

**(1982) 11 KL CK 0021**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 279 of 1982**

Kerala State Housing Board

APPELLANT

Vs

C. Ammalukutty Amma and Others

RESPONDENT

---

**Date of Decision :** 05-11-1982

**Acts Referred:**

General Clauses Act, 1897 — Section 21  
Kerala Land Acquisition Act, 1961 — Section 11, 12, 16, 17, 17(1)  
Kerala State Housing Board Act, 1971 — Section 71

**Citation :** (1982) 11 KL CK 0021

**Hon'ble Judges :** Khalid, J; Balagangadharan Nair, J

**Bench :** Division Bench

**Advocate :** T.C.N. Menon, K.P.G. Menon and T.D. Rajalakshmi, for the Appellant;  
T.R. Govinda Warriar and Sebastian Davis, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Khalid, J.—The power of the State to withdraw from the acquisition u/s 52 of the Kerala Land Acquisition Act, (the Act) corresponding to Section 48 of the Central Act, is the point that falls for decision in this writ appeal. By the Judgment under appeal, the learned Judge quashed the withdrawal notification, Ext.P-4 dated 4th February 1981, relying upon the decision reported in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, holding that once the land vested in the Government by the operation of law proceedings taken cannot be cancelled either u/s 21 of the General Clauses Act or u/s 52 of the Act.

2. The Petitioners are members of a Puthravakasham tavazhi of the 1st Petitioner. The 1st Respondent is the State of Kerala and the 2nd Respondent, the Assistant Collector and Land Acquisition Officer, Ottapalam, Palghat. The land involved lies in Sy. Nos. 27/3, 26/4, 27/5, 28/3 and 28/7 in Ottapalam II Village in Palghat District, the total extent of which is 7.63.16 hectares. There was a partition in this tavazhi. Portions of the land were allotted to the daughters and grandchildren of the 1st Petitioner. A notification u/s 3 of the Act was published

in the Kerala Gazette dated 1st May 1979 proposing to acquire the lands for the public purpose of implementing the Ottapalam Housing Accommodation Scheme by the Kerala State Housing Board. The Housing Board requested the Land Acquisition Officer to take advance possession of the land. Accordingly the Land Acquisition Officer obtained possession from the various allottees on 21st May 1979 through the Revenue Inspector attached to the Office of the Special Tahsildar for the Kerala State Housing Board. Ext. P-1 is the true copy of the record given by the first Petitioner to the Special Revenue Inspector evidencing surrender of possession. Similar records were given by the other members of the tavazhi in respect of the lands allotted to them. Subsequent to this, another notification u/s 3(1) of the Act was published in the Gazette dated 26th June 1979, when it was discovered that the original notification contained mistakes in the survey numbers. The formalities prescribed under the Act were gone through thereafter and ultimately Ext. P-2 award No. 3/80 was passed. In the award, the entire compensation is made payable to the Petitioners. The Petitioners aver that they are liable to share the compensation amount with the other members of the tavazhi. Under the award the 1st Petitioner has been awarded a total sum of Rs. 10,97,353 and the 2nd Petitioner, a sum of Rs. 14,336.84. The Petitioners' representative approached the 2nd Respondent, the Assistant Collector and Land Acquisition Officer, Ottapalam, when he was told that the Housing Board had not made available the amount for payment to the Petitioners. The Petitioners felt that the payment of the amount was being delayed because of the machinations of the Panchayat President, against whom the 1st Petitioner's husband had filed a suit. It was under these circumstances that the Original Petition was filed for the issue of a writ of mandamus directing Respondents 1 and 2 to pay the Petitioners the sum of Rs. 11,11,689.84, the amount awarded to them under Ext. P-2 and to pay interest at 12 per cent from 12th August 1980 and for other reliefs.

