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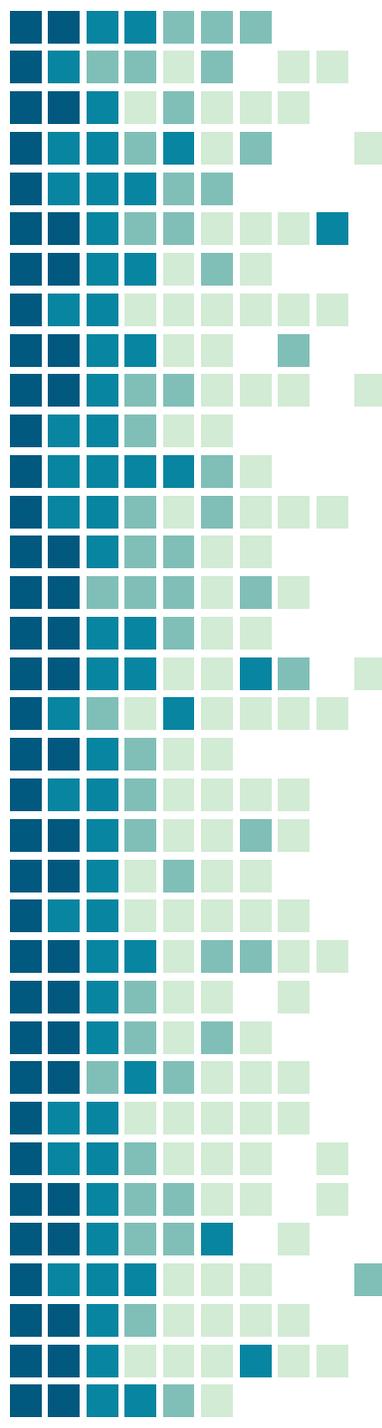
# Supreme Court Judgement on Transfer in the case of Compulsory Acquisition Raj Pal Singh vs CIT (Haryana) [2020] 118 taxmann.com 508

Mr. Sundara Rajan Krishnamachary

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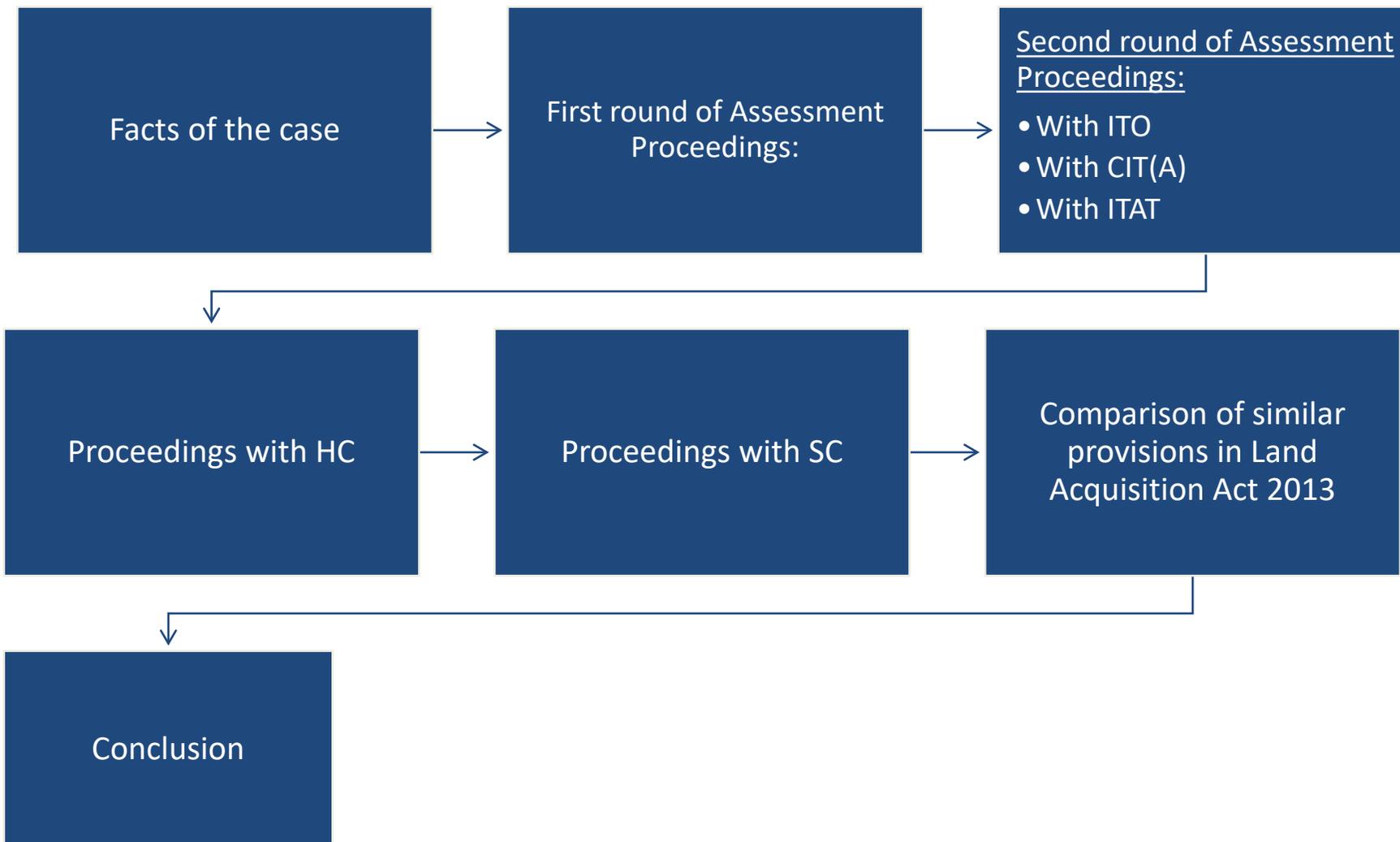
# Research Credits

CA Akash Kumar

# LEGENDS

CG	Capital Gains
CIT(A)	Commissioner of Income Tax (Appeals)
HC	High Court
ITO	Income Tax Officer
ITAT	Income Tax Appellate Tribunal
SC	Supreme Court

