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W.M.P.Nos.27473 and 27474 of 2017
W.P.No.3424 of 2017

THE HON'BLE CHIEF JUSTICE
and
M.SUNDAR, J.

(Order of the Court was made by M.Sundar, J.)

This petition has been filed with a prayer to recall an order dated 13.02.2017 made in W.P.No.3424 of 2017 by a Division Bench of this Court, to which one of us (M.Sundar, J.) was a party.

2.This recall petition has been filed by respondents 9, 10 and 11 in the aforesaid writ petition.

3.With regard to the aforesaid writ petition, it was filed by one Dr.V.Ganesan, with a prayer to initiate action against respondents 8 to 12 therein, pursuant to a representation dated 06.09.2016.

4.The complaint of the writ petitioner, to put it in nutshell, is that respondents 8 to 12 in the aforesaid writ petition, i.e., W.P.No.3424 of 2017, have put up a huge commercial construction and *inter alia* let it out to several shops in an area which is classified as residential zone.

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5. When the aforesaid writ petition, i.e., W.P.No.3424 of 2017, was heard by a Division Bench of this Court, the official respondents therein were represented by their respective standing counsel.

6. On behalf of respondent No.3 in the writ petition, i.e., Regional Joint Commissioner, Corporation of Chennai, 118, Dr.Muthulaxmi Salai, Adyar, Chennai-20, it was represented by the learned standing counsel for Chennai Corporation that the third respondent will cause an inspection to be made of the site about which the complaint has been made.

7. Based on such submission, the following order came to be passed:

"In view of the representation of the petitioner dated 6.9.2016 and the letter of the CMDA dated 01.10.2015, the learned counsel appearing for the respondent/Corporation of Chennai states that the third respondent will cause an inspection to be made of the site within fifteen days of the receipt of the order and in case the allegations are found to be correct, to take action in accordance with law after notice to all concerned and conclude the proceedings within a maximum period of two months thereafter.

2. The aforesaid statement is taken on record and the said respondent shall remain bound by the same.

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The writ petition is disposed of accordingly. No costs."

(underlining made by us to supply emphasis)

8. Respondents 9, 10 and 11 in the aforesaid writ petition, as stated supra, have now come up with this recall petition. The lone and pivotal point on which the recall petition is predicated is that the writ petitioner has not placed correct facts before this Court, as, according to the recall petitioners, the area in question is a mixed residential zone and not a residential zone as averred in the writ petition.

9. Mr. S. John J. Raja Singh, learned counsel appearing for the recall petitioners submitted that the above factually incorrect averment made by the writ petitioner amounts to fraud. The learned counsel relied on the judgment of the Hon'ble Supreme Court of India in **United India Insurance Co. Ltd. vs. Rajendra Singh and Ors.**, reported in **(2000) 3 SCC 581** and drew our attention to paragraph 14 therein. We deem it appropriate to extract paragraph 14, which reads as under:

*14. In **Indian Bank Vs. Satyam fibres (India) Pvt. Ltd. {1996 (5) SCC 550}** another two Judges bench, after making reference to a number of earlier decisions rendered by different High Courts in India, stated the legal position thus:*

"23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an

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order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order."

10.A perusal of paragraph 14 of **Rajendra Singh's** judgment, supra, would reveal that it deals with an extract of paragraph 23 of **Satyam Fibres'** case, i.e., **Indian Bank vs. Satyam Fibers (India) Pvt. Ltd.**, reported in **(1996) 5 SCC 550**. We had also had the benefit of reading through the judgment in **Satyam Fibres'** case.

11.It is our considered opinion that neither the aforesaid **Rajendra Singh's** case nor **Satyam Fibres'** case help the recall petitioners. The reason is **Satyam Fibres'** case is one which, on facts, dealt with a case of forgery. A mere incorrect averment in an affidavit or for that matter, that too in the nature of referring a mixed residential zone as residential zone cannot be classified as fraud. Obviously, it is not forgery.

