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At the Supreme Court Sitting as the High Court of Justice

HCJ 8066/14
HCJ 8070/14

Before:

Honorable Justice E. Rubinstein
Honorable Justice E. Hayut
Honorable Justice N. Sohlberg

The Petitioners in HCJ 8066/14:

1. _____ Abu Jamal
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
3. **Addameer – Prisoner Support and Human Rights Association**

The Petitioners in HCJ 8070/14:

1. _____ Abu Jamal
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
3. **Addameer – Prisoner Support and Human Rights Association**

v.

The Respondent:

GOC Home Front Command

Petitions for *Order Nisi* and Interim Orders

Session date:

11 Kislev 5775 (December 3, 2014)

Representing the Petitioners:

Adv. Muhammad Mahmud; Adv. Andre Rosenthal

Representing the Respondent:

Adv. Yochi Genesin; Adv. Avinoam Segal-Elad

Judgment

Justice E. Rubinstein

- A. The two petitions before us concern the issue of demolition orders against the homes of the petitioners pursuant to Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: **Regulation 119**), following the involvement of their family members in the murderous terror attack in the Har-Nof synagogue on November 18, 2014, in which five innocent individuals were murdered, four worshipers and a policeman who reached the scene to fight the assassins.

HCI 8066/14

- B. Petitioner 1 (hereinafter: the **petitioner**) is the brother _____ Abu Jamal (hereinafter: **J_____**), who participated in a murderous terror attack in the Har Nof synagogue on November 18, 2014, in which five people were murdered by knives and guns by J___ and his cousin 'U___ Abu Jamal (hereinafter: '**U_____**'). Following the terror attack, on November 20, 2014 the respondent notified petitioner 1 of his intention to demolish Jassen's home, in which the assassin lived with his wife and children, according to the authority vested in him under Regulation 119; His submission was rejected and an order was issued on November 25, 2014. The apartment of his brother Amad and the apartment of his parents are also located in the same building. The petitioners request to revoke the order which was issued. In the outset it was argued that the petitioner and his family objected to any form of terror and to any injury caused to innocent people, and that had they been aware of Jassen's intentions they would have taken action to stop him. To the crux of the matter it was argued, that although it was held in the past by case law that the purpose of demolition orders was to achieve deterrence, there was no way to know whether in fact, deterrence was indeed achieved. It was further stated, that although it was argued that the purpose was to achieve deterrence, in fact it was a punitive sanction which amounted to prohibited collective punishment, which was decided by the political echelon for extraneous reasons. It was also argued, that the decision to demolish petitioner's home did not reconcile with the Basic Law: Human Dignity and Liberty and with the values of the State of Israel as a Jewish and Democratic state, and also ran contrary to the rules of international law.
- C. The State is of the opinion that the petition should be denied. It was argued, that the deeds attributed to J___ were very severe and justified the issue of such an order, particularly in view of the tide of terror which hit Jerusalem recently. According to the State, on November 11, 2014, J___, together with 'U___, committed a murderous terror attack, in which they murdered worshipers with a gun and a meat cleaver. In that morning they arrived at the Hr-Nof synagogue and waited for worshipers to come in and fill up the place; then, one of them started to shoot at the worshipers, and the other to stab other worshipers with the meat cleaver. At a certain stage, 'U___ stepped out of the synagogue, holding the meat cleaver in his hand, and was shot to death by policemen who reached the scene; J___ who also stepped out from the synagogue with the gun in his hand, was apparently also shot to death by the policemen. With respect to petitioners' arguments on their merits, it was argued that as has been held by this court more than once, the matter did not concern collective punishment but rather a need to deter, and that the military commander was vested with the discretion to decide whether or not the deterrence was effective enough, and that the latter was of the opinion that said measure had a deterring effect. It was further argued, that the use of Regulation 119 for the issue of demolition orders was lawful, did not contradict, in and of itself, the Basic Laws, the values of the State of Israel and international law, and that it was not routinely used but only in particularly severe and exceptional circumstances, such as in the case at hand. The respondent also stated that there was no intention to demolish additional apartments in the building other than the apartment of J___ and his nuclear family, and that steps would be taken to minimize the damage which would be caused to adjacent apartments.