3. Subsequent to the filing of the petition, the Government issued Ext. P-4 notification under Sub-section (I) of Section 52 of the Act withdrawing the acquisition. The Petitioners therefore filed C.M.P. No.7232 of 1981, seeking amendment of the Original Petition raising additional grounds and including a prayer to quash Ext. P-4 notification. The case of the Petitioners is that the Government cannot exercise powers u/s 52 of the Act since possession was taken and title had vested in it.

4. In the counter-affidavit filed by the Respondents, it is stated that the Petitioners voluntarily surrendered the land to the Kerala State Housing Board even before the notification u/s 3(1) was issued and that the possession of the land was not taken by the Land Acquisition Collector from the Petitioners at any time under the Act. The surrender of possession was purely voluntary. The Government was compelled to reconsider the question of acquisition after the award was passed in view of the high amount of compensation fixed by the Land Acquisition Collector. The amount shown in the award is far more than the value of the properties demanded by the 1st Petitioner and her husband at the time of

making the offer. The original offer was Rs. 250 per cent while the compensation awarded was much higher. The Housing Board expressed certain misapprehension about the correctness of the valuation fixed in the award. The matter was considered in detail by the Revenue Department of the Government in consultation with the Housing Department and also the representatives of the Housing Board and it was decided that the Government should withdraw from the acquisition. There is no bar in withdrawing the acquisition since possession was not taken during the course of the acquisition proceedings. The decision to withdraw was taken bona-fide in public interest. Immediately after the withdrawal notification steps were taken to assess the damages payable to the owner of the land and it was fixed at Rs. 93,100.05. The demand for payment of interest does not arise since the Government had already withdrawn from the acquisition.

5. The question of law raised in the petition was considered by the learned Judge against the facts stated above and he stated thus in paragraph 7 of the judgment:

It is not disputed that possession was given by the Petitioners and the other owners of the land and records like Ext. P-I have been given to them. It is also noted that the award was passed when the land was in the possession of the Land Acquisition Officer. The question is whether after passing of the award, in such circumstances, the Government can withdraw Land Acquisition Proceedings. I do not have much difficulty in resolving this question.

After quoting Section 52(1) and Section 18 of the Act, the learned Judge repelled the contention of the learned Additional Advocate-General that possession contemplated u/s 52 was possession after passing of the award and that coming by possession prior to the award would not avail the Petitioners. The learned Judge held that possession of the Government in this case would be deemed to be possession taken as per Section 18.

6. The learned Additional Advocate-General disputed before us that possession was given to the State and that all the owners of the property had given possession. The Petitioners had not satisfactorily proved that the entire extent of the property was covered by Ext. P-I. He contended that assuming possession had been given as per Ext. P-I to the Government, the most that the Petitioners could get was the invalidation of Ext. P-4 to the extent of the land comprised in Ext. P-I. The Respondents' counsel met this plea stating that the Appellant could not be heard to say so in appeal since these points were not raised before the learned Judge. Besides, there was no denial in the counter-affidavit that all persons interested in the land had surrendered possession. We find that the submissions now made on facts were not in dispute before the learned Judge.

Even so for completeness of the case and to remove difficulties, we think it proper to refer to the contentions raised before us and to answer them also.

