

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

Present:

Mr. Justice Hasan Foez Siddique, *Chief Justice*
Mr. Justice Obaidul Hassan
Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.32 OF 2005

(From the judgment and order dated 21.06.2004 passed by the High Court Division in Writ Petition No.3548 of 2003)

Bangladesh and others**Appellants**

-Versus-

Bangladesh Paribesh Andolon (BAPA)**Respondents**
and another

For the appellants : Mr. Sk. Md. Morshed, Additional Attorney General with Mr. Sayem Mohammad Murad, Assistant Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

For the respondents : Mr.Tanjib-ul-Alam, senior Advocate, instructed by Ms. Madhumalti Chy. Barua, Advocate-on-Record.

Date of hearing : The 2nd and 3rd day of August, 2022.

Date of judgment : **The 16th day of August, 2022.**

JUDGMENT

Obaidul Hassan, J. This Civil Appeal by leave granting order dated 10.11.2004 in Civil Petition for Leave to Appeal No.983 of 2004 at the instance of the appellants has been directed against the judgment and order dated 21.06.2004 passed by a Division Bench of the High Court Division in Writ Petition No.3548 of 2003 making the Rule absolute.

The brief facts as has been narrated in the Writ Petition are that, in June 1959 the Central Government of Pakistan decided to establish two capitals in Pakistan, one each for the then East Pakistan and West Pakistan and the legislative capital was to be in Dhaka, Bangladesh (Erstwhile East Pakistan) and the idea of designing a new Assembly Building was taken up because Dhaka did not have an existing

structure to accommodate its new status as a 'Second Capital'. World acclaimed famous architect Louis Isadore Kahn was opted for designing the National Assembly construction project and accordingly he received the commission for the project in the year 1962 and continued working on it till the last days of his life in 1974. The construction of the National Assembly Complex was finally completed in the year 1983 under the supervision of one of Louis Kahn's associates. The National Assembly Complex is treated as the climax of the lifelong thinking of Louis Kahn about architecture, city and humanity. The aesthetic composition, visual clarity, spatial order and virtuoso engineering of the National Assembly Complex have been analyzed and studied by both the academics as well as students of architecture all over the world. The final Master Plan prepared by Louis Kahn in 1973 clearly lays out the structural composition of the buildings, including residences, plazas, fields, lakes, gardens and recreational facilities within the National Assembly Complex. However, the National Assembly Complex is continuously and incrementally being endangered and threatened by encroachment and construction of various buildings by the public authorities. The respondent No.1 is carrying out work on construction of the residences of the Speaker and Deputy Speaker (shortly the impugned project) within the National Assembly Complex in violation of the Louis Kahn's Master Plan, 1973 causing irreparable damage to the form and beauty of the composition as envisaged by the original

Master Plan. The impugned project was first approved by the Speaker of the Seventh Parliament, Humayun Rashid Chowdhury but the then Prime Minister's Office scrapped the impugned project in the face of strong public protest from the civil society, architectural community, environmentalists and the media. The present government revived the impugned project on the suggestion of some ill-motivated officials that Louis I. Kahn's original plan envisaged such residences of the Speaker and the Deputy Speaker. The Master Plan, 1973 clearly shows that the land on which the impugned project is being built was meant to be open space with green fields.

In the face of strong public protest the government had postponed the impugned project. However, after about a two month's suspension of the work on the impugned project construction work had been restarted and with a view to finishing of the project quickly before facing further protest additional workforce, working extra hours has been engaged in order to complete the construction of residential units for the Speaker and Deputy Speaker.

The impugned project being undertaken in violation of Louis I. Kahn's Master Plan, 1973 the Respondents filed the Writ Petition No.3548 of 2003 before the High Court Division. A Rule was issued on the respondents' prayer for a declaration that the impugned project has been undertaken without lawful authority and is of no legal effect and unconstitutional as being done in violation of the law and fundamental rights of the respondents as guaranteed under

Articles 27, 31 and 32 of the Constitution and a direction was sought upon the writ respondent No.2 to declare the National Assembly Complex as National Heritage Site with a further direction upon the Writ Respondents to apply to the UNESCO to declare the Bangladesh National Assembly Complex as a World Heritage Site. There was also a prayer for an injunction restraining the Writ Respondents from carrying out any further construction of the impugned project.

