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**At the Supreme Court Sitting as the High Court of Justice**

**HCJ 3592/13**  
**HCJ 3594/13**  
**HCJ 3595/13**

Before:

**Honorable Justice S. Joubran**  
**Honorable Justice Y. Danziger**  
**Honorable Justice N. Hendel**

The Petitioners in  
HCJ 3592/13:

1. \_\_\_\_\_ 'Odeh
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioners in  
HCJ 3594/13:

1. \_\_\_\_\_ 'Amur
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioners in  
HCJ 3594/13:

1. \_\_\_\_\_ Yasin
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

**v.**

The Respondents:

1. **Military Commander of the West Bank Area**
2. **Head of Civil Administration**
3. **Legal Advisor for the West Bank**

Petition for *Order Nisi*

Session date:

Sivan 28 5773 (June 6, 2013)

Secretary of the panel:

Itamar Mitzri

Representing the Petitioners:

Adv. Yadin Elam

Representing the Respondent:

Adv. Avishai Krauss

## Protocol

### **Honorable Justice S. Joubran:**

Why is this procedure being conducted in this manner? People have lands which should be farmed and which are located on the other side of the fence. They submit an application to enter and farm, not to play and not to visit. Eventually the applications are approved, so what is the point in harassing these people, causing them to turn to the High Court of Justice and a day before the hearing they are told that the requested permit was granted. The policy should be that if there is security preclusion then the issue should be examined. Why should people who only wish to farm their lands be harassed in this manner?

### **Advocate Krauss:**

I understand the harsh impression which was left on the court. We believe that it is a wrong impression and we will try to explain the matter to the court. I would like to submit updated data regarding permits in the seam zone. We wish to argue that the situation is different. Indeed, it is the 113<sup>th</sup> petition filed by my colleague. On the other hand, the data presented before you indicate that over the course of the last three years over 100,000 permits were granted. In general, the argument we wish to present before your honors is that the procedure at hand is usually implemented in an orderly manner. This is the only appellate instance on these matters. We are concerned with a fracture of a percent.

### **Honorable Justice S. Joubran:**

I refer to all these cases. In two out of three petitions there is consent to grant the permit, so why is it granted on the eve of the hearing?

### **Honorable Justice Y. Danziger:**

The material shows that there are many applications, after the panel specifically referred to land owners, to lessees who wish to farm their lands. In the first category the numbers are high. This is the problem. We know that there are many more applications, but we are concerned now with farmers.

### **Advocate Krauss:**

A very small number of people challenge the denial. In certain cases there are mishaps, misunderstandings. In such cases we usually try to make the proceedings redundant before we go to court. All petitions which were filed may be divided into three categories, these petitions are divided into three categories. In the first one the respondent examines the matter, understands that a mistake, misunderstanding occurred and the respondent retracts his position and grants the permit. The second example applies to cases in which the petitioner failed to exhaust his remedies before the petition was filed in which case the respondents refer him to exhaust his remedies. The third category pertains to change of circumstances. The harvest season arrived, the tools [*sic*] granted for the specific plot expired and therefore a permit may be granted.

### **Honorable Justice Y. Danziger:**

With respect to all three categories, what is the permit policy for the long term, is there a policy or are they granted randomly?

### **Advocate Krauss:**

The matter is examined and then [permits] are issued. We are certainly the default [*sic*]. This means that there is no room to issue for the entire term. He is of the opinion that he can issue the permits and facilitate access to the plots. The respondents are of the opinion that the permits should be issued for a

shorter term. If there is any preclusion for giving the permit for two years, permit should not be given. If any preclusion arises we will revoke the permit. This means that in fact individuals with permits are out there until they are caught and their permits are taken from them. Within the state of Israel there is nothing to stop him, he wanders around with the permit in his possession. To respondents' understanding they are obligated to issue permits for a shorter term.

**Honorable Justice S. Joubran:**

We do not dispute the fact that an examination should be conducted. I wish to propose that the policy will be compassionate. The vast majority of these individuals have plots and this may be their sole source of livelihood. The state has an interest that people will make a living. They farm [the land] and go back. The policy should be lenient up to a certain point. The rule is to give and the exception is not to give. There are many denials here.

**Honorable Justice N. Hendel:**

Assuming that you know like in other situations that some applications are more difficult etc., then communication is very very important here. If you know that you intend to grant the permit you should speed up the procedure. Communication makes things better.

**Advocate Krauss:**

I spoke with the officers before the hearing and there is a clear inclination to accommodate the farmers.

**Honorable Justice S. Joubran:**

We wanted that things would be done in good spirit and in the simplest manner. Without HCJ proceedings.

**Honorable Justice N. Hendel:**

We have the bottom line test which arises from this manner of implementation, and we also have the 'manner of implementation' test.

**Advocate Elam:**

I think that with respect to other populations, maybe within the territory of the state of Israel, they would have come and said indeed, we issue dozens and if [...] it does not matter. I wish to draw the attention of the court to the first chart on the other side. The court can see how the court's comments are taken into account. According to the data, in 2004 there were many permits and as the years elapse the number of permits decreased. Among other things the respondents regard a son of a land owner not as his successor like in Israel, but rather as a worker. Therefore a son of a land owner is also treated as an ordinary worker. My colleague said in 3595 he put it in the mistake category. On May 28<sup>th</sup> a letter was sent to us which stated that he did not understand why a decision was made to file a petition. It was stated that the mistake was ours.