12.Learned counsel for the recall petitioners also circulated a judgment of the Hon'ble Supreme Court of India in **A.V.Pappaya Sastry and Ors. vs. Govt. of A.P. And Ors.**, reported in **(2007) 4 SCC 221**. We deem it appropriate to extract paragraph 39 of the said judgment, which reads as follows:

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"39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior."

13. Mr. N. Pragasam, learned counsel, who appeared for the writ petitioner in the proceedings out of which this recall petition arises, is before the Court to-day. Mr. Pragasam very fairly submitted that it was an inadvertent error on the part of his client in stating that the area is a residential zone. It is submitted by him that when his client Dr. V. Ganesan, a medical practitioner, had purchased the property at Survey No. 213/71, Plot No. 2, First Street, Raju Nagar, Thuraipakkam, Chennai 600 097 and moved in there, it was a residential zone and it is now learnt that it was subsequently converted into a mixed residential zone by the Chennai Metropolitan Development Authority (CMDA), about which the writ petitioner was not aware at the time of filing of the writ petition.

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14. Besides this, the learned counsel for the writ petitioner also took us through various proceedings that have been initiated against the recall petitioners qua the commercial construction in question. These proceedings have been initiated by the Chennai Corporation as well as CMDA. To be noted, some of the proceedings have been initiated prior to the order dated 13.02.2017, recall of which is sought herein.

15. The proceedings demonstrate that *inter alia* a lock and seal notice has been issued for various violations. It was also pointed out by the learned counsel that the recall petitioners had originally obtained permission only for construction of a residential unit, but have put up a commercial construction in utter violation of the same. However, we are not going into these aspects of the matter considering the very limited scope of this petition, which is for recalling the aforesaid order dated 13.02.2017 and also because it is predicated on a lone point, which we have referred to supra.

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16. In our narrative supra, we have expressed our considered opinion that **Rajendra Singh's** case and **Satyam Fibres'** case supra, do not help the recall petitioners. With regard to paragraph 39 of **A.V.Pappaya's** case, which we have extracted supra, we are of the considered view that in the light of the legal position qua fraud laid

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down by the Hon'ble Supreme Court of India, the facts of the instant case definitely do not qualify as fraud. The reason is, in paragraph 39 of **A.V.Pappaya Sastry's** case, which we have extracted supra, fraud and as to circumstances under which a judgment obtained by fraud would be vitiated have been elucidated. We follow the principle laid down by the Hon'ble Supreme Court of India. Obviously, the principle is an indisputable legal proposition as obtaining to-day.

17. We find that the recall petitioners are facing proceedings from the local authorities and it is for them to face the proceedings in a manner known to law.

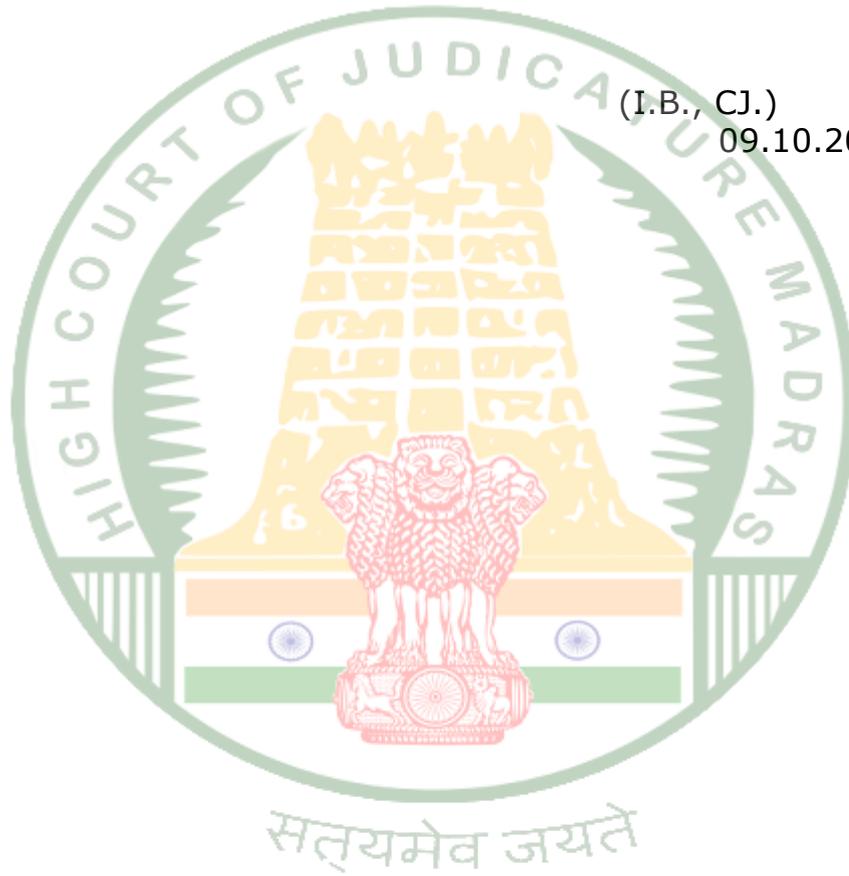
18. Most importantly, the order that is being sought to be recalled is innocuous.