The writ respondent No.1 filed an affidavit-in-opposition denying the allegations of the writ petitioners contending *inter alia* that there are Master Plans dated 12th March, 1962, 3rd May 1963, 21st December 1963, 10th May 1964, August 1964 and February 1965 wherein the Speaker's House was incorporated. The latest Master Plan for the *Shangshad Bhaban* area was formally approved on May, 2002 by the Ministry of Housing and Public Works. It was further claimed that the Department of Environment and RAJUK are not the germane body to call in question where construction is made on the government land rather the Public Works Department is the competent body to embark on construction work of the buildings on the government land on obtaining endorsement from the Department of Architecture. Referring an excerpt from David Wisdom's write-up "Kahn's Building at Dhaka" it was further contended that Kahn's Master Plan is not an unyielding document, but it is supple and there had been insertions and eliminations in his plan. It was also stated that Kahn died before the preliminary design was entirely finished.

He frequently changed the shapes and positions in the plan with his own reasons without any pressure from the government to get on with these designs. Kahn also studied the special houses for the President, the Speaker and the Deputy Speaker and he enjoyed those kind of work so much under no pressure to show progresses that every time he submitted a sketch for any one of them. There was a radical change of design from the previous submission. Finally the decision came not to build the three houses. Again, quoting an extract from the book titled "The Story of Ayub Nagar: Decade of Development and Reforms: 1958-1968" published by the Department of Film and Publication, Dhaka under the heading "South Elevation of Speaker's Resident" it was also stated that construction of the Speaker and the Deputy Speaker's residence in the legislative enclave has been an integral part of the government approved plan and both the residences are within the residential block of National Assembly which were built under Louis Kahn's direct supervision, will not in any way jeopardize and blemish the beauty and grace of the National Assembly Complex. It was further contended that Louis Kahn designed and made construction of the residential block of the National Assembly Complex under his direct supervision. These buildings were not shown in his own Master Plan of 1973. Louis Kahn did not furnish any unique master plan but he submitted sets of master plans from time to time. It is a co-incidence that Louis Kahn died in 1974 and no further Master Plan could be produced by him. It

was also contended that the Secretary, Ministry of Housing and Public Works placed a summary to the then Prime Minister on 09.08.1998 regarding the construction of Speaker and Deputy Speaker's House within the residential block of the National Assembly and the then Prime Minister accorded approval of the said construction taking into consideration about the architectural elegance of the open space of the National Assembly Complex. It was also stated that the present construction is being made in similitude with the other buildings constructed at the supervision of Louis Khan himself. The symbolic value of the green fields of the National Assembly from the context of the new structure shall in no way tarnish the symbolizing effect of the landscape of Bangladesh and in fact the construction of residences of Speaker and Deputy Speaker will not any way mutilate and distort the beauty of the green area. It was further contended that The Town Improvement Act, 1953 and Building Construction Act, 1952 have no relevance with the construction of the residences for the Speaker and the Deputy Speaker which are being constructed on government's own land after obtaining clearance from the Department of Architecture and on approval of the Prime Minister, the Chief Executive of the Government while the Town Improvement Act, 1953 and Building Construction Act, 1952 are applicable in cases of construction of building on private land. It was further contended that on the basis of the Government Order dated 27.04.1998 for construction of

residences of the Speaker and the Deputy Speaker a Master Plan for the said purpose has been approved in the place as stated in memo dated 27.04.1998 but the Memo dated 27.04.1998 and Master Plan having not being impugned, the Writ Petition is misconceived and not maintainable.

In reply the writ petitioners filed an affidavit controverting all the statements made in the affidavit-in-opposition filed by the writ respondents and stated that the Master Plan of 1973 prepared and finalized by Louis Kahn superseded and replaced the initial plans prepared in 1962, 12 March 1963, 3 May 1963, 21 December 1963, 10 May 1964, August 1964 and February 1965. Louis Kahn was initially commissioned to design the plan for an entire site for a city which was meant to be the Second Capital of Pakistan. The design for National Assembly Complex is only a component of the larger design of the entire capital site containing plans for a Supreme Court, a hospital, a library, a mosque, a museum, schools, clubs, markets, offices, recreational areas, special diplomatic enclave and low and high income residential areas. It was the Pakistan Government, prior to the independence of Bangladesh, which had contemplated the construction of the houses of the Speaker and Deputy Speaker as temporary residence as ancillary facilities for the second capital. However, after 1971, with the emergence of Bangladesh as an independent state, Louis Kahn was commissioned to set up the plan for the Assembly Complex of Bangladesh which was to serve quite a

