

IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

**Mr. Justice Md. Muzammel Hossain**  
**-Chief Justice.**

**Mr. Justice S.K. Sinha**

**Mr. Justice Md. Abdul Wahhab Miah**

**Madam Justice Nazmun Ara Sultana**

**Mr. Justice Syed Mahmud Hossain**

**Mr. Justice Muhammad Imman Ali**

**Mr. Justice Md. Shamsul Huda**

**CIVIL PETITION FOR LEAVE TO APPEAL NO.**  
**1046 OF 2011.**

(From the judgment and order dated  
10.03.2011 passed by the High Court  
Division in Writ Petition Nos.1053 of 2011)

**The Chief Engineer, Roads & Highway**  
**Directorate, Shorok Bhaban, Ramna,**  
**Dhaka.**

.....Petitioner.  
(in C.P. No.821 of 2011)

**Director, Bangladesh Shisu Academy.**

.....Petitioner.  
(in C.P. No.1046 of 2011)

=Versus=

**Advocate Asaduzzaman Siddique, Supreme**  
**Court Bar Association Building, Hall No.2,**  
**P.S.-Shahbag, Dhaka and others.**

..... Respondents.  
(in both the petitions)

For the Petitioners:  
(in C.P. No.821 of 2011)

**Mr. Obaidur Rahman Mustafa,**  
**Advocate**

Instructed by Mr. Md. Aftab Hossain  
Advocate-in-Record

For the Petitioners:                    **Mr. Mansur Habib, Advocate**  
(in C.P. No.1046 of 2011)    Instructed by Mr. Zainul Abedin  
Advocate-in-Record

For the Respondent    **Mr. Manzill Murshid, Advocate**  
Instructed by Mr. Nurul Islam Chowdhury,  
Advocate-on-Record.

**Date of Hearing: The 28th July, 2011**

**( J U D G M E N T )**

**Md. Muzammel Hossain, CJ:**

These two civil petitions for leave to appeal, taken up for hearing analogously, are directed against the judgment and order dated 10.03.2011 passed a Division Bench of the High Court Division in Writ Petition No.1053 of 2011 making the Rule absolute.

In Writ Petition No.1053 of 2011 before the High Court Division a Rule Nisi was issued calling upon the writ respondents, Bangladesh and some of other functionaries of the State including the Registrar of the Supreme Court of Bangladesh, to show cause as to why a direction should not be given upon the writ respondents to take steps to identify and demarcate the land of the Bangladesh Supreme Court through a Survey and to take steps to protect and maintain the same land through an effective manner, and / or such other or further order or orders as to this Court may deem fit and proper.

Thereafter, a supplementary Rule Nisi was issued calling upon the writ respondents, including the Director, Bangladesh Shishu Academy and the Chief Engineer, Roads & Highway Directorate, to show cause as to why a declaration should not be given that the land recorded in the name of Bharat Samrat under C.S. Khatian No.16855, appertaining to C.S. Plot Nos.12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 16/162, measuring an area of 55.05 acres are the land of the Supreme Court of Bangladesh and why a direction should not be given upon the writ respondents to maintain and protect the land of Supreme Court of Bangladesh through an effective manner and / or such other or further order or orders as to this Court may deem fit and proper.

The writ petitioners, Advocates of the Supreme Court, are human right activists and they filed the writ petition as public interest litigation as the question raised therein attracts an issue of great public importance having national interest concerning the land of the Supreme Court of Bangladesh. The writ petitioners, Advocates of the Supreme Court, being informed by various sources that the entire land belonging to the

Supreme Court of Bangladesh is not really under its possession as some part of it are being illegally occupied by some other organizations to the serious detriment of and predicament to the highest seat of Justice. Accordingly, the writ petitioners felt conscience bound to file the writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh.

The writ petitioners stated, inter alia, that during the British Raj, the Governor House for the then Province of East Bengal and Assam was constructed in 1905 over a specified and clearly demarcated area of land. On the land so specified and demarcated for the Governor House, the High Court of East Bengal headed by the Chief Justice A.S.M. Akram was subsequently established in 1947. During that period, the High Court had two kinds of jurisdiction, one being the Appellate Jurisdiction and the other being the Original Jurisdiction. The land in question which originally belonged to the Governor House, was transferred to the then High Court of East Bengal which was subsequently named as the High Court of East Pakistan after the enactment of the Constitution of the Islamic Republic of Pakistan, 1956. The C.S. record was prepared in the name of Bharat Samrat and the C.S. Map reveals that the property was bounded by a demarcated wall. The land which originally belonged to the then High Court of East Pakistan, after liberation of Bangladesh, automatically vested in the Supreme Court of Bangladesh by operation of law. After the change-over of 1975 when the country was governed by Extra-Constitutional Regime, some other organizations occupied certain portions of the Supreme Court land illegally which had purportedly been leased out to them. In the after math of this it has been felt that time has come to demarcate the concerned land belonging to the Supreme Court in its entirety so that the same can be identified and clearly recognized to meet the acute shortage of space required for the apex Court of the Country.

Unfortunately, it has been revealed that the land belonging to the Supreme Court of Bangladesh has not been recorded in the name of Supreme Court. Supreme Court's land cannot be transferred to some other Departments or Organizations nor can it be legally recorded in their names and, hence, it has become necessary to locate and demarcate the land in question by way of survey and get it recorded in the name of the Supreme Court. As a part of the Supreme Court's land under illegal occupation of some other organizations is beyond the Supreme Court's de-facto control, has become imperative to demarcate the said land. It is unfortunate to note that the Supreme Court Administration and the concerned authority of the Government failed to record the whole land in the name of the Supreme Court during the preceding surveys. Hence, a direction be given upon the respondents to

take steps to protect and maintain the Land of the Supreme Court of Bangladesh.

The Rule was contested separately by filing Affidavit-in-Opposition by the writ respondent no.10, Department of Roads and Highways, whereby the said body admitted the facts contained in the record of rights stating, that during the State Acquisition (S.A.) Survey, entire land was recorded in the name of the Department of Construction and Building (C & B) and the Department of Roads and Highways as a successor to C & B had inherited part of the land. During the Revisional Survey (R.S.), a total of 7.1888 acres of land was recorded in the name of Roads and Highways. During the Dhaka Metropolitan Survey an area of 7.0924 acres was recorded in the name of Roads and Highways.

The Registrar, Supreme Court of Bangladesh as the respondent No.5 supporting the cause of the filing of the Writ Petition for protecting the land of the Supreme Court filed an Affidavit-in-Opposition stating, inter alia, that unfortunately from the beginning no effective step had been taken to protect and maintain the land of the Supreme Court; that in recent past an initiative has been taken whereby copies of maps and record of rights from the concerned authority have been procured and it has been revealed that the land of the Supreme Court has not been recorded in the name of the Supreme Court of Bangladesh; that an organization known as the "Shishu Academy" is occupying a portion of the said land which was purportedly demised on lease to the Shishu Academy by the Ministry of Works on 30<sup>th</sup> December, 1989 for a period of 30 years, i.e., upto 29<sup>th</sup> December, 2019; that the purported lease not being renewable would expire on 30.12.2019; that another portion of the said land is being used by the Department of Roads and Highways. The Registrar, Supreme Court of Bangladesh also re-iterated that the entire land("the said land") under C.S. Khatian No.16855, appertaining to C.S. Plot Nos.12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162, was recorded in the name of the Bharat Samrat, and the Governor House/ Government House was established on the said land. Thereafter the then High Court of East Bengal, Dhaka was established there-on in November 1947. Subsequently, it was named as the then High Court of East Pakistan and finally, after the liberation of Bangladesh the total area of the said land vested in the Supreme Court of Bangladesh by operation of law. In fact, the then High Court of East Bengal was established on the whole land of the Governor House fully specified and demarcated by specially designed boundary wall. The same land stood transferred to the Supreme Court of Bangladesh automatically by operation of law after liberation of Bangladesh. Exclusive possession of the entire chunk of land was first granted to the Governor House and then to the High Court of East Bengal,

subsequently renamed as the High Court of East Pakistan and finally after the liberation of Bangladesh as the Supreme Court of Bangladesh by operation of law. In fact the fully specified and demarcated land by specially designed boundary wall measuring 55.05 acres of land is indeed the land of the Supreme Court of Bangladesh, which was granted to the High Court of East Bengal.

The High Court Division after hearing all the parties by judgment and order dated 10-03-2011 made the Rule absolute finding that during the S.A. as well as R.S. operation some portion of the land in question was wrongly recorded in the name of the Department of Roads and Highways, although there exists no document whatsoever to show as to how it got the said land or acquired possession over it; that mere entry of its name in the subsequent records of rights, without any documentary evidence as to title, goes nowhere to divulge any right or title in their favour.

The High Court Division found that, admittedly, the then High Court of East Bengal was established on 17.11.1947 in the Governor House which had been constructed on the Bharat Samrat's land under C.S. Khatian No.16855 appertaining to the above mentioned C.S. Plots measuring an area of 55.05 acres. Since 1947, the then High Court of East Bengal renamed as the High Court of East Pakistan and after the liberation of Bangladesh, the Supreme Court of Bangladesh, as the only entity, alone has been in exclusive ownership and possession of the subject land for a good period of time until in the recent past the Department of Roads and Highways and the Shishu Academy took possession of two different portions of the said land long after liberation of Bangladesh because of the situation prevailing in the country at that time. The High Court Division found that the exclusive possession and control by the then High Court of East Bengal created irrefutable presumption to establish the fact that it was the High Court of East Bengal that was vested with the Bharat Samrat's aforesaid property which stood for the Governor House of East Bengal and Assam in its entirety. The respondents failed to rebut this presumption and indeed no attempt has been made to rebut the presumption. The High Court Division observed- "We believe, for the obvious reason that the said fact is so well recognized that none thought of taking any step in that direction."

Accordingly, the High Court Division held that the portion of the said land occupied by the Department of Roads and Highways, as well as by the Shishu Academy, are actually the land of the Supreme Court of Bangladesh which owned the same in order of succession by operation of law from the then High Court of East Pakistan, which obtained the same from the then High Court of East Bengal. The High Court Division categorically formed the opinion that these two bodies, namely, the

Department of Roads and Highways and the Shishu Academy, are possessing the two portions of the said land without any lawful authority. Having perused all the documents and materials on record, the High Court Division held that the said land, recorded in the name of the Bharat Samrat under C.S. Khatian to C.S. Plot Nos.12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 comprising a total area of 55.05 acres, are the land of the Supreme Court of Bangladesh. Accordingly, supplementary Rule which superseded the original Rule was made absolute without any order as to cost. The writ respondents were "directed to maintain the land of the Supreme Court of Bangladesh in effective manner and to take steps in that regard in accordance with law."

Being aggrieved by the impugned judgment and order dated 10.03.2011 passed by the High Court Division in Writ Petition No.1053 of 2011, the writ respondent Nos. 9 and 10 as the petitioners preferred the instant Civil Petition for Leave to Appeal Nos. 1046 of 2001 and 821 respectively before this Division.

Mr. Obaidur Rahman Mustafa, the learned Advocate appearing for the writ respondent no.10-petitioner in C.P. No.821 of 2011 submits that the writ petitioners having not been directly or indirectly affected, have no locus standi to maintain the writ petition, moreover the writ petition suffers from laches and delay but the High Court Division wrongly held that the writ petitioners as human rights activists felt conscience bound to file writ petition invoking Article 102 of the Constitution of the Republic and, as such, the impugned judgment and order is not tenable in law. He then submits that the High Court Division committed serious error of law in adjudicating upon disputed questions of facts in the writ petition and making the rule absolute. Mr. Mustafa contends that in spite of the settled principle of law that the presumption of the C.S. Khatian under Section 103B of the Bengal Tenancy Act is that every entry in a record of right finally published shall be the evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved to be incorrect and in the instant case it is evident that Annexure-1, 1(a) and 1(b) showed' that S.A. R.S. and M.D.S. Khatians published in the name of the respondent-petitioner and the High Court Division failed to appreciate in this regard and, as such, the impugned judgment and order is not sustainable in law. Mr. Mustafa finally submits that the High Court Division committed serious error of law in finding that the land now occupied by the Department of Roads and Highways, as well as by the Shishu Academy, are actually the land of the Supreme Court of Bangladesh, which inherited the same by operation of law, from the then High Court of East Pakistan which ought to have been evident by

assessing and evaluating the Annexures-1, 1(a) and 1(b) submitted by the Assistant Commissioner (land).

