

19.12.2022
Item No.02
Court No.6.
S. De

**F.M.A. 1092 of 2019
with
I.A. No. CAN/1/2019
(Old No. CAN/3063/2019)
I.A. No. CAN/2/2019
(Old No. CAN/7181/2019)**

**Zarina Reshma & Anr.
Vs
Kachari Sakher Bazar Khuchara Chaul Babasayee
Samity & Ors.**

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
...for the appellants.
Mr. Sayan Sinha,
...for the Baruipur Municipality.
Mr. Partha Sarkar,
...for the writ
petitioner/respondent.

By consent of the parties, the appeal and the connected applications are taken up together for hearing.

The appellants herein were the private respondents in the writ petition. It is submitted that the writ petition was taken up for hearing out of turn and the private respondents could not be represented before the learned Single Judge. The Division Bench, at the time of admission of the appeal, granted an interim order which continues till date.

Since the private respondents were not heard by the learned Single Judge, we are of the view that the matter should be remanded to the learned Judge

having determination to hear the matter for fresh decision.

Accordingly, without going into the merits of the case, solely on the ground that the private respondents were denied an opportunity of hearing, we set aside the order under appeal and remand the matter back to the learned Single Judge having determination to hear the writ petition.

The respondents in the writ petition who have not filed affidavit-in-opposition will be at liberty to do so by January 9, 2023. The writ petitioners will be at liberty to file affidavit-in-reply by January 16, 2023. The Municipality prays for leave to file a supplementary affidavit. Such leave is granted and let such affidavit be filed by January 9, 2023.

All parties will be at liberty to mention the matter before the learned Single Judge after completion of affidavits.

We have not gone into the merits of the case and all points are left open to be decided by the learned Single Judge.

F.M.A. 1092 of 2019 is, accordingly, disposed of along with the applications being I.A. No. CAN/1/2019 (Old No. CAN/3063/2019) and I.A. No. CAN/2/2019 (Old No. CAN/7181/2019).

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as

expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)