different role to that of an Assembly building for a second capital. It was in these changed circumstances that Louis Kahn drew up the final Master plan of 1973 which clearly did not have any residential buildings in the Legislative Enclave of the plan. The alleged latest Master Plan for the *Shangshad Bhaban* area as prepared by the Ministry of Housing and Public Works in May 2002 defaces and destroys the symmetry of the National Assembly Complex Buildings as prepared and envisioned by Louis Kahn. It was stated further that the issuance of the circular from the Ministry of Housing and Public Works dated 16.3.1999 is *ex facie* without lawful authority and is in violation of the Rules of Business, Town Improvement Act, 1953, Building Construction Act, 1952 and মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকা সহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণের জন্য প্রণীত আইন, ২০০০. It was lastly contended that despite the Government is under a duty to adopt measures for the protection against disfigurement, damage of all monuments, objects or places of special artistic or historic importance or interest as per Article 24 of the Constitution, it has violated the provisions of the Constitution.

The High Court Division upon hearing both sides made the Rule absolute by the impugned judgment and order dated 21.06.2004.

Feeling aggrieved with the judgment and order dated 21.06.2004 passed by the High Court Division in Writ Petition No.3548 of 2003 the writ respondents-appellants filed the Civil Petition for Leave to Appeal No.983 of 2004 before this Division and

after hearing the parties this Division was pleased to grant leave by order dated 10.11.2004 and hence the instant Civil Appeal.

Mr. Sk. Md. Morshed, the learned Additional Attorney General along with Mr. Sayem Mohammad Murad, the Assistant Attorney General appearing for the appellants took us through the judgment and order dated 21.06.2004 of the High Court Division, the materials on record and submitted that the High Court Division committed error of law in not taking into consideration that (a) the construction is made on government land by Public Works Department after obtaining clearance from the Department of Architecture and (b) on the basis of the Government Order dated 27.04.1998 for construction of residences of the Speaker and the Deputy Speaker, a Master Plan for such construction has been approved in the year 2002 in the place and (c) the said memo dated 27.04.1998 and the Master Plan having not been impugned, the rule in the Writ Petition was liable to be discharged. The learned Counsel contended next that the High Court Division committed error of law in not holding that the Town Improvement Act, 1953 and the Building Construction Act, have no relevance with the present construction work which is being done on government land after taking clearance from the Department of Architecture and on approval of the Prime Minister, the head of the government whereas the aforementioned laws are applicable in case of construction on the private land. Assailing the impugned judgment of the High Court Division the learned Counsel submitted

further that the High Court Division committed error of law in making the Rule absolute without giving any specific finding as to how the impugned construction work caused environmental hazard affecting the fundamental rights of the public or of the writ petitioners. The learned Counsel contended further that the High Court Division committed illegality as it did not take into consideration that the construction of residences within the National Assembly Complex for the Speaker and the Deputy Speaker, who hold an exalted position under the Constitution are state necessity and for public interest. The learned Additional Attorney General finally submitted that during the stay of the judgment and order of the High Court Division by this Division 100% of the impugned construction work has been completed, but the High Court Division without taking into consideration committed error of law by passing the impugned judgment and order, which is liable to be set aside.

Conversely, Mr. Tanjib-ul Alam, the learned senior Advocate for the respondents vehemently opposed the submissions made by the learned Additional Attorney General. The learned Counsel for the respondents contended that the impugned construction work is illegal and without lawful authority since no sanction has been taken from the appropriate authority under the Building Construction Act, 1952. The learned Counsel for the respondents next submitted that by converting the open space for the National Assembly Complex into residential building for the Speaker and the Deputy Speaker, the

government has violated the fundamental right of the respondents due to the reason that protection of the environment is considered to be part of the fundamental right to life. The learned Counsel contended next that the impugned construction project being done flouting the Master Plan, 1973 of the National Assembly Complex prepared by the world renowned architect Louis Kahn will tarnish the architectural beauty of the National Assembly Complex. The learned Counsel, in fine, craved for dismissal of appeal having no merit for consideration.

We have considered the submissions of the learned Advocates for the both sides, perused the judgment and order dated 21.06.2004 passed by the High Court Division in Writ Petition No.3548 of 2003 and the materials on record.

It is admitted that Louis Kahn is recognized worldwide as one of the greatest architects of the twentieth century and the National Assembly Complex is an architectural masterpiece created by him. The timeless quality of the building transcends the boundary of the architecture and reaches out not only to our minds but to our visions of hopes. The architect's key design philosophy was to represent Bengali culture and heritage, while at the same time optimizing the use of space.