Mr. Mansur Habib, the learned Advocate appearing for the writ respondent no.9-petitioner in C.P. No.1046 of 2011 submits that the impugned judgment and order passed by the High Court Division is liable to be set aside because the High Court Division misread the C.S. Khatian and held that the subject land was recorded in the name of Bharat Samrat although the C.S. Khatian shows that the land of Plot Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 belonged to the Department of Works representing Bharat Samrat and the said Department of Works executed the deed of lease for 30 years and thus the declaration of title of land of said plots in the name of Bangladesh Supreme Court is beyond the record and law. He finally submits that it appears from the map that possession of 2.108 acres of land under C.S. Plot No.12 (part) of Block-A and B was handed over by authority of P.W.D. in favour of petitioner and as such the declaration of title of the land under Plot No.12 in favour of Bangladesh Supreme Court is absolutely beyond the record and the impugned judgment passed by the High Court Division is liable to be set aside.

Mr. Manzill Murshid, the learned Advocate appearing for the writ petitioners-respondents submits that there is no illegality in the impugned judgment and order passed by the High Court Division and as such no interference is called for by this Division. Having referred to the C.S. record of the land in question and some of the old records and files of the then High Court and presently the Supreme Court of Bangladesh, Mr. Murshid submits that the land in question measuring 55.05 acres and the structures thereon belonged to the Supreme Court of Bangladesh since the establishment of the High Court of East Bengal on 17.11.1947 in the then Governor House. He further submits that this Court should involve Article 104 of the Constitution exercising its extra ordinary power to do complete justice in finding that the said land was vested in the Supreme Court of Bangladesh by operation of law from the then High Court of East Pakistan, which obtained the same from the then High Court of East Bengal established in the erstwhile Governor House having an area of 55.05 acres, which was specified and demarcated by boundary wall and fencing as evident from the decisions, correspondences and documents of the Government of East Bengal and the records of the successive Governments and the then High Court. He finally submits that there is no merit in these two leave petitions which are liable to be dismissed.

We have heard the learned Advocates for all the parties, perused the leave petitions, impugned judgment and order passed by the High Court Division and all other connected papers on record.

While deciding as to the legality of the impugned judgment and order passed by the High Court Division in writ jurisdiction in respect of the property claimed to have been owned by the Supreme Court of Bangladesh we have to consider not only the assertions made in the writ petitions and the Affidavits-in-Opposition submitted on behalf of the respondents before the High Court Division and the Annexures but also the relevant files and documents, correspondences of the then High Courts, the Supreme Court of Bangladesh and the successive Governments since the establishment of the High Court of East Bengal in 1947. We have to take judicial notice of the historical events and consider the constitutional development of the country since the independence of Erstwhile Pakistan after partition of India and the emergence of Bangladesh through the historic Language Movement in 1952, Six-Points Movement in 1966, Eleven-Points Movement of the students in 1969, Mass upsurge of 1969 followed by the General Elections of 1970, the historic struggle of the people of our country for national liberation in 1971 and the Declaration of independence on 26<sup>th</sup> March, 1971 by the founding father of the Nation Bangabandhu Sheikh Mujibur Rahman, the War of Liberation during which Proclamation of Independence was declared on 10<sup>th</sup> April, 1971 by the elected representatives of the people forming Provisional Government on 10<sup>th</sup> April, 1971 at Mujibnagar, Bangladesh, Laws Continuance Enforcement Order dated 10<sup>th</sup> April, 1971, the Provisional Constitution of Bangladesh Order, 1972 acknowledging the existence of a High Court of Bangladesh, the High Court Order 1972, the High Court of Bangladesh Amendment Order, 1972 and finally the establishment of the Supreme Court of Bangladesh under the Constitution of the People's Republic of Bangladesh, 1972. In this context, at the very outset we have no other alternative but to take recourse to the provisions of the High Courts (Bengal) Order 1947 (and the establishment of the erstwhile High Court of East Bengal at Dhaka), the Constitution of the Islamic Republic of Pakistan 1956, the Constitution of the Islamic Republic of Pakistan, 1962 and the Constitution of the People's Republic of Bangladesh, 1972. In examining the Constitution and establishment of the then erstwhile High Court of East Bengal at Dhaka, one cannot ignore the constitutional history of the partition of the then British India which was divided into two Dominions, namely, India and Pakistan. The State of Pakistan had originally five provinces, namely, Provinces of East Bengal, Punjab, Beluchistan, Sindh and the North West Frontier Province (NWFP). The territory, presently comprising the People's Republic of Bangladesh, was initially the Province of East Bengal which was subsequently re-named as East Pakistan under the Constitution of the Islamic Republic of Pakistan, 1956. After the partition of India, the High Court of Calcutta at the Fort William was divided into two parts, one of which was transferred to the



Province of East Bengal with its entire establishment including all relevant records and some of the Judges of the Calcutta High Court who opted for Pakistan to serve in the High Court of East Bengal at Dhaka. They came to Dhaka with the relevant case files and records concerning the territory of the then East Bengal now comprising the People's Republic of Bangladesh.

After the partition of India and creation of Pakistan and the establishment of the Province of East Bengal, a new High Court, namely, High Court of the Judicature at Dhaka in East Bengal popularly known as High Court of East Bengal was established in the premises of the former Governor House, also known as the New Government House, with specified and demarcated land by specially designed boundary wall inclusive of its full area and structures thereon which was established long ago, as the official residence of the Governor of the Province of East Bengal and Assam. These are the bare historical facts. Admittedly, the High Court of East Bengal in Dhaka was established in the Governor House comprising an area of 55.05 acres, of land. We can take judicial notice of the historical truth and the admitted fact that the High Court of East Bengal was established in the Governor House, Dhaka which was formally opened on 17<sup>th</sup> November, 1947 by His Excellency the Governor of East Bengal in presence of the then Chief Minister of the Province, the Chief Justice and his companion judges of the High Court of East Bengal, Members of the High Court Bar, Civil Servants and elites of the Country.

If one delves further into the historical perspective, it is well known that the territory of Bangladesh originally is a part and parcel of the then Indian Sub-continent, and the history of its legal system may be traced back to the British Rule in the undivided India when the East India Company introduced the English Legal system for administration of the three Presidency Towns of the Sub-continent namely, Madras, Bombay and Calcutta and, thus, the English Judicial System has been adopted in the Indian Sub-continent. The filing of the appeals from the then India to the Privy-Council in England was introduced by the Charter of 1726. Subsequently, the East India Company Regulating Act, 1773 was introduced to place the East India Company under the control of the British Government and provisions were made for the establishment of the Supreme Court of Judicature at Fort William, Calcutta through Charter or Letters Patent. The Supreme Court of Judicature at Fort William in Bengal was established by Letters Patent issued on March 26, 1774. Subsequently, judicial system of the then India was recognized by introducing the Indian High Courts Act, 1861 by which High Courts were established in Calcutta, Madras and Bombay abolishing the Supreme Courts at Fort William, Calcutta. For the independence of India and Pakistan from the British Rule in 1947,

Indian independence Act, 1947 was passed by the British Parliament giving independence to India and Pakistan, whereby two Dominions, namely, India and Pakistan, were created. The Indian independence Act, 1947 transfers power from the British Parliament to the people of the Sub-continent on division of the then India. The High Courts (Bengal) Order, 1947 was promulgated under the Indian Independence Act, 1947 by the then Governor-General of India. It is to be noted that the Pakistan (Provisional Constitution) Order, 1947 established Federation of Pakistan which included the five provinces, namely, East Bengal, West Punjab, Sindh, North West Frontier Province (NWFP) and North Beluchistan and any other area that might with the consent of the Federation be included therein.

Article 3 of the High Court (Bengal) Order, 1947 provides that as from the 15<sup>th</sup> day of August, 1947 there shall be a High Court of Judicature for the Province of East Bengal; and the said Court is hereinafter referred to as the High Court of East Bengal.

Article 4(2) of the High Courts (Bengal) Order, 1947 envisages that if any judge of the High Court in Calcutta, having elected to be a judge of the High Court of East Bengal, is appointed to be a judge of that Court in accordance with the preceding provisions of this Order, then, as from the appointed day, the judge so appointed shall cease to be a judge of the High Court in Calcutta.

According to Article 5 of the Order of 1947 the High Court of East Bengal shall be a court of record and shall have, in respect of the territories for the time being included in the Province of East Bengal, all such original, appellate and other jurisdictions as, under the law in force immediately before the appointed day, is exercisable in respect of the said territories by the High Court in Calcutta.

Article 8(1) contemplates that the High Court of East Bengal shall have a Seal consisting of the Royal Arms, with an exergue or label surrounding the same with the inscription "The Seal of the High Court of Judicature in East Bengal".

The High Courts (Bengal) Order, 1947 provides a specific provision in respect of the location for the High Court of East Bengal as envisaged in Article 11 which provides as under:

"11. The High Court of East Bengal and the judges and Divisional Courts thereof shall sit at such places in the Province of East Bengal as the Chief Justice of the said Court may, with the approval of the Governor of East Bengal, appoint."

On partition of British India, five Judges came from the High Court of Calcutta to Dhaka and joined the new High Court of East Bengal, at Dhaka. In his memoir under the title "A Peep into the Past," Mr. Justice Amin Ahmed, a former Chief Justice of the High Court of Judicature at

Dhaka in the then East Pakistan, portrayed a glimpse of the initial condition of the High Court with the following words:

"On partition we five judges came from Calcutta to Dhaka and a new High Court was set up here. Subsequently, another Judge, i.e. Viz., Shahabuddin, J came from Madras. We started from scratch with Mr. Justice A.S.M. Akram as a Chief Justice. ....

After the partition of India in 1947 the records of some criminal cases pending in the Calcutta High Court at that time were sent along with records of similar cases to the East Pakistan High Court." In reminiscing about the past, the former Chief Justice Amin Ahmed also spoke about the relationship of the executive authorities with the Judiciary and opined that "the relationship was cordial but firm: in the matter of transfer and promotion of members of judicial service I not only sent my recommendation but unless any cogent reason was given by Government for not accepting them, I insisted on mine being accepted and be it said to the credit of the then Government that ultimately they accepted my recommendation. ....

Further, the then Government accepted to my request in other matters like grants etc. for the improvement of the old building of High Court e.g. a bridge was constructed from the terrace of Chief Justice's Chambers across to the other side of the building."

After the independence of Pakistan on 14<sup>th</sup> August, 1947 the High Court of East Bengal was established in the then Governor House, Dhaka which was originally built for the Governor of the East Bengal and Assam. The Constitution of the Islamic Republic of Pakistan was promulgated in 1956.

With the enactment of the Constitution of the Islamic Republic of Pakistan, 1956 "The Supreme Court of Pakistan" was established as the Apex Court of the country, consisting of the Provinces of East Pakistan and the West Pakistan, in place of the Federal Court with the appellate jurisdiction, to hear the decisions of the High Courts.

Under Article 117 of the Constitution of the Islamic Republic of Pakistan, 1956 the High Court of East Pakistan was given powers and jurisdiction to issue writs of mandamus, habeas corpus, quo warranto and certiorari.