7. The land proposed to be acquired bears Sy. Nos. 27/3, 27/4, 27/5, 28/3 and

28/7 in Ottapalam II Village. Its total extent is 7.63.16 hectares. The land surrendered by Ext. P-1 is only 8 acres 96 cents in extent bearing Sy. Nos. 27/2-8, 27/1 and 27/2-A. The learned Additional Advocate-General built up a new case on the difference in extent and the survey numbers. We are not impressed with this case, for it is properly explained by the Respondents' counsel. In the award Ext. P-2, there is a note. Paragraph 1 deals with grounds of award. There it is stated that the Secretary, Kerala State Housing Board, Trivandrum, requested the District Collector, Palghat, to forward a requisition for the acquisition of 23 acres of land in Sy. No. 27/2-8. Lower down we find that Survey Nos. 27/1, 27/2-A and 27/2-B correspond to new subdivisions 27/3, 27/4 and 27/5. Therefore, the mention in Ext. P-1 of Survey Nos. 27/2-B, 27/1 and 27/2-A is of no consequence and nothing turns on that. Nor is the contention based on the extent acceptable for the reason that the Petitioner had clearly stated in the original Petition that the Petitioners as well as others who obtained the property by partition had given records similar to Ext. P-1 in respect of the lands allotted to them totalling 7.63.16 hectares. This case was not contraverted in the counter-affidavit. From the judgment, it is evident that this was not disputed before the learned Judge either. Therefore, we proceed on the footing that the possession of the entire area had been surrendered by the owners of the land.

8. The learned Additional Advocate-General then submits that in any case the Petitioners are not entitled to the entire compensation and therefore not to a mandamus to recover the entire amount because it is the admitted case of the Petitioners that the entire land is not allotted to them in the partition. That the entire land is not allotted to the Petitioners is not disputed. In paragraph 4 of the Original Petition, it is stated that though the entire compensation had been awarded to the Petitioners, they are bound to share it with the other members of the tavazhi in accordance with the spirit of the partition deed and the third proviso to Section 33(2) of the Act. We are not impressed with this case of the Appellants either, since we find that there is no dispute inter se between the allottees of the partition deed regarding their share in the properties, as the Petitioners have clearly stated that the land belong to all the members of the tavazhi and that they are bound to make good the compensation amount to all the owners. The award is not challenged before us. The award is a validly passed one. It is final and conclusive as between the Collector and parties to it u/s 12 of the Act. The rights inter se between the owners of the land have to be worked out by them. The Petitioners' case cannot be defeated with the plea that all those who are interested in the property have not chosen to challenge Ext. P-4. To make the position clear, we hereby declare that all the members of the tavazhi are entitled to the compensation amount proportionate to the share of the property allotted to them by the partition deed.

9. The learned Additional Advocate-General made a feeble attempt to contend that possession was not given to the State and on the admitted case of the Petitioners possession was given only to the Housing Board which in law will not

be possession to the State. Unless possession is given to the State, the attack against Ext. P-4 with the plea that possession was taken will have to be rejected. The judgment under appeal is assailed on the ground that the distinction between taking possession under the Act by the Land Acquisition Officer and surrender of possession de hors the Act to an authority other than the State was not noted in it. Before considering the nature of transfer of possession and its impact on the operation of the various sections of the Act, it is necessary to consider the factual contention that possession was not given to the State. The learned Judge observes thus in paragraph 2 of the Judgment:

2. After Section 3 notice, the owners of the land were given advance possession which possession was accepted by Land Acquisition Officer. Though at the hearing I thought that the reasons for and circumstances in which advance possession was given by the owners may be of some significance in the matter, after going through the relevant files carefully, I do not think it will matter much because it is clear from Ext. P-I itself that the taking over of possession was with the full concurrence of the Land Acquisition Officer and the Housing Board, Ext. P-I is the copy of the record given to the 1st Petitioner regarding handing over of possession by the Special Revenue Inspector and it is attested by the Officer of the Housing Board and verified and counter signed by the Special Tahsildar, Land Acquisition (General), Palghat. It is specifically asserted by the Petitioner that similar records have been given in respect of the lands allotted to the share of the other members of the tavazhy and that the entire area is covered by such records. (Ext. P-1 is in respect of 1st Petitioner's share of the property).

