

GAHC010258592023



2024:GAU-AS:9443

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6760/2023

PANKAJ MOHAN YEIN AND 9 ORS.
S/O- LATE HALADHAR YEIN, R/O- PATHALIAL, P.O. MACHKHOWA, P.S.
AND DIST. DHEMAJI, ASSAM, PIN- 787057.

2: JAYANTA KONCH
S/O- PURNA KONCH
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM
PIN- 787057.

3: AMULYA KR. SAIKIA
S/O- LATE TILAI CHUTIA
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM
PIN- 787057.

4: BIREN SAIKIA
S/O- LATE TILAI CHUTIA
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM
PIN- 787057.

5: BISHWA KONCH
S/O- LATE HIRANATH KONCH
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM

PIN- 787057.

6: BHASKAR JYOTI DUTTA
S/O- ROBISON DUTTA
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM
PIN- 787057.

7: LILA KONCH
S/O- LATE HARINATH KONCH
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM
PIN- 787057.

8: RUBUL SAIKIA
S/O- LATE DURNA SAIKIA
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM
PIN- 787057.

9: PURNA KANTA DUTTA
S/O- LATE GAMDHAR DUTTA
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM
PIN- 787057.

10: SANJAY SAIKIA
S/O- AMULYA SAIKIA
R/O- PATHALIAL
P.O. MACHKHOWA
P.S. AND DIST. DHEMAJI
ASSAM
PIN- 787057

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, THE PUBLIC WORKS (ROADS) DEPARTMENT,
SACHIVALAYA, DISPUR, ASSAM-781006.

2:THE STATE OF ASSAM
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
THE REVENUE DEPARTMENT
SACHIVALAYA
DISPUR
ASSAM-781006.

3:THE DISTRICT COMMISSIONER
DHEMAJI
ASSAM
PIN- 787057.

4:THE ADDL. DISTRICT COMMISSIONER
DHEMAJI
ASSAM
PIN- 787057

Advocate for the Petitioner : MR S BORTHAKUR, MR. D GOGOI,MR H P NEPAL

Advocate for the Respondent : GA, ASSAM, SC, REVENUE,SC, PWD ROAD

Linked Case : WP(C)/6592/2023

SABITA DAS
W/O- PRADIP DAS
R/O- NO. 2 BHARALI CHUK
P.O.- DHEMAJI
P.S.- DHEMAJI
DISTRICT- DHEMAJI
ASSAM

PIN- 787057.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

THE PUBLIC WORKS (ROADS) DEPARTMENT
SACHIVALAYA
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2:THE STATE OF ASSAM
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3:THE DISTRICT COMMISSIONER
DHEMAJI
ASSAM
PIN- 787057.

4:THE ADDL. DISTRICT COMMISSIONER
DHEMAJI
ASSAM
PIN- 787057.

Advocate for : MR S BORTHAKUR
Advocate for : SC
PWD appearing for THE STATE OF ASSAM AND 3 ORS

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT & ORDER (CAV)

Date : 20-09-2024

1. Heard Mr. S Borthakur, learned counsel for the petitioners. Also heard Mr. P Nayak, learned standing counsel, PWD appearing for respondent No.1, Mr. S Dutta, learned counsel appearing for respondent No.2 and Ms. S Sarma learned counsel for respondent Nos.3 & 4.
2. These two writ petitions are taken up for final disposal together as identical facts and issues are involved in this case and the learned counsel for the parties have also agreed.
3. The case of the petitioners in a nutshell is that the land of the petitioners have been acquired for the construction of roads

under "Assam Mala", a notification dated 20.01.2021 introduced by the Government of Assam for improvement and up-gradation of State Highways and Major District Roads and externally aided projects. Such lands are to be acquired through direct purchase by way of a negotiated settlement. According to the petitioners, they have been paid the land acquisition compensation only to the extent of 50% of the total awarded amount, however, the remaining 50% has not been paid to them.

