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The Supreme Court

HCJ 2301/03

____ Jabber v. Commander of the IDF

Forces in the West Bank

Filed on: 9 March 2003

At the Supreme Court
Sitting as the High Court of Justice

In the matter of:

1. _____ **Jaber**
Hebron, near Haled Ben al Walid Mosque
2. _____ **Jaber**
Hebron, near Haled Ben al Walid Mosque
3. _____ **Jabber**
Hebron, near Haled Ben al Walid Mosque
4. **HaMoked: Center for the Defence of the Individual**
An association founded by Dr. Lotte Salzberger
all represented by attorney L. Tsemel,
License 6088
2 Abu Obeidah Street, Jerusalem
Tel. 02-6273373; Fax 02-6280327

The Petitioners

v.

The Commander of the IDF Forces in the West Bank

by the State Attorney's Office
Salah a-Din Street
Jerusalem

The Respondent

Petition

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

- a. Why he will not refrain from confiscating and/or demolishing and/or sealing the house described in this petition, located in Hebron, near Halled El Walid Mosque, not far from Qiryat Arba', and inhabited by Petitioners 1, 2, 3 and their families.

The Honorable Court is moved to render these orders nisi absolute.

As temporary relief:

The Honorable Court is moved to order the Respondent to refrain from performing any act on the house which is 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 5 adult sons, all of whom were arrested on 24 February 2003. There is room to presume that the sons were arrested not because of acts that are ascribed to them, but due to the fact that their brother is wanted.

It has been claimed that one of Petitioner 1's sons, by the name of _____, is wanted and is not under arrest.

A spacious house with 3 apartments that belongs to Petitioner 1 was thoroughly demolished by the IDF forces without any prior warning on 17 November 2002.

After his house was demolished, Petitioner 1, with his wife and children, moved to the house which is the subject matter of this Petition, a house belonging to his children, to the ground floor thereof.

2. Petitioner 2 is the wife of one of Petitioner 1's sons, the detainee Jabber, and the mother of his children.

Petitioner 3 is the wife of one of Petitioner 1's sons, the detainee _____ Jabber, and the mother of his children.

3. Petitioner 4 is an association acting for the protection of human rights in the occupied territories.

4. In the night **between Friday and Saturday**, 8 March 2003, at 4 a.m., army men arrived at the house and ordered its inhabitants to vacate all of the apartments thereof, since the entire house was about to be demolished. They caused great damage and destruction, and removed all of the tenants and children into the fiercely cold night, while terrorizing everyone around. They wreaked havoc in the house, damaging furniture and objects. They announced that they intended to demolish the house. Bulldozers were waiting outside.

They presented no order, nor gave any opportunity for an objection.

5. **Also when Petitioner 1's house was demolished a short while ago, he was given no warning, nor any opportunity to object.**
6. *Prima facie*, the Respondent's behavior appears to deviate from a series of decisions recently issued by the Supreme Court, whereby *the rule is that a house shall not be demolished, nor property damaged, without a prior hearing, other than in exceptional cases* (HCJ 6696/02).
7. 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. Foreknowledge of the timing of the army's entry to the site, so it is claimed, may prepare the forces of resistance to the violence and enable them, owing to the advance warning, to prepare and thwart the demolition of the house, or to place a trap therein.

These arguments were valid, perhaps, as of the time they were written. 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.

8. **The main element is the fact that the IDF soldiers had notified the Petitioners in the early morning hours of their intention to demolish the entire house, and had thereafter left it and removed the bulldozers from the house, and did not return thereto until after the Sabbath was out, 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 hurry.

On the contrary – it would appear that in a state of anger, such as that currently experienced by the IDF forces in view of the terror attack of Friday night in Qiryat Arba', the mind should be cooled before hasty decisions, which could cause irreversible damage, are made.

