

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

Review Application No.123 of 2021

1. State of Tamil Nadu
Rep. by its Secretary to Government
Highways and Minor Ports Department
Fort St. George
Chennai 600 009.
2. The District Collector
Chennai District
Chennai.
3. The Special Tahsildar
Aminjikarai Division
Chennai District
Chennai 600 029.
4. The Divisional Engineer (Highways)
Chennai Metropolitan City Development
Project Division IV
Chennai 600 016.
5. The Divisional Engineer (Highways)
Construction and Maintenance
Chennai City Major Roads SH-2
Chennai 600 015.

6. The Assistant Divisional Engineer
State Highways Construction and Maintenance
Highway Roads Sub Division
Chennai City Major Roads SH-2
Chennai 600 015.

.. Petitioners

Vs.

R.Jothikrishnan

.. Respondent

Prayer: Application under Order XLVII, Rule 1, read with Section 114 of Civil Procedure Code, to review the order dated 12.03.2021 made in OSA No.172 of 2020.

For Petitioners : Mr.R.Shunmugasundaram
Advocate-General
Assisted by
Mr.P.Muthukumar
State Government Pleader

For Respondent : Mr.R.Subramanian

ORDER

(Order of the Court was made by P.D.AUDIKESAVALU, J.)

The Respondents in OSA No.172 of 2020, which appeal had been disposed by order dated 12.03.2021, have applied for review of the said order. Mr.R.Shunmugasundaram, Learned Advocate-General appearing on their behalf, points out that the condition imposed on the State to deposit a certain amount as security in paragraph 12 of the said order is contrary to the mandate in Rule 8A of Order XXVII of the

Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code' for short), which reads below:-

"8A. No security to be required from Government or a public officer in certain cases.— No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity."

Paragraph 12 of the said order dated 12.03.2021 in OSA.No.172 of 2021 is extracted below:-

"12. Therefore, this Court directs the Respondents-Government to deposit Rs.1,14,16,800/- towards value of the land viz., 1420 square feet and Rs.25,00,000/- towards value of the super structure thereon as expeditiously as possible in an interest fetching fixed deposit in any one of the Nationalised Banks in Chennai City in the name of the Registrar-General of this Court initially for a period of one year and renewable automatically for the same period from time to time till the disposal of the suit and the original receipt shall be handed over to the Registrar-General of this Court under written acknowledgement."

2. After service of notice in this application for review, Mr.R.Subramanian, learned counsel has appeared on behalf of the Appellant in OSA.No. 172 of 2020, but has not been able to demonstrate with any justifiable reason as to why the said rule quoted from the Code would not get attracted to the instant case.

3. In that view of the matter, this Court is of the considered view that the directions issued in paragraph 12 of the order under review ought not to have been made and that part of the said order is alone recalled. As now accepted by the Respondents in OSA.No.172 of 2020, in the event of ultimately fixing any monetary liability on the State in the suit in C.S.No. 13 of 2020 pending in the Original Side of this Court, the Plaintiff would be entitled to recover that amount as expenditure charged on the Consolidated Fund of the State under Article 202(3)(e) of the Constitution. The order dated 12.03.2021 in OSA No. 172 of 2020 shall remain intact in all other respects. It is needless to add here that none of the parties herein shall be precluded from working out their rights if they have any other grievance in appropriate proceedings in the manner recognised by law.

4. In the upshot, Review Application No. 123 of 2021 is ordered on the aforesaid terms. CMP No.14973 of 2021 is closed. There shall be no order as to costs.

(S.B., CJ.) (P.D.A., J.)
10.11.2021

Index : No

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THE HON'BLE CHIEF JUSTICE
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