The question now raised before us is not seen discussed by the learned Judge. Perhaps it was not raised in this form then. Possession as per Ext. P-I was given prior to Section 3 notification. In the petition there is a clear averment that "the Housing Board requested the Land Acquisition Officer to take advance possession of the land and the Land Acquisition Officer took advance possession from the various allottees on 21st May 1979, through the Revenue Inspector, attached to the office of the Special Tahsildar". Possession was so taken in the presence of an Office of the Kerala State Housing Board and the Land Acquisition Officer made over possession of the land to the Kerala State Housing Board. The plea that the Additional Advocate-General now urges is, according to us, purely technical. u/s 71 of the Kerala State Housing Board Act, 1971, (Act 19 of 1971) any land or any interest therein required by the Board for any of the purposes of the said Act can be acquired under the provisions of the Kerala Land Acquisition Act, 1961. It is by the combined operation of Section 71 and the relevant provisions of the Land Acquisition Act that acquisition proceedings were initiated. Ext. P-I is a statement given to the Revenue Inspector attached to the Land Acquisition Special Tahsildar. The Respondents' counsel has made available to us the copies of statements similar to Ext. P-I given by the other allottees. From Ext. P-I and the statements mentioned above, it is clear that the owners of the land knew that the land was acquired by the State and that possession was given to the State. The documents and the file indicate that possession was handed over to the

State for the Housing Board. It may not therefore be correct to say that the land was surrendered to a private agency and not to the State, we find it difficult to agree with the case that possession was not given to the State.

10. Possession was given on 21st May 1979. The first notification u/s 3(1) was issued on 1st May 1979 and the second notification with the corrections was published on 26th June 1979. From these dates, we assume, for the disposal of this appeal, that possession was obtained by the State prior to the initiation of the land acquisition proceedings, for, the earlier notification was cancelled by the subsequent notification. This fact is of importance in this case for the decision of the question whether the withdrawal notification Ext. P-4 was validly passed or not. For a decision on this aspect of the case, it is necessary to consider the scheme of the Act.

11. Section 3(1) occurring in Part II of the Act deals with publication of preliminary notification and powers of officers there upon. Section 5 deals with hearing of objections by any person interested in any land notified u/s 3(1) as being needed or likely to be needed for public purpose. Section 6 deals with declaration that land is needed for a public purpose once the State is satisfied that it is so needed. Section 7 authorises the Government to direct the Collector to take order for the acquisition of the land, and Section 8 refers to marking out, measuring and planning the land. Section 9 gives an important right to the persons interested in the land sought to be acquired. u/s 9 public notice shall be given at convenient places, stating that the Government intends to take possession of the land, and inviting claims to compensation from persons interested in such land. Section 11 deals with enquiry and award by the Collector. Section 12 lays down that the award of Collector shall be final and conclusive evidence as between the Collector and the persons interested. An award can be made u/s 16 on agreement as to the amount of compensation between the Collector and all the persons interested. Such award shall also be conclusive evidence as between the Government and all persons interested. Section 18 states that when the Collector has made an award u/s 11 or Section 16, he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Section 19 deals with special powers of the Land Acquisition Officer in cases where land is needed urgently. u/s 19(1), whenever the Government or the District Collector is satisfied for reasons to be recorded in writing that a land is needed urgently, possession of such lands can be taken on the expiration of 15 days from the dates of notice mentioned in Section 9(1) though no award has been made and in cases where Section 19(1) is applied, the Government or the District Collector may direct that the provisions of Section 5 shall not apply and a declaration can be made u/s 6 after the publication of the notification u/s 3(1). Section 52(1) which confers power on the Government to withdraw from the acquisition reads:

52. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-(1) Except in the case provided for in Section 38, the

Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

\* \* \*

This section makes it abundantly clear that liberty to withdraw from the acquisition, is given under it only where possession has not been taken. The question that falls to be considered is the scope of the expression "of which possession has not been taken".

