Mine, Mill and Smelter Workers, 101 A.2d 291, 293, 140 Conn. 457

Advanced Law Lexicon by P. Ramanatha Aiyar (Third Edition), Volume 3 (At page 2968)

“Meeting” defined. The coming together of persons generally for common purpose or common consultation. An assembly.

Meeting, in 32 & 33 Vict. c. 19 S. 4 (Stannaries), does not apply to acts done by a single person, as the prima facie meaning of the words is "the coming together of more than one person." Sharp v. Dawes (1876) 2 OBD 29.

"The word ‘Meeting' implies a concurrence, or coming face to face, of at least two persons." [(per Coleridge, C.J., Sharpe v. Dawes, 46 LJQB 104)

"The term "meeting" connotes coming together of persons for certain purposes. It is a gathering of persons with a specific object in view." D.D. Didolkar v. Nagpur University, AIR 1976 Bom 276, 279.

For a meeting there must be at least two persons. The word ‘prima facie’ connotes coming together of persons for certain purpose. Awadhoot v. State of Maharashtra, AIR 1978 Bom 28, 30.

For a meeting there must be at least two persons. It means a gathering of persons with a specific object. (Awadhesi Kisan Ambadkar v. State of Maharashtra, 1977 Mah LJ 689).

Words and Phrases (Permanent Edition), Volume 39 (At page 460)

"Sitting" in English law means a session or term of court; usually plural. People v. Higgins, 16 N. V.S.2d 302, 310, 173 Misc. 96.

Shorter Oxford English Dictionary (Sixth Edition), Volume I (At pages 1680 & 1742)

Majlis: [Origin Arabic: place of session, from jalasa, be seated] An assembly for discussion, a council; the Parliament of any various N. African or Middle Eastern countries, esp. Iran. Also, a reception room.

Meeting: 1. A private or (now often) public gathering or assembly of people for entertainment, discussion, legislation, etc., an assembly of people, esp. the Society of Friends, for worship; a Nonconformist congregation, esp. of the Society of Friends. Also, the people attending a meeting, collectively. 4. The junction, intersection, confluence, etc., of two or more things.

Merriam-Webster Dictionary (Online)

Majlis (noun): a council, assembly, or tribunal in North Africa or southwestern Asia. *specifically*: a house of parliament. [Ref:https://www.merriam-webster.com/dictionary/majlis]

> **Dictionary.com** (Online)
>
> Majlis. (in Islamic countries). A public audience held by a chieftain, monarch, or other ruler to listen to the requests of the petitioners. A house of parliament. Ref: https://www.dictionary.com/browse/majlis]

> ***Majlis, a cultural and social space*, United Nations Educational, Scientific and Cultural Organization, Representative List of the Intangible Cultural Heritage of Humanity** (Online)
>
> Majlis are 'sitting places' where community members gather to discuss local events and issues, exchange news, receive guests, socialize and be entertained. The Majlis is where the community gathers to resolve problems, pay condolences and hold wedding receptions. [Ref: https://ich.unesco.org/en/RL/majlis-a-cultural-and-social-space-01076]

11. It is quite significant to note that the word "*majlis*" under Section 13 of the 1987 Act has been used in parentheses (brackets) in juxtaposition with the words "sitting" and "meeting". The purpose of putting words in parentheses is to complement, or generally illustrate, explain, define, amplify or add an additional piece of information to the whole. It is also delineated as an explanatory or qualifying clause, sentence, or paragraph, inserted in another sentence, or in the course of a longer passage, without being grammatically connected with it. Punctuation marks can at times be used as an aid in the construction or interpretation of sentences. When a statute is cautiously punctuated and there is no uncertainty as to its meaning, it should be given due weight, but it cannot be permitted to control or regulate the natural and ordinary meaning of a statute. If the word used in the statute visibly provides a clue as to the legislative intent behind the provision, then it ought to be interpreted in harmony with the legislative intent; however any punctuation mark which is lacking consistency may be overlooked and marginalized, and will not be acknowledged or allowed to regulate the plain meaning of the text. In the case of Fuerst Day Lawson Ltd. and Ors. v. Jindal Exports Ltd. and Ors. (**(2011) 8 SCC 333**), the Supreme Court of India has discussed the interpretative value of parentheses in the following terms:

> "36. The use of round brackets for putting words in parenthesis is not very common in legislation and this reminds us of the painful lament by Meredith, J. of the Patna High Court, who in 1948 dealing with a case said that "the 1940 Act contains examples of bad drafting which it would be hard to beat".
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> 37. According to the New Oxford Dictionary of English, 1998 edition, brackets are used to enclose words or figures so as to separate them from the context. The Oxford Advanced Learner's Dictionary, Seventh edition defines "bracket" to mean "either of a pair of marks, ( ) placed around extra

information in a piece of writing or part of a problem in mathematics". The New Oxford Dictionary of English, 1998 edition gives the meaning and use of parenthesis as:

Parenthesis-noun (pl. parentheses) a word, clause, or sentence inserted as an explanation or afterthought into a passage which is grammatically complete without it, in writing usually marked off by brackets, dashes, or commas.