4. In the aforesaid backdrop, the present writ petitions are filed seeking a direction to release the compensation amount already determined and agreed in favour of the petitioners against the acquisition of their land and building.

5. The Deputy Commissioner has filed an affidavit, inter alia contending that based on public complaint submitted by one Shri Minturaj Kaman and others, a case was registered at Dhemaji PS vide Dhemaji PSE No.149/2023 under section 120(B)/420/406/409 IPC and vigilance PSPE No.07/2023 of the Chief Minister's Special Vigilance Cell was registered and investigation process is underway.

6. It is the stand of the respondent Deputy Commissioner cum Collector that after receiving the allegation from Public Accounts Committee, based on the complaint of said Shri Minturaj Kaman, wherein allegation of anomalies in assessing compensation of the land acquired at village Pathalial under Dhemaji Revenue Circle was raised, and accordingly Assessment Committee was formed and reassessment was carried out by such committee. It

was found that there was a huge amount of difference between the earlier assessment and the new assessment made by the Committee and in that background, the matter was forwarded to the Principal Secretary to the Govt. of Assam, Revenue and Disaster Management Department for suitable instruction and in that background payment has not been made.

7. The Revenue Department has not filed any affidavit to explain their stand.

8. Before dealing with the arguments advanced by the learned counsel for the parties, let this court first record the undisputed facts which are available on record and from the pleadings of respective parties, in the following manner.

I. The Governor of Assam was pleased to notify its intention to acquire land by way of direct purchase through a negotiated settlement for the improvement and up-gradation of State Highways and Major District Roads under the Assam Mala Programme and externally aided projects. Such notification was published in the official gazette on 20.01.2021. The detailed procedure of notification dated 20.01.2021 is provided in the Annexure-1 of the notification. It is further provided that the effect of Annexure – 1 will come into force with effect from the date of publication in the official gazette and will remain in operation till such time as the State Government may consider fit and proper.

II. The said Assam Mala scheme also included the

construction of a road namely "Dhakuakhana to Dhemaji Telejan connecting road", which passes through Machkhowa, Dhemaji. It was not in dispute that the petitioners' lands were acquired under the said Assam Mala scheme and as per notification dated 20.01.2021. It is also not in dispute that initially assessment was done and on the basis of the assessment made, the amount to be awarded was also determined in terms of the notification dated 20.01.2021 and accordingly, 50% of the award was also paid to the land owners (petitioners).

III. However, on the basis of the complaint, a reassessment was conducted and Annexure D to the writ petition shows that on 11.09.2023 the Additional Deputy Commissioner, Dhemaji submitted the enquiry report before the Deputy Commissioner. The re-assessment committee concluded

A. The conclusion of the report was that the assessment of 20 structures submitted by the Executive Engineer, PWD Building is erroneous.

B. As 50% of the assessment has already been paid, it was suggested that the remaining amount should be paid after reassessment of the structure and necessary rectification only.

9. In the aforesaid backdrop, Mr. Borthakur learned counsel for the petitioners submitted that since the land acquisition was under a negotiated settlement, the petitioners being happy with

the assessment duly accepted the amount. Therefore, under the scheme, the authorities cannot deny the agreed amount on the pretext that the assessment made was wrong inasmuch as, when the price assessed was agreed upon, possession was taken over, and award was passed, at this stage the authority cannot be allowed to go for a reassessment inasmuch as, such course of action is not permissible under law.

10. The learned State counsel representing the Deputy Commissioner has confined her argument to the statements made by the Deputy Commissioner in his affidavit in opposition i.e., that as there were anomalies in assessment, the Deputy Commissioner has directed for an enquiry and only after reassessment, the payment shall be made. However, the learned counsel representing respondent Deputy Commissioner has failed to highlight any of the provisions under the ***Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013*** (hereinafter referred to as Act' 2013) or under the notification dated 20.01.2021, showing any power of the Deputy Commissioner to make a re-assessment and re-determine the compensation after the award was passed that too in case of a negotiated settlement, wherein the due process of land acquisition was dispensed with, for it being a negotiated settlement.

