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At the Supreme Court Sitting as the High Court of Justice

HCJ 175/81

Before: **Honorable Justice M. Ben-Porat**
Honorable Justice A. Barak
Honorable Justice D. Levin

The Petitioners: **1. Mustafa Anabi al-Natsheh**
2. Azmi Gavril Gizawi
3. Muhammad Nabil 'Atal
4. Ibrahim Jamil Danditi
5. Jamil Bader
6. Muhammad Husein Tamimi
7. Yitzhak a-Rahman Ismail Samuh
8. 'Ajani Rubin al-Akhmar
9. Dr. Phaizi al-Qarka
10. Salah Musar Yarmur
11. Dr. Muhammad Nasri Din Nasri Din

v.

The Respondents: **Minister of Defence**
Military Commander of the Judea and Samaria Area

Petition for *Order Nisi*

Session date: April 29, 1981

Representing the Petitioners: Adv. F. Langer

Representing the Respondents: Adv. D. Beinisch, Director of HCJ Division at the State Attorney's Office

Decision

Justice M. Ben-Porat

1. The petition for *order nisi*, which was filed by the Mayor of Hebron and the members of the city council together with several residents of the city against the Minister of Defence and the Military Commander of the Judea and Samaria Area, and which requests, in essence, that the respondents will be directed to remove from the 'Hadassah' house the Jews who occupy it, was assigned, at the time, to a panel of three Justices at the presence of the representative of the Attorney General. On the date of the hearing (April 29, 1981), after we heard the arguments of Ms. Felicia Langer, the learned legal counsel of the petitioners, and the response of Ms. Beinisch, who argued on behalf of the respondents, we decided as follows:

In view of the statement made by respondents' representative that measures were taken to ensure that law and order would be maintained and that the complaints raised by the residents against the occupants of the 'Hadassah' house would be handled urgently and efficiently – and since we have not found any basis for all other arguments – we decide to deny the petition.

The following are our reasons in their entirety.

The arguments raised in the petition are substantially two:

- (a) Said Jews should be regarded as mere trespassers, in view of the fact that the owners of the building (which according to the petitioners, are the Jewish communities, through three trustees) did not give them the right to occupy the building, and in view of the fact that in the past, the Jordanian Alien Property Custodian leased the building under protected tenancy to the Relief and Works Agency for Refugees (hereinafter: **UNRWA**);
 - (b) The occupants of the building harass the residents of the city, mainly those who live nearby. Their evident declared purpose is to frighten and scare off residents for the purpose of the realization of their ostensible right to settle in this city.
2. It seems to us that some of the harassment arguments, to the extent they were specific and clear, are considerably weighty. Of these arguments we shall discuss two incidents, the boldest ones: (a) An incident which concerns the demolition of part of the ceiling of a store in the 'Hadassa' house, which is held by petitioner 4 as a protected tenant according to an agreement with the Alien Property Custodian. In petitioner's complaints before the administration it was argued, that on the day which followed Purim holiday, he found that the ceiling collapsed. The "explanation" of the upper floor tenants was that it happened as a result of dances which took place over there during the holiday. Initially, the petitioner hesitated whether to file a complaint. It was later emphasized by him, that should the damage be repaired he would disregard the incident. However, on the following day (in another complaint which was filed with the police) he stated that the merchandise has also disappeared. He stated further, that the tenants of the building pushed and urged him to transfer the store to their possession, as they argued that in the past it was the original stairwell, which lead to the synagogue. Said complaint, which we regard as serious, was not handled properly. Respondents' response indicates that after the ceiling was repaired, the file was closed. The explanation according to which they have tried to calm things down in this manner is far from satisfactory. (b) The respondents admit that one day, in 1975, several Jews entered the dental clinic of petitioner 9 and prayed there. The frightened clients ran away. The military forces which were

called in, detained the worshipers. One of them was even convicted and a fine of 500 Liras was imposed on him.

The petition includes many more complaints. However, most of them lack specific details and spread over a long period of time. These deficiencies obviously encumber the ability to conduct an investigation, but with petitioners' proper assistance, it may perhaps be possible. There are also complaints which should not have been raised, such as – the demolition of a certain building for security reasons after the night in which several Jews were murdered in Hebron.

There is no doubt that the main duty of the sovereign in an occupied territory is to maintain law and order. It must also fulfill its duty in the absence of any complaint of the residents of the Area. However, at the same time, it is important to make it clear to the residents that it is their right and obligation to file a complaint whenever they are harassed, to insist that such complaint is examined, and to have the necessary measures taken, as the conclusions of the investigation may require.

Only after the learned counsel of the respondents declared before us that the investigation file concerning the store was re-opened and that instructions were given to seriously handle violations of good order, we saw no further reason to issue an *order nisi* concerning the complaints. We would like to believe, that from now on complaints will be handled efficiently and that charges will be pressed against offenders. It is the only way which will hopefully calm things down, and restore order.

3. We found no basis for petitioners' arguments, that the occupants of the building were mere trespassers, for the following reasons (step by step):

Firstly, the petitioners do not deny the fact that the building is owned by Jews, this way or another. The respondents attached to their notice a registration extract in the name of the sage Eliyahu Nabi and of the sage Rabbi Haim Franko from 1911.

Secondly, the petitioners do not claim to have ownership rights in the building, with the exception of the fourth petitioner, who is off course entitled to enjoy the status of a protected tenant without interruption, a fact admitted to by the respondents. The petitioners do not purport to represent the owners of the building or UNRWA, which, according to them, has the rights of a protected tenant. The above are in fact sufficient not to hear petitioners' arguments. If UNRWA wishes to argue for its rights, it should do it in the right place, by itself or by others on its behalf. According to the respondents, it removed its remaining assets from the building in 1975. If this is the case, it is *prima facie* difficult to see what is the basis for its arguments.

Moreover: there is reason to assume, that the presence of the occupants in the building was brought to the attention of the Alien Property Custodian, who, nevertheless, chose to remain silent.

Furthermore, it should be noted that the respondents attached to their notice a resolution of the government of Israel dated March 23, 1980, which adopted the proposal of the Minister of Building and Housing concerning the 'Hadassah' house (R/3) which stated (below) that

....

- (a) Action should be taken to develop the character of the Jewish yard in the Jewish quarter in Hebron, for its revival.

The planning will be made in a manner which will not violate the rights of the owners or their successors and will not jeopardize the division into plots.

The planning will maintain the spirit of its style and character.

(b) A third floor will be added to the Hadassah house.

In this context an extension of the Hesder Yeshiva will be erected in Kiryat Arba and a field school will be established in the Hadassah house. Staff will be allowed to live in the Yeshiva and there will be a hostel in the Hadassah house.

Accordingly, the occupancy of the 'Hadassah' house by the Jews is fully agreed and consented to by the government. Based on all of the above reasons we have decided, at the time, to deny the petition.

Given today, 15 Iyar 5741 (May 19, 1981).