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At the Supreme Court
Sitting as the High Court of Justice

HCJ /14

In the matter of:

1. _____ **Hijazi, ID No. _____**
2. _____ **Hijazi, ID No. _____** **Petitioner**
3. **HaMoked: Center for the Defence of the Individual,**
founded by Dr. Lotte Salzberger
4. **Addameer – Prisoner and Human Rights**
Association

all represented by counsel, Adv. Labib Habib et al.
of New Beith Hannina
POB 21225, Jerusalem 97300
Tel//fax: 02-6263212; Cell: 0524404477

The Petitioners

v.

GOC Home Front Command

represented by the State Attorney's Office

The Respondent

Petition for Order Nisi and Interim Injunction

A petition for Order Nisi is hereby filed which is directed at the Respondent instructing him to show cause:

- A. Why he should not refrain from seizing, demolishing and sealing the apartment located on the ground floor of a two-story building in the Abu Tur neighborhood in Jerusalem, or otherwise harming it.
- B. Why the Petitioners should not be informed of the manner in which Respondent intends to carry out the demolition and sealing and what parts he intends to demolish and what part to seal.

Petition for Interim Injunction

The Honorable Court is further requested to issue an Interim Injunction ordering the Respondent to refrain from seizing, demolishing or sealing said apartment or damage it in any other way pending completion of the hearing of this petition.

The arguments for the petition follow:

Factual background

1. On November 19, 2014, at 10:00 P.M., or around that time, the Respondent delivered notice of the intent to seize and partially demolish and seal the residential apartment pursuant to his powers under Regulation 119 of the Defense (Emergency) Regulations – 1945 (hereinafter: the Regulation), on the grounds that the son of the Petitioners, Mu'taz Hijazi, had committed a shooting terrorist attack, severely wounding Yehuda Glick

The notice cited the possibility of submitting an objection to the Respondent by November 22, 2014, at 10:00 P.M. Following the request of Petitioners' counsel, the deadline for submitting the objection was extended to Tuesday, November 23, 2014, at 10:00 A.M.

A copy of the notice is attached hereto and marked P-1.

2. On November 22, 2014, counsel for the Petitioners submitted an objection, a copy of which is attached hereto and forms an integral part of the petition, marked P-2.
3. On November 24, 2014, the Respondent's decision to reject the objection was received and a Seizure and Partial Demolition and Sealing Order was issued for the apartment that is the subject of this petition. The Petitioners were given leave until November 26, 2014 at 10:00 A.M. to file the petition.

A copy of the decision and the Order are attached hereto and marked P-3 and P-4 respectively.

4. The apartment which is the subject of this petition is located on the ground floor. There is a second floor which partly lies on top of the ceiling of the apartment which is the subject of the Petition.

The apartment is home to the father, Petitioner 1, a 67-year-old diabetes patient who also suffers from a herniated disk; the mother, Petitioner 2, 55, who has a heart condition and suffers from epilepsy; the daughter _____, 26, a social worker, and the son _____, 28, an electrical engineer.

The entire building is owned by the late grandfather, _____ Hijazi, who bequeathed the apartments to his sons.

5. Petitioner 3 is a registered association that has been defending human rights for many years. Petitioner 4 is a registered association in the Palestinian Authority, also defending human rights.
6. The Respondent, GOC Home Front Command, has been appointed as the military commander of the Jerusalem area under the Defense (Emergency) Regulations 1945. As such, he has the power to issue seizure, sealing and demolition orders in accordance with Regulation 119 thereof.

The legal argument

The Defense (Emergency) Regulations – 1945

7. The above Defense Regulations, from which the Respondent draws the power to issue the Order are obsolete. In the time that has elapsed since their issuance, they have been replaced by more modern, less injurious “civilian” legislation.
8. Thus for instance, the regulations pertaining to administrative detention were replaced with the Emergency Powers (Detention) Law 5739-1979. The regulations pertaining to deportation have also been cancelled. In addition, the state no longer uses the Regulations for the purpose of prosecution.
9. As demonstrated, of all the issues covered by the Defense Regulations, most of which have become a dead letter, Regulation 119 remains a useless, anachronistic relic that is pulled out of the bag only against Palestinians. The Honorable Court is hereby requested to declare that this Regulation must no longer be used, particularly when directed against residents of the country, or, at least, interpret any matter that is open to interpretation narrowly, such that the Petitioners come to less harm.

Harm to innocents

10. The Petitioners will argue that the seizure and demolition of their home meets neither the test of legality nor the test of proportionality, and that it constitutes harm to innocents, a cruel measure against a family that was never alleged to have any part in the act or prior knowledge thereof.
11. The Petitioners and the inhabitants of the home had no part in the act attributed to their son. The demolition of their home, which would make them homeless, at the hands of the State of which they are residents constitutes collective punishment and is contrary to all the moral values on which the relationship between the resident and the State is built.
12. In [HCJ 2722/92 al-'Amrin v. IDF Commander in the Gaza Strip](#), [1992-4] IsrLR 1, p. 8, the Court set out the considerations that must be taken into account before Regulation 119 is used. They include:
 - 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? It should be stated once more, to make matters clear, that such ignorance or uncertainty on this issue do not in themselves prevent the sanction being imposed, but the factual position in this regard may influence the scope of the commander’s decision.
 - ...
 - 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?

In the matter at hand, the family had no connection to the alleged act, nor was any such connection alleged, and the demolition would render the family homeless.

