

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.9371 of 2011

ORDER:

The petitioner prays for the following relief :-

“... to issue a Writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of 3rd respondent in not executing non bailable warrant issued against 4th respondent on 15-03-2011 in Calender Case No. 491/ 2009 on the file of the court of Learned II Additional Judicial Magistrate of First Class, Machilipatnam as illegal, irregular, irrational and violative of provisions of Code of Criminal Procedure, 1973 and offends article 14 of Constitution of India and consequently direct the 3rd respondent to execute said non bailable warrant by affecting arrest of 4th respondent and producing him before the said court...”

On 18-01-2017 this Court directed the 3rd respondent to file counter affidavit along with status report. In compliance of the order dated 18-01-2017, the 3rd respondent filed counter affidavit on 29-01-2017. In paragraph ‘3’ of the counter affidavit, on the alleged inaction, the 3rd respondent stated thus :-

“It is submitted that all the contentions of the petitioners are not correct except the facts admitted herein. It is submitted that it is a fact that the Hon’ble II Addl. JFCM Court, Machilipatnam, has issued NBW dt.15.03.2011 in C.C.No.491/ 2009 against the 4th respondent herein and the same was sent to the 3rd respondent for execution on the 4th respondent herein. On receipt of the same, efforts were made by the 3rd respondent to trace the 4th respondent, but it is

found on enquiry that the 3rd respondent is not residing in the village since a long time. Accordingly, statements of the Ward Councillor of 27th Ward, Security Guard & Watchman of Jai Jawan Industries, were recorded to the above effect that the NBW dt.15.03.2011 in C.C.No.491/ 2009, were returned unserved for the above-said reason to the Hon'ble II Addl.JFCM Court, Machilipatnan vide CF No.7514/ 11, dt.16.11.2011. Thereafter, the above said Hon'ble Court has issued any fresh NBW against the 4th respondent for service by the 3rd respondent. Therefore, there is no inaction on the part of the 3rd respondent as alleged in the writ petition."

Having regard to the counter of 3rd respondent, learned counsel for petitioner does not press the writ prayer.

The writ petition is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 31-01-2017
Prv

S. V. BHATT, J