12. The learned Additional Advocate-General forcibly contends that possession contemplated is possession under the Act and not one outside the Act. In other words, the power of the Government to withdraw from the acquisition is not trammelled or entrenched, if the Government obtained possession otherwise than by the operation of the relevant sections of the Act dealing with taking possession. Possession under the Land Acquisition Act of a land sought to be acquired can be taken by the Government either u/s 19 where it is a case of urgency on the expiration of 15 days from the date of publication of the notice mentioned in Sub-section (1) of Section 9 or u/s 18 when the Collector has made an award u/s 11 or Section 16. According to him, possession was not taken by the Land Acquisition Officer in this case. Possession was given by the owners of the land even prior to the notification u/s 3(1). This possession will not be taking possession u/s 52. That being so, according to him, Ext. P-4 notification is perfectly valid and cannot be called in question. The learned Judge answering this contention observed in paragraph 7 of his judgment as follows:

7. It is not disputed that possession was given by the Petitioner and the other owners of the land and records like Ext. P-I have been given to them. It is also noted that the award was passed when the land was in the possession of the Land Acquisition Officer....

\* \* \*

Once the land has vested in the Government, free from all encumbrances there can be no question of going back on the Land Acquisition Proceedings. That is also the scheme of the Act. It is clear from Section 52 also. But what the learned Additional Advocate-General appearing for the Respondent contended before me was that the possession referred to in Section 52 is possession after the award is passed as contemplated u/s 18. The peculiarity of the case was possession was taken by the Government before the award, the parties being willing to give possession even before the award for the proposed acquisition. What is the nature of the possession of the Government after the award is passed. In view of the fact that possession is already taken over, no question of taking possession u/s 18 of the Act then arises. It would naturally follow that possession of the Government after passing of the award would be deemed to be possession taken as per Section 18 also.

And for this conclusion he relied on Lt. Governor of Himachal Pradesh and

Another Vs. Avinash Sharma, and referred to State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, . The Appellant's counsel attacked this finding and contended that the decision reported in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, was misapplied by the learned Judge and that he overlooked a vital distinction on facts between that case and the case on hand. If the facts of the Supreme Court case mentioned above were closely scrutinised and studied it would be evident, according to him, that the dictum laid down there did not apply to the present case. It becomes necessary, in view of this submission, for us to refer to the facts of the case in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, and to see whether there is, in fact, a distinction as pointed out by the learned Additional Advocate-General which would render the dictum laid down there in applicable to the facts of the present case.

13. In that case also what fell for decision at the hands of the Supreme Court was the scope of the powers of the State to withdraw from the acquisition. The Supreme Court was dealing with the Central Act. Section 17 of the Central Act corresponds to Section 19 of the Kerala Act. Section 48 corresponds to Section 52 of the Kerala Act. There, the Deputy Commissioner, Mahasu, took possession on December 23, 1963 of an area of land in a village belonging to the Respondent before the Supreme Court. Possession of the land was so taken apparently on the request of the Airforce authorities. There were no materials before the Supreme Court to disclose the authority under which possession of the land was taken. After a series of correspondence a notification u/s 4 of the Land Acquisition Act (corresponding to Section 3 of the Kerala Act) was published on March 31, 1964, notifying that the land was likely to be needed by the State Government for a public purpose. By a composite notification u/s 6 and Section 17(1) and (4) dated May 16, 1974, the enquiry u/s 5-A of the Act was dispensed with, and it was declared that possession of the land would be taken after the expiry of 15 days from the publication of the notice u/s 9(1) of the Act. After the issuance of Section 9 notice, the Government of Himachal Pradesh cancelled the notification u/s 4 and Section 17 by an order dated October 5, 1965. The Respondent thereupon moved the Judicial Commissioner, Himachal Pradesh, for an appropriate writ, to quash the withdrawal notification and to direct the authorities to act in accordance with law in the matter of compensation etc. The Judicial Commissioner granted the prayers holding that the land vested in the Government when possession was taken and that it was not competent to the State Government thereafter to withdraw from the acquisition in exercise of the power u/s 48. The Lt. Governor, Himachal Pradesh, then filed the appeal before the Supreme Court by special leave. Before the Supreme Court it was contended that the State had a general power u/s 21 of the General Clauses Act to cancel the notification at any time and that Section 48 of the Act did not trench upon that power. This contention was considered by the Supreme Court with reference to its own earlier decision reported in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, . In that case, the Supreme Court had to