At this juncture, it is pertinent to know whether Louis Kahn had a unique Master Plan of the National Assembly Complex and the

Speaker and the Deputy Speaker's residence was included in that plan. From the record it appears that Louis Kahn did not furnish any unique master plan but he submitted sets of Master Plan from time to time. There are Master Plans of the year 1962, March 12, 1963, May 3, 1963, December 21, 1963, May 10, 1964, August 1964, February 1965 and the Speaker's house was included in those plans. It is a coincidence that Louis Khan died in 1974 and no further Master plan could be produced by him.

Now, let's have a glimpse on a relevant extract of David Wisdom's write-up "Kahn's Building at Dhaka"-

"Kahn died before the preliminary design was entirely finished. Kahn studied the architectural composition and site placement of the Supreme Court, the Central Government Library and the mosque. He frequently changed the shapes and positions with his own reasons but there was no pressure from the Government to get on with these designs. No real preliminary plans were formally submitted and these projects are not shown on Kahn's last Master Plan. Kahn also studied the special houses for the President, the Speaker and the Deputy Speaker, he enjoyed these kind of work so much under no pressure to show progresses that every time he submitted a sketch for any one of them. There was a radical change of design from the previous submission. Finally the decision came not to build the three houses. When Kahn received his commission from Bangladesh these houses were not included."

Further, "The Story of Ayub Nagar: Decade of Development and Reforms 1958-1968" published by the Department of Film and Publication, Dhaka under the heading "South Elevation of Speaker's Resident" reads as follows-

"The residences of the Speaker and the Deputy Speaker of the National Assembly:

Provision has been made for construction of the residences for the Speaker and one Deputy Speaker in the Legislative Enclave at an estimated cost of 8 Lakh. These residences are also scheduled to be completed within the current plan period."

From the above it is clear that the construction of the Speaker and the Deputy Speaker's residence in the National Assembly Complex has been an integral part of the government approved plan. The construction of the Speaker and the Deputy Speaker's residence are within the residential block of National Assembly Complex which built under Louis Kahn's direct supervision, will not in any way deface the aesthetic value and grace of the National Assembly Complex.

The Master Plan of 1973 provided for the building of five sectors of establishments namely: (a) Assembly Sector, (b) Secretarial Sector, (c) Civic Sector, (d) Housing Sector and (e) Hospital Sector. Within the Assembly Sector Louis Kahn's 1973 Master plan catered for (1) Fountain Drive and Promenade, leading to Sher-E-Bangla

Nagar Gate, (2) Crescent Lake, (3) Recreation Garden and Court, (4) Recreation Building, (5) Arcades, (6) Cricket Field, (7) Hostels for Secretaries, (8) Hostels for Ministers, (9) Lake, (10) Presidential Plaza, (11) National Assembly, (13) Memorial Mazar, (14) Garden (15) Cooling Tower, (16) South Plaza, (17) Fountain and Drainage Canal, (18) Arcaded Garden Courts, (19) Hospitality Hall and (20) Servant's Quarters. Amongst these various types of establishments within Sher-E-Bangla Nagar there are various Sectors and within the Assembly Sector which is absolutely the government domain as apparent from the Master Plan of 1973, the government opted to erect buildings for the Speaker and the Deputy Speaker, who are provided a unique position under the Constitution and such offices are basically referring to two institutions rather than two individual persons. Thus, the construction of the two residences has been undertaken due to pragmatic situation, state necessity and public interest. As such there is no hard and fast rule as to stick to the Master Plan of 1973 of Louis Kahn and treat it as an unamenable scripture rather it is supple which underwent changes from time to time as written by David Wisdom on Kahn's Building at Dhaka.

On the other hand, the Department of Architecture is the only Government organization to impart architectural services under the Ministry of Housing and Public Works and responsible for designing all Government buildings and also for public housing

schemes across the country. The Department not only prepares architectural designs and layout plans for public building and housing projects, but also advises the government on policy matters relating to human settlement and land use planning.

All the architectural drawings of projects implemented for different Ministries, which are executed by the Public Works Department and National Housing Authority are prepared by the Department of Architecture. Besides providing the services and help of architecture, planning and housing design for the public sector the Department of Architecture played a vital role during the formulation of the National Housing Policy, 1993 and the National Building Code 1993 (Modified in 1999). The steering Committee constituted by the Government to update the Building Code is also headed by the Chief Architect of this Department. The Chief Architect of this department has been declared as *ex officio* "Authorized Officer" under the Building Construction Act, for all public building and projects implemented under the Ministry of Housing and Public works.