38. The Oxford Advanced Learner's Dictionary, Seventh edition, defines the meaning of parenthesis as:

a word, sentence, etc. that is added to a speech or piece of writing, especially in order to give extra information. In writing, it is separated from rest of the text using brackets, commas or dashes.

39. The Complete Plain Words by Sir Ernest Gowers, 1986 revised edition by Sidney Green Baum and Janet Whitcut, gives the purpose of parenthesis as follows:

The purpose of a parenthesis is ordinarily to insert an illustration, explanation, definition, or additional piece of information of any sort into a sentence that is logically and grammatically complete without it. A parenthesis may be marked off by commas, dashes or brackets. The degree of interruption of the main sentence may vary from the almost imperceptible one of explanatory words in apposition, to the violent one of a separate sentence complete in itself.

40. The Merriam Webster Online Dictionary defines parenthesis as follows:

1. an amplifying or explanatory word, phrase, or sentence inserted in a passage from which it is usually set off by punctuation b: a remark or passage that departs from the theme of a discourse: digression

2. interlude, interval

3. one or both of the curved marks ( ) used in writing and printing to enclose a parenthetical expression or to group a symbolic unit in a logical or mathematical expression

41. The Law Lexicon, The Encyclopedic Law Dictionary by P. Ramanatha Aiyar, 2000 edition, defines parenthesis as under:

Parenthesis. a parenthesis is defined to be an explanatory or qualifying clause, sentence, or paragraph, inserted in another sentence, or in course of a longer passage, without being grammatically connected with it. (Cent. Dist.)

Parenthesis is used to limit, qualify or restrict the meaning of the sentence with which it is connected, and it may be designated by the use of commas, or by a dash, or by curved lines or brackets [53 Fed.81 (83); 3C, CA 440]".

According to the law, *talb-e-muwathibat* is required to be made by a pre-emptor in the "sitting or meeting (*Majlis*)" in which he gains knowledge of the sale, and the purpose of highlighting the dictionary meaning of the words "sitting", "meeting" and "(*majlis*)" is to accentuate its significance as a pre-condition for complying with the requirements of *talb-e-muwathibat*, therefore, it is obligatory for the Court to diligently examine whether the pre-conditions of *talb-e-muwathibat* have been fulfilled before the tendering of *talb-e-ishhad*.

12. Both the learned Appellate Court and the learned High Court have focused predominantly on the notice of *talb-e-ishhad* (Ex.P.W.3/2) which was on a printed form and appeared to be a stereotyped specimen/sample, with only the blank spaces filled by the petition writer. The purpose of the statutory requirement of *talb-e-ishhad* is to prove the initial demand by evidence, and restate the first demand in order to ratify or formalize the desire to pre-empt. Hence, the statutory notice is required to be sent in writing, attested by two truthful witnesses, under registered cover with acknowledgement due, to the vendee for confirming the intention to exercise the right of pre-emption. Needless to state, there is no specific format prescribed to tender a statutory notice of *talb-e-ishhad* with the obvious rationale or purpose of conveying the confirmation of one's intention to exercise the right of pre-emption, which is required to be conveyed with a proper description of the property on which the right of pre-emption is claimed or asserted. Thus, the form of the notice is not as relevant as the substance, which should convey the source of the right of pre-emption (i.e., in accordance with the categories mentioned hereinabove) along with the hardship or inconvenience that would be caused to the pre-emptor if the subject property was sold to a third party/stranger. Moreover, just as every case has its own facts, the outcome of which cannot be applied across the board, similarly, every legal right has its own peculiarities and eccentricities in a particular situation which cannot be applied universally. The right of pre-emption is already a feeble right, and where there is any recklessness, indolence and/or inattentiveness on the part of the pre-emptor, the right is further enfeebled and rendered ineffectual. The requirement of sending a notice of *talb-e-ishhad* for confirming the intention to assert the right of pre-emption is imperative and is, essentially, a foundation stone without which no right of pre-emption can be asserted, therefore it commands a great deal of seriousness, attention, and focus. In this case, admittedly, the notice was tendered on a printed form containing stereotyped and generalized text with different columns for land, house, and shops, allowing the pre-emptor or petition writer, as the case may be, to simply erase/cut out the inapplicable terms and fill in the blanks. In our view, this ready-made format does not fulfill the purpose of a statutory notice and this court cannot countenance the use of such *pro formas* which every pre-emptor can simply purchase from a vendor, shop/stall, or petition writer who, for his own

