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**At the Supreme Court**  
**Sitting as the High Court of Justice**

HCJ 8898/16

In the matter of:

1. \_\_\_\_\_ Amar, ID No. \_\_\_\_\_
2. **HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger - RA**

Represented by counsel, Adv. L. Tsemel and/or  
Adv. Ahmad Khaleq and/or and/or Adv. Hava Matras-Irron and/or Adv. Sigi  
Ben Ari and/or Adv. D. Shenhar and/or Adv. Noa Diamond and/or Adv.  
Benjamin Agsteribbe and/or Adv. Bilal Sbihat  
2 Abu Obeida St., Jerusalem,  
Tel: 02-6273373; Fax: 02-6289327

**Petitioners**

**The**

v.

**Military Commander of the West Bank Area**  
Represented by the State Attorney's Office  
Ministry of Justice Jerusalem

**The Respondent**

**Administrative Petition and  
Request for Interim Remedy**

A petition is hereby filed which is directed at respondent's order dated November 14, 2016, concerning his intention "to enforce a forfeiture and demolition order" of unspecified parts of a housing unit located in the Qalandiya refugee camp and referred to by the respondent as "the house of the perpetrator Abu Shahin".

In fact, the respondent refers to what used to be a rented apartment on the third floor of a three story building in the Qalandiya refugee camp which was rented by the family of \_\_\_\_\_ Abu Shahin, ID No. \_\_\_\_\_, and which served as the family's residence. The forfeiture and demolition of this apartment only were demanded in an order of the military commander dated October 19, 2015, were approved in HCJ 7081/15 on November 12, 2015, and the apartment was demolished on November 16, 2015.

Following developments broadly described below, the respondent currently demands to demolish unspecified parts of the house which was erected on the ruins of the forfeited apartment and two additional apartments which were damaged and demolished.

### **As an Interim Remedy**

The honorable court is requested to order the respondent, or anyone on his behalf, to refrain from causing any damage to the apartment or the structure which was erected until a final decision in this petition is given.

### **The grounds for the petition are as follows:**

#### **A. The Petitioners**

1. Petitioner No. 1 is the son of Mrs. \_\_\_\_\_ Amar, the petitioner in HCJ 7081/15. The entire family is originally from the Deir Ayub village near Latrun. In 1948 the family arrived to the Qalandiya refugee camp as a refugee family and received a one story house in the camp. Over the years the family members added two additional stories to the building. The management of the camp was transferred by the Kingdom of Jordan to UNRWA, the United Nations Relief and Works Agency.
2. Petitioner No. 2 is a not-for-profit human rights organization, founded by Dr. Lotte Salzberger, engaged in the protection of human rights.

#### **B. Description of the Structure**

3. Prior to June 15, 2015, the date on which the offense attributed to \_\_\_\_\_ Abu Shahin was committed, his family had been living for about five years in a rented apartment on the third floor of a building in the Qalandiya refugee camp. **The entire house, three stories high, belonged to the family of the petitioner \_\_\_\_\_ Amar, and was built by it.** The above petitioner lived at that time on the first floor, the second floor was rented out, and as aforesaid, \_\_\_\_\_ Abu Shahin's family lived on the third floor which was rented by it. Remote family relations exist between the family of Mohammad Abu Shahin and the family of the petitioner in HCJ 7081/15. The petitioner in HCJ 7081/15 rented the apartment to them and lived on the income which derived therefrom.
4. The building itself was a typical refugee camp building built in the manner refugee camp buildings were normally built. It consisted of one 110 square meters apartment on the first floor, another floor of the same size above it, and a third floor, the smallest one, being the subject matter of the petition, consisting of 85 square meters. The building had plastered concrete walls and a flat roof.

#### **C. The Chain of Events:**

5. On July 1, 2015, \_\_\_\_\_ Abu Shahin ID No. \_\_\_\_\_ was arrested for having allegedly killed Mr. Danny Gonen in cold blood by gun shots and for having wounded another person near Ein Bovine spring on June 19, 2015.

\_\_\_\_\_ Abu Shahin was arrested by the Israel Security Agency (ISA), gave a first admission on July 3, 2015, and on July 4, 2015, recreated the incident.

6. Three months and a half later, on October 15, 2015, the respondent gave notice of his intention to use Regulation 119 against the third floor apartment which served as the residence of \_\_\_\_\_ Abu Shahin's family.
7. After the appeal which had been submitted by it was rejected, the family filed a petition with the High Court of Justice, in which it argued that material delay occurred, clarified the fact that the apartment was rented rather than owned by it, the sanctity of private property, the issue of personal responsibility and expressed a deep concern that the requested demolition of the third floor of the building which was poorly built, would harm the entire building as well as the neighboring buildings. **Said concern was supported by an expert opinion which stipulated that should the third floor be demolished, structural damages would be caused to the second and first floors as a result of the detonation and the pieces of cement which would fall down, and that damage was also expected to the neighboring buildings.** The petition was given the number 7081/15.