Since the partition of India and the creation of Pakistan as an independent state, the people of the then Province of East Bengal subsequently renamed as East Pakistan have been subjected to subjugation, harassment and discrimination in all spheres of life. Immediately after the independence of Pakistan, Mr. Mohammad Ali Jinnah, the then Governor-General of Pakistan, in a public meeting at

Ramna Race Course on 21<sup>st</sup> March, 1948 declared that the Urdu shall be the State Language of Pakistan. Thereafter, while addressing the Special Convocation of the University of Dhaka on 24<sup>th</sup> March, 1948, he repeated the same and declared that "the Urdu shall be only the state language of Pakistan". The students of the University of Dhaka vehemently raised objection and voiced their protests shouting "No, No". This decision of the Government of Pakistan became clear, subsequently, in the activities of both the Federal Government of Pakistan and the Provincial Government of East Bengal. This led to the formation of All Party State Language Committee of Action and the 21<sup>st</sup> February, 1952 was declared the "State Language Day". It does not require any elaborate discussion that students of the University of Dhaka held protest meetings and brought out huge demonstrations in the University Campus which brought them into direct conflict with the then Government. The Law Enforcing Agency, namely, the police deployed by the then Provincial Government opened fire to stop processions and demonstrations resulting in the killings of Salam, Rafiq, Barkat and Jabbar and injuring hundreds of students and consequently, thousands of students, people and politicians were arrested. This led the people of the Province to take initiatives seriously and they reiterated their demands to establish Bangla as one of the State Languages of the then Pakistan. In the General Elections of 1954, the United Front dominated by the then East Bengal won majority giving a crashing defeat to the ruling Muslim League. The Constitution of the Islamic Republic of Pakistan, 1956 clearly stated that the structure of the Government was Federal and East Pakistan was one of the Provinces of Pakistan. Furthermore, Article 214 of the Constitution of the Islamic Republic of Pakistan, 1956 recognized Bangla as one of the State Languages of Pakistan along with Urdu. However, the constitutional development of Pakistan is not a happy one; Martial Law was declared in October, 1958 abrogating the Constitution of 1956 dissolving both the National and the Provisional Assemblies of Pakistan and banning political parties. The then Military Ruler of Pakistan formed a Constitution Committee in 1960 headed by Mr. Justice Shahabuddin, a former Chief Justice of Pakistan. Ultimately, the Constitution of 1962 was enacted which was in force till 25<sup>th</sup> March, 1969 when it was abrogated by General Yahia Khan, the then Military Ruler of Pakistan, by way of Proclamation of Martial Law which was made effective all over the then Pakistan. Thereafter, the history depicts numerous unpleasant events which compelled the people of this part of the Sub-continent, which is now Bangladesh, to revolt resulting in the movement for provincial autonomy led by Bangabandhu Sheikh Mujibur Rahman, the then leader of the Pakistan Awami League, who announced Six-Points Programmes on 18<sup>th</sup> March, 1966 at the Pakistan Council in Lahore. Being subjected to subjugation and

discrimination, the students of East Pakistan All-Party Action Committee became discontented and launched Eleven-Points demands and raised their support to the cause, which led to the Mass Movement of 1969. In the General Election of 1970, there was a massive victory for the Bangalees under the leadership of Bangabandhu Sheikh Mujibur Rahman in which Awami League won a landslide election victory having all but two seats of the then Provincial Assembly of East Pakistan and gained majority in the National Assembly of Pakistan. There is no need to repeat the history but suffice it to say that the Rulers of Pakistan could not accept the Awami League as the majority party in the National Assembly to form the Central Government. The Session of Parliament convened on 3<sup>rd</sup> March, 1971 was abruptly cancelled which prompted sharp reaction among the people of the then East Pakistan resulting ultimately to a Non-Co-Operation Movement under the leadership of Bangabandhu Sheikh Mujibur Rahman. In his historical and inspirational speech on 7<sup>th</sup> March, 1971 at the Race Course Maidan, Dhaka, Bangabandhu called upon the people of the country to be united and declared that “এবারের সংগ্রাম আমাদের মুক্তির সংগ্রাম, এবারের সংগ্রাম স্বাধীনতার সংগ্রাম” (“ Our struggle this time is a struggle for emancipation, the struggle this time is a struggle for independence.”) In the historical speech he gave a guideline to the nation how to proceed with the historic struggle for national liberation which ultimately culminated in his declaration of independence on 26<sup>th</sup> March, 1971 followed by the war of national liberation.

Speaking about the Constitutional development of Bangladesh, vesting of judicial power in the judiciary of Bangladesh, and the establishment of the High Court of Bangladesh and the Supreme Court of Bangladesh, one has to recall the historical events which led to the declaration of independence followed by war of liberation, Proclamation On of Independence on 10<sup>th</sup> April, 1971 at Mujibnagar, Kushtia and the Laws Continuance Enforcement Order 1971 dated 10<sup>th</sup> April, 1971, formation of a Provisional Government of Bangladesh on 17<sup>th</sup> April, 1971 at Mujibnagar, Kushtia. During the war of liberation Mujibnagar was declared as the temporary capital of Bangladesh. During the nine months war, Pakistani Army committed genocides in Bangladesh. Ultimately through the war of liberation making supreme sacrifice by the valiant freedom fighters and the people of Bangladesh, we achieved our victory on 16<sup>th</sup> December, 1971 when the Pakistan Occupational Army surrendered their arms. The Provisional Constitution of Bangladesh Order, 1972 was promulgated on 11<sup>th</sup> January, 1972 by Bangabandhu Sheikh Muzibur Rahman, the President of the People's Republic of Bangladesh. It is pertinent to reproduce Articles 9 and 10 of the Provisional Constitutional Order, 1972 which provides as under:

- "9. There shall be a High Court of Bangladesh consisting of a Chief Justice and so many other judges as may be appointed from time to time.
10. The Chief Justice of the High Court of Bangladesh shall administer an oath of office to the President and the President shall administer an oath of office to the Prime Minister, other Ministers, Ministers of the State and Deputy Ministers. The form of the oath shall be as prescribed by the cabinet."

It is to be recalled that on 27<sup>th</sup> March, 1972 Bangladesh Gana Parishad Order, 1972 was promulgated with the assignment to frame the Constitution of the People's Republic of Bangladesh. The Constitution of the People's Republic of Bangladesh, 1972 was passed by the Constituent Assembly on 4<sup>th</sup> November, 1972 which was authenticated by the sneaker on 14<sup>th</sup> November, 1972.

Part VI of the Constitution of the People's Republic of Bangladesh ("the Constitution") deals with the Judiciary dividing the same into three Chapters, namely, Chapter I provides for the Supreme Court, Chapter II provides for Sub-Ordinate Courts and Chapter III provides for Administrative Tribunals. Article 94 of the Constitution "provides for the establishment of the Supreme Court which reads as under: "94(1) There shall be a Supreme Court for Bangladesh to known as the Supreme Court of Bangladesh (comprising the Appellate Division and the High Court Division).

(2) The Supreme Court shall consist of the Chief Justice to be known as the Chief Justice of Bangladesh and so many other judges as the President may deem it necessary to appoint to each Division.

(3) The Chief Justice and the Judges appointed in the Appellate Division, shall sit only in that Division and the other judges shall sit only in the High Court Division.

(4) Subject to the provision of this Constitution the Chief Justice and the other judges shall be independent in exercise of their functions."

According to Article 95(3) of the Constitution, "Supreme Court" includes a Court which at any time before the commencement of the Constitution exercised jurisdiction as a "High Court" or Supreme Court in the territory now forming part of Bangladesh.

Article 100 of the Constitution provides, inter alia, that the permanent seat of the Supreme Court shall be in the capital.

For the purpose of the instant case the aforesaid provisions of the Constitution are required to be read in the light of the constitutional development of this country, as stated earlier, which was immediately after partition of India named as the Province of East Bengal and subsequently, the territory of present Bangladesh was named as the Province of East Pakistan. We have already noticed that the Calcutta

High Court at Fort William had jurisdictions for all the territory of the then East Bengal which was previously a part of the undivided Bengal in British India. Article 11 of the High Courts (Bengal) Order, 1947 provides that the High Court of East Bengal and the Judges and the Divisional Courts thereof shall sit at such place in the province of East Bengal as the Chief Justice of the said Court may, with the approval of the Governor of East Bengal appoint. Accordingly the powers and jurisdiction of the High Court of Calcutta at Fort William covering the territorial area of the then Province of East Bengal (presently Bangladesh) was transferred to and vested in the New High Court of East Bengal in Dhaka.

Invoking Article 104 of the Constitution, we have gone through the original files and records of the High Court of East Bengal and found that there were series of correspondences made by the Registrar of the High Court of Judicature in Dhaka of East Bengal with different functionaries of the then Government of East Bengal regarding the establishment of High Court in the then Governor House/Government House and subsequently the construction of a New High Court Building and Bar Association Building over the same premises.

The instant case is very much unusual having a chaquered history. The Supreme Court of Bangladesh has got its origin in the High Court of East Bengal which was subsequently renamed as the High Court of East Pakistan and after the liberation of Bangladesh by operation of law it has become the Supreme Court of Bangladesh. The writ respondents-petitioners have asserted that the land in question does not belong to the Supreme Court of Bangladesh and that land in question belongs to the different Departments of the Government, namely, the Department of Public Works, Department of Roads and Highways, Shishu Academy, Dhaka and the Deputy Commissioner, Dhaka. If one believes the statement of the petitioners to be true then it would lead to the consequence that the Supreme Court of Bangladesh has no land and the very existence of the Supreme Court of Bangladesh would be questionable. It is unfortunate to note that inadvertently not an inch of land was recorded in the name of the then High Court of East Bengal, or the High Court of East Pakistan. Even after the historic struggle for national liberation and the emergence of Bangladesh the land of the Supreme Court of Bangladesh has not been recorded in its name. Mere an error or omission of entry in the record-of-rights prepared, revised and finally published without entering the name of the High Court of East Pakistan and after the emergence of Bangladesh the name of the Supreme Court of Bangladesh would not disentitle the Supreme Court of Bangladesh of its right, title and interest on the land in question.

From the forgoing discussions and having gone through the historical and constitutional developments of this country we are proud to place

on record of the establishment of High Court of East Bengal, subsequently renamed as the High Court of East Pakistan, which was succeeded by the High Court of Bangladesh and ultimately the Supreme Court of Bangladesh. Can it be justified to say that the Supreme Court of Bangladesh being the Apex Court of Bangladesh which came into being at the cost of the supreme sacrifices made by the freedom fighters and the millions of people of Bangladesh for the liberation of the country has no place of its own. We the judges of the Supreme Court can take judicial notice of the fact that the Supreme Court of Bangladesh has been functioning in succession in its permanent site in the then Governor House of the Province of East Bengal and Assam which is fully demarcated and specified by specially designed boundary wall with grille fencing since November, 1947 as the High Court of East Bengal, then the High Court of East Pakistan and finally as the Supreme Court of Bangladesh. It is very unfortunate to note the unusual situation where the land belonged to the Supreme Court of Bangladesh by succession has not been recorded in its name or in the name of its predecessors the High Court of East Bengal or the then High Court of East Pakistan. Having faced with this unusual situation, we are duty bound to invoke extra ordinary power of this Division under Article 104 of the Constitution to do complete justice for the purpose of production of the original files and records of the then High Court of East Bengal and the Supreme Court of Bangladesh regarding its establishment as to the place of sitting of the High Court of East Bengal pursuant to Article 11 of the High Courts (Bengal) Order, 1947 for examination and perusal. On careful perusal of the original files and records of the English Department (1E-20/49) of the High Court of East Bengal, it appears that the place of sitting of the High Court was selected by the Chief Justice in consultation with and with the approval of the then Governor of East Bengal which is evident from different correspondences of the English Department (1E-20/49) of the High Court of East Bengal. In this context, we would like to profitably reproduce a letter from the then Secretary, Judicial and Legislative Department, Government of East Bengal under Memo No.3079-J dated Dacca, the 8<sup>th</sup> July, 1949 to the Registrar, High Court, Dacca which reads as under:

"Form:XXIX, S.I.,1924.

GOVERNMENT OF EAST BENGAL  
Judicial and Legislative Department.  
Judicial

No. 3079-J., dated Dacca, the 8<sup>th</sup> July, 1949

From: M.A. Ispahani, Esqr., Barrister-at-Law,  
Secretary to the Government of East Bengal

To  
The Registrar, High Court, Dacca.



Sir;

I am directed to invite your attention to Article 11 of the High Courts (Bengal) Order, 1947 and to request that Government may kindly be informed if any decision was taken by the Chief Justice with the approval of the Governor as to the place of sitting of the High Court as provided in the Article of the Order mentioned herein.

The favour of an early reply is requested.

I have the honour to be,  
 Sir,  
 Your most obedient servant,  
 Sd/-  
 Secy. to the Govt. of East Bengal."

In the aforesaid letter the Secretary to the Government of East Bengal in the Judicial and Legislative Department wanted to know from the Registrar, High Court, Dhaka whether the Hon'ble Chief Justice with the approval of the Governor, East Bengal had taken any decision as to the place of sitting of the High Court as provided in the Article 11 of the Order, 1947.