The functions of the Department of Architecture are enumerated in the following-

- a. Basic architectural services including site selection, preliminary survey of sites before taking up planning and designing of building project;

- b. Preparation of detailed drawings for execution of building projects and supervision of construction work to ensure execution as per Architects plans and specification;
 - c. Preparation of Master plans and Lay out plans;
 - d. Studies proposals for formulation of space standards for Government offices and residential buildings and assessing land requirements for various building projects;
 - e. Offer advice to Government on policy matters relating to human settlement and land use planning;
 - f. Assisting various public agencies in preparing plans for their building projects including assessing their land requirement.
- [Source: <http://www.architecture.gov.bd/site/page/64fdbcba-828f-4855-822f-ec6e672e937f/->].

It is evident from the above discussion that the Department of Architecture is concerned with the architectural value of the National Assembly Complex and in the present case the government has not unilaterally and with arbitrary manner taken the decision of construction of the present construction work rather the same is done with the approval of the Department of Architecture and in the way the government complied with the legal requirement, but the High Court Division could not take the matter into consideration, therefore, committed illegality in making the Rule absolute.

From the record it is seen that the secretary, Ministry of Housing and Public Works placed a summary to the then Prime

Minister on 09.8.1998 and the then Prime Minister approved 1.37 acres of land by the side of National Assembly Road through Memo No.P.C./IM-803/97(Part-1)49 dated 27.04.1998 (Annexure-5). Subsequently as per direction of the then Prime minister the design and structure of the residences of the Speaker and the Deputy Speaker was prepared and the said structural maps have been approved. Thus a latest Master Plan (Annexure-1) for the National Assembly Complex was formally approved in May 2002. But the said Memo dated 27.04.1998 (Annexure-5) and the latest Master Plan (Annexure-1) having not been impugned in the Writ Petition, thus the Rule issued in the said Writ Petition was liable to be discharged.

It transpires from the Memo dated 09.08.1998 (Annexure-4) that the then Prime Minister while according approval for construction of residences of the Speaker and the Deputy Speaker scrupulously took into consideration about the architectural elegance of the open space and the green fields of the National Assembly Complex. The Government also critically examined whether proposed construction will disparage the architectural beauty of the National Assembly Complex. The relevant portion of the said Memo is extracted below:

“নিম্ন স্বাক্ষরকারী আদিষ্ট হইয়া জানাইতেছেন যে, বিগত ৬-৪-৯৮ তারিখে শেরেবাংলা নগরস্থ ডি-১ ও ডি-২ প্লট দুইটিতে স্থাপত্য অধিদপ্তর কর্তৃক প্রণীত নকসা মোতাবেক গণপূর্ত অধিদপ্তরের উদ্যোগে মাননীয় স্পীকার ও মাননীয় ডেপুটি স্পীকারের বাস ভবন নির্মাণের বিভিন্ন দিক সম্পর্কে মাননীয় গৃহায়ণ ও গণপূর্ত মন্ত্রী, জাতীয় সংসদ সচিবালয়ের সচিবের উপস্থিতিতে মাননীয় প্রধানমন্ত্রীকে প্রধান প্রকৌশলী ও প্রধান

স্থপতির ব্রীফিংকালে তিনি আলোচ্য দুইটি বাস ভবন নির্মাণ প্রকল্পের বিভিন্ন দিক, জমি ব্যবহারের পরিমাণ, স্থাপত্য নকশার সাথে অন্যান্য ইমারতের ডিজাইনের সামঞ্জস্যতা ও স্থপতি লুইস আই কান কর্তৃক প্রণীত মূল নকশাতে উক্ত বাস ভবনের জন্য পরিকল্পিত স্থান, সংসদ ভবন এলাকাতে ভবিষ্যৎ প্রকল্প বাস্তবায়নের জন্য সীমিত জমির প্রাপ্যতা এবং ডি-১ প্লটের জমি বাস ভবনের জন্য ব্যবহারের ক্ষেত্রে সংশ্লিষ্ট খোলা জায়গাটির সৌন্দর্যের বিনষ্ট ইত্যাদি পুংখানুপুংখরূপে পর্যালোচনা পূর্বক বিকল্প ব্যবস্থা হিসাবে মাননীয় স্পীকার ও মাননীয় ডেপুটি স্পীকারের বাস ভবন নির্মাণের জন্য সংসদ সড়ক নং বি এর পার্শ্ব ১.৩৭ একর জমি নির্দিষ্ট করিয়া দিয়াছেন।”

