

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

**HCJ 4457-09**

Before: Hon. Justice D. Beinisch  
Hon. Justice E. Arbel  
Hon. Justice U. Fogelman

The Petitioners: 1. Mohammad Ahmad Yasin Manaa  
2. Mohammad Ahmad Yasin Farhat

Versus

The Respondents: 1. The Minister of Defense  
2. The Commander of IDF Forces in the West Bank  
3. Head of the Civil Administration  
4. Cmdr. SJ Police District  
5. Ministry of Environmental Protection  
6. Ministry of National Infrastructures  
7. Environmental Association of Cities in Samaria  
8. Ofra Cooperative Village for Community Settlement Ltd  
9. Mateh Binyamin Regional Council  
10. GES Global Environmental Solutions

Objection to Order Nisi

Date of Hearing: 25 Tammuz, 5771 (July 27, 2011)

Representing the Petitioners: Atty Michael Sfard; Atty. Shlomy Zachary

Representing Respondents 1-6: Atty. Roi Avihai-Shweika; Atty. Hani Ofek

Representing Respondent 7: Atty. Rina Avenchik

Representing Respondents 8-9: Atty. Akiva Silvetzky

Representing Respondent 10: Atty. Natalie Shmueli Maudi

## Verdict

### Chief Justice D. Beinisch:

In the petition before us we were asked to issue an order for the demolition of a waste purification facility built illegally on the petitioners' private land near the settlement of Ofra on the land of Ein Yabrud. The facility was built against the local outline plan and without a building permit.

The facility (henceforth: "the WPF") was originally intended to address the need to drain the waste water of the settlement of Ofra, that currently flows into the surrounding valleys and agricultural lands untreated. The State claims that this waste water also pollutes the groundwater in the sensitive area of the mountain aquifer.

When inspection and enforcement procedures were launched against the Mateh Binyamin Regional Council because of its inadequate waste treatment, it was decided to build a waste treatment facility and a government budget was allocated to that end. However, it emerged that the WTF was built on privately-owned Palestinian land, without receiving legal building permits and without an authorized detailed plan. Only at a late stage of the construction, when a request was made to connect the WTF to the electric grid, did building inspection procedures begin and the Civil Administration's inspection unit in Judea and Samaria issued a stop work order. On July 17, 2008 the inspection subcommittee of the Higher Planning Council for Judea and Samaria issued a final stop work and demolition order. Only in March 2009, after the intervention of the enforcement authorities, was it decided to take the necessary actions to stop the work and stop all state funding of the project, as well as preventing the connection of the WPF to the electricity.

Meanwhile the petition before us was submitted. On June 7, 2009 we issued an interim order, with the State's agreement, ordering the respondents to refrain from carrying out any work at the WPF site as well as refraining from connecting it to the electric grid and other infrastructures. It was also forbidden to operate the WPF in any other way.

After two hearings before this court, before a bench consisting of Justices Beinisch, Procaccia and Meltzer, on June 27, 2010 an order nisi was issued ordering respondents 1-4 to show cause why they should not enforce the stop work and demolition orders, and respondents 5-10 why they should not stop all actions that facilitate the construction and its funding.

On March 1, 2011, respondents 1-6 submitted their statement of response to the order nisi. In their response the respondents emphasized the importance of building the WPF, not just because of the vital importance of organizing the drainage and purification of the waste of the settlement of Ofra, but also because of the identical critical need of the nearby Palestinian settlements. However, they noted they did not dispute that "the appropriate and correct course of action to begin with should have been examining different alternatives to solving the problem, and initiating both planning and property procedures to implement the suitable alternative." They added that professional experts on their behalf explored different alternatives to solve the problem of the pollution created by the waste of the settlement of Ofra and the nearby

Palestinian settlements. The suitable solution, according to the respondents, is to build a regional WPF to serve both the Israeli and Palestinian settlements. Professionally, they found that the location of the WPF that was built is the most suitable location topographically. The respondents also found that considering the scarcity of state land in the appropriate size and topographic location, construction of a WPF in any other place would also require land expropriation, in an equal or greater amount than what the present alternative would entail.

This is not the place to elaborate on the subsequent developments. The matter of the WPF was brought to the environmental subcommittee of the Higher Planning Council for Judea and Samaria. A professional opinion was submitted to the subcommittee, as well as an amended opinion, over which opinions differ as to what was before the subcommittee in the procedure that took place before it. At the hearing held before us about the objection to the order nisi it emerged that all of the respondents think that substantially, professionally and practically there is a need to build a WPF in the area promptly, but only after planning procedures are undertaken, of course. It also emerged during the hearing that no planning procedures had been initiated yet and that the hearing before the subcommittee was merely a preliminary hearing. In fact, no one has contested to us that there is a need to build a WPF. The petitioners of course protest the illegality of seizing their land to build the facility, and claim that alternatives could have been found to the location where the facility was built. But these questions can not be clarified before us. There is no doubt that planning procedures are required before a WPF is built and legalized and the question of alternatives must be heard before the professional planning institutions. Those institutions should consider all of the planning data, including the topographical and environmental aspects, and take into account the weight of the illegality discovered in this affair and the clear needs and planning considerations.

Under the circumstances, we must bring into account firstly that there is no contest that there is a need for a facility to treat the area's waste, for the area's settlements, both the settlement of Ofra and the Palestinian villages; secondly, that there is no contest before us that the illegally built WPF must not be operated unless there is a change in the legal status that applies to the area and proper planning procedures are undertaken, as well as concluding the required legal procedures. Furthermore, everyone agrees on the need to undertake the required procedures promptly because of the necessity of building a WPF in the area; each day the matter goes unattended the environmental problem worsens. Therefore, we have reached the conclusion that the petition before us was exhausted, and hereby grant an absolute order ordering the respondents to refrain from acting to complete the facility in question, to refrain from connecting it to the electric grid and to refrain from performing any other work connected to it, unless the aforesaid legal procedures are completed according to the considerations outlined above.

Finally, the petition is accepted in part. The respondents will carry the petitioners' expenses in the total amount of NIS 20,000, half to be carried by respondents 1-6 and the other half by respondents 7-9.

Given today, 25 Tammuz, 5771 (July 27, 2011).

Chief Justice

Judge

Judge