11. Mr. P Nayak, learned counsel for the State respondent, PWD, however, has vehemently argued that the writ petitions are not maintainable for the reason that it is an agreement between the state authority and the land owner for transfer of the land on

negotiated price and therefore, if the petitioners are aggrieved for non-payment of the remaining amount of 50%, it is a violation of such term and the right option for them is to file a suit for specific performance of contract and not a writ petition. Mr. Nayak further contends that the scheme introduced by the state under notification dated 20.01.2021 and the procedure laid under Annexure- 1 to such notification cannot be said to be a land acquisition process. Mr. Nayak referring to clause 4.17 of Annexure – 1 further contended that the process of acquisition of land can be initiated when the owners of land refuse to sell the land or any of the owners object or are not interested in the purchase through negotiated settlement. Therefore, for all meaning and purport, the price determined is for purchase and therefore, it cannot be relatable to the Act' 2013 and therefore, cannot be termed as a procedure of land acquisition.

12. I have given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the gazette notification dated 20.01.2021 and the materials available on record.

13. At the outset, let this court deal with the arguments of Mr. Nayak, more particularly for the reasons that he has raised a serious objection even to the maintainability of the writ petition and argues that the actual remedy lies in a civil suit for specific performance of a contract.

14. The power of the State to acquire private land and property must have a statutory backing. The Land Acquisition Act, 1894 was the general law relating to the acquisition of land for

public purposes and also for companies and for the determination of the amount of compensation to be made on account of such acquisition. Having found the provisions of the Act, 1894 to be inadequate for the exercise of such statutory power of the State for the involuntary acquisition of private land more particularly, in the absence of any provision as to the issue of rehabilitation and resettlement of the affected persons and families and for other issue ancillary thereto, the parliament in its wisdom enacted the Act' 2013. The Act'2013 is extended to the whole of India.

15. An appropriate government under the Act, 2013 is the State Government, when the land sought to be acquired is situated within the territory of the state.

16. **Chapter VI of the Act, 2013** deals with the procedure and manner of rehabilitation and resettlement. Section 43, section 44 and section 45 under this chapter deals with the procedure and manner of rehabilitation and resettlement. Section 46 of the Act deals with the provisions as regards purchasing land through private negotiations. Under the scheme of section 46 no person other than a **"specified person"** can purchase land through private negotiations. Persons other than "specified person" can purchase through private negotiations only after fulfilling the conditions as envisaged under clauses (a), (b), (c) of sub-section 1 of section 46 and in strict adherence to provisions as laid down under sub-section 2, 3, 4, 5 and 6 of section 46. From the aforesaid provision, it is clear that any person other than a **"specified person"**, if wishes to purchase land through private negotiations for an area equal to or

more than the limit that is prescribed by the appropriate government, is to fulfil the condition prescribed under section 46. An application is required to be filed in this regard before the District Collector notifying the Collector of the intent to purchase, the purpose for which such purchase is made and particulars of the land to be purchased etc.

17. **Sub-section 5 of section 46** provides that any purchase of land by a person other than specified persons without complying with the provision of rehabilitation and resettlement scheme shall be void ab initio. “**specified person**” as explained under section 46 does not include an Appropriate Government.

18. Now, let this court deal with the gazette notification dated 20.01.2021 (Annexure – B to the writ petition), the same being the bone of contention in the present case. The notification is quoted herein below:

NOTIFICATION

The 20th January, 2021

“No.DA5R.80/2020/3- The Governor of Assam is pleased to order “Land acquisition through direct purchase by way of negotiated settlement for improvement and upgradation of State Highways and Major District Roads under Asom Mala Program and Externally Aided Projects (EARs)” as enunciated in the enclosed document in Annexure 1. It will come into force with effect from the date of publication in the Assam Gazette and will remain in operation till such time as the State Government may consider fit and proper. The Government also reserves the right to make any amendment to the police from time to time.”