# PRESENTATION SCHEMA



# Facts of the case

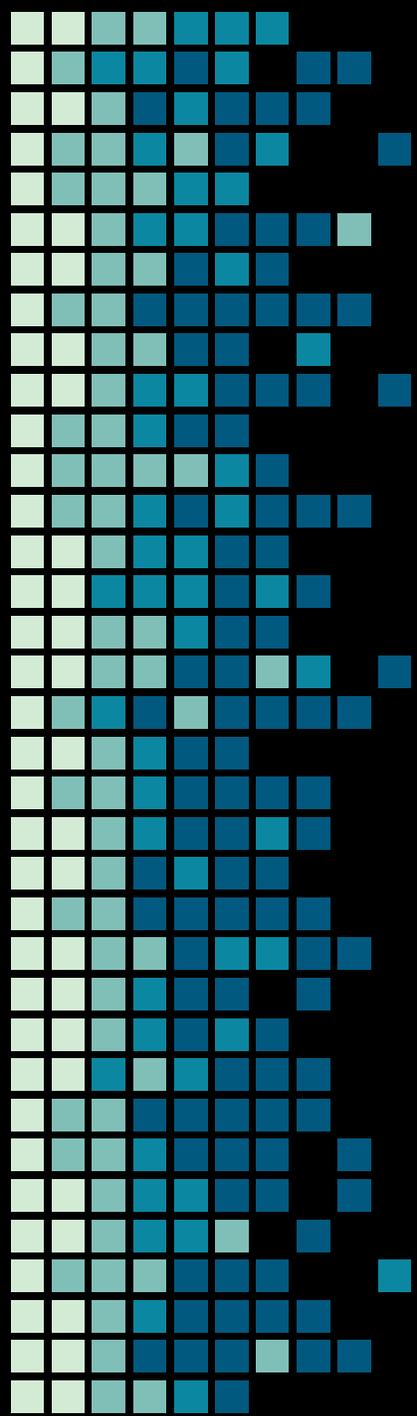
# Facts of the case

- Raj Pal Singh, the Karta of the Amrik Singh HUF (“The assessee”) had bought a land (“The land”) from a person who migrated to Pakistan.
- The original owner gave some part of the land to S.A. Jain college (“the college”) on lease for 20 years which was expiring on 31.08.1967.
- Later the college moved the government of Haryana for compulsory acquisition of the whole land.
- A notification under Section 4 of the Land Acquisition Act, 1894 (“The act of 1894”) was issued by the Government of Haryana on 15.05.1968, seeking to acquire the subject land for public purpose.
- The notification was followed by the declaration dated 13.08.1969 under Section 6 of the Act of 1894.
- Ultimately, after submission of the claim for compensation, the Land Acquisition Collector, Ambala proceeded to make the award on 29.09.1970.

# Facts of the case

- The case of the assessee was selected for scrutiny and ITO passed an order dated 12.02.1982 enhancing the income from HP and adding the interest income received as per the award date.
- On an appeal with CIT(A), question arose as to why CG shall not be taxable in the year of receipt of award (i.e.) AY 1971-72.
- Assessee contented that the transfer was related to Section 17 (i.e. urgency acquisition) of the Act of 1894, and therefore the transfer shall be when the first notification was issued (i.e.) AY 1968-69.
- However, CIT(A) held that, until the actual amount of compensation has been fixed, no income could be said to have occurred and therefore, it shall be taxable only when the award was announced.
- On an appeal, the ITAT held that since no actual date of acquisition has been mentioned either in the award order or by the ITO, the same has to be ascertained at the first stage.
- The ITAT also referred to the similar case of the assessee for the AY 1975-76 whereby that was a clear case of urgency acquisition and possession was taken on date of notification under section 9(1).
- The ITAT had mentioned that it is certain that the possession of the lands was taken before the award was made u/s 11 of the Act of 1894.

# Second Round of Assessment Proceedings



# Proceedings with ITO

The assessee contented that the transfer was covered under the urgency matter of section 17 of the Act of 1894 and therefore, taxable only in the year of notification (i.e.) AY 1969-70.

The ITO after making enquiries from the revenue concluded that the date of transfer for land was 'in consonance' with the date when the award was announced.

For the case relevant to AY 1975-76, the ITO clarified that specific date of taking over possession was mentioned in the notification as per section 9 of the Act of 1894.

The same was not the case of AY 1971-72 and therefore ITO held that in the instant case, the award was announced on 29.09.1970 and the said date shall be relevant to determine transfer.

## Supplementary Facts

that in the order for award dated 29.09.1970, the interest was awarded from the date of notification of u/s 4 of the Act of 1894 (i.e. 15.05.1968).

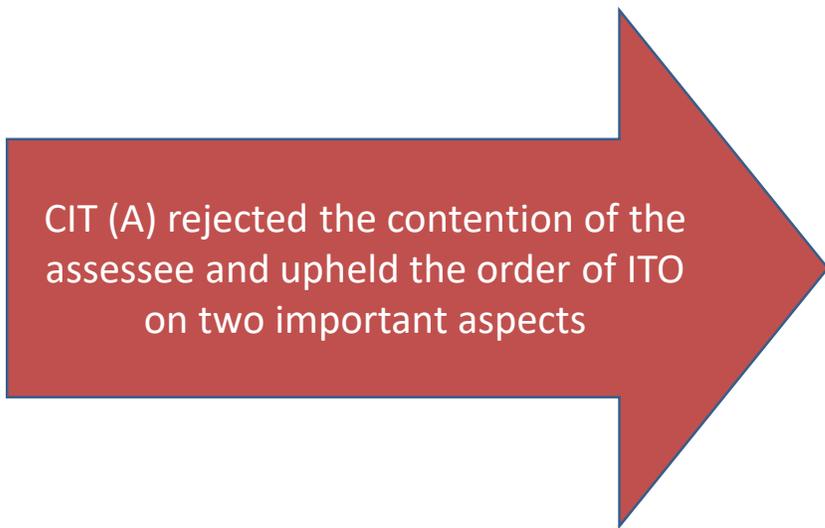
# Proceedings with CIT(A)



The assessee contended that the acquisition of land was a case of Compulsory acquisition under section 17 of the Act of 1894 and date of possession shall be 15.05.1968 (i.e. date of notification u/s 4).