consider the power of the Government to issue successive notifications u/s 6 for small parcels of the land comprised in one notification u/s 4(1) of the Act. The court rejected the contention that the State was invested with such a power. Thereafter the powers of the State u/s 21 of the General Clauses Act was considered vis-a-vis its powers u/s 48 of the Land Acquisition Act. In that case the Supreme Court held that the power u/s 21 of the General Clauses Act was not available when possession had been taken by the State under the provisions of the Land Acquisition Act. Section 48(1) is a special provision. Once possession is taken, the land vests in the Government. Thereafter withdrawal either u/s 21 or u/s 48 is not permissible.

14. Before us, the learned Additional Advocate General did not contend that the withdrawal could be justified u/s 21 of the General Clauses Act. What he strenuously contended was that withdrawal u/s 52 of the Kerala Act in this case was perfectly within the powers of the State Government for the reason that possession was not taken during the land acquisition proceedings. In A.I.R. 1970 S.C. 1576 though possession was taken prior to the issuance of Section 4 notification, taking of possession was ratified by the composite notification issued under Sections 6 and 17 of the Act. Such a situation does not obtain in this case. Here possession is said to have been given by Ext. P-1 and similar other documents. There was no notification u/s 19 of the Act. Possession therefore could be taken in the land acquisition proceedings only u/s 18 when the Collector had made the award when alone the land would vest absolutely in the Government free from encumbrances. In this case, there is no document before court and in fact none exists to show that possession was taken pursuant to the award Ext. P-2.

15. Before the Supreme Court also, a contention was raised that possession was not taken under the Act since possession in that case was obtained by the State prior to Section 4 notification. This case did not find favour with the Supreme Court as is seen from the following:

4. In the present case a notification u/s 17(1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice u/s 9(1), be deemed to be in the possession of the Government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification u/s 17(1) is issued the land does not vest in the Government free from all encumbrances. We are of the view that when a notification u/s 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), the possession previously obtained will be deemed to be the possession of the Government u/s 17(1) of the Act and the land will vest in the Government free from all encumbrances.

16. From what is extracted above, it is clear that the Supreme Court held that possession taken prior to the acquisition proceedings enured for the benefit of possession contemplated u/s 17. The Supreme Court went to the extent of

saying that even when possession was obtained "illegally or under some unlawful transaction" that possession became possession u/s 17(4) for the purpose of Section 48 in that case. It is the absence of a notification similar to the composite notification in the Supreme Court case that has emboldened the submission before us of a distinction between that case and the case on hand. We see that there is no notification in this case similar to the one in the Supreme Court case. The question is whether that makes any difference. That the land surrendered by Ext. P-1 and by similar documents to the State for the use of the Housing Board continued in its possession on the strength of the surrender so made is not disputed. The fact of possession with the Housing Board for whom acquisition was proposed is a reality. There cannot be a further taking of possession by the State when it is already in the possession of the land. All that Section 18 states is that the Collector may take possession of the land after making the award u/s 11 or Section 16. Ext. P-2 is the award. It gives all the details necessary for making a valid award. We cannot think of a taking of possession of the land which is already in the possession of the Housing Board. The last paragraph of Ext. P-2 reads as follows:

No encumbrances over the properties under acquisition if any has been brought to the notice of the L.A.O. The land along with the improvements thereon shall vest with the Government of Kerala free from all encumbrances from the date of taking possession and will be transferred as poramboke (Kerala State Housing Board-Under Labour and Housing Department),