**Attached is a copy of the petition dated October 20, 2015, marked A**

8. Petitioners' petition was dismissed, and on November 15, 2015, the judgment of this honorable court was given which rejected petitioners' arguments on the issues of the delay and the lease, as well as the concern regarding injurious demolition.

**D. To the Crux of the Matter:**

9. In the hearing of the petition before the Supreme Court, the demolition method of the structure was raised and the court noted in its judgment, paragraph 68 that:

As to the issue of safety and the demolition method of the structure. As recalled, the order being the subject matter of the petition refers only to the top floor of a three story building. In the framework of the decision in petitioner's objection, the respondents clarified that the demolition plan was established by certified engineers "following a precise mapping of the apartment, taking into consideration its engineering characteristics and location" all of the above "in consideration of the need to avoid, as much as possible, damage to neighboring buildings or parts of the structure which are not designated for demolition, namely, the lower floors of the building." In addition, the respondents declared that the demolition would be carried out under the supervision of an engineer who will ascertain that all measures are taken to prevent incidental damage. As noted above, respondents' above undertakings are appropriate and should be strictly upheld. Under these circumstances I am of the opinion that there is no room to hold that the contemplated demolition is not proportionate.

10. The demolition was actually carried out on November 16, 2015, exactly one year before the date of this petition. Unfortunately, the respondents and the engineers on their behalf failed to meet their undertakings and as a result of the demolition of the third floor damage was caused, as expected, to

the two lower floors of the structure (first and second floors), and severe damages were caused to three additional neighboring buildings. The expert opinion stated, *inter alia*, as follows:

When I visited the property I realized that the apartment on the second floor was totally ruined, including the columns, and that the vast majority of the ceiling had collapsed. As a result of the weight of the ceiling and the demolished walls, damage was caused to the supporting elements of the apartment underneath it, including sinking of the ceiling and cracks in columns and supporting walls. In addition, additional damage was caused to the ground floor apartment as a result of the weight of the ruins.

When I visited the property I was under the impression that the entire building was dangerous to live in, and I am of the opinion that **the entire building should be demolished and reconstructed**.

I was also informed that the building was actually demolished on November 19, 2015, and that the engineer of the Palestinian Authority's team found that the building was dangerous.

The expert who wrote the above pinion also notes that he it became known to him that before the demolition was carried out, an opinion was given which warned precisely against the risks which had eventually materialized, and that the execution of demolition with explosives is dangerous and prohibited.

**Attached is an expert opinion from September 2016, marked B**

11. As a result of the damage which was caused to the building itself in which the demolished apartment was located, the competent authorities of the Palestinian Authority had to demolish the two apartments located underneath the apartment which served as the residence of Mohammad Abu Shahin, since they were severely damaged and in view of the immediate danger posed by them after the demolition had been executed.

Petitioner No. 2, through its counsel, Advocate Gada Khalikhal, wrote to the respondent, to the Beit El legal adviser and to the Ministry of Defense and informed them on December 1, 2015, of the intention of petitioner's family to re-build the two apartments which were demolished by the Authority. In his letter petitioner 2's counsel noted that the forfeiture and demolition order did not apply to these two apartments as expressly stated in respondent's statement before the Supreme Court in HCJ 7081/15.

**Attached is a copy of the letter dated December 1, 2015, marked C**

12. The letter mentioned in paragraph 13 [*sic*] above was followed by two reminders due to the fact that no answer or response has been received from the respondent thereto.

Following respondent's disregard of the letters and in view of the fact that the original petitioner and her family remained homeless, petitioner's family turned again, through counsel, Advocate Andre Rosenthal, to the office of the legal adviser in Beit El and notified him that as a result of the demolition of the third floor apartment the entire building collapsed and that the inhabitants of the first and second floors wanted to re-build the building.

Petitioner 2's counsel requested to receive written confirmation that the military commander had no objection to the rebuilding of the building by the inhabitants of the first and second floors, and requested to receive an answer until February 18, 2016, 9:00 am.

