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At the Supreme Court
Sitting as the High Court of Justice

HCJ 1813/03

In the matter of:

1. _____ **El Barka'ah**
Aida Refugee Camp
2. _____ **El Barka'ah**
Aida Refugee Camp
3. _____ **El Barka'ah**
Aida Refugee Camp
4. **Zavon family**
Aida Refugee Camp
5. **Alian family**
Aida Refugee Camp
6. **Kraaka family**
Aida Refugee Camp
7. **Bremil family**
Aida Refugee Camp
8. **HaMoked: Center for the Defence of the Individual
an association founded by Dr. Lotte Salzberger**

all represented by attorney L. Tsemel
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The Petitioners

v.

Commander of the IDF forces in the West Bank

By the State's Attorney's Office
Salah Al-Din Street, Jerusalem

The Respondent

Petition

The Honorable Court is moved to summon the Respondent and to charge him with answering:

1. Why he will not deliver to the Petitioners or any one of them advance notice regarding the intention, if any exists, to damage his property, and allow any of them to file an objection against such intention, and if the objection is rejected, to exhaust legal proceedings;
2. Why he will not refrain from confiscating and/or demolishing and/or sealing the houses described in this petition, located in the West Bank, in the Aida Refugee

Camp, the region of Bethlehem, and inhabited by Petitioners 1-7 as well as other families. In one of the apartments, Petitioner 1's apartment, Petitioner 1's son, _____ **El Baraka'ah**, who is claimed to be wanted for an attack in Gilo on 18 June 2002, resided with him.

The Honorable Court is moved to render this order nisi absolute.

As interlocutory relief:

The Honorable Court is moved to order the Respondent to refrain from performing any act on the houses which are the subject matter of this Petition, pending the conclusion of all the proceedings in the Petition.

The Grounds for the Petition are as follows:

1. Petitioner 1 is the father of a 26-year old detainee, _____ **El Baraka'ah**, who is currently at Ramla prison, since 26 July 2002. He is suspected, insofar as the Petitioners know, of involvement in an attack on a bus in the neighborhood of Gilo, which took place, as aforesaid, on 18 June 2002. He has not yet been tried.

Petitioner 1 is the father of Petitioners 2,3 whereas Petitioners 4,5,6,7 are families whose houses are attached to the house of Petitioners 1,2,3.

Petitioner 8 is a legally registered association which protects human rights in the occupied territories.

2. On 13 February 2003, at 00:30, GSS [General Security Service] and IDF forces entered the house of Petitioners 1,2,3 and removed all the inhabitants of the four-storey house from their various apartments. When the house, including all the apartments thereof, was empty of its inhabitants, and in the absence of the latter, they conducted a "search" therein, which was in fact a deliberate rampage. They also took measurements in the house and filmed the entire house with a video camera, took pictures of inhabitants of the house with a regular camera and prepared a list of names. They stayed in the house until 03:30.

Pictures documenting some of the destruction caused by the IDF and GSS people are attached hereto as Exhibit A.

The arrivals notified the inhabitants of the house that they were not, under any circumstances, to go back to using any one of their apartments, and that the house was to be demolished.

The GSS people and IDF soldiers who arrived at the house *did not inform its inhabitants of any order discussing the demolition or sealing thereof, not to mention*

any notice informing the Petitioners of their right to file any objection against the decision.

3. Following the destruction in their houses and the IDF soldiers' decisive announcement, Petitioners 1-3 and their families frantically cleared all the apartments in the building and, in the cold wintry weather typical of Bethlehem, slept outdoors, waiting for disaster to strike.

Only many days later did they find the way to Petitioner 8, and on Friday night presented their situation thereto.

It should be noted that only thanks to the humanity of the Deputy Legal Advisor in Bet El, Lieutenant-Colonel Yair Lotshtein, who was attentive and ready to help as always, were the Petitioners granted a night of peace, since the undersigned was promised that there was no intention of demolishing the house, including its apartments, during the Sabbath.

