

sanction the plans accordingly. The petitioners have sought a declaration that the action on the part of the respondents of including the properties of the petitioners in the draft development plan published in May-2016. Certain other ancillary prayers are also made in the writ petition.

The petitioners are the owners of 4 plots of lands bearing C.S. No. 565 admeasuring 7199 sq. yards, C.S. No. 1/565 admeasuring 144 sq meters, C.S. No. 1A/565 admeasuring 520 sq. meters and C.S. No. 1B/565 admeasuring 467 sq. meters. The final development plan for the Mazgaon Division came into force on 07/01/1964 and the land of the petitioners was reserved for garden and open space. The respondent-corporation desired to acquire some part of the land and therefore, steps were initiated under the provisions of the Act to acquire the land. The proposal for acquisition was however, dropped on 21/11/1986. In the development plan for the year 1991, the lands of the petitioners were still reserved for garden and open space. The petitioners served a purchase notice on the Planning-Appropriate Authority and since no steps were taken by the authority for the acquisition of the land within the time stipulated under section 127 (1) of the Act, writ petitions were filed by the petitioners bearing writ petition nos. 1067 of 2007 and 2108 of 2007. The writ petitions were allowed by the judgment dated 12/06/2008. The Court declared that the reservation of the land of the petitioners was deemed to have lapsed in view of the provisions of section 127 (1) of the Act.

Being aggrieved by the judgment of the High Court, the Corporation and the State Government filed special leave petitions before the Hon'ble Supreme Court. The said petitions were dismissed by the orders dated 10/12/2013. In the meanwhile, by the interim directions of the Hon'ble Supreme Court, the Corporation and the Planning-Authority were directed to consider the applications of the petitioners for development of the land. The petitioners applied to the State Government for deletion of reservatin under section 127 (2) of the Act on 23/04/2014. In November-December 2014, the petitioners applied for permission to develop the land but the application of the petitioners was not accepted. In the draft development plan for the year 2013-2014, the land of the petitioners was still shown under reservation for garden and open space. Since the respondents could not have reserved the land of the petitioners after the judgment in writ petition nos. 1067 of 2007 and 2108 of 2007 had attained finality, the petitioners have filed the instant petition seeking the aforesaid relief.

Shri. Thorat, the learned senior counsel appearing for the petitioners submitted that after this Court granted the declaration as prayed by the petitioners in respect of deemed lapsing of reservation under section 127 (1) of the Act, the respondents were not justified in again including the land of the petitioners in the draft development plan for the year 2013-2014. It is submitted that merely because the State Government did not perform the ministerial act of issuance of

notification under section 127 (2) of the Act, the respondents could not have denied the development permission to the petitioners. It is stated that the inaction on the part of the State Government to issue the notification under section 127 (2) of the Act as also the action on the part of the Corporation of including the land of the petitioners in the draft development plan for the year 2013-2014 is bad in law.

Shri. Makhija, the learned counsel appearing for the Corporation submitted that the land of the petitioners is required for the garden and open space. It is submitted that though the acquisition proceedings were initiated in the year 1986, they were required to be dropped. It is submitted that in the year 2003, the Corporation had deposited the amount that was liable to be paid towards compensation for the acquisition of the land, with the State Government. It is stated that the State Government should have taken some steps to ensure that the land of the petitioners was acquired under the provisions of the Act r/w provisions of the Land Acquisition Act, 1894. It is however fairly submitted that an Award is not passed in respect of the lands of the petitioners till date.

The learned Assistant Government Pleader appearing for the State Government does not dispute that this Court had granted a declaration that there was a deemed lapsing of reservation in respect of the land of the petitioners and the petitioners were entitled to use the land, as is permissible to the adjoining

owner, as per the final development plan. The learned Assistant Government Pleader submitted that an appropriate order may be passed in the circumstances of the case.

In the circumstances of the case, the petitioners are entitled to the relief claimed. After this Court had allowed writ petition nos. 1067 of 2007 and 2108 of 2007 and had declared that there was a deemed lapsing of reservation in respect of the lands of the petitioners, it was necessary for the State Government to issue a formal notification under section 127 (2) of the Act within a time frame. Though the Hon'ble Supreme Court dismissed the special leave petitions filed by the Corporation, the State Government did not take any steps to issue the notification under section 127 (2) of the Act. After the judgment in the aforesaid writ petitions had attained finality, in view of the dismissal of the special leave petitions by the Hon'ble Supreme Court, the Corporation could not have reserved the lands of the petitioners for the garden and open space. It was necessary for the Corporation to have taken steps to decide the applications of the petitioners for development. So also, the State Government ought to have issued the notification under section 127 (2) of the Act, showing the deletion of the land of the petitioners from reservation. However, despite the dismissal of the special leave petitions, neither the State Government issued the necessary notification under section 127 (2) of the Act nor did the Corporation delete the entry pertaining to the reservation of the land of the

petitioners for garden and open space. It would be necessary to direct the State Government to issue the notification under section 127 (2) of the Act within a time frame and to direct the respondent-corporation to decide the application of the petitioners, for development of the land within a reasonable time. If the State Government or the Corporation are still interested in acquiring the land of the petitioners, they are free to do so by taking appropriate steps under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Hence, for the reasons aforesaid, the writ petition is allowed. The State Government is directed to issue the notification under section 127 (2) of the Act, in pursuance of the declaration granted in writ petition nos. 1067 of 2007 and 2108 of 2007, within one month. The respondent no. 1-Corporation is directed to decide the application of the petitioners for development of the land within 3 months. The respondent no. 1 and the respondent no. 6 are directed to delete the lands of the petitioners from the draft development plan for the year 2034 within three months. Rule is made absolute in the aforesaid terms. No order as to costs.

With the disposal of the writ petition, the notice of motion stands disposed of.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]