**Attached is a copy of the letter dated February 11, 2016, marked D**

13. Behind schedule, respondent's response was received only on February 23, 2016, stating as follows:

**It should be noted that the forfeiture and demolition order which was issued by the military commander applies only to the apartment of the perpetrator Mohammad Abu Shahin. Hence, there is no preclusion preventing the perpetrator's neighbors from rebuilding their apartments. Obviously, this does not apply to the perpetrator's apartment which is still forfeited by the military commander.**

**Attached is a copy of the response dated February 23, 2016, marked E**

**It should be noted that respondent's response contains no demand to rebuild the building in its former form, it contains no specific architectural requirements and it contains no restriction regarding the nature of the new building. It is doubtful whether under the circumstances the respondent has the authority to decide how the new building should be built. Excluding the requirement that the building will consist of two housing units, after the housing unit designated for demolition had indeed been demolished and does no longer exist, he can say nothing, and in fact he did not set any conditions.**

14. And indeed, the home owners rebuilt their apartments without the third floor which had been demolished. Indeed, the house was re-built in a more modern fashion with a garage (for one car) underneath. To maintain the future stability of the house after the shocks which the previous house had undergone (the demolition of the third floor which was followed by the demolition of the two floors which were damaged as a result of the first demolition), the house was built on columns with a garage for one car underneath.

Due to the short time which was given by the respondent to the petitioners for the filing of this petition, the petitioners will provide the additional evidence as soon as possible.

The house is built on a slope with the entrance to the garage from the side of the slope and with the first floor on the other side.

After the demolition, the family of Mohammad Abu Shahin rented an apartment elsewhere in the camp, farther away.

15. Several months later, on November 12, 2016, at 02:00 in the morning, about ten soldiers broke into the new building which had been built, photographed it from the outside and broke the entrance door. They wanted to speak with the owner of the building. \_\_\_\_\_, the petitioner in the original HCJ answered the questions of one of the soldiers who interrogated her while masked, and started to ask her in Arabic where the house of Mohammad Abu Shahin was. The owner of the building told him that the entire building was demolished and that Mohammad used to live there in the past as a lessee, but that ever since the demolition his family did not live in the building.

Said soldier asked her who was living in the building, and she told him that she was living on the first floor and that the second floor belonged to her son Louie – petitioner No. 1 – but it was not occupied yet and in any event she had a building permit.

The soldier asked her whether they had built only two floors and she said answered in the positive. The soldier reiterated the same question and asked whether they had built a floor downstairs and she said that downstairs they had built a garage for one car and he told her that it was therefore considered a three story building. The soldier did not mention the source of his expertise or authority.

The soldiers went up to the second floor which belongs to petitioner No. 1, photographed the apartment from within, drilled holes in the walls and left around 04:45 in the morning. The reason for drilling holes in walls has not been clarified until now, **nor has it been clarified by virtue of which authority the soldiers took the liberty to damage the house without any lawful permit.**

Internally, the first floor was completed two weeks ago and in the second floor the doors have not yet been completed.

16. The undersigned was appointed by the petitioners to represent them in these proceedings and immediately on November 14, 2016, contacted by telephone (and thereafter by a facsimile message) the officer in charge in the legal adviser's office, Major Izhar Itzhaki. **She requested to meet with him to discuss the entire issue and to try to understand respondent's demand which was totally unclear, was not given in writing and was not accompanied by an official order. She discussed possible ways for removing the concern that the building would consist of three housing units, and reminded Major Itzhaki that a demand for compensation due to the severe damages which were caused to said building and to neighboring building was in the making.** The general overtone of the discussion was quite positive and left the impression that the respondent was open for discussion following his cumulative and injurious mistakes, and that the petitioner also wanted to abide by lawful requirements.
17. In the discussion it was agreed that such a meeting would be desirable and possible. In this spirit petitioners' counsel sent a facsimile message at 12:09 which is attached hereto.

**Attached is a facsimile message dated November 14, 2016, marked F**

18. On the following day, November 15, 2016, notice from the office of the legal adviser was received which stated as follows:
  - 2 Following an examination of the status of the aforementioned building... it became evident that construction was made therein in the floor attributed to the perpetrator which was forfeited by the military commander for its demolition by order dated October 19, 2015.
  - 4 48 hours are hereby given to your clients to independently demolish the deviating and prohibited construction (including supporting columns and structures, stairs etc.). Should such independent demolition be executed please send us an immediate notice thereof together with appropriate photographs. To the extent demolition is not carried out within the above period, the military commander will act to enforce the order." (Emphases added by the undersigned – L.T)

**Attached is a copy of the notice dated November 14, 2016, marked G**

#### **E. Partial Legal Argument**

19. Due to the fact that the 48 hour confine caught the petitioners by surprise, and due to the need to act quickly to stay the execution of yet another injustice, this petition is filed without all legal arguments required for this matter. The initial arguments however can sufficiently clarify petitioners' position.
20. Demolition may not be effected without a demolition order, and a general warning such as the one given by the respondent does not give rise to a lawful cause.