Assessee further contended that in the order for award dated 29.09.1970, the interest was awarded from the date of notification of u/s 4 and therefore such date be date of transfer.



**Section 28** – If the sum, which the collector did award as compensation, the award of the court may direct that the collector shall pay interest on such excess at the rate of 9% p.a. from the date on which he took possession of the land to the date of payment of such excess into the court.

## Possession of land (Requisite for Section 17)

Possession of the Land should have taken before the award date and

Possession should have been taken after 15 days of notice u/s 9(1)

## Relevance of Interest payment from the date of notification u/s 4

The interest awarded was not because of section 17 but based on section 28 and

Based on the ruling of court and based on an equitable interpretation of Sec. 28 of the Act of 1894

# Proceedings with ITAT

The ITAT took up the issue concerning the date of taking over physical possession of the land since the matter presented a complex scenario, where a clear finding about this date was difficult to emerge by the lower authorities.

The ITAT referred to the observations regarding “possession of land”, as occurring in the award dated 29.09.1970 and observed that, possession of the land was supposed to have been taken on 15.05.1968.

The ITAT further observed that to sort out the controversy, such stipulation in the award was required to be depended upon.

The date of actual physical possession was inferable from the intention of the parties and the language of such stipulation in the award.

The ITAT held that since the actual physical possession was taken on 15.05.1968, such a date shall be the transaction date and not on the date of award i.e., 29.09.1970.

Hence, capital gains were not to be taxed for the AY 1971-72.

# Proceedings with Honorable High Court

# Proceedings with HC – Contentions

The appeal by the Revenue on the following question –

“Whether on the facts and in the circumstances of the case, the Tribunal was right in Law in holding that the capital gains are not assessable in the year under consideration as the transaction did take place on the date of notification i.e. 15.05.1968 and not on the date of award on 29.09.1970?”

## Contention of the Revenue

- As per the Income Tax Act, CG are taxable in the year in which transfer takes place.
- Therefore, the date of award 29.09.1970 ought to be considered for the purpose of calculating CG and not the date of notification i.e., 15.05.1968.

## Contention of the Assessee

- It had been a matter of urgency acquisition where the possession of land was taken on the date of notification i.e., 15.05.1968
- In view of the provisions contained in Section 17, the transfer took place on that date (15.05.1968) and not on the date of award (29.09.1970).

# Proceedings with HC – Judgement

The HC answered the reference in favor of the revenue while holding that the Collector had not taken possession of the land under Section 17 as the said provisions was not invoked by the Government.

For the purpose of CG, the date of award was required to be taken as the date of taking over possession because, on that date, the land vested in the Government under Section 16 of the Act of 1894.

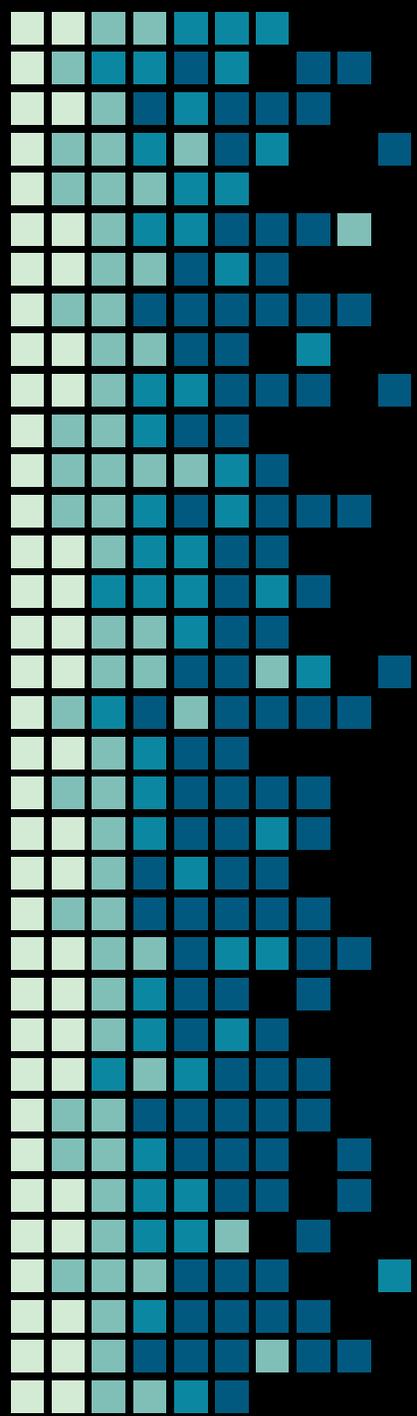
The High Court further examined the ambit and scope of Section 45 of the Income Tax Act and read along with Section 16 of the Act of 1894.

On such examination, the HC came to the conclusion that the transfer of the land and its vesting in the Government took place on 29.09.1970, (i.e.) the date of award.

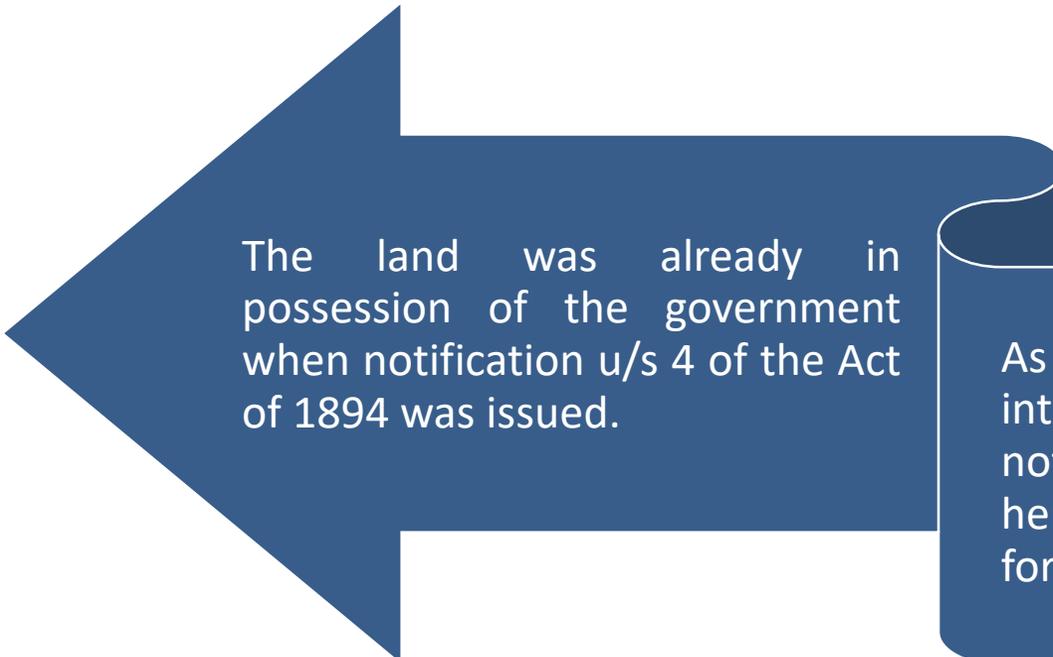
The HC stated that Income tax is not levied on a mere right to receive compensation. There must be something tangible, something in the nature of an obligation to pay an ascertained amount.

