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In The Supreme Court of Israel sitting as HCJ

HCJ 704/85

Before: **Honorable Justice M. Elon**
Honorable Justice D. Levin
Honorable Justice E. Goldberg

The Appellant: _____ **'Attoun**

V.

The Respondents: **1. Ministry of Finance**
2. Israel Land Administration
3. Municipality of Jerusalem

Application for Order Nisi

Date of Hearing: 11 Cheshvan 5747 (13 November, 1986)

On behalf of the Petitioner: Attorney Boulous

On behalf of Respondent 1, 2, 4: Attorney Miard

On behalf of Respondent 3: Attorney Eliraz

JUDGEMENT

Justice D. Levin

1. The subject of this Petition is the expropriation of land in the community of Sur Bahir which is located in the jurisdiction of the Municipality of Jerusalem. The Petitioners argue against this expropriation, as it pertains to an area of 500 dunum they claim are held by them in the Block known as 7 and 8 of this land.
2. The expropriation of the land was executed by the Minister of Finance, by virtue of the authority vested in him by the **Land Ordinance** (Acquisition for Public Purposes) 1953, which was published on 30 August, 1960. It included a large area of 2,240 dunam. Over time, the neighborhood now known as East Talpiot was built on most of this area.

3. The Israel Land Administration together with the Jewish National Fund have recently begun to plant a forest on the same expropriated area, to which the Petitioners claim rights.
4. These forestry operations have prompted the Petitioners, who claim to represent the general position of the residents of Sur Bahir, to turn to this this court.

Their alternative objections focused on the following:

- a. The expropriation of 1970 was unlawful and had not been brought to their attention until recently.
 - b. The purpose of the expropriation, as expressed at that time, was "building, developing and populating Jerusalem by building new residential districts". This purpose was fully realized once the building of the East Talpiot neighborhood was completed. Now, when the Respondents are seeking to plant a forest on the disputed area, this constitutes a change of the original purpose. Therefore, the expropriation should no longer exist, and by law the lands should be returned to their owners.
 - c. The aforesaid land is farmland which serves the Petitioners and the residents of Sur Bahir for agricultural crops, orchards and various field crops. The conversion from agricultural use to forestry is not reasonable. The considerations guiding the Respondents are extraneous and irrelevant. Therefore, the decision to use the expropriation to plant a forest on the aforesaid land is improper and must be revoked.
5. For all the aforesaid reasons, the Petitioners petition that the Respondents withdraw their intention to expropriate the land which is the subject of this Petition; that they and those acting on their behalf refrain from entering the land: that the proceedings required according to the Ordinance be taken before the land is possessed, and, if execution of the expropriation is sought that it be established that the expropriation that referred to this land is no longer in force and that there are cause and grounds to revoke it, and this is in light of the existing situation and the sequence of events since the expropriation.
 6. After reviewing the Petition and the affidavits of response submitted to us on behalf of the Respondent, and after hearing parties' arguments, we have reached the conclusion that the Petition in its entirety must be rejected.
 - a. As far as the initial validity of the expropriation is concerned, counsel of the Petitioners withdrew this argument after he realized that all the proceedings required from this expropriation were duly performed.
 - b. With regard to the argument that the purpose of the expropriation had changed, we are satisfied, after reviewing the letter of the Minister of Finance, dated 22 April, 1986, Appendix R/A, to the Respondents' affidavit of 17 July, 1986 and from the entirety, that when the area was expropriated for public purposes, these purposes included both the building of residential homes and the development of the entire area, which naturally includes roads, public buildings and public use areas for improving the quality of life and the environment in the area. Populating new districts in Jerusalem is not to be interpreted narrowly in the sense that it comes down to building residential homes for the residents, but also the development of the entire area in terms of wider public needs inside the neighborhoods and their close vicinity. Therefore it can be said that the original purpose of the expropriation did include the building of neighborhoods, but naturally also included planting and green spaces for public use. The planting of the forest in the strip of land between the residential neighborhoods and the community of Sur Bahir is part of the environmental development.

- c. With regard to the argument that the seizing the agricultural land from the residents of Sur Bahir, who used the land for planting and crops, and giving it to the Respondents for forestry is not reasonable: The answer is already given in the aforesaid. It is possible to say that it would have been unreasonable if the developers had not designated a "green" space next to a significant built area, i.e. gardens, parks, woods or forest, for public use public. Therefore it cannot be said that the aforesaid decision and the use made of the expropriated land is unreasonable – it surely cannot be said that the planting of the forest is a result of a decision that is based on extraneous motivations.
 - d. The considerations which must guide the planning entities and the Minister of Finance who seeks to expropriate land in order to offer it for public purposes are first and foremost, planning considerations, for example - what is good and desirable from a general perspective of populating communities while preserving nature values and the environment. When, as in this case, planning meets these requirements, it cannot be said that it derives from extraneous considerations.
6. [*sic.*] Having reached the aforesaid conclusions, we did not see fit to refer to other, marginal, arguments brought by both the Petitioners and the Respondents with respect to delay or stay of the development of the area and the realization of the expropriation, etc.
 7. Therefore, we have decided to reject the Petition, to revoke the order nisi and all interim orders issued in this Petition.

The Petitioners shall pay for costs incurred by Respondents 1 and 2 in the amount of ILS 2,000 and for costs incurred by Respondent 3 in the amount of ILS 1,000. These amounts are lawfully subject to linkage and interest.

This version is subject to editing and textual revisions.

"Hama'agar" comment - date of judgment is unknown. The date of December 31, 1985 is arbitrary and was established according to the proceeding number for storage purposes.