19. We find absolutely no scope for entertaining this recall petition in the light of our narrative supra. We are also of the considered view, owing to all that we have stated supra, that the recall petition is bereft of merits. This recall petition fails and the same is dismissed. We refrain ourselves from imposing costs. Consequently, W.M.P.No.27374 of 2017 is also dismissed.

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20.Though obvious, we make it clear that this order will not come in the way of respondents and other statutory authorities proceeding against the recall petitioners in accordance with law and carrying the proceedings already initiated to its logical conclusion.

sra



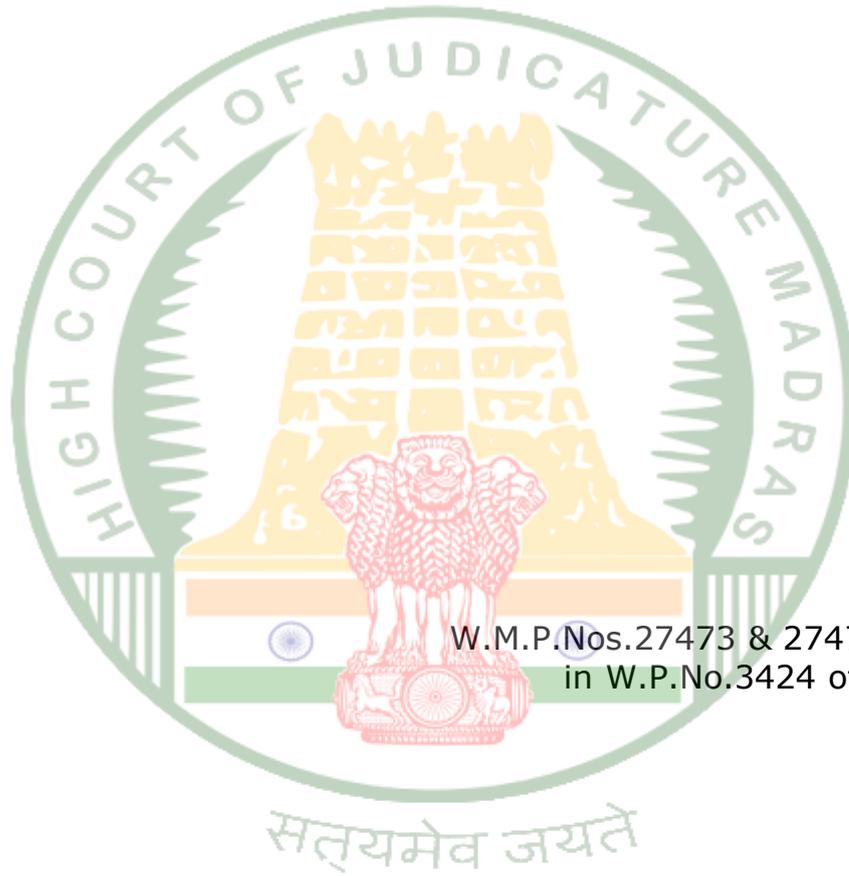
(I.B., CJ.) (M.S.,J.)
09.10.2017

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The Hon'ble Chief Justice
and
M.Sundar, J.

(sra)



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