The CG is chargeable only in the year of award since only at that time, the amount was ascertainable. Therefore, CG shall be chargeable to tax in the AY 1971-72.

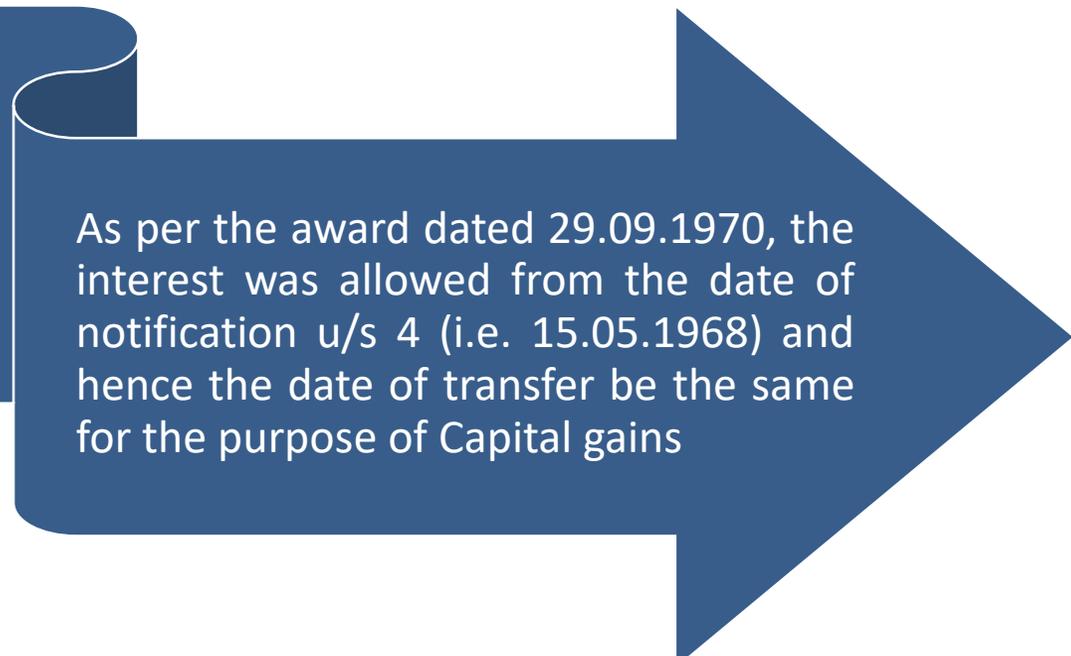
# Proceedings with Honorable Supreme Court



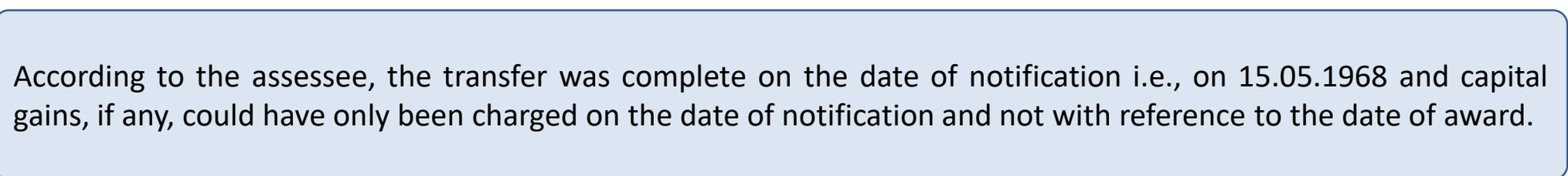
# Proceedings with SC – Assesse Contentions



The land was already in possession of the government when notification u/s 4 of the Act of 1894 was issued.



As per the award dated 29.09.1970, the interest was allowed from the date of notification u/s 4 (i.e. 15.05.1968) and hence the date of transfer be the same for the purpose of Capital gains



According to the assessee, the transfer was complete on the date of notification i.e., on 15.05.1968 and capital gains, if any, could have only been charged on the date of notification and not with reference to the date of award.

# Proceedings with SC – Various rulings relied upon by the Assesse

Kerala High Court in the case of Peter John (supra)

- The owner of property is entitled to compensation on the day on which he is dispossessed; and that such right does not await quantification of compensation by the authority.
- On application of these principles to the case at hand, the date of award i.e., 29.09.1970 for quantification of compensation has no relevance, and the only relevant date is 15.05.1968

Rama Bai vs CIT (1990) 181 ITR 400 [SC]

- The interest income in cases of land acquisition accrues from year to year and is taxable in the respective year of its accrual
- In the present case, since the possession was taken on 15.05.1968, capital gains and interest accrued were taxable only in the AY 1969-1970 and not in the AY 1971-1972.

Assesse further contented by relying on the case of **Berger Paints India Ltd. Vs. CIT (2004) 266 ITR 99**, wherein it was held that where the order passed in favour of the very same assesse and against the revenue in a similar matter has attained finality, the revenue cannot seek re-opening of the issue in relation to the other case without a just cause.

# Proceedings with SC – Revenue Contentions

The Revenue referred to the definitions of “capital asset” and “transfer” as per the Income Tax Act.