HCI 8070/14

- D. Petitioner 1 in this petition (hereinafter: **petitioner 1**) is the father of 'U___, who, as aforesaid, committed, together with J___, the murderous terror attack in Har Nof on November 18, 2014. Following the terror attack, on November 20, 2014, the respondent notified petitioner 1 of his intention to demolish 'U___'s home, in which his wife and children lived, according to the authority vested in him under Regulation 119. His submission was rejected and an order was issued on November 25, 2014. The petitioners request to revoke the order which was issued. Similar to the arguments which were raised in HCI 8066/14, it was argued that, in general, house demolition

pursuant to Regulation 119 was punitive rather than deterring, that the effectiveness of the deterrence was dubious, that house demolition did not reconcile with the values of the state of Israel and that it ran contrary to international law. It was further argued that despite the fact that the respondent undertook to demolish only certain parts of the house, focusing on that part of the house in which 'U___ lived, respondent's ability to do so without causing damage to the other parts of the structure was questionable, and for this reason the court should also revoke the order which would disproportionately injure all innocent inhabitants of the house.

- E. The respondent is of the opinion that this petition should also be denied. It was argued that the issue of the order was required in view of the above described deterioration of the security situation in Jerusalem, and was intended to deter potential terrorists from executing additional terror attacks. With respect to the circumstances of the specific case, the State describes again the terror attack which was described by us above in HCJ 8066/14, and specifies once again the arguments which were raised by it in said matter concerning the lawfulness of Regulation 119 and respondent's authority to issue demolition orders pursuant thereto. As to the execution of the demolition, the State undertook to minimize the damage which may be caused to the apartments adjacent to 'U___'s apartment.

The hearing before us

- F. In the hearing, petitioners' counsels reiterated their main arguments in both petitions. It was argued that it was questionable whether the argument, according to which the house demolition policy could actually deter potential terrorists from executing future terror attacks, had any basis, and that the Regulation was used for punishment rather than for deterring purposes.

Petitioners' counsels submitted engineer opinions concerning the houses themselves. With respect to the house being the subject matter of HCJ 8066/14 the opinion stated, that the planned demolition could cause the entire building in which the apartment was located to collapse, even if effort was made to demolish only J___'s apartment. With respect to the house being the subject matter of HCJ 8070/14 it was also stated, that even if the respondent intended to demolish only specific parts of the house, such action would cause additional walls to cave in, which would consequently lead to the collapse of the house's roof.

- G. Respondent's counsels argued, that according to the professional opinion of the security agencies, the case at hand concerned the most severe terror attack which was committed in Jerusalem recently, which justified the use of Regulation 119 for the demolition of the structures, and that Regulation 119 was not used as a matter of routine but only in very extreme and severe cases. On the deterrence issue it was argued, that evidence on the scene showed that house demolition had a deterring effect, and that it was supported by sources of the Israel Security Agency (ISA).

Decision

- H. The normative framework within which the respondent exercises his authority and issues orders for the demolition of the homes of persons suspected of being involved in hostile activities against the State of Israel, pursuant to Regulation 119, was discussed in the judgment which was given in HCJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defence** (hereinafter: **HaMoked**) which was published today, and therefore there is no need to discuss it again. In said judgment, most of petitioners' arguments in the petitions at hand were discussed and denied, including the argument that house demolition was intended to punish rather than to deter, that the effectiveness of the deterrence was questionable and that it ran contrary to international law.

- I. It should be added, that as noted by us in **HaMoked** case, when the actions attributed to the suspect are extremely severe, house demolition may be justified based on considerations of deterrence in accordance with respondent's discretion (subject to the reservations which were specified in that matter). In the case at hand, there is no dispute that the acts attributed to J____ and 'U____ are on the highest level of severity, as we are concerned with a massacre in which five individuals were murdered and others were wounded, and which came to a halt only as a result of the actions of the security forces on the scene. Hence, the petitioners were unable to prove that respondent's decision in their matter was disproportionate to an extent which justified our interference.
- J. As to the execution of the demolition orders: we noted before us the State's undertaking, in both files, that "during demolition, measures will be taken to minimize the possibility that significant damage would be caused to the apartments adjacent to the terrorist's apartment" (paragraph 45 of the State's response in HCJ 8066/14; paragraph 45 of the State's response in HCJ 8070/14). We will add, that like its undertaking before us in HCJ 8025/14, the State should use its best efforts to minimize the possibility that significant damage would be caused to adjacent apartments. In addition, the respondent would act wisely should he review the engineer opinions submitted by the petitioners on this issue in both files, and use them to the extent required.
- K. Subject to the provisions of paragraph J above, we cannot accept the petitions.

Justice

Justice E. Hayut

I concur.

Justice

Justice N. Sohlberg

I concur.

Justice

Decided as specified in the judgment of Justice E. Rubinstein.

Given today, 9 Tevet 5775 (December 31, 2014).

Justice

Justice

Justice