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At the Supreme Court
Sitting as the High Court of Justice

H CJ 2732/05

1. **Head of Azzun City Council, Mr. _____ Hassin**
2. **Head of Nabi Elias Village, Mr. _____ Rushdi**
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Advocate Michael Sfar
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The Petitioners

v.

1. **Government of Israel**
2. **Military Commander of the West Bank**

all represented by the State Attorney's Office,
Ministry of Justice, Jerusalem

The Respondents

Respondents' Supplementary Response

According to the decisions of the honorable court dated July 3, 2005, and September 19, 2005, the respondents hereby respectfully submit a supplementary response on their behalf.

1. The petition at hand concerns seizure order 37/02 T (hereinafter: the **order**). It is an order for the seizure of land for the purpose of erecting the security fence. The private lands which were seized according to the order are located in the Azzun village.
2. The purpose of the relevant part of the route is to protect the southern and eastern parts of the Israeli settlement Zufin, located in Judea and Samaria, and to protect the access road to the settlement. The route, in its relevant part, is about 9.4 kilometers long.

3. The barrier starts from the border line of Judea and Samaria. The barrier stretches along the access road to the Zufin settlement and serves as a security barrier between the city of Qalqiliya and the connecting road between Kibbutz Eyal in Israel, and the Zufin settlement.
4. The barrier continues to run towards the southern part of the settlement along the bottom line of the hill on which the settlement is located. In parts of this section the barrier runs through private lands which were acquired by Israelis, and through state lands.

Thereafter, the barrier continues southwards to circumvent a mine-field located in the area.

5. Thereafter the barrier heads northeast, near the ridge line which control the Jayyus village from the south. In this part the route is also used as a protected observation post over national route No. 55, which is one of the main crossroads running through the breadth of Shomron, leading to the settlements Karnei Shomron, Ma'aleh Shomron, Ginot Shomron etc.

In the planning of the route prior to its construction, in 2002, weight was given to a plan which was in the design process but has not yet entered into effect, namely, plan 149/5.

6. The relevant part ends at hill "1000", located west of the Jayyus village, and east of Zufin. This hill is a central control point in the area. The inclusion of the hill in the seam zone gives important advantage to the force which protects the settlement, and prevents its seizure by terrorists as a basis for attacks against IDF forces and Zufin inhabitants.
7. In the response submitted by the respondents towards the previous hearing in the petition it was stated that had the security fence being planned today, the southeast corner of the route would have been planned differently, without taking into consideration plan 149/5.
8. The works in that part ended and the obstacle in that part has been operational for quite some time. Moreover, a petition which was filed against said route (HCJ 8532/02) was denied as early as October 14, 2002.
9. On July 3, 2005, a hearing was held in the petition. The hearing focused on the southeast part of the route. Upon the conclusion of the hearing, an *order nisi* was issued, and the respondents were requested to submit a response affidavit on their behalf within 30 days from the date of the judgment in HCJ 7957/04 **Mar'aba v. Prime Minister of Israel et al.**, (hereinafter: the **judgment**).
10. Following the judgment the respondents conducted a comprehensive administrative work for the examination of the route of the security fence. Among other things, the part of the fence being the subject matter of the petition was re-examined.
11. Following the administrative work it was decided to change the route of the security fence in the southeast part of the route being the subject matter of the petition. As aforesaid, the hearing in the petition for an *order nisi* focused on said part of the fence.
12. In view of the examination it was decided to construct a new route which would reach the controlling hill, hill "1001", from the south side of the Zufin settlement. The new route will not include the southeast corner of the old route.

The new route is 1,350 meters long. It is estimated that for the purpose of the construction of the route, the expropriation of about 30 dunams of private land will be required.

A map on which the general route is drawn is attached to the supplementary response. The map is marked **RS/1**.

13. If this petition is denied, specific design of the general route may commence and expropriation orders for the new route may be issued, where required. It should be noted that a certain part of the new route is designed to pass through state land. The construction of the fence will commence immediately upon the conclusion of the legal proceedings which will take place following the issue of the expropriation orders.
14. Upon the conclusion of the construction works of the new route, the Tahsin Mansur gate, which is currently located in the southern part of the old route, on its southeast corner, will be opened. The opening of the gate will provide **free** access, without the need to obtain permits and without the need to undergo a security check, 24 hours a day, to all lands located between the new route and the old route.
15. With respect to the old route (on the southeast corner), we would like to note that said part of the fence provides a significant security advantage, since it facilitates protected observation over national route No. 55, which is used by thousands of Israelis.

Therefore, the decision regarding the dismantling of the old route will be made taking into consideration the security condition, after the construction of the new route shall have been completed.

16. Following the change of the route, free access will be made possible to the vast majority of petitioners' lands, residents of Azzun and Nabi Elias.

A small part of the lands of the Azzun village will remain beyond the update route of the fence. These lands are located beyond the part of the fence which passes near the Zufin settlement and the access road to the settlement.

According to the data in respondents' possession, the seam zone, along the current route of the barrier, consists of 1010 dunams, 634 of which are privately owned.

On the other hand, according to the new route, only 75 dunams of the Azzun village will remain in the seam zone, 72 dunams of which are privately owned. It should be note that the lands of the Azzun village consist of 23,464 dunams. It is therefore clear that the concerned harm is negligible.

17. The change of the route in this area too will severely harm the security of the Zufin inhabitants and the security of the Israelis who reach the settlement from the state of Israel, through the Eyal-Zufin road.

On the other hand, the harm caused to the Azzun inhabitants in this section, after the completion of the new route, will be negligible.

For the purpose of farming the few agricultural lands which will remain in the seam zone, the farmers will be able to enter the seam zone through the Zufin gate, during all daylight hours.

18. We are of the opinion that in view of the change of the route in the area which was discussed in the hearing of the petition for an *order nisi*, petitioners' request was satisfied and therefore, the petition should be denied.
19. If the petitioners wish to proceed with their petition and a hearing is scheduled in the petition, the respondents will request to submit a detailed response on their behalf prior to the date of the hearing.
20. Therefore, the honorable court is requested to dismiss the petition.
21. The facts in this response are supported by the affidavit of Colonel (reserve) Dan Tirza who acts as the head of the "Color Rainbow" administration at the Central Command, and coordinates the planning of the route of the barrier.

Today: February 19, 2006
Shvat 21, 5766

(Signed)
Avi Licht
Senior deputy to the State Attorney