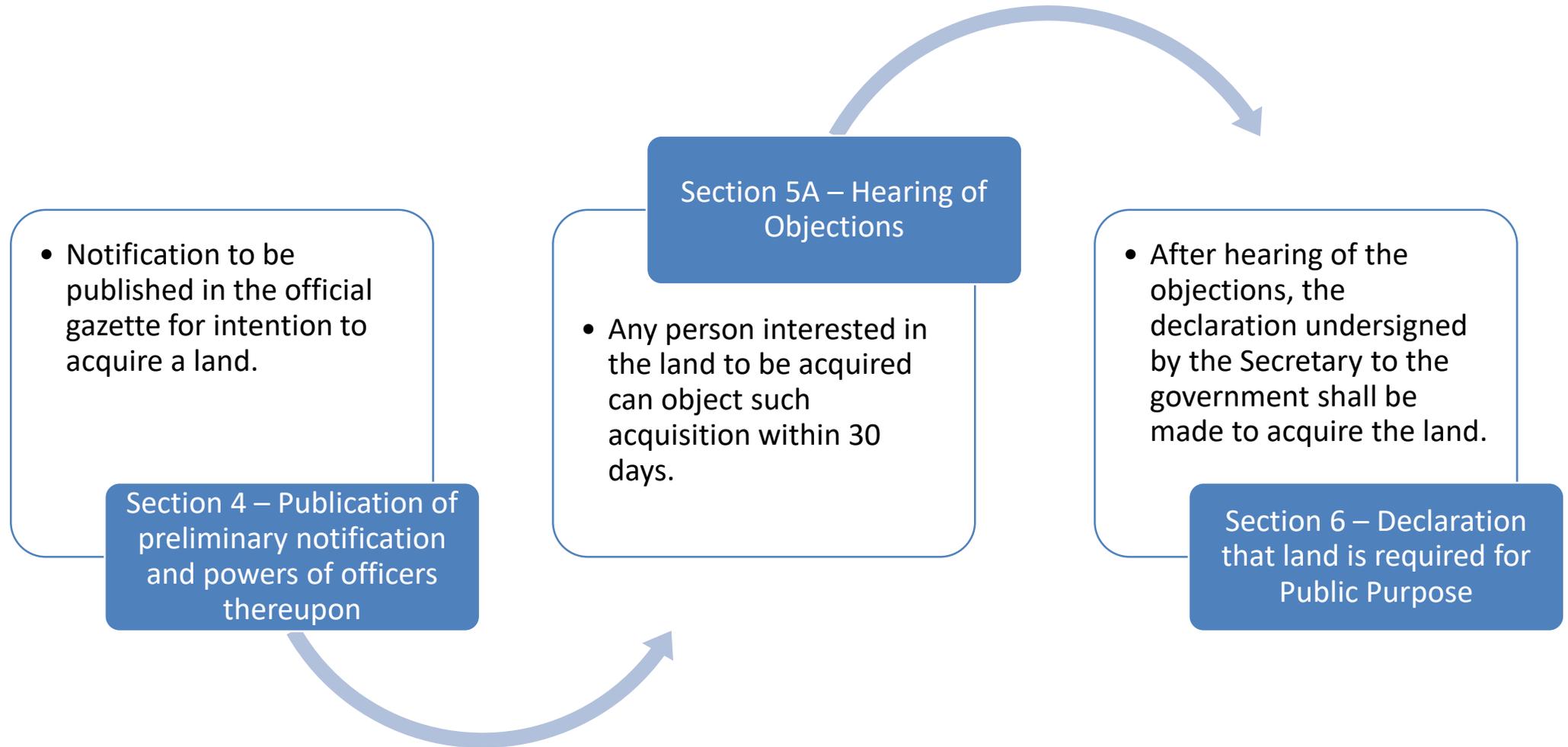
It contended that though possession of the land was with the College, gain on account of transfer of land accrued only on the date of award.

The Revenue further stated that the acquisition had not been under the urgency provisions contained in Section 17 of the Act of 1894.

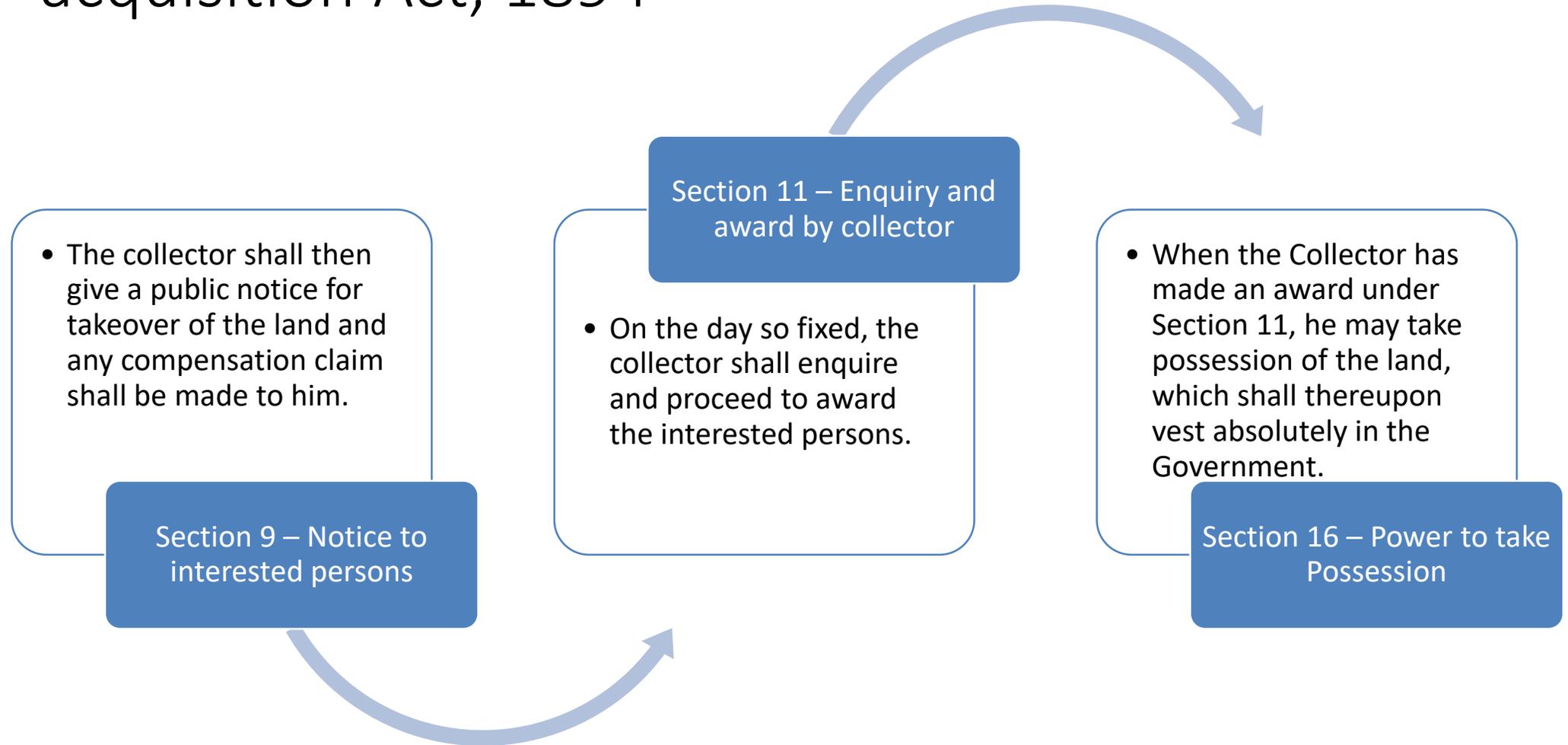
The government did not issue directions to take possession after the expiry of 15 days from the date of publication of notice under Section 9(1).