4. The judgment often referred to by the Office of the State Attorney in its answers to the petitions regarding demolition of houses is HCJ 6696/02, in which the Court, by its Honorable Chief Justice, determined, *inter alia*, that "as a rule, the petitioners should be given advance notice and the opportunity to voice their claims... There is an exception to this rule...".

This Petition discusses **the general rule and not the exception**. Nevertheless, the Petitioners were given no advance notice of an intention to damage their houses, nor any opportunity to object to such intention.

6. [sic] The Petitioners shall claim, already at this preliminary stage, that *no exception should be applied to their case*. The origin and force of the exception derive from a temporary situation in which the IDF enters a certain region in the occupied territory by surprise, in order to demolish houses, and in certain cases, foreknowledge of the timing of the army's entry to the site, so it is claimed, may prepare the violent forces of resistance and enable them, due to the advance warning, to prepare for and thwart the demolition of the house, or to place a trap therein.

These arguments may have been valid as of the time they were written, approximately one year ago. However, since then far-reaching changes have occurred in the field, and the IDF has, in effect, complete and utter control of the entire West Bank region. There is no Palestinian freedom of action to speak of in any area, the classification of different areas with different levels of control is entirely inoperative, and the same control is exerted over all areas.

7. Furthermore - **The main element in the case before us is the fact that the IDF soldiers and the GSS people arrived in full force at the Petitioners' house. They treated the said house as their own, and orally notified the Petitioners' families of their intention of demolishing the entire house.** They stayed *fearlessly* in the house for three and a half hours, while damaging everything that came into their hands. **Afterwards they left the house and did not return thereto until the time of writing of this petition. In other words, no fear that justified the *exception* pursuant to the decision of the Honorable Court, by its Chief Justice, is applicable to this case.**

A proper hearing can be held, the Petitioners can be given the right to voice their arguments in full, and there will be no need to rush.

The Respondent cannot claim that he was searching for any wanted persons in the house, since the main wanted person has been in prison for seven months!

8. The family member, who is the subject of the threat, was arrested *seven months* ago. Had there been any urgency in the acts of environmental punishment which the Respondent is seeking to inflict, he could have implemented the same long ago and over a period of seven months. The passage of time, in itself, attests to the flagrant trampling of the cited court decision by the Respondent and his representatives.

The manner in which the Respondent's representatives and [the] GSS people behaved during their stay in the house attests to the extreme crudeness of those who are fed up with others' personal or property rights, and whose sole intention is to rain terror on peaceful civilians.

The Petitioners shall claim that even if a reasoned and legally justified decision to damage real estate of the detainee's family is eventually formulated, the Respondent's lawlessness, the behavior of his people, the arbitrariness of their action and their disregard for the Supreme Court's decisions are, in themselves, enough in order to annul and invalidate any such damaging of property.

The house which is the subject of the petition:

9. The house is located in the Aida Refugee Camp, and as such, **is the property of the UN Relief and Works Agency.** The families of Petitioners 1-8 [*sic*] are refugee families who, over the years, expanded the original apartments which were issued to them by UNRWA, and built above them continuation apartments for the family members.

10. The detainee _____'s residence – one apartment on the first floor. In this apartment live Petitioner 1, approximately seventy-five years of age, who was widowed approximately three years ago and his son _____, who is under arrest.
- On the second floor – an apartment of three rooms, a restroom and a kitchen, live Petitioner 2 and his family.
- On the third floor – a similar apartment, live _____, Petitioner 3, his wife and his seven children.
- Neighbors' house on the north – on the northern side, attached to the house of Petitioners 1-3, there is a three-storey house with four apartments, in which Petitioners four family resides.
- Neighbors' house on the south – on the southern side there is a house attached to the house of Petitioners 1-3, a single story house belonging to Petitioners 5 family.
- Neighbors' house on the east – on the eastern side, attached to the house of Petitioners 1-3, there is a two-storey house which is the house of Petitioners 6 family. On that side there is also another attached two-storey house, in which two of Petitioners 7 families live.
11. Due to the lack of complete knowledge as to what the Respondent intends to do with the house, there is currently no engineering opinion to inform of the measure of the foundations of the house itself and of neighboring houses. **Such an opinion is essential in any event and against any intention of damaging the house in any way whatsoever.**