In reply to the aforesaid Memo, the Registrar of the High Court of Judicature at Dhaka in East Bengal wrote to the Secretary, Judicial and Legislative Department, Government of East Bengal on 18<sup>th</sup> July, 1949 under Memo No.4828 G which reads as under:

"No, 4828 G

From : F. Akbar, Esqr., Barrister-at-Law,  
 Registrar of the High Court of Judicature at Dacca in  
 East Bengal.

To : The Secretary to the Government of East Bengal,  
 Judicial Department.

Dated, Dacca, the 18<sup>th</sup> July, 1949.

Sir,

With reference to your letter No.3079-J., dated the 8<sup>th</sup> July, 1949, I am directed to say that the place of sitting of the High Court was selected by the Chief Justice in consultation and with the approval of the Governor.

There is, however, nothing in writing.

I have the honour to be,  
 Sir,  
 Your most obedient servant,  
 Sd/-  
 Registrar."



My Dear Justice Akram,

The Government have written to say that a notification should be issued appointing Dacca as the place of sitting of the High Court. Section 11 of the High Court (Bengal) Order, 1947, which is quoted in this connection, does not require a notification to issue. It seems that the object of such notification is to give information to the public and I think the appropriate stage for such a notification, even if it were considered necessary, was when the Court was started; but at that time, however, the official Gazette had not appeared and now the situation of the High Court is common knowledge in the Province. I propose, therefore, to write to Government stating that such a notification is unnecessary.

On looking into the papers connected with the setting up of the Court, I do not find anything in your writing that you consulted the Governor, and that, as a result of that consultation, he approved of Dacca as the place of our sitting. The fact that the Governor declared this Court open on the 17<sup>th</sup> of November, 1947 shows that he gave his approval. But for the sake of our record being complete in this respect, I think it is necessary to have on the file your note that the approval of the Governor was obtained in this matter.

Your Sincerely,  
Sd/ - Illegible

The Hon'ble Mr. A.S.M. Akram,  
Judge of the Federal Court of Pakistan,  
3, Fuller Road,  
Dacca."

Mr. Justice A.S.M. Akram, (the First Chief Justice of the High Court of East Bengal), Judge of the Federal Court of Pakistan replied to the then Chief Justice vide his letter dated 21.09.1950 which is reproduced below:

"21.9.50  
3, Fuller Road,  
Dacca

My dear Chief Justice,

Your D.O. No.5410G of today's date. It was after consultation with and the approval of H.E. the Governor and the Hon'ble Chief Minister at the time, that the place where the Dacca High Court is at present located was selected for its establishment and the sittings of its judges. His Excellency was himself present at the opening ceremony of the High Court on the 17<sup>th</sup> Nov, 1947.

Yours sincerely,  
Sd/ - A.S.M. Akram  
Judge, Federal Court,  
Lahore"

Having received the reply from Justice Akram, Judge of the Federal Court, the then Chief Justice of High Court of East Bengal directed the Registrar of the High Court of East Bengal, on 23<sup>rd</sup> November, 1950 to send reply to the Secretary to the Government of East Bengal, Judicial Department and accordingly the Registrar sent reply to the following effect:

“No.6442 G

From : B.Z. Ahmad Esq., B.L.,  
Registrar of the High Court of Judicature at Dacca in  
East Bengal.

To

The Secretary to the Govt. of East Bengal, Judicial Department, Dacca.

Dated Dacca, the 23<sup>rd</sup> November, 1950.

Sir,

With reference to the correspondence resting with your letter No.1114-J, dated the 19<sup>th</sup> April, 1950, I am directed to say that the High Court does not consider the issue of the suggested notification necessary. The provision of law quoted in the letter under reference does not require the issue of such a notification. What is required under that provision has been done and the then Hon'ble Chief Justice took the approval of His Excellency the Governor for locating the High Court at Dacca. This Court was formally opened by His Excellency the Governor on the 17<sup>th</sup> November, 1947 and the Court does not consider that the fact that Dacca is the location of the High Court, needs publication.

I have the honour to be,

sir,

Your most obedient servant,

Sd/-

Registrar."

In the aforesaid letter dated 23<sup>rd</sup> November, 1950 it was made clear that the High Court did not think it proper to consider the fact that Dacca is the location of High Court needs publication.

On perusal of the original records of this Court it appears that the establishment and inauguration of the High Court of East Bengal at Dhaka was made in the Governor House of the erstwhile Province of East Bengal and Assam which was also known as the New Government House. By whatever name we may call the place of sitting of the High Court whether the Governor House or the new Government House it is in fact the same magnificent building and the entire area of the Governor House which is still maintaining its position as the "Old High Court Building", Main Building of the Supreme Court of Bangladesh,

Supreme Court Annex Building and the rest of the area of the former Governor's House.

Having gone through the records of this Court from our scrutiny it reveals that the Office of the Executive Engineer, C & B, Dhaka City Division vide Memo No.6990 dated 05.12.1949 sent an estimate amounting to Rs.3630/- for S.R. (Special Repair) of the New Government House with Gate, Building, used as High Court, Dhaka to be counter-signed by the Registrar and be returned to the Office of the Executive Engineer. Accordingly, by Memo No.7192 G dated 22.12.1949 the Registrar of the then High Court having had duly counter-signed the said estimate for the above noted work returned the same with a request to expedite the work. Subsequently, the Assistant Engineer, Ramna, Sub-Division, C & W.D, Dhaka vide Memo No.1522 dated 24.05.1950 sent the completion certificate to be counter-signed by the Registrar. Accordingly, the Registrar having duly signed the completion certificate vide Memo No.3863 G dated 21.06.1950 returned the same to the Executive Engineer, Ramna. The Office Notes reveal that the Office of the Registrar had instructed the Court Keeper to verify as to whether the repairs in question had been duly executed before signature of the completion certificate. Earlier, by Office note dated 12.06.1950 the Court Keeper submitted his report and then the Registrar by Order dated 16.06.1950 counter-signed the completion certificate and returned the same to the Executive Engineer.

The then Consulting Architect in his reports to the Chief Engineer mentioned about the location of the High Court of East Bengal High Court in the "Government House". The Registrar of the then High Court vide his Memo No.3218 dated 25.05.1950 wrote to the Consulting Architect, C & B Directorate asking him to inform as to whether any suggestion of the Court was desired and if so the precise points on which suggestions were required. Thereafter, on 31.05.1950, the Office of the Consulting Architect vide Memo No.1908 dated 31.05.1950 requested the Registrar to send a comprehensive list of rooms and areas required for a new High Court Building.

The Consulting Architect, Government of East Bengal Mr. Coleman Hicks, F.R.I.B.A. while discussing about the Zone for Buildings of the East Bengal Government had stated that as regards the construction of new High Court Building the first decision to be made is that of a site. Thereafter discussion was held between the Consulting Architect and the Hon'ble Chief Justice and the Judges of the High Court about the construction of the New High Court Building.

Thereafter series of correspondences were made between the Registrar of the High Court of East Bengal High Court and the different functionaries of the Government including the Chief Secretary to the

Government of East Bengal. The Registrar by the letter dated 23<sup>rd</sup> April, 1951 stated to the effect:

"Their Lordships would prefer the High Court being constructed on the site which has been selected for the Secretariat. If, however, it is not possible to change the sites, their Lordships consider it absolutely necessary that the High Court building should be located as further away from the main road as the present building is situated. According to the present alignment which was explained to their Lordships, the nearest road to the building would be the Mymensingh Road which already is, and is certainly going to be, a very busy road. The building should therefore, be, in the view of their Lordships, as far away from that road as possible.

With regard to the plan of the building, as well as the design of the bungalows which was in the contemplation of the Government to build for the High Court Judges, their Lordships desire that this matter should be left to a Committee of Judges to be appointed by the Hon'ble Chief Justice, and not to the Planning Committee as the requirements of the Court, as well as of the residences of Judges, are better understood by the Judges themselves than by other authorities."

The Additional Assistant Secretary to the Ministry of Communication, Building & Irrigation Department (C & B), Department, Town Planning Branch by Memo No.1147-T.P. dated 5<sup>th</sup> June, 1951 informed the Registrar of the High Court that the new Building for the High Court and residences of the High Court Judges are not, at present, included in the list of top priority projects to be taken up for construction. Necessary action will, however, be taken to ascertain the wishes of the High Court Judges as and when preparation of schemes for construction of these buildings is taken in hand.

Thereafter series of correspondences were made by the Registrar of the High Court and the Department of Communication, Building & Irrigation regarding the construction of the High Court Building. Whatever we have stated is nothing but a rare glimpse of the historical back ground which led to the establishment of the Supreme Court of Bangladesh in its present site.

In the instant case the High Court Division in making the Rule absolute rightly observed as under:

"Having perused all the documents in the file and having considered the submissions made by the learned Advocates, we are satisfied that the land recorded in the name of Bharat Samrat under C.S. Khatian No.16855, C.S. Dag Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 consisting a total of 55.05 acres are the land of the Bangladesh Supreme Court."

It has been asserted on behalf of the writ-petitioners-respondents that during the British Rule in India after the partition of Bengal the

Governor House for the then Province of East Bengal and Assam was constructed in 1905 over a specified and clearly demarcated land by specially designed boundary wall with grille fencing. The petitioners assertion is that after the partition of India and independence of Pakistan, the High Court of East Bengal was established on 17 November, 1947 in the Governor House with the whole area of the land of the said House specified and demarcated by boundary wall as described above. On careful scrutiny we have found that "The Daily Azad" dated 17<sup>th</sup> November, 1947 reported the news of the formal inauguration of the High Court of East Bengal which runs as under:

“আনুষ্ঠানিকভাবে পূর্ব বাংলা হাইকোর্টের উদ্বোধন  
জাতি, ধর্ম নির্বিশেষে সকলের প্রতি সুবিচারের আশ্বাস

দৈনিক আজাদ, ঢাকা-১৭ নভেম্বর, ১৯৪৭।

অদ্য সকালে হাইকোর্ট ভবনে আনুষ্ঠানিকভাবে পূর্ব বাংলা হাইকোর্টের উদ্বোধন অনুষ্ঠিত হয়। জজ, এডভোকেট, অন্যান্য আমন্ত্রিত ব্যক্তি ও মহিলাগণ নিচতলায় উপস্থিত হন। যে ফিতায় সিড়ির পথ আটক করা ছিল তাহা সাড়ে দশ ঘটিকায় প্রধান বিচারপতি কাটিয়া দেন। তিনি ও অন্যান্য জজগণ, পূর্ব বঙ্গের গভর্নর ও প্রধানমন্ত্রী শোভাযাত্রা সহকারে উপর তলায় গমন করেন। একজন মাওলানা সাহেব কোরআন হইতে আবৃত্তি করেন। প্রধান বিচারপতি মিঃ এ,এস,এম, আক্রাম পাকিস্তানের পতাকা উত্তোলন করেন। ১১ ঘটিকায় প্রধান বিচারপতি অন্য পাচজন বিচারপতিসহ পূর্ণ আদালতে উপবেশন করেন। অন্যান্য বিচারপতিগণের নাম মিঃ পি,সি, আরমন্ড, মিঃ টি,এইচ, এলিস, মিঃ সাহাব উদ্দিন, মিঃ আমিন আহম্মেদ, মিঃ আমির উদ্দিন আহম্মেদ। মিঃ এ,কে, ফজলুল হক পূর্ব বাংলার হাইকোর্ট বার এসোসিয়েশনের পক্ষ থেকে ঢাকাস্থ পাকিস্তান হাইকোর্ট উদ্বোধন উপলক্ষ্যে প্রধান বিচারপতি ও অন্যান্য বিচারপতিগণকে অভ্যর্থনা জানান। তিনি বলেন, তাহারা চলিয়া গিয়েছেন কিন্তু উত্তোরাধিকার হিসেবে আমাদের যা দিয়ে গেছেন, সে জন্য আমরা গৌরবান্বিত। ইংল্যান্ড আমাদেরকে উন্নত শ্রেণীর আইনজ্ঞ এবং বিশেষত একটি আইন বিষয়ক সাহিত্য দিয়েছেন। এ সাহিত্য সকল আইন ব্যবসায়ীর জন্য গৌরবের বস্তু। অন্যান্য ক্ষেত্রে যা-ই ঘটুকনা কেন এ সাহিত্য বিচার নিষ্পত্তিতে সাহায্য করিবে বলিয়া আশা করি।