**Honorable Justice S. Joubran:**

We are talking about people, sensitive people. They have rights and feelings. They should be respected and balancing should be made. We requested the state to make the balancing in the most lenient manner.

**Advocate Elam:**

With respect to 3592/13 we follow the provisions of the collection of seam zone orders. It should be published by December 1, 2012, as set forth in the judgment. We hear that the matter is still undergoing administrative work.

**Honorable Justice S. Joubnan:**

We shall decide to delete the petition.

**Advocate Elam:**

He had a permit until March 15<sup>th</sup>. On February 25<sup>th</sup> an application was transferred. The procedures provide for a 14 day period. Your honors can see how many times we had to apply before we filed the petition. We see that eventually we did not receive the permit.

**Honorable Justice Y. Danziger:**

May you also respond to the issue of the administrative work.

**Advocate Krauss:**

The administrative work was more limited. The collection of orders is in its final draft awaiting for the last comments of security agencies. The rational is to expand the work in the seam zone. The general policy regarding merchants in the seam zone is to give them permits, the administrative work will arrange this issue. In any event, concretely, the current policy is to issue permits to merchants. With respect to the matter at hand, according to the provisions of the collection of orders, chapter C, in cases of heavy load, notice may be given according to which the response will be delayed. We apologize for the delay in this matter.

**Judgment was given.**

**Advocate Elam:**

With respect to HCJ 3595/13 – we requested to cancel the hearing because my colleague said that he intended to give him a permit.

**Advocate Krauss:**

A permit for the entire period of two whole years was issued to the petitioner.

**Advocate Elam:**

In view of the declaration of my colleague we delete the petition. I request again an order for costs. Indeed, your honor relies on a decision of the President in another seam zone file. In this file there so many applications. Even after we filed the petition the Attorney General argued that we should not have filed it in view of the fact that there was an objection for security reasons and after we filed the petition the permit was issued for two years.

**Judgment was given.**

**Advocate Krauss:**

With respect to HCJ 3594/13 – we think that the good news was given to the petitioner over five months ago. The petitioner has available to him an orderly administrative procedure in the framework of which he can present his entire evidence. Under the current circumstances he can submit an application. We can only wonder why said application was submitted after such a long time. It is practically possible to submit an application using the administrative procedure.

**Honorable Justice S. Joubran:**

Your colleague here says that the case at hand should be heard elsewhere.

**Advocate Elam:**

I agree with my colleague, the administrative procedure was not exhausted. It is a compelling example of the bureaucracy here. A person who receives permits for years is suddenly told that there was no change in the route of the fence, and that he is not in the seam zone. It can happen. But the collection of orders referred to by my colleague specifies what should be done in such a case. Where there is doubt whether the land is within the seam zone or not, permit should be granted and I quote from the provisions. Submitted. The administrative procedure referred to by my colleague explicitly provides that if there is doubt whether the land is within the seam zone or not, a temporary permit should be issued to the applicant and then a tour on scene should be conducted because it is impossible.[sic]

**Honorable Justice S. Joubran:**

Advocate Krauss, there is also common sense in this offer. A temporary permit may be given, and meanwhile he will submit an application and things will be made at the same time. He will farm his land and try his luck through the administrative procedure.

**Advocate Krauss:**

My colleague refers to a section which pertains to a case in which there is doubt.

**Honorable Justice Y. Danziger:**

It arises from the mere fact that in the past you issued for years for these lands [sic].

**Advocate Krauss:**

The application which was denied does not necessarily refer to the same plot which was discussed, and this is the background for the denial. The respondents did not comply with the mechanism established by the collection of orders.

**After Consultation:**

**Advocate Krauss:**

The respondents are willing to summon the petitioner for a hearing next week where he will be able to present all of his arguments. Within two weeks they will receive an answer.

**Advocate Elam:**

The collection of orders provides that a tour should be conducted. We applied in a case of another farmer, where we were told that they had doubt concerning the lease agreement. We told them to conduct a tour. The section I referred to pertains to cases in which there is doubt concerning the land.

**Honorable Justice S. Joubnan:**

Can counsel give us information, how many times in the past this petitioner received permits and how many criminal offenses he committed when he was on the land?

**Advocate Krauss:**

Not right now.

**Honorable Justice S. Joubnan:**

If this person received permits in the past it shows that he is an honest and decent person. Public interest will not be injured should he continue to receive a temporary permit.

**Advocate Krauss:**

We hear the court's proposals. I refer to the last part of paragraph 20 of the response. To a certain extent we are in a situation in which for a long time he had a permit in his possession. The respondent says I determined that the land being the subject matter of this case is not located in the seam zone. The respondent has no doubt about this situation. We are willing to re-examine the matter.

**After Consultation:**

**Advocate Krauss:**

We reached an agreement according to which a permit for three weeks commencing from June 9<sup>th</sup> would be issued to the petitioner on Sunday. During said period the petitioner would be summoned for hearing and during said period a decision shall be made. To the extent necessary a tour will be conducted. I request to receive the recommendation of the Supreme Court.

**Advocate Elam:**

In view of the above I withdraw the petition.

**Judgment was given.**