Since Ext. P-2 unambiguously declares the vesting of the land in the Government after taking possession, the said declaration amounts to vesting of the land in the Government since possession had already been taken. Possession already given enures for the benefit of the land acquisition proceedings. So considered, it has to be held that the land had vested absolutely in the Government by Ext. P-2 award. In the Supreme Court case, the principle settled is that the earlier possession should be deemed to be possession taken u/s 17(1) whereupon the land vested in the Government. If, in that case, instead of the composite notification u/s 6 and Section 17, the possession taken before the initiation of the land acquisition proceedings had continued till the award was made, same result would have followed. There, the mere issuance of a notification u/s 17(1) was held to be sufficient to meet the requirement of law to evidence taking of possession while actually possession was not taken pursuant to that. Here the making of the award should be taken to evidence obtaining of possession since possession was already with the State. As a consequence the land vests in the Government. As observed by the Supreme Court "there is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification". We therefore hold that the withdrawal notification violates Section 52 of the Act.

17. The learned Additional Advocate-General invited us to a Division Bench ruling of the Court in *Kallianikutty Amma v. Special Tahsildar (L.A.) Cochin* 1981(2) ILR

Ker 53 to which one of us was a party to contend that the facts of this case were more similar to that case than to the Supreme Court case. We shall briefly state the facts of that case to test the correctness of the submission before us. There were negotiations between the owner of the property and the Kerala State Housing Board pursuant to which the parties entered into an agreement for the sale of the property. It was on December 24, 1977 that the owner agreed to hand over possession of the property and to receive 50 per cent of the compensation. This was agreed to in order to expedite the proceedings. There was delay on the part of the State in initiating the land acquisition proceedings. Section 3(1) notification followed. Ultimately, the owner was informed that possession would be taken and in fact possession was taken on 6th February 1979. The owner of the land thereupon moved this Court to quash all proceedings for acquisition of the land. In that case, it was held that the land acquisition proceedings could not be proceeded with for the reason that no declaration u/s 6 was issued within a period of 2 years as required by the proviso to Section 6 of the Act. The court then considered as to what further relief could be granted to the Petitioners before it, as the owner of land had lost possession of the land. This Court had to consider the scope of Section 16 of the Act since the original agreement between the parties made a reference to that section. Section 16 speaks of award in case of agreement as to the amount of compensation. Ext. P-2 agreement in that case was understood by the State to be a statutory agreement u/s 16 of the Act. But the court held that when a party agrees to surrender the land, the State can only seek such surrender and cannot take possession by force. The taking of possession was held to be not valid since it was not by resort to any of the provisions of the agreement but by use of might. It was held that such taking of possession was not in accordance with law. Since the land acquisition proceedings were no longer alive for want of a declaration u/s 6 within the statutory period of two years and since the taking of possession was not in accordance with law and not on the strength of any agreement, it was held that the Petitioners who had been divested of possession were entitled to be put back in possession. We fail to understand how this case can help the Appellant. The facts are so dissimilar that the principle laid down in that decision is of little help to the Appellant. What is attempted is this. In that case there was an agreement before the land acquisition proceedings. Reference was made to Section 16 of the Act in the agreement. Possession was taken de hors the provisions of the Act. This Court directed possession to be restored. Support appears to be sought from this direction, to the case on hand, with the plea that possession taken before the initiation of the proceedings cannot enure for the purpose of Section 52 and such possession will not be possession taken u/s 18. This, according to us, is a far-fetched assumption and cannot be accepted.

18. Respondent's counsel submits that the owners are entitled to interest at 12 per cent from the date of Ext. P-2. The learned Judge has awarded interest as claimed. This is assailed by the Additional Advocate General. We feel that this contention is justified. We held that the Petitioners will be entitled to 6 per cent

interest on the amount awarded from the date of Ext. P-2.

19. For the foregoing reasons, we agree with the learned Judge that Ext. P-4 is invalid and was passed without jurisdiction we dismiss the appeal and declare that the Petitioners are entitled to the compensation awarded with interest at 6 per cent from the date of Ext. P-2 till realisation. No order as to costs.