The only applicable provision for taking possession in the present case had been Section 16 whereby possession could be taken by Collector after making the award under Section 11 and only thereupon the land vests in the Government.

# Proceedings with SC – Analysis of Land acquisition Act, 1894



# Proceedings with SC – Analysis of Land acquisition Act, 1894



However, a different process u/s 17 has been prescribed whereby, in the case of urgency, the collector shall take the possession of the land on the expiration of 15 days from the date of publication of notice u/s 9(1) of the Act of 1894.

# Analysis of Section 16 vis-à-vis Section 17

Particulars	Acquisition under Normal route – Section 16	Acquisition under Special route in case of Urgency – Section 17
<b>Relevant Extract</b>	Power to take possession. - When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon [vest absolutely in the [Government]], free from all encumbrances.	(1) In cases of urgency whenever the [appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section 1). [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government], free from all encumbrances.
<b>Date of Possession</b>	Date of Award under Section 11	On the expiration of fifteen days from the publication of the notice mentioned in section 9(1)
<b>Necessity</b>	Authority to make an award under section 11 of the Act of 1894	Public notice by the collector specifying the intention of government to take the possession of land.

# Proceedings with SC – Analysis of Transfer of Properties Act, 1882

## Section 5 – Transfer of Property defined

- In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and “to transfer property” is to perform such act.

## Section 108 – Rights and Liabilities of Lessor and Lessee

- In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:- \*\*\* \*\*\*(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.”

## Section 116 – Effect of Holding Over

- If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, renewed automatically.

As per Section 111 of Transfer of Properties Act, 1882, Determination of lease means - A lease of immovable property determines- (a) by efflux of the time limited thereby.

# Proceedings with SC – Repudiation of rulings referred by Assesse

## Kerala High Court in the case of Peter John (supra)

- The High Court referred to the enunciation by this Court in the case of Joginder Singh (supra) and held that:
  - Right to compensation arises immediately on dispossession and does not await quantification of compensation.
  - The right to receive interest accrue at a point of time when the right to receive compensation accrues.

## Rama Bai vs CIT (1990) 181 ITR 400 [SC]

- This Court found that the issue of point of time at which the interest payable under Sections 28 and 34 of the Act of 1894 accrues or arises, the HC in the case of CIT vs. Govindrajulu Chetty (T.N.K.): [1987] 165 ITR 231 held that:
  - The interest cannot be taken to have accrued on the date of the order granting enhanced compensation but has to be taken as having accrued year after year from the date of delivery of possession.

Accrual of capital gain depends upon completion of transfer of property from the owner to the Government and not upon accrual of right to receive compensation.

# Proceedings with SC – Various rulings referred upon by the SC

Lt. Governor of  
Himachal  
Pradesh vs.  
Avinash Sharma:  
1 SCR 413

- In the present case a notification under s. 17 (1) and (4) was issued by the government and possession which had previously been taken must, from the date of expiry of 15 days from the publication of the notice u/s 9(1), be deemed to be the possession of the Government.

CIT vs. Pandari  
Laxmaiah:  
(1997) 223 ITR  
671

- Possession of the land was taken on 03.08.1977 whereas notice under Section 9(1) was issued on 20.05.1980 and award was passed on 25.03.1981.
- The High Court held that the relevant date for vesting of the land in the Government would be the date of making the award.

Fruit &  
Vegetable  
Merchants  
Union v. Delhi  
Improvement  
Trust: AIR 1957  
SC 344

- On the other hand, sec. 16 and 17, provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances".
- It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests.

# Proceedings with SC – Various rulings referred upon by the SC

Buddaiah v. Commissioner of Income-Tax, Karnataka-2: (1985) 155 ITR 277

- The HC held that since title of land passes to the Government on possession being taken by the authority under Section 16, such date of taking possession becomes relevant for the purposes of Section 45 of the Income Tax Act.

Special Land Acquisition Officer, Bombay and Ors. v. Godrej and Boyce: (1988) 1 SCC 50

- Under the scheme of the Act, neither the notification under Section 4 nor the declaration under Section 6 nor the notice under Section 9 is sufficient to divest the original owner of, or other person interested in, the land of his rights therein.
- Section 16 makes it clear beyond doubt that the title to the land vests in the government only when possession is taken by the government. Till that point of time, the land continues to be with the original owner

# Proceedings with SC – Judgement

With regard to the year of transfer relevant for taxability under the Income Tax Act, the SC observed the following:

As per section 2(47) of the I.T. Act, “transfer”, in relation to a capital asset, includes the compulsory acquisition thereof under any law;

As per the Land acquisition act, 1894, there are only two ways to acquire the land (viz) u/s 16 – Normal route or u/s 17 – in case of urgency.