It reveals from the Master Plan of May 2002 (Annexure-1) that the residences were planned to be constructed at D(1) and D(2) area adjacent to which construction of residences have been made on the supervision of Louis Kahn himself. The site for construction of the said residences was selected after careful scrutiny of the plan of the site next to Road B in the Master Plan of 2002. Therefore, we find that the construction of the residences of the Speaker and the Deputy Speaker will not diminish the aesthetic value and the architectural beauty of the National Assembly Complex.

On going through the impugned judgment and order dated 21.06.2004 passed by the High Court Division it is seen that Mr. Mahmudul Islam, the learned senior Advocate being appointed *amicus curiae* by the court submitted in the following way-

“.....it has to be examined whether the open space being used for construction of the house for the Speaker and the Deputy Speaker was meant for public use and the right of the public has to be considered alongside the need of the government, which is also acting in the public interest. He submitted that

this Court ought not to interfere in a situation where the government is acting in the public interest. He added that again, it is to be seen whether the construction is creating any congestion in the area or materially affecting the environment in order to determine whether any right of the public is infringed.”

But the High Court Division in its judgment could not show how the environment is affected with the construction of the residences for the Speaker and the Deputy Speaker. In this regard our view is that the said construction of residences has been undertaken with the recommendation from the Department of Architecture by critically examining the architectural beauty of the National Assembly Complex as well as the need for open space or green field. Moreover, the said residences are not meant for an individual person, but for the Speaker and the Deputy Speaker who uphold a unique position under the Constitution of our country and in the said way the impugned project is being implemented for the public interest being the same is a state necessity.

Again, Section 3 of the Government Building Act, 1899 provides that -

“Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality shall apply to any building used or required for the public service or for any

public purpose, which is the property, or in the occupation, of the Government, or which is to be erected on land which is the property, or in the occupation, of the Government:

Provided that, where the erection, re-erection, construction or material structural alternation of any such building as aforesaid (not being a building connected with defence, or a building the plan or construction of which ought, in the opinion of Government, to be treated as, confidential or secret) is contemplated, reasonable notice of the proposed work shall be given to the municipal authority before it is commenced."

On examination of Section 3 of the Government Building Act, 1899 it appears that the said construction of residences of the Speaker and the Deputy Speaker being for the public purpose in the government land is exempted from complying with provisions of other municipal laws. Therefore, the Town Improvement Act, 1953 and the Building Construction Act, 1952 have no relevance with the construction of the residences for the Speaker and the Deputy Speaker which are being constructed on Government's own land after obtaining clearances from the Department of Architecture and on approval of the Prime Minister, the Chief Executive of the Government as per approved plan. But the High Court Division committed error of law failing to appreciate the said matter.

It also deserves to mention here that the writ petitioners obtained Rule and an order of stay of the operation of any further construction of the impugned project in the High Court Division in Writ Petition No.3548 of 2003 on 18.05.2003. Against the order dated 18.05.2003 and 21.07.2003 passed by the High Court Division the writ respondents-appellants preferred Civil Petition for Leave to Appeal before this Division and obtained stay operation of the said orders till disposal of the Writ Petition. During the subsistence of stay order from this Division 100% of the construction work of the residential building for the Speaker and the Deputy Speaker has been completed. But the High Court Division without taking notice of the said completion of the construction work made the Rule absolute by the impugned judgment and order dated 21.06.2004 for which the interference by this Division is warranted.

In view of the proposition of law and discussions made above, our considered view is that the High Court Division fell in serious error of law and the impugned judgment and order of the High Court Division warrants interference by this Division.

In the light of the observations made above, we find merit in the submissions of the learned advocate for the appellants and therefore the impugned judgment and order dated 21.06.2004 passed by the High Court Division in Writ Petition No.3548 of 2003 is liable to be set aside.

Accordingly, this Civil Appeal is **allowed**.

The judgment and order dated 21.06.2004 passed by the High Court Division in Writ Petition No.3548 of 2003 is hereby set aside.

C.J.

J.

J.

The 16th day of August, 2022

Sarwar, RRO; Total words 5078