19. Thus, from the aforesaid, it is seen that the object is land

acquisition through direct purchase by way of a negotiated settlement. The notification dated 20.01.2021 itself envisages land acquisition through direct purchase by way of a negotiated settlement for the improvement and up-gradation of State Highways and Major District Roads under Assam Mala Programme which is a flagship programme of the State Government for improvement and widening of State Highways and Major District Roads.

20. Clause-2 of **Annexure -1** of the notification dated 20.01.2021 provides that as Act' 2013 and Rules framed by the State shall require a number of sequential compulsory processes, involvement of a number of bodies as well as the statutory waiting time between different processes, the acquisition of land under the procedure laid down in the Act, 2013 and ***Assam Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2015*** (hereinafter referred to as Rule' 15) shall require a very long time from notification to possession of land, therefore for the expeditious acquisition of land and for speedy implementation of the program, the Government of Assam has issued the notification dated 21.01.2021 for the acquisition of land through direct purchase by way of negotiated settlement for improvement of up-gradation of State Highways in conformity with section 46(1) of the Act 2013, the relevant provision of the Annexure-1 is quoted herein below:

Land acquisition through Direct Purchase by way of negotiated settlement for improvement and upgradation of

State Highways and Major District Roads under Asom Mala Program and Externally Aided Projects

I. Government of Assam has initiated flagship program Asom Mala for improvement and widening of State Highways and Major District Roads. It would be a large and prestigious long-term road infrastructure development program which in addition to state funded works, would also include several Externally Aided Projects (EAP) under its umbrella. The works under Asom Mala would involve big highway contract with substantial land acquisition. The readiness criteria for EAPs require completion of 50% of land acquisition for a project before loan negotiation. Ministry of Road Transport & Highways (MoRTH) stipulates 90% land availability before starting the works.

II. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARRA) enacted by Government of India with effect from 1st January 2014, superseded all previous land acquisition Acts and Rules in India. It includes provision for Rehabilitation and Resettlement (R&R) of project affected families and persons in addition to cost of acquiring land. **The State of Assam made the Assam RFCTLARR Rules 2015 on the provision of number of bodies as well as statutory waiting time between different processes. Acquisition of land as per the general procedure laid down in the said act and rules require a very long time from notification to possession of land.**

III. Assam Mala being a flagship programme of Government of Assam calls for expeditious acquisition of land for speedy implementation of the programme. **Section 46(1) of the RFCTLARRA has been considered for direct purchase of land for the programme.**

IV. **Government of Assam has adopted land acquisition through Direct Purchase by way of negotiated settlement** for improvement and upgradation of State Highways and Major District Roads under Asom Mala

Program and Externally Aided Projects.

(emphasis supplied)

21. The notification further provides the steps and procedure of such acquisition which are enumerated in four steps. The aforesaid steps are also quoted herein below.

I. 4.14. Steps 14: ***The Deputy Commissioner/District Collector shall make an award according to the terms of such agreement by the DLLPC. The possession of the land is taken through paying the negotiated price directly to the land owners or interested persons other the land owner, if any, through electronic transfer to their respective bank accounts.***

II. 4.15. Step 15: *The list of the rightful owners so prepared may be communicated to the concerned sub-registry office for registration of conveyance Deed. The stamp duty in the Indian Stamp Act, 1899, will be exempted, in respect of instrument executed by, or on behalf of, or in favour of government.*

III. 4.16. Step 16: *The concerned Deputy Commissioner /District Collector will transfer the land in favour of the Requisitioning Agency.*

IV. 4.17: Steps 17: *In the event of any owner refusing to sell the land or any of the owners has objected or not interested with the direct purchase through negotiation the respective land may be acquired through land acquisition process of Assam Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2015.*

22. From the aforesaid, it is clear that under 4.14, the District Collector is to make an award and the possession can be taken by paying the negotiated price directly to the land owners or interested persons through electronic transfer in their respective bank accounts.