SC referred the decision of Andhra Pradesh HC in the case of S. Appala Narasamma v. Commissioner of Income-Tax: (1987) 168 ITR.

In that case, the possession of the land was voluntarily transferred to the government before the date of award, but the HC held that the date of transfer shall only be the date when the award was ordered.

# Proceedings with SC – Judgement

Contd....

- The decision of this Court in the case of Avinash Sharma (supra), however, supports the view that in the case of urgency acquisition,

- even if possession of the land under acquisition is taken earlier, it should be related to the process contemplated by Section 17 (1) of the Act of 1894,

- Deemed to be effective from the date on which the period prescribed by sec. 17 would expire (i.e. 15 days) from the publication of the notice under sec. 9(1).

- In S. Appala Narasamma and Pandari Laxmaiah (supra), the Andhra Pradesh High Court applied these principles to the cases pertaining to ordinary process of acquisition

- It was held that if possession had been taken earlier, it would relate to the award; and the date of award would be the relevant date for vesting of the land in the Government.

# Proceedings with SC – Concluding Points

Completion of transfer with vesting of land in the Government essentially correlates with taking over of possession of the land under acquisition by the Government.

However, where possession is taken over before arriving of the relevant stage for such taking over, capital gains shall be deemed to have accrued upon arrival of the relevant stage and not before.

To be more specific, in such cases, capital gains shall be deemed to have accrued:

Upon making of the award, in the case of ordinary acquisition referable to Section 16; and

After expiration of 15 days from the publication of the notice mentioned in Section 9 (1), in the case of urgency acquisition under Section 17.

In the present case, the land in question was subjected to acquisition under the Act of 1894 by adopting the ordinary process leading to award under sec. 11 and therefore, capital gains would have accrued upon taking over of possession after making of the award (i.e.) 29.09.1970.

# Proceedings with SC – Concluding Points



- it is evident on the face of the record that it had not been a matter of urgency acquisition and nowhere it appears that the process contemplated by Section 17 of the Act of 1894 was resorted to.



- If it was a matter of urgency acquisition, the land could have vested in the Government only after expiration of 15 days from the date of publication of notice under sec. 9(1); and, in any case, could not have vested on the date of publication of initial notification under Section 4 of the Act of 1894.



- Further, in terms of Section 108(q) of the Transfer of Property Act 1882, on determination of lease, the lessee is bound to put the lessor into possession of the leased property.



- In case where lessee does not deliver possession to the lessor after determination of the lease but the lessor accepts rent or otherwise assents to his continuing in possession, in the absence of an agreement to the contrary, the status of such lessee is that of tenant holding over



- But, in the absence of acceptance of rent or otherwise assent by the lessor, the status of lessee is that of tenant at sufferance.

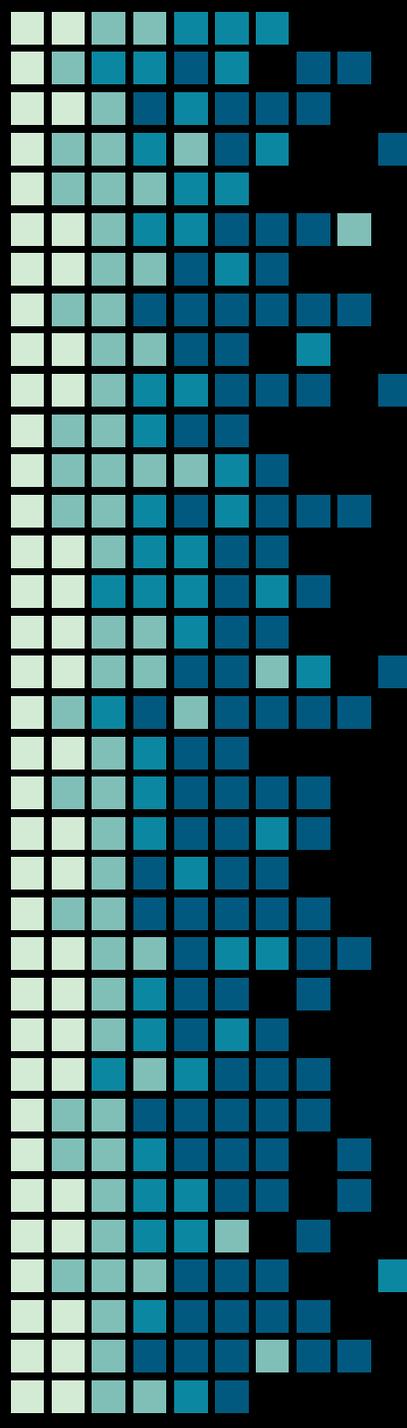
# Proceedings with SC – Other Non-core Points

Viewed from any angle, it is clear that accrual of capital gains in the present case had not taken place on 15.05.1968. If at all possession of the College was to result in vesting of the land in the Government, such vesting happened only on the date of award i.e., 29.09.1970 and not before.

We may also usefully observe that awarding of interest from 15.05.1968 in the award had only been just and equitable application of the provisions of law, including Section 28 of the Act of 1894 but that did not result in vesting of the land in Government on that date of notification.

The matter involved in the said case pertaining to the AY 1975-1976 was taken to be an acquisition under the urgency provision contained in Section 17 of the Act of 1894.

The acquisition proceedings in the present case had not been of urgency acquisition but had been of ordinary process where possession could have been taken only under Section 16 after making of the award.