প্রধান বিচারপতি বলেন, ইহা একটি ঐতিহাসিক উপলক্ষ্য। তিনি আশা করেন যে, সকলের সহযোগিতায় এবং প্রচেষ্টায় জাতি-ধর্ম নির্বিশেষে সকলের প্রতি সুবিচার করিতে পারিবেন। জাতির অগ্রগতি ও উন্নতি বিচার ও আইন শৃঙ্খলার উপর নির্ভর করে। এ গুলি ছাড়া সমাজ টিকিতে পারিবেনা। প্রধান বিচারপতি আরও বলেন, আইন সর্বব্যাপী সকলের জন্য। ব্যক্তি স্বাধীনতা অর্থ সংযমকেও বুঝায়। আইন শৃঙ্খলা রক্ষা ও পূণ্য স্থাপনের জন্য আমাদের সকলকে কাজ করিতে হইবে। আপনারা যদি এই পন্থা অবলম্বন করেন সমাজে শান্তি ও শৃঙ্খলা পূর্ণ উদ্ভারে বেশি বিলম্ব হইবে না, এ বিষয়ে আমি নিঃসন্দেহে আছি।”

Now we would like to examine the record of the concerned land. During the C.S. operation the concerned land was recorded in the name of Bharat Samrat under C.S. Khatian No. 16855, C.S. Plot Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 represented by the Department of Works. As per Article 11 of the High Courts (Bengal) Order, 1947 the High Court of East Bengal and the Judges and the Divisional Courts thereof shall sit at such places in the Province of East Bengal as the Chief Justice of the said Court may with the approval of the Governor of East Bengal appoint. Having gone through the original files and records of the English Department of the then High Court of East Bengal it appears that in reply to the query made by the Secretary, Judicial and Legislative Department of the Government of East Bengal as to whether any decision was taken by the Hon'ble Chief Justice as

per Article 11 of the High Courts (Bengal) Order, 1949 with the approval of the Governor regarding the place of sitting of the High Court, Mr. F. Akbar, Esqr., Barrister-at-Law, Registrar of the High Court of Judicature at Dhaka in East Bengal by his letter dated 18<sup>th</sup> July, 1949 stated that the place of sitting of the High Court was selected by the Chief Justice in consultation with and with the approval of the Governor.

There was however, nothing in writing.

It appears from the record that the Secretary, Ministry of Judicial and Legislative Department, Government of East Bengal by his Memo No.1114-J dated 19<sup>th</sup> April, 1950 requested the Registrar, High Court to issue necessary notification under Article 11 of the High Courts (Bengal) Order, 1947 appointing 'Dacca' as the place of sitting of the High Court of this Province in order to regularise the matter. The then Chief Justice by Memo D.O. No.5410-G dated 21<sup>st</sup> September, 1950 addressed - to Mr. Justice A.S.M. Akram (First Chief Justice), Judge of the Federal Court of Pakistan at that time residing at 3, Fuller Road, Dacca informed him that the Government had requested to issue a notification appointing Dhaka as the place of sitting of the High Court. But the learned Chief Justice of East Bengal in the aforesaid Memo opined that Article 11 of the High Court (Bengal) Order, 1947 did not require any notification to be issued in this connection. According to the learned Chief Justice the object of such notification is to give information to the public and the appropriate stage for such a notification, even if it were considered necessary, was when the Court had initially started; but at that time no official Gazette had appeared. But at the time of writing the letter, his Lordship observed that the situation of the High Court is common knowledge in the Province and as such Government should be informed that such a notification is unnecessary. His Lordship further stated that the fact that the Governor had declared this Court open on the 17<sup>th</sup> of November, 1947 showed that he gave his approval and for the sake of record being complete in this respect, it was felt necessary to have on the file a note from Justice A.S.M. Akram (the First Chief Justice) to the effect that the approval of Governor was obtained in this matter. However, on the same day i.e. 21.09.1950, Mr. Justice A.S.M. Akram replied to the learned Chief Justice of East Bengal stating that "It was after consultation with and the approval of H.E. the Governor and the Hon'ble Chief Minister at the time, that the place where the Dacca High Court is at present located was selected for its establishment and the sittings of its judges. His Excellency was himself present at the opening ceremony of the High Court on the 17<sup>th</sup> Nov, 1947."

With the aforesaid reply Mr. Justice Akram stated that it was after consultation with and the approval of H.E., the Governor and the Chief Minister at the time that the place where the Dhaka High Court was at



that time located was selected for its establishment and the sitting of its Judges. He also stated that His Excellency was present at the opening ceremony of the High Court on 17<sup>th</sup> November, 1947. It was revealed from the record that the then Registrar of the High Court by Memo No.6442 G dated 23<sup>rd</sup> November, 1950 wrote to the Secretary, Judicial Department, Government of East Bengal stating that the provisions of law quoted in the letter under reference does not require the issue of any notification and that what is required under that provision has been done and the then Chief Justice took the approval of His Excellency the Governor for locating the High Court at Dacca and the High Court was formally opened by His Excellency the Governor on the 17<sup>th</sup> November, 1947 at the then Governor House of the Province of East Bengal and Assam, along with the adjacent area of land which was specifically demarcated and identified by specially designed boundary wall with grille fencing, and the Court formed the opinion that there was no further need of a notification/publication for notifying the place of sitting of the High Court inasmuch as the same was already within the domain of public knowledge.

We have also perused several notes in the original files of the then High Court of East Bengal and found the location of its place of sitting, which comprised the Old High Court Building and its adjoining area (Governor House), and the establishment of the High Court of East Bengal was approved by His Excellency the Governor within the knowledge of the Chief Minister at that time. But there was no sufficient accommodation in the Old High Court Building and it was felt that proper accommodation should be provided for housing the High Court of East Bengal and in this regard series of correspondences were made between the Office of the Registrar, High Court of East Bengal and the Judicial and Legislative Department of the Government of East Bengal, Chief Justice of the Supreme Court of Pakistan and the Public Works Department of the Government. It also appears from the record that the then Government of East Bengal was informed that the High Court does not consider the issue of the suggested notification necessary. From a clear reading of Article 11 of the aforesaid Order 1947 we are also of the view that it did not require a Gazette Notification to be issued appointing "Dacca" or any specific area within "Dacca" as the place of sitting of the High Court of East Bengal.

We have already noticed that the High Court of East Bengal was established in the Governor House, which was also known as the New Government House.

The building of the Governor House in which the High Court of East Bengal was inaugurated, did not have sufficient space to accommodate the Court Rooms, Chambers of the learned Judges, different sections of the Court, Judges Library and also accommodation for the Bar

Association Library, Car Park, Canteens for the Staff as well as the Canteens for the Members of the Bar. Facing with this situation, the Government initiated a Master Plan for the complex to accommodate High Court of East Bengal, Provincial Assembly Building, Secretariat and other officials of the Government. The Office of the Consulting Architect (C & B), Directorate, Government of East Bengal worked hard to make a Master Plan for the site of the East Bengal Legislative Assembly, East Bengal High Court and the Secretariat, etc. The Consulting Architect also wanted to know from the High Court about the requirement of space to accommodate Court rooms, Offices etc. However the said idea of construction of a complex could not succeed due to the paucity of space and the need of Bar Association Library, etc. was a burning issue for the judiciary. Facing with these multifarious problems, the successive Chief Justices of the High Court of East Pakistan made series of correspondences with the then Government of East Pakistan to do the needful for the construction of New High Court Building within its premises specified and demarcated by specially designed boundary wall with grille fencing. In that view of the matter the Registrar of the High Court East Pakistan wrote to the Government Architect, East Pakistan on 10<sup>th</sup> October, 1959 to construct a New High Court Building under Five-Years Plan setting out details of the proposed Court Building which should be three-storied or more with three lifts one for the Judges and others for the litigant people, the members of the Bar and the staff. The said letter described the requirements of Court Rooms and Chambers of the Hon'ble Chief Justice and other Judges of the High Court, Meeting Hall which should be centrally situated so as to be accessible to all the Hon'ble Judges and Court Rooms to sit round at Full Court Meetings. There should be Library for Judges with adequate number of staff, Chambers for Gazetted Officers, Record Room, the English. Office, First Appeal Section, Supreme Court Appeal Section, Second Appeal Section, Original Section, Paper Book Department consisting of three branches, (namely, Inspection Section, Paper Book Section and Civil Translation Section) Rule Section, Accounts Section, Stamp Reporter's and Filing Section, General, Establishment & Dispatch Section, Bench Section, Decree Section, Central Copying Section, Bench Clerks and Assistant Bench Clerks, Transcription Room, Translation Section, Original Side, Writ Section, Committee of Legal Education, Court Keeper's Department, Lavatories and Urinals should be provided for the Court Staff, and sufficient number of separate lavatories and urinals for the litigant public including the Advocates' Clerks and others at some distance from those meant for the Courts Staff, Bar Library, Law Officers of Government and their offices, Supreme Court Branch Registry, Prayer Hall, Canteens, Employees Recreation Room and Library, Post Office, Court Sergeant, Garages, Residential

Accommodation with sufficient accommodation for Court Keepers and the Assistant Court Keepers with suitable family quarter within the court compound. Provisions may also be made in the plan for residential accommodation of a skeleton staff, namely the Registrar, Deputy Registrar, two Superintendents and 4 Assistants of the Court who may be available in the Court premises for any emergent business. In this connection the Registrar also refers to earlier correspondences made with the Government by the then High Court vide letter No.2670 G dated 23<sup>rd</sup> April 1951 to the Chief Secretary, to the Government of East Bengal vide letter No.1147 T.P. dated 05.06.1951 from the Additional Assistant Secretary, Government of East Bengal, C.B. & I. Department, letter No.6044 G dated 10.07.1951 to the Additional Assistant Secretary, Government of East Bengal, C.B. & I. Department and letter No.2227-T.P. dated 18<sup>th</sup> October, 1951 from the Additional Assistant Secretary, Government of East Bengal, C.B. & I. Department. In the process of construction of New High Court Building at Dhaka, Works, Housing & Settlement (C&B) Department, Development Branch, Government of East Pakistan vide letter No.494-D dated 24.03.1960 wrote to the Registrar, Dhaka High Court to inform them as to the requirement for the New Building to be constructed for the High Court including provision for the Supreme Court Judges so that necessary plans and rough estimate could be made accordingly. Following this letter, the Registrar of the High Court wrote to the Supreme Court of Pakistan, Lahore on 20.04.1960 requesting them to inform the High Court the requirements of the Supreme Court in respect of the accommodation to be provided for High Court of East Pakistan so as to enable this Court to send a reply to the Government of East Pakistan. However, the Supreme Court of Pakistan vide Memo No.F.14 / 13 / 59-SCA dated 30.04.1960 replied to the Registrar-in-Charge, High Court of East Pakistan stating that plans for the construction of the separate building for the Supreme Court of Pakistan at Dhaka have been finalized and steps had been taken by the Pakistan P.W.D. to acquire a plot in Shahbagh area already reserved for the building and accordingly High Court of East Pakistan will not be required by Supreme Court of Pakistan. Thereafter, the Registrar-in-Charge on 07.05.1960 informed the Government of East Pakistan, Works, Housing and Settlement (C & B) Department, Development Branch forwarding a copy of the Supreme Court letter dated 30.04.1960. In continuation of the High Court's initiative for the construction of a New High Court Building the then Chief Justice of High Court of the East Pakistan wrote a letter being D.O. No.3644 G dated 20.05.1960 to the Governor, East Pakistan, Government House, Dacca which reads as follows:-

"D.O.No.3644 G

The 20<sup>th</sup> May, 1960

My dear Governor,

I take this opportunity of thanking you for paying a visit to the High Court on Saturday last and discussing with us the various problems connected with the construction of a new High Court Building. It is indeed gratifying that the urgency of this question which has been hanging for years together has at long last been appreciated and a solution acceptable to all concerned found across the table.

As to the site of the proposed new building I suggest that in case the plot of land to the north of the existing Court building is not utilised for the construction of the new Government House, the same may be kept in view while approving site for the proposed new building for the Court. In this connection, I need hardly point out that besides being imposing enough, the High Court should be situated in a calm and quiet atmosphere essential for the peaceful conduct of judicial business, and as everywhere else it should be at a respectable distance from buildings in and around which demonstrations of any kind are likely to take place. So far as the height of the building is concerned, a three storied building in preference to a taller one may serve our purpose well.

