

TUSHAR ARUN GANDHI

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v.

STATE OF GUJARAT AND ORS

(Civil Appeal No. 2660 of 2022)

April 01, 2022

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**[DR. DHANANJAYA Y CHANDRACHUD AND
SURYA KANT, JJ.]**

Public Interest Litigation – Sabarmati Ashram – Redevelopment of – The Government of Gujarat issued a Resolution which constituted Governing Council and an Executive Council for the development of the Gandhi Ashram Memorial (Sabarmati Ashram) – The appellant filed a petition before the High Court u/ Art. 226 of the Constitution in the form of a Public Interest Litigation challenging the Government Resolution – The appellant has also sought a direction that the work of redevelopment at the Ashram should be “spearheaded by the Trusts which presently run the Ashram” – Division Bench of the High Court disposed of the petition holding that the petition u/Art. 226 is not required to be entertained in view of the undertaking furnished by the Advocate General for the State – On appeal, held: The High Court did not call for an affidavit in reply from the State of Gujarat in response to the petition, before it proceeded to dispose of the writ petition – It would have been appropriate for the High Court to decide upon the issues which are raised in the petition after furnishing to the State of Gujarat an opportunity – Prima facie, the matter is required to be remanded to the High Court – The Court has not entered into the merits of the issues which are sought to be raised by the appellant before the High Court – The High Court would form a fresh view after allowing the pleadings to be completed and hearing the parties – Therefore, appeal is allowed and the impugned judgment of the High Court is set aside – Writ petition restored to the file of the High Court.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2660 of 2022.

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From the Judgment and Order dated 25.11.2021 of the High Court of Gujarat at Ahmedabad in R/Writ Petition (PIL) No.137 of 2021.

Ms. Indira Jaising, Mihir Desai, Sr. Advs., Ms. Aparna Bhat, Paras Nath Singh, Ms. Karishma Maria, Mihir Joshi, Advs. for the Appellant.

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A Tushar Mehta, SG, Satyam Chhaya, Ms. Aastha Mehta, Ms. Deepanwita Priyanka, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

B 1. Leave granted.

2. The appellant instituted a petition before the Gujarat High Court under Article 226 of the Constitution in the form of a Public Interest Litigation to challenge a Government Resolution dated 5 March 2021 issued by the Government of Gujarat. The Government Resolution constitutes a Governing Council and an Executive Council for the development of the Gandhi Ashram Memorial (popularly known as the Sabarmati Ashram)- a charitable trust established to conserve the writings, photos and multimedia material of Mahatma Gandhi and Kasturba Gandhi, its precinct, and surrounding areas. Besides the challenge to the Government Resolution, the appellant has sought a direction that the work of redevelopment at the Ashram should be “spearheaded by the Trusts which presently run the Ashram” under the auspices of the second respondent, while allowing for funding by the Central and State Governments. According to the appellant, the work of redevelopment ought to remain within the domain of the second to seventh respondents.

3 By a judgment dated 25 November 2021, a Division Bench of the High Court of Gujarat, disposed of the petition holding that the petition under Article 226 “is not required to be entertained” in view of the submission of and undertaking furnished by the Advocate General for the State of Gujarat. The undertaking which has been referred to in the concluding paragraph of the judgment of the High Court and the submission are recorded in paragraph 7 of the impugned judgment which is extracted below:

“[7] The State which is on advance notice by virtue of the advance copy having been served on the office of learned Advocate General, is represented by the learned Advocate General and when the matter is taken up for consideration, learned Advocate General has appeared and a submission has been made by the learned Advocate General to the effect that existing Gandhi Ashram on Sabarmati Riverfront, which is an area of one acre would not be disturbed, or, in other words, it would be maintained as it is and all

efforts would be made even for the improvement of the said Ashram, if decided by the Governing Council. He would also submit that for promoting and educating the people in the philosophy, values and teachings of Gandhiji, who is the Father of the Nation, this mammoth project has been taken up and he states that State would not undertake any activity in the said one acre of the area where the Gandhi Ashram is located that would disturb the existing structures, but the project envisaged under the impugned order would be put into action for spreading the teachings of Gandhian philosophy of Gandhi at all levels. His submission and undertaking is placed on record.”

The High Court, without allowing pleadings to be completed, dismissed the Writ petition observing that the Government Order dated 05.03.2021 would preserve the teachings of Mahatma Gandhi:

“[8] In this background, we have perused the impugned order dated 05.03.2021 which would indicate that to preserve the ethos and teachings of Mahatma Gandhi and the part taken in the freedom struggle and to promote and educate the great philosophy, values and teachings of Mahatma Gandhi, the Government of Gujarat has envisioned and has come up with the project of comprehensive development of Gandhi Ashram Memorial and in this direction, Government Resolution dated 05.03.2021 was made under which a Governing Council and an Executive Council have been constituted which comprises of several representatives including the representative of Sabarmati Ashram Preservation Memorial Trust, that is the third respondent herein. Hence, any apprehension of the said Ashram about the existing ashram being altered can be espoused in the Governing Council by the representative of 3rd respondent. In other words, apprehension expressed by the learned counsel appearing for the petitioner that the decisions would be taken by the Governing Council or Executive Council unilaterally to the detriment to the Ashram stands allayed. In fact, we notice that the role and responsibilities of the Governing Council has also been fixed under the Government resolution dated 05.03.2021. The authorities required to implement the project have also been specified under the said Government resolution which would clearly indicate that neither the Ashram not the existing Sabarmati Ashram not its value and importance is being denuded or reduced. But, on

A the other hand, by virtue of the said development work which is being taken, the existing Ashram would receive attention at all levels and it would not only be a source of inspiration to one and all across the Globe, but it would also be an international tourist destination which, in the process, would earn name and fame at the national as well and international level.

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[10] In that view of the matter, we are of the considered view that this Writ Petition is not required to be entertained and by placing on record the submission and undertaking given by the learned Advocate general on record, we dispose of this Writ Petition. Hence, the question of issuing of notice to any of the respondents would not arise.”

C 4. Ms Indira Jaising, Senior Counsel, appears on behalf of the appellant. Mr Tushar Mehta, Solicitor General, appears on behalf of the first respondent, on caveat.

D 5. The High Court did not call for an affidavit in reply from the State of Gujarat in response to the petition, before it proceeded to dispose of the writ petition. It would have been appropriate for the High Court to decide upon the issues which are raised in the petition after furnishing to the State of Gujarat an opportunity of filing a comprehensive affidavit dealing with various facets of the matter. The High Court having disposed of the petition summarily without calling for a reply from the State of Gujarat, we were of the *prima facie* view that the matter would require to be remanded to the High Court. The Solicitor General has fairly consented to the petition being restored back to the file of the High Court to follow the above course of action.

E 6 This Court has not entered into the merits of the issues which are sought to be raised by the appellant before the High Court or, for that matter, expressed an opinion on such aspects of the matter which the State of Gujarat or the other respondents would seek to place before the High Court. The High Court would form a fresh view after allowing the pleadings to be completed and hearing the parties. All the rights and contentions of the parties are kept open.

G 7. Both the Senior Counsel for the appellant and the Solicitor General have joined in stating that they would request the High Court to expediently dispose of the proceedings.

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8. For the above reasons, we allow the appeal and set aside the A
impugned judgment of the High Court dated 25 November 2021. The
writ petition is restored to the file of the High Court. Pending applications,
if any, stand disposed of.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal allowed.