The nature of the damage to the house

12. The tenants of the entire house, who awoke after midnight to find the IDF soldiers in their homes, neither know nor can know how the Respondent intends to damage the house. Obviously, nobody has bothered to inform them of the nature and scope of the damage.
- A principal argument in this petition is the argument that the Respondent *is not entitled* to damage the house at all, according to any international and moral standards which prohibit collective punishment. However, also according to the case law that has developed in this Honorable Court, the Respondent has no permission at all to damage any one of the apartments, which exist in any one of the floors of the entire building, *except, prima facie, the residential apartment of the detainee himself, if and after violent acts that are ascribed to him are proven against him by suitable proof.***

13. That would be a case of *sealing the apartment on the first floor, and only that apartment*. Decisions in this spirit have been made also in cases of multiple-attack saboteurs, such as the Silwan squad.

Also in the case of an intended sealing, the Petitioners shall claim that first and foremost, the *engineering* possibility of such an act has to be checked, and only after it is approved, can the need and justification for such sealing be looked into.

There is no justification for collective punishment

14. Much ink has been spilled on the principles underlying the opposition to collective punishment, and on its pointlessness; moreover, in this specific context, with regard to the Petitioner's family, there is no justification for such punishment.

A summary of the criteria for demolition and confiscation considerations, from which inferences can be made regarding confiscation and sealing, may be found in HCJ 2772/92 *Al-A'marin v. IDF Commander in Gaza Strip, Piskei Din* 46(3), 693. On p. 700, the Honorable Justice Bach lists, among the relevant factors for the military commander's decision:

- a. **What is the seriousness of the acts attributed to one or more of those living in the building concerned, with regard to whom there is definite evidence that they committed them?...**
- b. **To what extent can it be concluded that the other residents, or some of them, were aware of the activity of the suspect or the suspects, or that they had reason to suspect the commission of this activity?... The factual position in this regard may influence the scope of the commander's decision.**
- c. **Can the residential unit of the suspect be separated in practice from the other parts of the building? Does it, in fact, already constitute a separate unit?**
- d. **Is it possible to destroy the residential unit of the suspect without harming the other parts of the building or adjoining buildings? If it is not possible, perhaps the possibility that sealing the *relevant* unit is sufficient should be considered?**

- e. **What is the severity of the result arising from the planned destruction of the building for persons who have not been shown to have had any direct or indirect involvement in the terrorist activity? What is the number of such persons and how closely are they related to the resident who is the suspect?**

15. According to these criteria the house should not be damaged, and at most, following a substantial amount of factual and legal assumptions, it would be possible to seal the wanted person _____'s apartment.

The illegality of the act of damaging the house

16. The Honorable Court will be moved to receive separate complementary legal arguments on the damage to the house, which have been omitted from this petition owing to the haste in which it was written.
16. [*sic*] This petition is accompanied by an affidavit by the Petitioners' counsel, on the contents of the petition, which was taken from Petitioner 2 on the telephone. The affidavit further states that the power of attorney that was given to Petitioner 8 by Petitioner 2 refers also to all the other Petitioners, his family members and neighbors, who might be harmed as a result of the acts of his family member.
17. All of the Petitioners neither support nor encourage the acts attributed to the detainee, and they have no connection with such acts.
18. With regard to the exhaustion of administrative remedies: due to the extreme urgency of the matter in itself, which is accompanied by the intimidating behavior of the soldiers and GSS people in the Petitioners' home, the undersigned has notified the Respondent's representative of her intention to file a petition on the matter on Friday night. Out of consideration, as aforesaid, it was agreed that the petition be filed on Sunday morning, and there will be no need to trouble entire systems after the beginning of the Sabbath.

If a commitment will be given by the Respondent that no harm will come to the house and to the neighbors' houses, without advance orderly notice, the granting of an opportunity to file an orderly objection and upon rejection thereof, to file a petition – the Petitioners will be willing to withdraw their petition.

In view of the aforesaid, the Honorable Court is moved to issue orders as requested.

[signed]

L. Tsemel, Att.

Counsel for the Petitioners

[Filed on: 23 February 2003]