# Comparison of Similar Provision with Land Acquisition Act 2013.

# Comparison of Similar Provisions

Land Acquisition Act, 1894	Land Acquisition Act, 2013
<p><u>Section 16 – Power to take possession:</u></p> <p>When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon [vest absolutely in the [Government]], free from all encumbrances</p>	<p><u>Section 38 – Power to take possession:</u></p> <p>The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons <b>within a period of three months</b> for the compensation and <b>a period of six months</b> for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30:</p>
<p><u>Section 17 – Special powers in case of urgency:</u></p> <p>In cases of urgency whenever the [appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section 1). [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances.</p>	<p><u>Section 40 – Special powers in case of urgency:</u></p> <p>In cases of urgency, whenever the appropriate government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the government, free from all encumbrances.</p>

# Comparison with Other Relevant SC Case Law

Compulsory acquisition under Land Acquisition Act



Taxability is determined as per Section 16 / Section 17 case of transfer



As per section 16 - Taxable when award for compensation is made  
As per section 17 – Taxable after 15 days from the date of publication of notice



Applicable in the case of Compulsory acquisition

SC ruling in the case of Sadiq Sheikh vs CIT on transfer of possession of property



Taxability is determined as per Section 53A in the case of transfer of physical possession in the case of part performance of the property



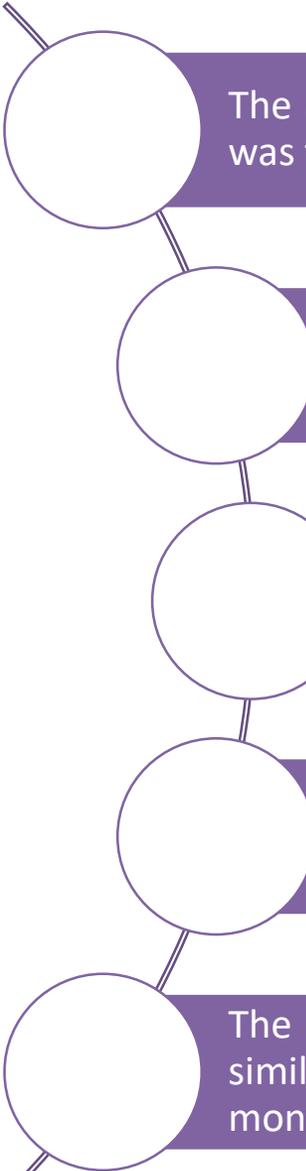
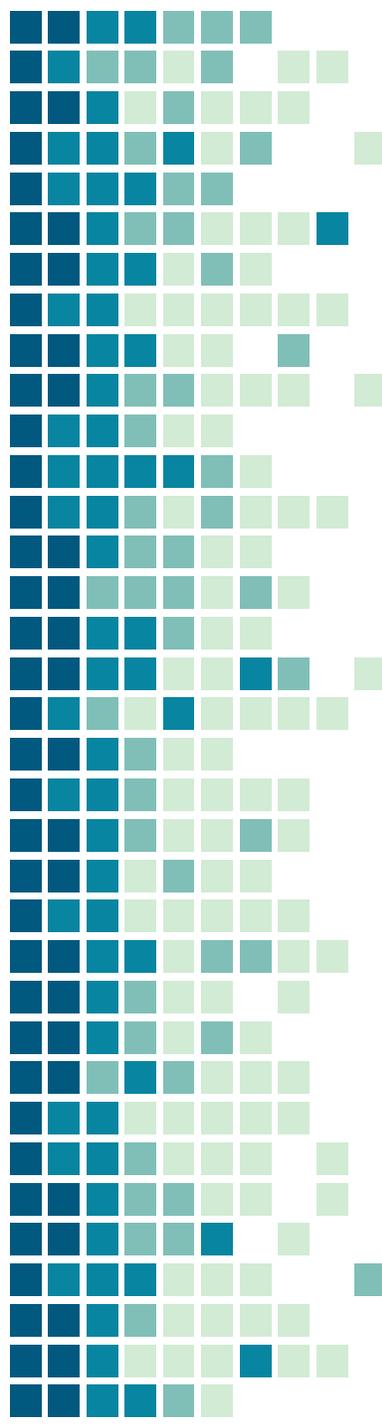
Taxable when the physical possession of the property is transferred in consideration for part performance of the agreement, even if the title is not transferred.



Applicable in the case of Normal acquisition

# Conclusion

# Conclusion



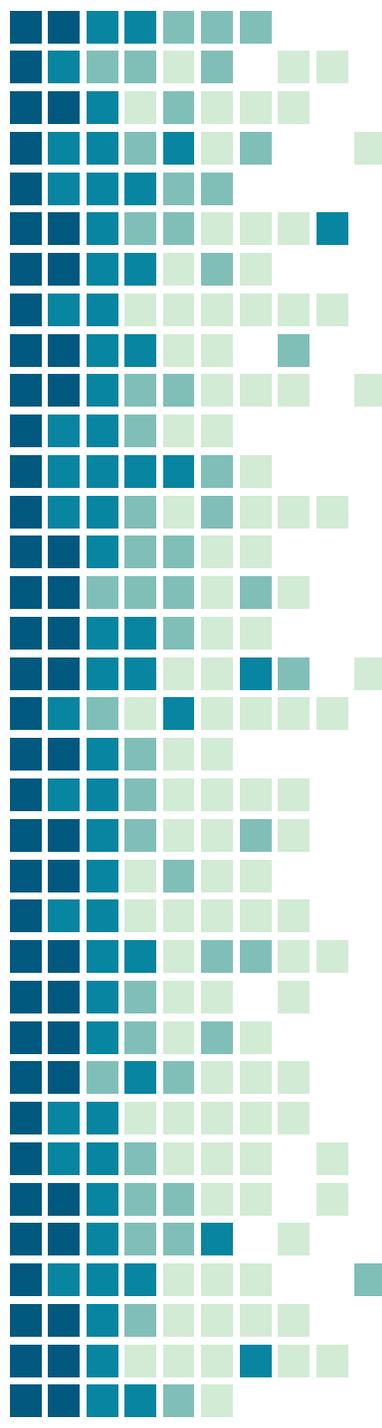
The acquisition of land was a matter of ordinary acquisition u/s 16 where the possession of the land was transferred only upon making the award dated 29.09.1970.

The taxability of Capital gains arises on transfer of such capital asset. Transfer in terms of Section 2(47) of the I.T. act read with Land acquisition act 1894 shall be made only upon making the award dated 29.09.1970.

As per Land acquisition act, 1894 read with various rulings, the possession of the land was completed to be transferred only upon making the award as per Section 11 as provided under section 16.

The interest on compensation provided from the date of notification u/s 4 was based on just and equitable basis and it did not result in vesting of the land in Government on that date of notification.

The judgement shall hold good even in the Land Acquisition Act of 2013 since the provisions are similar with an exception that under normal acquisition, now the time has been specified (i.e.) 3/6 months as the case may be and upon completion of the same, the transfer shall be completed.



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