HCJ 469/83

1. **United National Bus Company Hebron LTD**
2. **Waqef Tamim A-Dari**

v.

1. **Minister of Defense**
2. **Head of the Civil Administration, Judea and Samaria Area**
3. **Commander of the IDF Forces in the Judea and Samaria Area**
4. **Governor of Hebron**
5. **City of Hebron**

At the Supreme Court Sitting as the High Court of Justice

(April 1, 1992)

Before Justices, A. Barak, S. Levin, E. Goldberg

Request for Decree Absolute

Att. Zahalka - on behalf of the petitioners

Att. Plia Albek - on behalf of the respondents

Judgment

In June 1983, a seizure warrant was issued for the area of the central bus station in the city of Hebron. The station was shut down. Military forces were stationed therein. Some time thereafter (on September 1, 1983), the station was relocated pursuant to a traffic commissioner warrant (a warrant dated June 1, 1984 sets the new station as the new central station for bus transportation). The station has since operated in its new location. The petitioners challenge the lawfulness of the seizure order. The argue that it is not based on a considerations of security but of settlement. A long time has passed since the issuance of the *order nisi* and submission of the first response by the respondents. The parties had held negotiations in order to settle the matter out of court. On September 30, 1987, petitioner 1 and the traffic commissioner in the Judea and Samaria Area signed an agreement with respect to bus routes, which does not include the old bus station.

Today we heard arguments by counsel for the petitioners. We are satisfied that the consideration on which the seizure order is based is a military one and that this consideration continues to stand today. This consideration is based on the concept that the existence of an area in the heart of the old, crowded center

of the city of Hebron, wherein there is much human traffic, constitutes a security a security hazard. A number of terrorist attacks were carried out near the area of the station. Moreover, due to the proximity to the commercial center and crowded neighborhoods which are focal points for street violence and terrorist activity in Hebron, there is a particular need for good, convenient mobility capabilities by military forces in order to send military forces in the shortest time possible from any call. Military presence in the area of the old central station allows access to events on foot as well and in itself has a calming effect. It should be noted that the traffic consideration which formed the basis for relocating the station also seems to us appropriate and constitutional (see HCJ 393/82, IsrSC 37(4) 785). This consideration was reviewed by the City of Hebron back in 1972 and it also thought at the time that the station should be moved to a different, appropriate location. Indeed, we have not heard substantive arguments on this issue.

In his pleadings, Mr. Zahalka noted that the original seizure order was given orally and was therefore null and void. This argument must be rejected in view of the provisions of Section 1.A(e) of the Order regarding Security Provisions (Judea and Samaria Area) (No. 378) 5730-1970 which established that an order can be issued orally. However, we do wish to note that proper administration procedures instruct that despite the permissibility of issuing orders orally, once the urgency subsides, and where this is justified, a written order should be issued. In the circumstances of the matter at hand, it has not been argued that the fact that the order was issued orally caused misinformation with regards thereto or harmed another of the petitioners' rights. The argument must therefore be rejected.

In their response, the respondents devote some room for examining the petitioners' property rights in the real estate which is the subject matter of this petition. In view of our conclusion that the petition must be rejected, we take no position on this issue.

It is superfluous to note that the rejection of the petition does not prevent the petitioners from arguing again that the change of circumstances has caused a change in the military need. Our judgment reflects military necessity as it appears to us from the time of issuance of the *order nisi* until the present day.

In the petition, the petitioners argue that the dominant consideration at the time of issuing the seizure warrant was related to the renewal of Jewish settlement in the location of the station. We have found no basis for this argument. The petitioners now stress that over the years, Jewish settlers have been allowed to remain in the station. The petitioners maintain that this is retroactively points to the military commander's consideration. This allegation is insubstantial. However, this allegation does ostensibly justify a separate review in the context of a new petition filed in HCJ 1634/92. This allegation may justify examination of the new reality that has been created. This cannot be carried out in the context of the petitioner at bar which concerns the old warrants.

The result is that the petition must be denied. There is no order on costs.

Given today, 27 Adar Tevet, 5752 (1 April 1992).