23. Clause 6 of the notification further provides that the price of the land shall be fixed based on negotiations and mutual consent and therefore, no separate rehabilitation or resettlement benefits shall be payable to the land owners.

24. As it is settled that the state or its instrumentalities cannot acquire private land and property in the absence of any statutory backing and the statutory backing in a case of present nature is the Act, 2013, in as much as from the quoted portion of Annexure -1, it is clear that the Government of Assam has adopted a policy of land acquisition through direct purchase by way of negotiated settlement taking note of the provision of 46(1) of the Act, 2013. If the contention of Mr. Nayak is accepted, that it is nothing but a sale and purchase and is a civil dispute between the state and the land owner, then this court cannot but hold that the notification under which direct purchase is prescribed is not having any statutory backing and therefore, the procedure adopted by the state shall have to be treated to be a nullity and all the land that has been acquired adhering the procedure prescribed under the notification dated 20.01.2021, shall become void ab initio.

25. Therefore, if the contention raised by Mr. Nayak is accepted that this is not relatable to a land acquisition process, then in such an eventuality, a question may arise as regards the authority of the state to acquire land through direct purchase by way of negotiated settlement by issuing a gazette notification inasmuch as private property can be acquired through due process of law and in the considered opinion of this court, such due process of law should be

the procedure provided under Land Acquisition Act enacted by the legislature. In that event, all acquisitions under the Asom Mala scheme and gazette notification dated 20.01.2021 shall fall and all the land acquisition proceeding under the notification dated 20.01.2021 will become nullity as per the mandate of sub-section 5 of section 46. Further, if such an argument is accepted, the whole notification dated 20.01.2021 of land acquisition for the Assam Mala Project shall be a scheme, that is not backed by the provisions of Act 2013.

26. From the reading of section 46 of the Act and the notification, this court is of the opinion an appropriate government is not a “**specified person**”, and if an appropriate government wants to acquire land by direct settlement, it is to the provision of section 46(1) of the Act.

27. It prima facie appears that the notification has been issued laying down the procedure for the acquisition of land under section 46(1) of the Act 2013 i.e., provisions relating to rehabilitation and resettlement and acquisition of land through a negotiated settlement. Therefore, the contention of Mr. Nayak that the present writ petition is not maintainable and that the petitioners need to file a civil suit for the specific performance of the contract stands negated inasmuch as the Deputy Commissioner has already passed an award granting compensation under clause 4.14 of Annexure – 1 to the notification. This court cannot be unmindful of the fact that state shall be within its power to purchase private land in a given case. However, when it is declared in the notification itself to be

land acquisition through direct purchase and when admittedly the notification was issued considering the object of the state for speedy implementation of the flagship programme in consideration of section 46(1) of the Act, such argument of Mr. Nayak has no legs to stand.

28. Therefore, this court is compelled to record that Mr. Nayak's argument has no substance at all. This court is also surprised to note that Mr. Nayak is arguing in a manner that is against the spirit of the notification, which invited this court to record its opinion as regards the validity of the land acquisition proceeding. However, it is made clear that this court has not upheld or determined the validity of the notification dated 20.01.2021/Annexure-1 or that such notification/Annexure-1 conforms to the provisions of the Act 2013, more particularly to section 46, such a question is left open to be decided in an appropriate case.

29. Now, coming to the stand of the Deputy Commissioner as regards the complaint, it is seen that an enquiry was conducted and during the enquiry, the following observations were made:

I. During verification, it is found that persons in favour of whom the assessments are prepared are bonafide pattadars and their names are recorded in land records.

II. The assessments made by the Executive Engineer, PWD (Building) were found erroneous on two counts, firstly, erroneous assessment of acquired structures and secondly, assessments of un-acquired and non-existent structures were made. Such a finding was made on the basis of comparing

the photographs of the structures available and the measurement of the plinth area.