The house which is the subject of the petition:

9. The house is a large, 3-story structure. On the first floor there is an apartment in which are now huddled, after the demolition of Petitioner 1's house, he himself, his

wife, his two daughters _____, and in which apartment also the son _____ resides.

On the second floor there are two apartments. In the one live Petitioner 2 with her husband, _____ Jabber who has been under arrest since 27 February 2003, their 4 daughters and 2 sons. There are 3 rooms, a living room, a restroom and a kitchen in the apartment.

In another apartment live Petitioner 3 with her husband, _____, who has been under arrest since 27 February 2003, and their 2 children. There are 3 rooms, a living room, a restroom and a kitchen in the apartment.

Demolition of the house from the engineering point of view

10. In any event, the house cannot be demolished without a responsible and orderly engineering opinion that is given in advance, and without allowing a professional response to be given thereto.

The IDF has recently proven that it has failed in its ability to perform surgical demolitions, and that in many instances of local demolitions it causes great environmental damage, demolishing houses it had no intention of demolishing, and demolishing houses while still occupied.

In view of the above, prior engineering certifications should be obtained and put to a professional test before such extensive and arbitrary demolition authority is taken.

The nature of the damage to the house

11. The tenants of the house, who awoke at 3 a.m. to find the IDF and engineering corps soldiers in their homes, neither know nor can know how the Respondent intends to damage the house. Obviously, nobody bothered to inform them of the nature and scope of the damage.

Clearly, 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 criteria 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 this house.

The wanted person did not reside in the house which is the subject of this petition at all. He lived in the house that belonged to Petitioner 1, which was demolished on 17 November 2002!

Petitioner 1 has 5 sons under arrest, who were arrested several days ago. As aforesaid, it appears that their arrest was aimed at nothing other than to cause their brother to give himself up. Certainly, none of the detainees can be attributed with [word missing] which, according to case law, can justify damaging his residential home.

Even were it to transpire that any of the detainees had committed an offense which, according to the valid case law, justifies damaging the house, such damage has to be defined and limited *only to the apartment which was inhabited by the person whose acts justify such damage.*

12. That would be a case of ***sealing an apartment, and one apartment only***. 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

13. Much ink has been spilled on the principles underlying the opposition to pointless collective punishment; moreover, in this specific context, there is no justification for such punishment.

We are missing details on the suspicions attributed to any one of the detainees or the wanted person, if any. And, in any event, all of the numerous family members inhabiting the house should not be injured in the circumstances described.

Since two months ago to this day, no sensational changes have occurred, which could indicate a *new* need to damage houses. The only changes are a new government and a considerable decrease in the number of attacks.

It is feared that the damage to the house is wanted solely as an impulsive act of vengeance for the night's events in Qiryat Arba', and no legal principles should be trampled only to satisfy revenge seekers.

14. 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 *Alamarin v. IDF Commander in Gaza Strip*, *Piskei Din* 46, 3, p. 693. On p. 700, the Hon. 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?**

As aforesaid, both the Respondent and the Petitioners are missing information in order to know how to align the criteria with the facts.

The illegality of the act of damaging the house

15. 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 due to the haste in which it was written.
16. This petition is accompanied by an affidavit by the Petitioners' attorney, 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 4 by the

Petitioners on the telephone has been re-confirmed on the telephone to the undersigned.

17. It shall be stated that today, on Saturday morning, the undersigned has tried to call the various offices of the Attorney General, and has even spoken with the Operations Sergeant, who cooperated fully and most politely, with the ever helpful Adv. Yair Lotstein, Deputy Legal Advisor [to the West Bank], and with the Assistant Legal Advisor, Timor Passo, who kindly inquired and promised the undersigned that no harm would come to the house until the ordinary time of filing of this petition with the Court, namely Sunday morning, and the possibility of inquiring into the receipt of an temporary injunction.
18. In view of the aforesaid, the Honorable Court is moved to issue orders as requested.

L. Tsemel, Attorney
Counsel for the Petitioners