The assurance so kindly given that provision will be made in the new building, besides other requirements of the Court, for 15 Judges, 12 Court-rooms, one modern Record Room and an up-to-date Cafeteria with Lounge and other amenities what a High Court building should in the fitness of things be equipped with, has been very much appreciated. Thanking you once again for all the interest you are so kindly taking.

Yours sincerely,  
Sd/- illegible  
(M.A. Ispahani)

Lient.-General Md. Azam Khan,  
Governor of East Pakistan,  
Government House, Dacca."

On 30 June, 1960 the Registrar of the High Court of East Pakistan wrote to the Commissioner, Works, Government of East Pakistan, Dacca requesting him to go ahead with the scheme of the New High Court Building independent of the scheme for the Supreme Court and to that end cause necessary plans and designs of the new High Court Building be prepared with as little delay as possible and forwarded to the High Court of East Pakistan as early as possible. In reply to the aforesaid memo of the High Court of East Pakistan, the Deputy Secretary to the Government of East Pakistan, Works (C & B) Department vide Memo No.SEC.VII / 7D-5 / 60 / D dated Dacca, the 20<sup>th</sup> July, 1961 wrote to the Planning Department as under:

"Government of East Pakistan  
Works (C & B) Department.

No.SEC. VII / 7D-5 / 60 D.  
Dated Dacca, the ---th July, 1961.

From: - A.Q.M. Mahiuddin Esqr.,  
Deputy Secretary to the Govt. of East Pakistan  
To: - The Planning Deptt. of this Govt.  
Sub: - Construction of New High Court Building at Dacca.  
Ref: - That Deptt. No.433 dt. 17.4.61.

The undersigned is directed to state that it has since been decided to construct the High Court Building at Dacca independent of the Supreme Court. The Governor also desired that the construction of High Court Building should be started during this year. Rs. 3 lakhs have been provided in the current year's budget for this work and Rs. 2 lakhs have been provided for it in the Contingent Development Programme for 1961-62. In view of the circumstances stated above the Planning Deptt. is requested to get the scheme for construction of Dacca High Court Building passed by the C.D.W.P. & E.C.C. without waiting for the scheme for Supreme Court Building. As the High Court is experiencing much difficulties for want of proper accommodation this scheme should not be held up for want of any decision from the Central Govt. about desirability of preparation of one comprehensive scheme for the High Court and Supreme Court Building at Dacca.

Sd/- (A.Q.M. Mahiuddin)  
Deputy Secretary.

No.SEC. VII / 7D-5 / 60 / 921 / 1 D.

Copy forwarded to the Registrar, Dacca High Court, Dacca, for information with reference to his No.4641G dt.30.6.61. The modified requirements may kindly be furnished early.

Sd/- Illegible

Dated, the th July, 1961

(A.Q.M. Mahiuddin)  
Deputy Secretary.

A.H.  
20.7.61"

The Registrar by his letter dated 26.08.1961 wrote to the Commissioner, Works, Government of East Pakistan requesting him to forward the plan and design of the proposed New High Court Building for perusal and approval by the Chief Justice. The Registrar was informed by the Government Architect, Government of East Pakistan vide his Memo No.3324 dated 04.09.1961 stating that the plan of the New High Court Building is under preparation. The Deputy Secretary to the Government of the East Pakistan, Works (C & B) Department wrote

to the Registrar stating that the plans of the New High Court Building would be sent to him for approval of the learned Chief Justice. Thereafter, series of correspondences were made between the Registrar, High Court of East Pakistan and the Works (C & B) Department, Government of East Pakistan in respect of the East Pakistan High Court Building stating that the Chief Justice will be consulted from time to time by the Architect on the job as the work progresses. The then Chief Justice wrote to the Governor, East Pakistan stating series of events and correspondences made by the Government and the High Court and also the decision of the Governor regarding the construction of New High Court Building during the year 1961 wherein Rs.5 lakhs in all were provided in the budget for starting the construction work but the work had not started and the fund would lapse as no work was likely to be taken during the financial year. In the circumstances, the learned Chief Justice requested the Governor to issue necessary directions to all concerned so that the construction of New High Court Building is expeditiously taken up in hand. Thereafter, on 26<sup>th</sup> June, 1962 the Registrar of the High Court wrote to the Secretary, Government of East Pakistan, Law (Judicial) Department requesting him to give priority of the construction of the proposed New High Court Building over other works considering the situation in which the High Court was functioning. The Secretariat of the Council of Ministers, Government of East Pakistan forwarded a copy of the minutes of the meeting of the Council of Ministers held on 22.11.1962 in the Government House regarding the site for the New High Court Building which runs as under:

"Government of East Pakistan.  
SECRETARIAT OF THE COUNCIL OF MINISTERS  
DECISION OF THE MEETING OF THE COUNCIL OF MINISTERS.

held on the

22<sup>nd</sup> November, 1962 in the Govt. House.

Subject: - THE SITE FOR THE NEW HIGH COURT BUILDING.

After general discussion on the subject it was decided that

- (1) A suitable building should be constructed for the High Court within the existing Compound of the High Court.
- (2) The present High Court Building may be used for the proposed permanent Bench of the Supreme Court.

Sd/- K.A. Hague.  
Chief Secretary.

No: 863(1) SCM.

In view of the urgency of the matter copy of the draft minutes forwarded to the Secretary to the Govt. of East Pakistan, Law Department for information and immediate action without waiting for the final minutes.

Sd / - Illegible  
Deputy Secy. to the Council  
Ministers.

Dated,  
The 4<sup>th</sup> Dec.'62"

In the aforesaid meeting of the Council of Ministers, it was decided that a suitable building would be constructed for the High Court within the existing Compound of the High Court and a copy of the said decision was communicated to the Secretary, Law Department "for information and immediate action without waiting for the final minutes." The Office of the Executive Engineer, Dacca, Dev. (Bldg) Divn.IV by their Memo No.457 dated 16.02.1963 wrote to the Registrar, Dacca High Court stating that the construction work of the New High Court Building would be taken up very soon and as such temporary Workers Shed cum-Godown was to be constructed immediately within the compound of the High Court Building. The Secretary, Works (B & R) Department, Government of East Pakistan vide his Memo No.480 dated 30.07.1963 wrote to the Registrar, High Court, Dacca stating that several models for the proposed High Court Building have been submitted by competing Architects for which a meeting would be held in the Govt. House on 31.07.1963 at 11-30 A.M. for consideration and requested him to place the matter before the learned Chief Justice so that His Lordships would be pleased to participate in the discussion. Additional Chief Engineer (Bldgs), C & B, Government of East Pakistan by the Memo No.1019-D1 dated 16.08.1963 wrote to the Registrar, High Court informing him that on the day when the design was approved by the Committee in the Government House, it was decided that the Committee would like to inspect the layout plan on the 29<sup>th</sup> August, 1963. On 30.09.1963 the Superintending Engineer, Dhaka Building Circle I, Government of East Pakistan vide his Memo No.9039 dated 30.09.1963 informed the Registrar, High Court stating that they were not competent to forward any plan for inspection and approval of the High Court and the Directorate may be consulted for the plan. The Registrar wrote to the Chief Engineer regarding the same matter. Thereafter, the Assistant Chief Engineer, Building Directorate, Development Branch I, Government of East Pakistan by Memo No.1513-DI dated 19.11.1963 wrote to the Registrar, High Court informing that the plans for the New High Court Building having been finalized would be submitted to the Law (Judicial) Department for their approval and he was requested to contact the Law (Judicial) Department for the purpose of his examination of the plans. Decision

was also taken for construction of Bar Library Building adjacent to the New High Court Building and the Registrar, High Court wrote to the Secretary, Law (Judicial) Department, Government of East Pakistan about the same on 20.07.1964. The Registrar, East Pakistan High Court on 11.11.1965 also wrote to the Secretary, Government of East Pakistan, Law (Judicial) Department requesting him to take necessary steps for construction of the Bar Library Building expeditiously along with the construction of the New High Court Building. The Registrar, High Court by memo dated 18.01.1966 requested the Secretary, Government of East Pakistan, Law (Judicial) Department to take early steps for the execution of the scheme for construction of Bar Library Building on the Western side of the New High Court Building. Thereafter, the Registrar, High Court by Memo dated 03.06.1966 further requested the Secretary, Government of East Pakistan, Law (Judicial) Department to take necessary steps to widen the road from the Segunbagicha crossing to the Ramna Park Gate and also to construct three traffic islands on the three touching points of the entrances and exits of the New High Court Building.

In the meantime, keeping in view the approved plan, the foundation of the New High Court Building was laid by the then Governor of East Pakistan in September, 1963 and the construction work started in 1964 as per the approved plan. The New High Court Building was constructed to the north-eastern side of the old High Court Building within the specified and demarcated area of the High Court of East Pakistan surrounded by specially designed boundary wall with grille fencing. Thereafter, decision was taken by the Government to formally inaugurate the New High Court Building by the President of the then Pakistan.

To that end in view, the Director of Regional Information, Government of Pakistan, Pakistan Secretariat, 2<sup>nd</sup> Block, Shegun Bagicha, Dacca-2 vide Memo No.3843 / 68 dated 10.09.1968 requested the Registrar, High Court, Dacca to furnish some important background information with full particulars about the New High Court Building for release to the press on the occasion of its formal inauguration by the President of Pakistan. In the present context, it is pertinent to reproduce the aforesaid Memo which reads as under:-

"REGIONAL INFORMATION OFFICE  
GOVERNMENT OF PAKISTAN  
DACCA

Pak. Secretariat, 2nd Block,  
Shegun Bagicha, Dacca-2

No.3843 / 68

Dated 10.09.1968



To  
The Registrar,  
Dacca High Court,  
Dacca.  
Sir,

I have the honour to request you to furnish us with some important background information about the New High Court Building for release to Press on the occasion to its formal opening by the President of Pakistan.

In the Press release, we propose to explain the purpose of constructing the New High Court Building along with some details about its costs, design, accommodation, area, material used and other allied things.

It is requested that the material may kindly be supplied to the undersigned well in time.

Yours obediently,  
Sd/ - Illegible  
(Abu Taher)

for Director of Regional Information."

It is to be noted that the Registrar of the High Court vide Memo No.3959-G dated 13.09.1968 requested the Executive Engineer, C & B Department, Dacca to supply the full particulars of the New High Court Building along with some details about its costs, design, accommodation, total area and other allied things to inform the Regional Information Office, Central Government.

Thereafter, the Executive Engineer, Development Building Division-IV, Dacca, Government of East Pakistan vide Memo No.3042 dated 17.09.1968 replied to the Registrar, East Pakistan High Court supplying the particulars of the New Building of the East Pakistan High Court with reference to his Memo No.3959 G dated 13.09.1968. The particulars of the New High Court Building (presently the Main Building of the Supreme Court of Bangladesh) submitted by Mr. Md. Atiar Rahman Munshi, Executive Engineer, Development Building, Division IV, Dacca can be gathered from the Memo dated 17.09.1968 which reads as follows:-

"Phone No.81488.

Government of East Pakistan  
Office of the Executive Engineer,  
Dev. Bldg.Divn.IV, Dacca

Memo No.3042

dated 17.09.68

To  
The Registrar,  
East Pakistan High Court,  
Dacca.

Sub: - Particulars of the New Bldg. of the East Pakistan High Court.

Ref: - His Memo No.3959-G. dt.13.9.68.

With reference to the above, the undersigned has the honour to send herewith the following particulars of the New High Court Bldg. as per attached sheet for favour of perusal.

Endo: - 1 Sheet.

Sd/- Illegible  
Executive Engineer,  
Dev.Bldg.Divn.IV,Dacca.

mau.17.9.68.

PARTICULARS OF NEW HIGH COURT BLDG.

(A) Estimate Cost:

1) Building	Rs.60,25,000/00
2) Sanitary, Plumbing & water supply	Rs.6,50,000/00
3) Electrification	Rs.8,00,000/00
4) Compound Roads, Walls &v Site Improvements.	Rs.2,75,000/00
5) Ancillary Building (Garages, Staff qts.godown etc.)	Rs.3,00,000/00
	-----
	Rs.80,50,000/00

(B) (1) Date of Commencement of the work	January'1964
(2) Date of Completion of the work	December'1967

(C) Floor Area of the Building:

(1) Ground Floor	= 99,247 sft.
(2) First Floor	= 95,237 sft.
(3) Second Floor	= 29,123 sft.