III. In one case, assessment made of the plinth area after verification was found to be a single-story building. The important portion of the enquiry report is quoted herein below:

I. The structure of Lila Koch is assessed for Rs.56.44,396. The measurement of structure "Assam Type Residential building of Lola Loch" is stated as 272.90 sqm. The building is already demolished but photographs of the structure is available. However, when measurement of the plinth was taken, it was found to be approximately 207 sqm.

II. The structure of Chandra Dutta's residential building is assessed for Rs.63,44,588.00. The assessment sheet states the plinth area of the ground floor as 118.65 sqm. However, during physical verification, it was found that structure is a single storied building and the building does not have any first floor.

III. The building of Sri Thaneswar Dutta is assessed at Rs.22,48,312.00, which shows acquisition of RCC ground floor (30.15 sam) and First Floor (44.57 sqm) apart from an AT house (29.20 sqm). However, no RCC house is seen within the row and the total land acquired from Sri Thaneswar Dutta is only 6.68 sqm, where two buildings are shown to be acquired.

IV. Exact same measurement is shown against Jayanta Dutta also for the same amount of compensation.

V. The measurement of other affected persons like Pankaj Mohan Yein, Amulya Saikia, Biren Saikia etc. also was found exaggerated and erroneous.

30. However, interestingly in the aforesaid assessment names of the petitioners are not there. Be that as it may, under the

notification price for acquisition is a negotiated price and not the actual cost of damage. Assessment by the State through the Executive Engineer, PWD (Building) cannot be the assessment for payment of compensation under the Act, 2013 inasmuch as, in such a case, procedure of rehabilitation and re-settlement is required to be followed. Above that, other statutory compensation like solatium etc are to be added. Further, in an acquisition procedure, the land owner shall have a right to claim more amount, if they are not satisfied with the award made by the acquiring authority, however, such remedy is not available under the notification dated 20.01.2021 for acquisition of land through negotiated settlement.

31. In the considered opinion of this court, the negotiated price shall mean a price arrived at and/or accepted by the land owner for the acquisition of their property by the State and therefore, the assessment made by the State authorities shall lose its relevance in case of a negotiated settlement. Such assessment made by the State, at best can be for assessment of the State for negotiation, inasmuch as, it is the specific pleading of the petitioners that they have agreed to the negotiated settlement on the basis of the price only and they have no further option to go for enhancement of such plan.

32. Another aspect of the matter is that once the authorities have agreed on the price and the award has been passed, there shall be no scope to recall such award either under the notification dated 20.01.2021 or under section 64(a)(1) of the Act, 2013 and Rules 2015.

33. That being the position, in the considered opinion of this court, the petitioners cannot be deprived of their negotiated price for the acquisition of land through direct purchase.

34. It is needless to say that, if the state authorities are of the opinion that they have paid more price for the wrong assessment done by their officers, they shall be at liberty to take action against those officers, however, they will have no authority under law to make a reassessment for purpose of payment after the price is settled and award is passed. They also cannot pay a lesser amount than the negotiated price, on the basis of such reassessment, more particularly when the price was determined after negotiation with land owners.

35. Accordingly, the present writ petitions stand allowed by directing the state respondents to pay the remaining 50% of the land acquisition compensation to the petitioners within a period of 2 months from today.

36. This court is also of the opinion that the petitioners have been illegally deprived of their legitimate compensation for the acquisition of their properties and therefore, the petitioners shall be entitled to payment of interest.

37. In the considered opinion of this court, taking note of other statutory provisions, more particularly, the Act 2013, the reasonable interest rate should be 6% per annum. Accordingly, it is provided such interest be paid to the petitioner's w.e.f. the date of the first installment paid/transferred to them till the full and final payment is made. If the full and final payment is not made within the period of

two months from today, the entire balance amount shall carry an interest rate of 9% per annum from the date of its becoming due till its payment.

JUDGE

Comparing Assistant