21. Petitioner 1's family did not execute an unlawful construction. In its attempt to rehabilitate the ruins of the two apartments which were unlawfully destroyed, contrary to a clear undertaking given to the Supreme Court with complete disregard of experts' warnings against the damages ancillary to the method selected by the respondent to demolish the third floor, it rebuilt **with a prior approval and with respondent's consent two floors which had been unlawfully destroyed. No conditions were set by the respondent to the construction.** Had he wanted to, the respondent could have demanded to see the building plans in advance; he could have requested to co-approve them, etc. However, the respondent chose not to do so and permitted the re-construction. Naturally, construction is made according to the spirit of the times. **A hasty erection of a house by refugees in 1948 cannot be compared to an erection of a house in 2016.** The addition of a garage for one vehicle underneath the building does not turn it into a three story building. The construction of a garage for a vehicle is an acceptable standard and is inevitable in conditions of a crowded refugee camp with narrow alleys. And under circumstances which were created at respondent's absolute fault, the rule according to which **one should move forward rather than backwards** should be applied.
22. There is no dispute that the brutal demolition was disproportionate and illegal and breached the undertaking made before the HCJ. In any event, in view of the disproportionate damage caused to the property of petitioner 1's family, and the fact that until this day the respondent offered no compensation, respondent's conduct was clearly in bad faith as indicated by his mere response, the injurious conduct of the soldiers – his agents – and the rush imposed by him on the petitioners, and the violent threats made against them.
23. The threat and the warning that the respondent would demolish the entire building should petitioner's family fail to demolish it in its entirety, or unspecified parts thereof, is a disturbing threat which goes hand in hand with an improper conduct of an organized military establishment.
24. **What is the third floor:** the original order stipulated that it was an order for the **forfeiture and demolition of the third floor**. The forfeiture was intended to enable the **demolition. The respondent forfeits ownership in the third floor and then it is entitled to demolish it**. The question is whether the third and last floor of the building continues to occupy the atmospheric space occupied by it also subsequent to its demolition, and therefore no construction is allowed in that space? And what is the rule when the atmospheric space which was occupied by it after the forfeiture collapsed into the second floor and even hit the first floor? Is the assumption of its existence above the two ruined apartments still valid?

And along those lines, did the respondent take height measurements and examined whether the new second floor invaded the imaginary atmospheric space of the former third floor, the forfeited one? And whether the line should be straightened according to the floor line of the former third floor?

Or isn't it mainly important – that the building will not have a third floor and will not be used by the family of Mohammad Abu Shahin?

25. It seems that the enactment of "demolition rules" has not yet been completed and in view of the increasing number of cases there is no other way but to apply more stringent and clear rules. **At this time it cannot be argued that the petitioners veered from rules which do not exist, and it is unfortunate that the respondent did not use petitioners' prior communications with him in which they informed him of the reconstruction after the forced demolition, to clarify his position (if he had any at that time).** **The reconstruction manner could have been discussed *ab initio*, rather than after the fact. Proceedings and expenses could have been saved had the respondent done so in the first place.** However, the respondent did not set any limitations on the reconstruction of the demolished building, and he has no one to blame but himself.

26. **Remission: is a right embodied in forfeiture and demolition. Had the respondent set any conditions, petitioner 1's family would have had the right to turn to the respondent and request him to remit the forfeiture and demolition and enable it to rebuild the third floor apartment.** However, the respondent failed to do so and has thus deprived the petitioner of an available option.
27. Since we are concerned with an addition of a roofed parking space for one vehicle, which does not constitute a first floor as argued, the building consists of two stories only. A third floor has not been built and the Shahin family does not reside in the apartment which was demolished and does no longer exist. Hence, the order which was issued by the petitioner [*sic*] according to Regulation 119 was exhausted.
28. In any event – in a telephone conversation with respondent's counsel the undersigned tried to mediate between the parties in a bid to reach agreed solutions between the different factors in this arena in the refugee camp: that should it be established and agreed that petitioners' family exceeded the permitted restrictions, the possibility to demolish the deviation (by petitioner's family) without causing new damage would be considered; and whether it would be possible to "**seal**" the deviation (a method well known to the respondent) preventing the use thereof,` and whether it would be possible to examine the entire damages caused by either one of the parties and create a 'balancing of damages" and so on and so forth creative possibilities which are better than any destruction.
29. At the last minute it became evident that as a matter of routine in a building of this sort in these places the builders added columns on the roof which can be used as a basis for a skeleton of a third floor. However, petitioner's family undertakes not to build under any circumstances a third floor unless it requests and receives remission and permit to build a third floor.
- As aforesaid, petitioner's family will be bound by any agreement reached between the parties and/or by any judicial decision.
30. The petitioners have not yet abandoned the option of mediation as mentioned above and are looking forward to it, and for this purpose an interim remedy by the honorable court is required to enable the exhaustion of this procedure. In any event, the petitioners will argue that in this case in view of its circumstances, *order nisi* and absolute order are required and costs of trial and attorneys' fees in favor of the petitions should be awarded.

Attached is an affidavit verifying the facts.

(Signed)

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Lea Tsemel, Advocate  
Counsel to the petitioners

November 17, 2016