13. It is worth noting that the above judgment referred to using the Regulation in the Occupied Palestinian Territories rather than inside the country and against its residents. The Petitioners argue that the consideration of the family's involvement must be given decisive weight in the case at hand, as explained below.
14. The Order which is the subject of the Petition causes double, direct harm to the family, twice violating their constitutional rights enshrined in Basic Law: Human Dignity and Liberty. The Order severely violates the family's right to property, enshrined in Sec. 3 of the Basic Law, whereby: "There shall be no violation of the property of a person". This harm amounts to a violation of the Petitioners' and their relatives' dignity as it denies their right to housing, and harms the most important asset of all – a roof over one's head.
15. The family's status as residents of the country must play a significant, decisive role when the Respondent is considering using his power.

Wartime sanction– inside Jerusalem

16. The Court has expressed its abhorrence of the very need to discuss damage to homes under the Defense Regulations, and the sense of estrangement attached to addressing a wartime act. In [HCJ 1730/96 Adel Salem Abed Rabo Sabih v. Major General Ilan Biran](#), IsrSC 50(1), 353, pp. 368-369, the following remarks were made:

However, all of the aforesaid cannot dull a sensation – and it is a strong sensation – that we are dealing with an issue that does not belong to us. Indeed, we are not oblivious to the fact that using ordinary administrative case law and applying it to extra-ordinary decisions such as a decision to demolish houses in Judea and Samaria, is more than a little artificial and confuses the issue. Furthermore: our review of demolition orders is accompanied by a strong sense of estrangement. And it is not because it is not within our power and authority to intervene in the military commander's decision. We have more than once intervened in the military commander's decision, overturned decisions that he made and ordered him to act one way and not another.

The sense of estrangement derives from the fact that house demolitions under the Regulations, by their very nature and character, are an act of war. And acts of war are not acts which the courts address in day-to-day life.

17. The very use of this harsh punishment inside Jerusalem, against its residents, is not something to be taken for granted, and at the very least, a thorough investigation of its necessity and lawfulness must be conducted.

The Respondent's latitude must be limited when it comes to actions inside the sovereign territory of the State, and against its residents, all the more so when the proposed sanction is set to harm innocents.

The very definition of the territory as sovereign territory implies that the sovereign is able to maintain public order and achieve its goals using "civilian" measures, without resorting to cruel, warlike actions.

18. This distinction is all the stronger from the perspective of the family – residents of the country expect to be treated reasonably by the authorities. The proposed sanction cannot be considered such

treatment, not simply because of its loathsome nature, but also because it is incompatible with the tools a state uses against its residents.

A measure that is acceptable on the battlefield is not and cannot be a measure that is acceptable inside a sovereign territory.

The effectiveness of the sanction

19. Using this draconian measure under Regulation 119 in the midst of civilians, with the unavoidable result, even if this is not the official intention, of harming innocents and causing environmental damage, achieves the opposite outcome.
20. The Petitioners will argue that the rational connection between the demolition of the house and deterrence has not been proven. On the contrary, in 2005, the Minister of Defense accepted the Chief-of-Staff appointed committee's recommendation to stop house demolitions as the measure had not been proven effective and because the damage it caused outweighed its benefits.
21. There is concern that in the midst of the heightened emotions caused by the incidents, as the cannons roar, the Respondent is employing a sanction without considering its true impact, or its connection to achieving the goal of deterrence, but is simply motivated by extraneous considerations.

The manner in which the demolition and sealing is to be carried out

22. The Petitioners will also argue that the obligation to act proportionately also applies to the manner in which the sanction is being employed. In their objection, the Petitioners asked for information about the manner in which the demolition and sealing was going to take place.
23. The decision to reject the objection failed to note how the demolition and sealing was going to take place. It is unclear what part of the dwelling will be demolished and what part will be sealed. In addition, since the apartment is located on the ground floor, with another floor above it, there is grave concern that the demolition would damage the entire building.
24. The Petitioners therefore ask to be provided with a detailed description of how the demolition and sealing will be carried out together with an expert opinion by an engineer, and they reserve the right to present the Court with an expert opinion after the relevant information is supplied. This was not possible in the absence of basic information about the way the demolition would be carried out and without sufficient time to prepare such an opinion.

Discrimination

25. The family of Ami Popper, who killed innocent laborers, did not hasten to leave its home, as such a sanction never hung over its head. The Goldstein family, though residing in the OPT, never considered looking for alternate housing after its son massacred dozens of worshippers (and, on this issue, the matter of his headstone, was handled with surgical restraint). The cell of Jewish civilians who planned to hide explosives in an educational institution in Jerusalem, and conspired to carry out other attacks, required no special measures, other than being put on trial. The homes of the persons who killed and burned Muhammad Abu Khdeir a few months ago, are in no danger.
26. The fact that the Respondent uses this sanction, which is wrongful in and of itself, solely against Palestinians, adds to its unlawfulness.

27. The authorities have been known to use restraint with respect to the “deterrent measures” at their disposal even in grievous cases that cried out for deterrence, for obvious reasons: a country does not treat its residents as it would its enemies.

For all the aforesaid reasons, the Honorable Court is hereby requested to issue an Interim Injunction and Order Nisi as requested, and to render them absolute after hearing Respondent’s response.

Jerusalem, Today, November 25, 2014

[signed]

Labib Habib, Adv.
[stamp – Labib Ghasan Habib,
Adv., Lic. No. 28420]