07. 20.12.2022
BD Ct.15

W.P.A. 10435 of 2008

Food Corporation of India & Anr.
-vs-
Burdwan Municipality & Ors.

Mr.Kamal Kumar Chattopadhyay
... for the petitioners.

Mr. Subhasish Bandopadhyay
... For the Municipality.

Mr. Altamas Alim
Mr. Swapan Kumar Kar
... for the respondent
nos. 2 & 3

Today the writ petition is taken up for consideration finally pursuant to the order passed by this Court on 24th November, 2022. Supplementary affidavit filed by the petitioners and the affidavits in opposition filed on behalf of the respondent nos. 2 and 3 are taken on record.

Mr. Chattopadhyay, learned advocate representing the petitioners submits that the petitioners are not willing to file affidavit in reply. It has also been submitted by Mr. Bandopadhyay, learned advocate, representing the Burdwan Municipality that the municipality has not used any affidavit in opposition.

The subject matter of challenge in the writ petition is an order dated 13th March, 2008 issued by the Chairman, Burdwan Municipality whereby the tax payable by the petitioners being the occupiers of the go-down as well as the owners of the godown, being the respondent nos. 2 and 3, was reassessed and it was decided Rs. 2,26,050/- was payable towards annual tax and surcharge was fixed at Rs. 45210/- with effect from 2006-07.

The petitioners being the occupiers of the godown are aggrieved by such refixation of annual tax and surcharge with effect from 2006-07 since according to the petitioners municipality was approached by them vide letters dated 25th October, 2007, 17th November, 2007 and 10/12/13th March, 2008, disputing computation of annual tax of Rs. 2,77,835/- and surcharge of Rs. 55,567/- with effect from 2006-07. It has been submitted by the learned advocate for the petitioners that based on such complaints Chairman of the Burdwan Municipality took decision vide order dated 13th March, 2008 without granting opportunity of hearing to the petitioners. Fact remains 50% of the annual tax and surcharge which has been reassessed by the municipality was to be paid by the petitioners being occupiers of the godown, therefore, according to the petitioners, opportunity of hearing was required to be given and failure on their part to hear the petitioners results in violation of natural justice.

Municipality and the private respondents are represented by learned advocates.

It has been submitted by Mr. Bandopadhyay, learned advocate representing the Municipality that no opportunity of hearing was given to the petitioners since petitioners were considered as occupiers.

The learned advocate representing the private respondents submits that if this order of reassessment is set aside and a fresh opportunity of hearing is given to the petitioners as well as private respondents before taking decision afresh on re-fixation of annual property tax they are willing to participate in the said hearing proceeding to be conducted by the Municipality.

This Court has heard the learned advocates representing the respective parties and perused the order dated 13th March, 2008 which is under challenge in the present writ petition. It further appears on hearing the learned advocates representing the petitioners that being dissatisfied with the fixation of annual tax and surcharge with effect from 2006-07 representations were made vide letters dated 25th October, 2007, 17th November, 2007 and 10/12/13th March, 2008 disputing such fixation of annual tax and surcharge. On perusal of the decision of the Chairman of Burdwan Municipality dated 13th March, 2008 it transpires that the decision has been unilaterally taken without granting opportunity of hearing to the petitioners which appears to this Court was required since decision was taken on the deliberations made by them through the aforesaid letters and fifty percent of assessed tax was payable by the petitioners.

Accordingly, the decision as contained in the memo dated 13th March, 2008 of the Chairman, Burdwan Municipality stands set aside.

This Court directs the concerned authority of Burdwan Municipality to take decision afresh with regard to refixation of annual valuation and surcharge with effect from 2006-2007 at an early date after granting opportunity of hearing to the petitioners and the private respondents. Before conducting hearing by the concerned authority of the Municipality at least seven day's notice to be served upon the petitioners and the private respondents.

Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

However, it is made clear that till such decision to be taken by the concerned authority of the Municipality the petitioners shall go on paying annual tax and surcharge at the old rate till the date of surrendering the godown by the petitioners in favour of the private respondents, if not already paid. Needless to add that private respondents shall also pay tax and surcharge, if not paid, at the old rate till decision is taken by the Municipality.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)