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At the Supreme Court Sitting as the High Court of Justice

H CJ 6492/08

Before:

**Honorable Justice A. Rubinstein
Honorable Justice U. Vogelman
Honorable Justice I. Amit**

The Petitioners:

1. **S.H.A.'A.L. – Peace Now for Israel Educational Enterprises**
2. **Hagit Ofran**

v.

The Respondent:

**IDF Commander in the West Bank, Major General
Gadi Shamni**

Petition for *Order Nisi*

Session date:

27 Tevet 5770 (13 January 2010)

Representing the Petitioners:

Att. Michael Sfard; Att. Shlomi Zachary

Representing the Respondent:

Att. Gilan Shirman

Judgment

Justice U. Vogelman:

The petition at bar concerns the petitioners' request to instruct the respondent to appear and show cause why the Israeli citizens living in the "Plugat Hamitkanim" compound which is located in the city of Hebron will not be evacuated.

1. Hereinafter follows a summary of the relevant facts as detailed by the respondent. The "Plugat Hamitkanim" compound is located in the heart of the city of Hebron. A part of the compound has been registered in Palestinian residents' names in the municipal property tax registry since Jordanian times. Another part (lots 110 and 130, hereinafter: **the two lots**) was registered in Jewish residents' names in the Mandatory land registry and in the municipal property tax registry. During

Jordanian rule, the two lots were given over to the “Jordanian Custodian of Jordanian Enemy Property” (hereinafter: **the Jordanian custodian**), who leased them to the City of Hebron. Following the Six Day War, the two lots were transferred to the administration of the Custodian of Government Property in the Judea and Samaria Area (hereinafter: **the custodian**), pursuant to the Order regarding Government Property (Judea and Samaria) 5727-1967. This was done as, having been transferred to the Jordanian custodian, the lots were tantamount to government property. The custodian leased the two lots to the City of Hebron from 1967 to 1982. During this time, the compound was used as a bus station, on a sublease from the City to a bus company. In 1983, the IDF seized the two lots and other lots in the vicinity of the bus station, and a company of soldiers was housed therein. The seizure of the compound, which, according to the military commander, is located in a strategic spot in terms of security, in the heart of the Jewish settlement in the city, was carried out following a series of terrorist attacks and murders directed against Jews in Hebron and committed in the area of the central station. This, in order to allow swift and immediate response to security incidents. In 1984, the civil administration expropriated land in a different area in Hebron and a new, alternative bus station was built therein. On July 31, 1991, following an opinion provided by the director of the civil department at the state attorney’s office, the Chief of the General Staff allowed Israeli settlers to reside in the compound as was done in practice.

2. Two petitions were submitted to this court with respect to the seizure of the area and the entry of Israeli settlers to the compound (hereinafter: **the previous petitions**). The first petition was filed in 1983 by the Palestinian bus company which operated in Hebron (HCJ 469/83 **United National Bus Company Hebron LTD v. Minister of Defense**, unpublished, April 1, 1992)). In the petition it was argued that the consideration underlying the seizure was not security related and that the order was given orally without issuance of a written order. In the judgment rejecting the petition (Justices **A. Barak, S. Levin and E. Goldberg**), the court accepted the claim that the consideration underlying the seizure order was military. In 1992, another petition was filed (HCJ 1634/92 **Waqef Tamim A-Dari v. Minister of Defense** (unpublished, March 16, 1993) which focused on the decision to insert Israeli citizens into the compound (hereinafter: **the second petition**). The petition was deleted after it was agreed that the petitioners would file a claim with the Jerusalem District Court. This proceeding did not reach review on the merits and was deleted. Israeli settlers continued to reside in the compound after the second petition was reviewed. Currently, six Israeli families reside in the locale in five mobile dwellings. The military compound is divided by an iron gate into the area where the military company is housed and the area where the Israeli families live.
3. In the current petition, the petitioners once again raise the issues reviewed in the previous petitions. As stated, the petitioners seek the evacuation of the Israeli citizens residing in the compound. At the time the petition was submitted, the petitioners also sought the evacuation of the military facility – or alternatively – the implementation of proper seizure procedures including issuance of a written seizure order. Following the military commander’s signing of a seizure order with respect to the area of the military camp (excluding the civilian compound) on June 24, 2009, learned counsel for the petitioners sought to withdraw the request for this relief. As such, we are left only with the request to instruct the evacuation of the Israeli residents from the compound.
4. The petitioners argue that the respondent’s actions are in violation of the “principle of distinction” in the laws of armed conflict which require distinguishing between combatants and civilians, and the respondent is thus turning the Israeli civilians into a legitimate target for attack by the enemy. They further argue that the area was not seized for military needs but for “political, settlement needs” and the seizure is therefore unlawful and must be revoked.

The respondent, on his part, seeks the dismissal of the petition out of hand both due to extreme laches and due to the existence of a petitioner who is “closer” to the matter, who has, in fact, turned to this court in the past.

5. The respondent's arguments are of substance. The Plugat Hamitkanim compound was seized by the IDF over 25 years ago. The Israeli settlers began dwelling there some twenty years ago. This state of affairs was well known and was reviewed in previous petitions in this court over the years, as detailed above. Submission of the petition at this point in time does indeed constitute extreme laches. To that one must add that while this court has expanded standing in public petitions over the decades, it cannot be said that all the limits have been removed in such petitions. Thus, in a public petition against security measures taken by the commander of the Area, this court found as follows (in the words of Justice I. Zamir):

... even in a public petition there are limits to standing. The court may, *inter alia*, deny standing to a person who meddles in a quarrel not his own; when the petition challenges an administrative act which infringes upon the right or interest of a specific person and that person refrains from petitioning the court, the court may deny standing to another person” (HCJ 1759/94 **Sreuzberg v. Minister of Defence**, IsrSC 55(1) 625 (1994)).

This court has repeated the aforesaid restriction in consistent rulings and stressed that –

Where someone is directly harmed as a result of an act of government and this individual does not seek remedy from the court himself, a public petitioner who submits a general petition in his matter, will not usually be satisfied and the public petitioner shall be considered as “meddling in a quarrel not his own and his petition shall be rejected” (HCJ 962/07 **Liran v. Attorney General** (unpublished, April 1, 2007). See also HCJ 1995/08 **Sheftel v. Attorney General** (unpublished, March 4, 2008); HCJ 4068/06 **Lam v. National Labor Court** (unpublished, August 27, 2006); HCJ 2148/94 **Gelbert v. Honorable President of the Supreme Court and Chair of the Investigative Committee for the Hebron Massacre, Justice Shamgar**, IsrSC 48(3) 573, 580 (1994)).

Indeed, we are prepared to presume that this not a qualification without exceptions, and in appropriate cases, the court may review a public petition in a case such as this as well. However, the case at bar is not suitable for making an exception. This due to the petition's timing and mostly because petitioners who are close to the issue have previously filed petitions and, as aforesaid, these were reviewed by this court.

On these grounds, we decide to dismiss the petition out of hand.

Given today, 27 Tevet, 5770 (14 January 2010)

Justice

Justice

Justice