convenience, got the template for the notice printed in advance and utilizes stereotyped text in all cases by simply filling in the blank spaces for the pre-emptor to sign and send. Such a notice does not provide any classification of the pre-emptory rights and fails to convey a confirmation of the intention to press the demand of pre-emption. The purpose of a notice under the law is to convey all the necessary particulars, specifically and with a proper application of mind, on a case to case basis, in a customized/personalized form, or in the vein of a tailor-made notice rather than a ready-made notice in which the mixing or merging of irrelevant or general text with the relevant information cannot be avoided. Therefore, a notice on a printed *pro forma* cannot be considered a valid notice in accordance with the tenets and dictates of the law and the same should be drafted especially and individually for each particular case on its own facts and circumstances. The notice should not be a published template of the petition writer who was either not capable of drafting a custom-made or customized notice or, due to sluggishness or laziness, wrongly advised the appellant to send notice in the template form. In this regard the appellant is also equally responsible for depending solely on the petition writer. Further, the argument of the learned counsel for the appellant, that the aforesaid lapses should be excused as the appellant was an illiterate man, is without force. Even if the appellant was an illiterate man, as contended, he was well-aware of his right of pre-emption and the requirement of tendering *talbs*, hence he should also have been aware of the proper manner for performing the same and, if there was any ambiguity in his mind, he could have sought proper legal advice or assistance to structure his case of pre-emption without any legal defect and lacuna**.**

13. The stipulation of tendering a statutory notice before knocking on the court's doors is not a novel one and, in fact, exists under several other laws. Under the labour laws, a workman/worker cannot lodge his individual grievance petition in the Labour Court or National Industrial Relations Commission (NIRC), as the case may be, unless he tenders a grievance notice to his employer. Likewise, under the Defamation Ordinance of 2002, before filing a suit and approaching the court of law for damages on account of libel or slander, a notice of action is mandatory. By the same token, a person cannot sue any Co-operative Society or any of its officers in respect of any act touching

the business of society, unless he tenders prior notice under Section 70 of the Co-operative Societies Act, 1925. Even under Section 273 of the Cantonments Act, 1924, no suit can be instituted against the Cantonment Board until the expiration of two months after tendering a notice in writing. The *raison d'être* of this analytical survey is to give a demonstration that the aforesaid laws, too, assimilate provisions for statutory notices which are required to be served mandatorily before invoking the jurisdiction of the court. The provisions of statutory notices in the aforesaid laws envisage the services of customized notices according to the facts and circumstances of the each case, without any room for the use of a ready-made notice on a printed format/form. If stereotyped statutory notices are allowed to be served in a generic and printed/template form and accepted to be filled by petition writers so callously and imprecisely as done in the instant case by the petition-writer, then it will be against the letter and spirit of the law. Moreover, it will not only make the provision of prior notice redundant and superfluous but also render the provision a mere formality without any assiduous sense of duty. The non-compliance in true spirit will in fact kill the very purpose, spirit, logic and intention of the provision incorporated and designed by the legislature for serving the prior notice.

14. One more indispensable constituent which cannot be left untouched or unattended is that, in the impugned judgment, the learned High Court while holding that the notice of *talb-e-ishhad* (Ex.P.W.3/2) should not be on a printed *pro forma,* also referred to a judgment of the same High Court passed in C.R. No.53-D/2014, which was later affirmed by this Court *vide* judgment dated 17.02.2015 rendered in C.P. No. 1015/2014 and C.A.s No. 1561 and 1562 of 2014. We have also gone through the aforementioned judgment of this Court dated 17.02.2015 which articulated, in paragraph 6, the whys and wherefores taken into consideration by the High Court while reversing the concurrent findings of the two Courts below i.e. that the notice of *talb-e-ishhad* was not in writing and was instead on a printed pro forma or in a template form which was not considered by the High Court to be a valid confirmation of *talb-e-muwathibat* and another point was relating to the proof of delivery of notices of *talb-e-ishhad* for which the concerned postman was not produced in the evidence. This Court in the end held that the decision of the High Court was well-

reasoned and unexceptionable and the aforesaid civil petition and connected appeals were dismissed by this Court. A plain reading of the aforesaid judgment makes it discernible without any doubt, that while this Court affirmed the judgment of the High Court, it did not deliberate on the issue pertaining to whether a notice of *talb-e-ishhad* could be on a printed template or not but affirmed the High Court judgment as a whole which tacitly covers all the issues but in our feeling and comprehension, this is a live issue which cropped up before us once again in the instant case, therefore, we have discussed it in detail and reached the conclusion that the tendering of the notice of *talb-e-ishhad* through a printed format/*pro forma* does not fulfill the conditions laid down under Section 13 of the 1987 Act being a special law to deal with and decide the cases of pre-emption which is premeditated for a specific usage, keeps a tight rein and restricted to a prescribed playing field of action and operation. Sanguine to the set of circumstances, we have deliberated on the issue *in extenso* and decided it without any perplexity in order to avoid any probability of tacit approval, which means agreeing to something or approving it without actually saying so, or affirming a judgment by means of insinuation or implicitly.

15. In the wake of the above discussion, we do not find any illegality or perversity in the impugned judgment passed by the learned High Court. As a consequence thereof, this Civil Appeal is dismissed.

Judge

Judge

Judge

Islamabad the
31st October, 2023
Khalid
Approved for reporting.