-----  
Total 2,23,607 sft.

(D) Total number of rooms:

(1) Total No. of Rooms.	=187 Nos.
(2) Total No. of Court Rooms	=19 Nos.
(3) Total No. of Judges Chambers	=19 Nos.
(4) Total No. of Judges' Retiring Rooms	=19 Nos.
(F) Total N. of bath rooms	= 70 Nos.
(G) (1) Chief Justice Court Room	=80' X 45'
(2) Senior Judges Court Room	=57' X 37'
(3) Other Judges Court Room	= 42' X 32'
(H) (1) Width of inner Verencah	=14'-0 to 15'-0
(2) Width of outer Verendah	=8'-0 to 10'-0
(I) Length and breadth of the Bidg.	=430'-0 and 380'-0
(J) (i) Height of the Bldg. from ground	= 103'-0

level to the top of the main dome

- (ii) Height of Ground Floor = 13'-0  
 (iii) Height of 1<sup>st</sup> Floor = 17'-0  
 (iv) Height of 2<sup>nd</sup> Floor = 14'-6"

(K) Materials Consumed:

- (1) Bricks. = 80,00,000 Nos.  
 (2) Cement. = 4,500 tons.  
 (3) Steel. = 1,200 tons.  
 (4) Timber. = 14,000 cft.  
 (5) Sand. = 8,00,000 cft.  
 (6) G.I. Pipe. = 18,000 rft.  
 (7) Mosaic Chips. = 8,000 bags.  
 (8) Marble slab. = 4,000 sft.  
 (9) White Cement = 80 tons.  
 (10) Bitumen. = 75 tons.  
 (11) River Shingles. = 25,000 cft.  
 (12) Asbestos Pipe = 10,000 cft.  
 (13) Glazed tiles. = 800 dozens.  
 (14) Glass Panes. = 24, 000 sft.  
 (L) Architecture - Muslim Architecture of medial period.  
 (M) Area of the Compound ----- 50 acres.  
 (N) Architect = M/s. Chisty, Lahore.

Sd/- Illegible

(Md. Atiar Rahman Munshi)  
 Executive Engineer,  
 Dev.Bldg.Divn.IV,Dacca.

mau.17.9.68."

From a careful scrutiny of the particulars of the New High Court Building supplied by the Executive Engineer, Dev. Bldg. Div.IV, Dhaka it appears that the Government admitted that the whole area of the Compound of the High Court is not less than 50 acres. Subsequently, the New High Court Building of East Pakistan was inaugurated on 24.09.1968 by the President of Pakistan, Field Marshal Mohammad Ayub Khan.

In our extreme anxiety we have meticulously perused the original records of the Court in respect of the establishment of the High Court of East Bengal subsequently renamed as the High Court of East Pakistan, Dacca and also construction of New High Court Building within the compound specified and demarcated by specially designed boundary wall with grille fencing and thereafter to the west of the New High Court Building, the High Court Bar Association Building was constructed as per direction and initiative of the learned Chief Justice of the High Court of East Pakistan. On a careful examination of the materials on record we have found that the entire area of the then Governor House

or the New Government House measuring approximately 55.05 acres of land under C.S. Khatian No.16855, appertaining to C.S. Plot Nos.12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 belonged to the High Court of East Bengal, subsequently renamed as the High Court of East Pakistan and now the Supreme Court of Bangladesh by operation of law.

In our view, the establishment of the High Court of East Bengal in the erstwhile Governor House, and the recording of this area of 55.05 acres of land in the C.S. record in the name of Bharat Samrat along with the admissions and acknowledgments made by the executive authorities in correspondences, made with the then High Court of East Bengal and its successors, are sufficient proof of the possession of the then High Court of East Bengal over the entire area of 55.05 acres of land under. C.S. Khatian No. 16855, appertaining to C.S. Plot Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 and the same also constitute good evidence of transfer of title of the said property in favour of the then High Court of East Bengal after creation of the then Pakistan in 1947. It is our proud privilege to observe that the Supreme Court of Bangladesh is a creature of the Constitution of the People's Republic of Bangladesh. But its origin can be traced back to the then High Court of East Bengal which was later on renamed as the High Court of East Pakistan, and after the independence of Bangladesh through a historic struggle for national Liberation and the constitutional development of the emergence of the People's Republic of Bangladesh and the enactment of the Constitution, the Supreme Court of Bangladesh by operation of law got all powers and jurisdictions along with physical infrastructures and properties from its predecessors. Under the constitutional dispensation, Article 94(1) mandates that there shall be a Supreme Court for Bangladesh to be known as Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division. Article 95(3) of the Constitution provides that in this article, "Supreme Court" includes a Court which at any time before the commencement of this Constitution, exercised jurisdiction as a High Court in the territory of Bangladesh. Therefore, there should not be any doubt in the mind of anybody to acknowledge, understand and admit that the High Court of East Bengal renamed as the High Court of East Pakistan by operation of law paved the way for the establishment of the Supreme Court of Bangladesh by operation of law after liberation of Bangladesh; that the entire area demarcated by boundary wall of the Governor House or the New Government House in which the High Court of East Bengal was established on 17.11.1947 comprising an area of 55.05 acres of land and subsequently within the compound of the High Court of East Pakistan towards its north-east side the New High Court Building constructed by the then Government was formally inaugurated by the President of Pakistan on 24<sup>th</sup> September, 1968. Since 17.11.1947,

nobody raised any objection about the location and total area of the High Court of East Bengal and thereafter the Supreme Court of Bangladesh till such time when Extra-Constitutional phenomenon prevailed in the country when in the South-Western part of the Supreme Court premises an area of 1.32 acres was purportedly leased out without lawful authority to the Shishu Academy on which a building was constructed in 1977 and thereafter 2.108 acres was also purportedly leased out on 30.12.1989 without lawful authority. The building of the Department of Roads and Highways was illegally constructed to the northern side of the compound of the Supreme Court in early 1980s. Nobody can deny the establishment of the High Court of East Bengal in the Governor House which was ultimately succeeded by the Supreme Court of Bangladesh after the emergence of Bangladesh as an independent and sovereign nation. Admittedly the Supreme Court of Bangladesh has been functioning in its permanent site situated in the erstwhile Governor House, Dhaka. A mere a mistake or an inadvertent omission of entry in the record of rights in respect of the land of the Supreme Court in the S.A., R.S. and Dhaka City Settlement operation would not affect the right, title and interest of the Supreme Court in respect of the land in question in view of the historical perspective, constitutional development of the Supreme Court of Bangladesh and other historical documents /correspondences elaborately discussed herein above.

The Supreme Court of Bangladesh being the Apex Court of the country is an institution created by the Constitution which by operation of law is a successor of the High Court of East Bengal and the High Court of East Pakistan. To our utter surprise and dismay, we have observed that the concerned Departments of the Government and also the Authorities of the then High Court of East Bengal and subsequently, the Supreme Court of Bangladesh could not take proper steps in recording the name of the High Court or the Supreme Court in the S.A., R.S. and D.M.S. operation. On the other hand, it is unfortunate to note that some portion of the land of the Supreme Court was recorded in the name of the Department of Construction and Building (C & B) or Public Works Department, Department of Roads and High ways and Deputy Commissioner, Dhaka and Shishu Academy after the purported lease in its name. In this scenario, can it be said that the then High Court of East Bengal and ultimately the Supreme Court of Bangladesh do not have any land or, more specifically, place of sitting. Can any one deny the very existence of the then High Court of East Bengal/East Pakistan or the Supreme Court of Bangladesh within the territory comprising the present Bangladesh. We are constrained to observe that any such assertion would create constitutional deadlock. All the constitutional documents prior to the enactment the Constitution of the People's Republic of Bangladesh and ultimately the Constitution in unequivocal

terms declares that there shall be a Supreme Court for Bangladesh to be known as the Supreme Court of Bangladesh comprising the Appellate Division and the High Court Division. In the foregoing discussions, we have found that the then High Court of East Bengal was established in the Governor House or the Government House. In other words, the entire area of the Governor House specified and demarcated by specially designed boundary wall with grille fencing is the land of the Supreme Court. It is true that according to Section 103(B)(5) of the Bengal Tenancy Act every entry in a record of right finally published shall be the evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved to be incorrect [Akbar Ali and others -Vs- Zahiruddin Kari and others, 30 DLR (AD) 81] In this reported decision, D.C. Bhattacharya, J in delivering the judgment of the Court quoted with approval Sir Lawrence Jenkins judgment of the Judicial Committee of the Privy Council which reads as under:-

"The term itself seems to be self expressive, Sir Lawrence Jenkins in delivering the judgment of the Judicial Committee of Privy Council in the case of Dakas Khan Vs. Ghulam Khan Qasim, I.L.R. 45 Cal. 793 28 C.L.J.J. 441 explained the nature of an entry in a record of right, as is generally understood, in the following words:

'A record of rights has been described by Sir Henry Maine as a detailed statement of all rights in land drawn up periodically by the functionaries employed in setting the claims of the Government to its shares of the rental.....

Though it does not create a title, it gives rise to a presumption in its support, which prevails until its correctness is successfully impugned'."

It is well established by series of decisions of this Court that presumption of correctness under Section 103(B) of the Bengal Tenancy Act has to be rebutted by the persons who alleges it. Admittedly, the major portion of the land of the Supreme Court has been under possession and control of the Supreme Court of Bangladesh wherein the Supreme Court Old Building, Main Building, Annex Building of the Supreme Court, Supreme Court Mazar and Mazar Masjid, different Offices/Sections of the Supreme Court, Staff quarters and compound of the Supreme Court have been located. We have already taken judicial notice of the development of the Supreme Court by operation of law since 1947 and found that at no point of time there was any initiative taken by the Government or the Supreme Court Authority to correct the record of rights in the same of the Supreme Court of Bangladesh. In the instant case, the entire land was erroneously recorded in the name of the Deputy Commissioner, Dhaka, Department of Construction and Building (C & B), the Department of Roads and Highways and the Shishu Academy without any legal basis. In view of the constitutional development of the Supreme Court of Bangladesh and the historical

documents/correspondences perused and discussed herein above, the writ petitioner-respondents have been able to successfully rebut the presumption of correctness of the record of rights in the names of other Organizations or Departments, because of the continuous possession and control of the Supreme Court on the major portion of the land of the Supreme Court. When the Supreme Court of Bangladesh has been in continuous ownership and possession of its land and structures thereon, mere recording of the land erroneously in the names of other organizations or Departments would not by itself entitle them to claim ownership or control over the land in question and therefore the lease purported to have been granted by these Departments in favour other organizations or bodies would not transfer any title in favour of them. At any point of time, the then Government of East Pakistan had not taken any initiative to lease out any portion of the land or to construct any building for other Departments or organizations on the premises of the High Court of East Pakistan. The High Court of East Bengal or East Pakistan had been established with the permission of the Governor of East Bengal in the Governor House or the Government House comprising an area of 55.05 acres of land appertaining to the C.S. Khatian No. 16855 recorded in the name of Bharat Samarat. The relevant files and documents in respect of establishment of the High Court of East Bengal submitted by the respondent No.7, the Registrar, which fully corroborates that subject land belongs to the Supreme Court of Bangladesh and the concerned Departments of the Government acknowledge the same by their conduct at different stages since 17.11.1947. When the Governor of East Bengal in presence of the then Chief Minister of the Province, the Chief Justice and his companion judges of the High Court of East Bengal, Members of the Court Bar, Civil Servants and elites of the Country granted the land of the Governor House to the High Court of East Bengal followed by their presence in the opening ceremony of the High Court corroborates the contention of the Registrar. The National Eidgah Maidan within the premises of the Supreme Court was opened with the permission of the then Chief Justice to use the land as Eidgah Maidan for offering Eid Prayers twice in a year without any other activities. It is also brought to our notice that at the time of construction of the Office of the Bangladesh Bar Council, the Ministry of Land advised the Bangladesh Bar Council, to seek permission from the Chief Justice of Bangladesh for construction of their Office Building on the land of the Supreme Court and, accordingly, on the prayer of the Bangladesh Bar Council, the then Chief Justice permitted them to construct their Office Building on a piece of land owned by the Supreme Court of Bangladesh. It is also true that as per desire/order of the then Chief Justice of the High Court of East Pakistan, the Bar Association Building had been constructed on the premises of the High Court of East Pakistan, which is now within

the premises of the Supreme Court of Bangladesh. We have also taken judicial notice of the existence of the Shrine of Hajrat Khaja Sharfuddin Chisti (Ra) on the southern portion of land of the Supreme Court premises. The Chief Justice of Bangladesh as the Chief Custodian of the Bangladesh Supreme Court Mazar Sharif and the Mazar Masjid has to constitute the Supreme Court Mazar and Masjid Administration and Management Committee to administer and manage the affairs of the Mazar Sharif and the adjacent Masjid and look after the interests and welfare of the devotees of the Mazar Sharif and the mussallies of the Masjid. From the foregoing discussions, it is abundantly clear that the Supreme Court has been in continuous ownership, possession and control of the land in question. Mere preparation of record of rights in S.A, R.S. and D.M.S. operation in the name of different Departments and institutions of the Government would not disentitle the Supreme Court of its ownership of the land in question. In the case of the Government of Bangladesh represented by the ADC -vs- AKM Abdul Hye and others 56 DLR(AD) 53, the Appellate Division held that the presumption as to the entries in the record of rights (R.S. Khatian) so attached under section 144A of the S.A.T. Act, 1950 is rebuttable by leading evidence from the side of the person questioning correctness of the entry made therein. The Supreme Court's continuous ownership and possession has rebutted the presumption of correction of the record of rights.

Because of the situation prevailing in the country at that time, the then Rulers of the Country without showing any regard to the Constitution and rule of law and without giving any importance to the interest of the Supreme Court of Bangladesh established the Shishu Academy in the South Western-Side and the Office of the Department of Roads and High Ways in the northern-side within the Supreme Court premises which was/is not proper in any way. From the foregoing discussions, it is well established that the then High Court of East Bengal or the High Court of East Pakistan and, finally after the liberation of Bangladesh by operation of law, the Supreme Court of Bangladesh has been the owner of the entire land measuring 55.05 acres of the then. Governor House specified and demarcated by specially designed boundary wall with grille fencing. In the facts and circumstances of the case, we have invoked the extra-ordinary power of this Division under Article 104 of the Constitution for doing complete justice in the instant case. This Article does not confer new jurisdiction but it gives power to the Court where it has jurisdiction in a matter before it. When this Court finds that no remedy is available to the present respondent though gross injustice has been committed to it, this Division would definitely invoke the jurisdiction under Article 104 to do complete justice in the matter. In the case of Bangladesh -Vs-Shamironnessa, 2005 BLD (AD) 225, this Division held that recourse to the provisions of Article 104 may be



justified when a substantial justice under law and on undisputed facts can be made so that the parties may not be pushed to further litigation. While speaking about complete justice in the case of National Board of Revenue, Dhaka -Vs- Nasrin Banu and 5 others (1996) 48 DLR (AD) 171 at page 178 paragraph 26, this Division observed:

"The words "complete justice" do not yield precise definition. Cases vary, situations vary and the scale and parameter of complete justice also vary. Sometimes it may be justice according to law, sometimes it may be justice according to fairness, equity and good conscience, sometimes it may be in the nature of arbitration, sometimes it may be justice tempered with mercy, sometimes it may be pure commonsense, sometimes it may be the inference of an ordinary reasonable man and so on."

This Division in the case of Jamuna Television Ltd. and another - Vs- Government of Bangladesh and others reported in 65 DLR (AD) 253 at pages 280-281 paragraphs 61 and 63 discussed about the scope of Article 104 of the Constitution in the following terms:-

"61. Under Article 104 of the Constitution in the exercise of its jurisdiction this Division is entitled to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it. It confers very wide powers on this Division to do complete justice in a matter pending before it. In the case of Khandker Jillul Bari -Vs- The State 2009 BLT (AD) 28 this Division held that its exclusive power under Article 104 the Constitution applies as special and extraordinary jurisdiction to avoid miscarriage of justice by establishing complete justice and that this extraordinary power has been given to it and not to the High Court Division. The object of this Article is to enable this Division to give such directions or pass such orders as necessary to do complete justice. This inherent power has been conferred upon this Division to do the right and to undo the wrong and to act ex-debito justicia to do the real and substantial justice for which they exist. The conferment of power is under special circumstances and for special reasons. Article 104 gives a power to this Division where it has jurisdiction but it does not confer a new jurisdiction. In the case of Raziul Hasan -Vs- Bodiuzzaman Khan and others 16 LD (AD) (1996) 253 this Division held that when it is found that a gross injustice has been done to the appellant for no fault or laches of his own and a valuable right accrued to him is being lost and no other remedy is available to him for redress of his grievance, this Division found it to be a fit case to exercise its jurisdiction under Article 104 of the Constitution for doing complete justice.

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63. The expression 'complete justice' contained in Article 104 is of wide amplitude. Article 104 does not envisage any limitation regarding causes or the circumstances in which power is to be exercised. The

exercise of such power is left completely to the discretion of this Division. The power of passing any order or decree in the interest of justice of justice has been conferred upon this Division under Article 104. The powers of this Division under Article 104 are inherent and are complementary to those powers which are specifically conferred on this Division by various statutes."

In the case of the Delhi Judicial Service Association -Vs- State of Gujarat reported in (1991) 4 SCC 406 at page 463, paragraph 51, the Supreme Court of India observed as follows:

"No enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute."

In the instant case, we have found that the entire area of the then Governor House measuring 55.05 acres of land specified and demarcated by specially designed boundary wall with grille fencing belongs to the Supreme Court of Bangladesh. Mere failure on the part of the Supreme Court Administration or the concerned Department of the Government in recording the name of the High Court of East Pakistan or the Supreme Court of Bangladesh in the record-of-rights during the S.A, R.S. and the D.M.S. Operations will not disentitle the Supreme Court from its right, title, interest and possession of the land. It is the historical truth and the admitted fact that the entire area of the land of the Governor House or the New Government House of the Province of East Bengal and Assam belonged to the then High Court of East Bengal/East Pakistan and subsequently, the Supreme Court of Bangladesh, though some portions of the land was illegally occupied by some other Departments or institutions of the Government without the permission of the Supreme Court Authority because of the situation prevailing in the country at that time. We have found that the High Court of East Bengal was established in the Governor House or the Government House with the approval of the then Governor of East Bengal within the knowledge of the then Chief Minister of East Bengal in as much as the successive Constitutions of Pakistan and ultimately the Constitution of the People's Republic of Bangladesh, other laws of the country and materials on record testify and guarantee the very existence of the Supreme Court of Bangladesh in its permanent site, i.e., the then Governor House, Dhaka. We also take judicial notice of the fact that initially on 17.11.1947, the High Court of East Bengal was formally opened in the then Governor House or the Government House by the Governor of East Bengal in presence of the then Chief Minister and other Ministers of the Province, the Chief Justice and his companion judges of the High Court of the East Bengal, Members of the

High Court Bar including its President, Shere-Bangla A.K. Fazlul Huq, Civil Servants and elites of the Country. We are of the view that the Constitution of Bangladesh testifies the very existence of the Supreme Court of Bangladesh, which has been functioning very much in its permanent site in the Governor House by succession since the establishment of the High Court of East Bengal in 1947. "The New High Court Building" which is presently known as the "Main Building of the Supreme Court of Bangladesh" was constructed in 1968 on the Supreme Court premises of the then High Court of East Pakistan and presently the Supreme Court of Bangladesh. From the foregoing discussions, the irresistible conclusion is that the Constitution of the People's Republic of Bangladesh which is the supreme law of the land and an instrument of the highest standing recognizes, testifies and guarantees the very existence of the Supreme Court of Bangladesh with its premises located in its permanent site, i.e., the then Governor House/ New Government House, Dhaka. No one raised any objection at any point of time about the very existence of the Supreme Court in its permanent site or the ownership of the entire land on which the Supreme Court has been established.

Mere construction of a building on a portion of the land of the Supreme Court by a Department or organization without the permission of the Supreme Court or even purported grant of a lease of a portion of a land of the Supreme Court by an unauthorized person or Department without lawful authority in the name of Shishu Academy or the Department of Roads and High Ways or the construction of the Building of the Department of Roads and High ways therein does not create any title to the land in favour of those Departments or organizations. It is an incorrect proposition to state that since the land of the High Court of East Bengal and, subsequently after the emergence of Bangladesh, the land of the Supreme Court of Bangladesh has not been recorded in its name during the S.A. the R.S. or the D.M.S. operations, the Supreme Court loses its right, title, interest and possession of the land in question. We have taken judicial notice of the events and developments since the establishment of the High Court of East Bengal in 1974 till the inauguration of the New High Court Building of the then East Pakistan by the President of Pakistan in 1968 and, subsequently after liberation of Bangladesh, the establishment of the High Court of Bangladesh and, finally, the Supreme Court of Bangladesh and the laying of the foundation stone of the Supreme Court Annex Building in 1998 and inauguration of the Annex Building by the Prime Minister of Bangladesh, Sheikh Hasina in 2001. It is immaterial whether the property was recorded in the name of the Supreme Court or not, facts remain that the land in question belongs to the Supreme Court of Bangladesh comprising an area of 55.05 acres with little interruption on a small portion of land to the south-west side

of the Supreme Court premises in the name of Shishu Academy and another portion of land to the northern side in the name of the Department Roads and High Ways. Having gone through the judgment and order passed by the High Court Division we have found that the High Court Division considered the materials on record and having heard the submissions of all the parties rightly made the Rule absolute by holding that the "exclusive possession and control by the then High Court of East Pakistan creates irrefutable presumption to establish the fact that it was the East Pakistan High Court that was vested with the Bharat Samrat's said property which stood for the Governor House, in its entirety" and that "the land now occupied by the Department of Roads and Highways, as well as by the Shishu Academy are actually the land of the Supreme Court of Bangladesh which inherited the same by operation of law, from the then East Pakistan High Court. From foregoing discussion and finding, we are convinced to hold that the writ respondents-petitioners are possessing the lands without any lawful authority.

Article 104 of the Constitution provides that the Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or pending before it. In the instant case, this Court have taken judicial notice of the fact that the then High Court of East Bengal was established in the Governor House or the New Government House comprising an area of 55.05 acres specified and demarcated by specially designed boundary wall with grille fencing and the said Court was subsequently renamed as the High Court of East Pakistan and, finally after the emergence of Bangladesh by operation of law, the Supreme Court of Bangladesh. The High Court Division rightly found that the exclusive possession of the chunk of land was first granted to the Governor House and then to the High Court of East Bengal and then by operation of law to the Supreme Court of Bangladesh by way of succession. It has been noticed that the Government vide Memo No.3042 dated 17.09.1968 has already acknowledged that the whole area of the premises of the Supreme Court of Bangladesh comprising of 50 acres of land (approximately). This corroborates the case of the Writ Petitioners. On perusal of the materials on record it appears that the graveyards of the "Three National Leaders" and the Institution of Engineers Bangladesh with, structures there-on was constructed on the land of the Supreme Court. Apart from that a portion of land of the Supreme Court premises to the south-eastern side is being used, with the permission of the Chief Justice, as the National Eidgah Maidan for holding Eid Prayers twice in a year under the management of the City Corporation. It is also on the record that the then Chief Justice of Bangladesh permitted the Bangladesh Bar Council to construct their Office Building on a portion of land to the north-eastern side of the Supreme Court premises, In

view of the foregoing findings and observations, we are invoking the power under Article 104 of the Constitution to do complete justice in holding that the land recorded in the name of Bharat Samrat under C.S. Khatian No. 16855 appertaining to C.S. Plot Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 measuring an area of 55.05 acres of land belongs to the Supreme Court of Bangladesh. There is no illegality in the impugned judgment and order passed by the High Court Division which does not require any interference by this Court.

For the aforesaid reasons, we do hereby direct the present petitioners, namely, the Department of Roads and Highways and the Bangladesh Shishu Academy, to hand over the possession of the aforesaid land with structures there on under their occupation in favour of the Supreme Court of Bangladesh without further delay, preferably, within 4(four) months from the date of the receipt of a copy of this judgment and order.

Invoking power under Article 104 of the Constitution we also do hereby direct the respondent Nos.8 to 10 to correct the record-or-rights in the name of the Supreme Court of Bangladesh within 4(four) months from the date of the receipt of a copy of the judgment and order.

