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At the Supreme Court Sitting as the High Court of Justice

HCJ 8150/15

Before:

Honorable Justice I. Amit
Honorable Justice Z. Zylbertal
Honorable Justice M. Mazuz

The Petitioners:

1. _____ Abu Jamal
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

v.

The Respondent:

GOC Home Front Command

Petition for *Order Nisi*

Session date:

25 Kislev 5776 (December 7, 2015)

Panel Secretary:

Guy Rubinstein

Typist:

Neta Shapira

Representing the Petitioners:

Adv. Andre Rosenthal

Representing the Respondents:

Adv. Avinoam Segal-Elad; Adv. Roi Shweiqqa

Protocol

Adv. Rosenthal: This is in fact a second petition.

Honorable Justice I. Amit: The first petition was deleted after they said it was not the target house but rather the second floor.

Adv. Rosenthal: I reiterate what I said in HCJ 8154/15, I insist on that. I wish to refer to the response of the state. I think that the evidence should be somewhat more substantiated than what we were provided with in this file.

Honorable Justice Z. Zylbertal: They write that they have confidential material which pertains to this issue.

Adv. Segal-Elad: Indeed we have. We are willing to show the entire material in our possession.

Adv. Rosenthal: Even if he has evidence which I do not understand why I cannot receive... they argue that the attack was on the 13th. They came to the house which I assume is the three story house, the house being the subject matter of this petition. They argue that they took pictures and we attached them. I refer to said photographs P/3. They argue that it was on the 13th. So we have some photographs, but the first photograph is a photograph of Bezeq equipment. They took it out of the closet, put it somewhere and photographed it. Why haven't they photographed it in the closet so that we can know that it was really there, instead of having to rely on an affidavit of the Israel Security Agency (ISA) coordinator who says "to the best of my knowledge"? Pardon me, do you have evidence? Do you have a visit report? I know that we are not on the criminal level, but a minimum? Particularly when they say that they made a mistake with respect to the previous house.

Honorable Justice M. Mazuz: A formal clarification question: your petition is that this is not the house? Because if the petition is general against the mere lawfulness, reasonableness, proportionality of the sanction...

Adv. Rosenthal: The respondent does not have in his possession sufficient evidence to make a decision with respect to either one of the houses. The previous order was revoked. The second photograph is a photograph of a certificate of excellence of the perpetrator. You see, we have color photographs. They argue twice that these photographs were on the wall. Why were they taken on the carpet, on the floor? Why does it say on the bottom of the photograph 19/10? Did it take six days to put them on the computer? I have no idea what this date is.

Honorable Justice Z. Zylbertal: The questions of counsel are in place. Why did they have to move the objects?

Adv. Rosenthal: Also with respect to card. We gave details about the location of this card, why it was in this house and not in the other house etc. In the appeal no reference is made to this, as if I have not written it!

Honorable Justice Z. Zylbertal: They argue that the photographs were taken when?

Adv. Rosenthal: They argue that it was on the 13th. With respect to the pay slips, it is true that four were found from eight years. Can residence be established based on this? This complex is very congested. This house consists of three stories and the single story house is located only a few meters away. We argue that he lived in the separate building. This is what the brother says.

Honorable Justice Z. Zylbertal: What is your factual argument?

Adv. Rosenthal: That he lived in the separate building. I go back to the response because the substantial part of the petition is here. The affidavit tells me nothing. To the best of my knowledge. Perhaps he has a visit report in the privileged material, and if such a report exists, other than the deletion of the names of those who conducted the visit, I would like to see it to understand what we have here. On the 13th we had the attack and the visit and the photographs according to the respondent. Is there any support for this? A report? It is indeed administrative but we are talking about a sealing of a house! On the 15th we have the brother who says that he was living there. On the 22nd, according to paragraph 18 of the response, they intended to demolish the separate building. Why? You argue that on the 13th you were in the house, you saw pictures in the three story building, and a week later you want to demolish the other one? Based on what? In paragraph 19 my colleague quotes from the objection from which we learn that on the 19th another

visit was conducted, before the order against the separate building was issued. And on the 19th he says that he saw in the separate building one picture which was previously in the other apartment, and he saw two or three beds. Two or three? We have three kids. So if you found three beds in the separate house what does it mean if you base your arguments on this? When the first order was issued, the evidence based on which the second order was issued were already in the possession of the respondent, this is what I understand from page 5. And then, on the day on which the order was issued, on the 27th, another visit is conducted and then we have the response of my colleague one day before the hearing that the brother had misled us, but we have additional things. Can you possibly provide us with details who they are and what they are? Do these people have any connection; do they have an interest to point at one place instead of the other? Indeed it is administrative, but again, is this an affidavit? "To the best of my knowledge"? Was the coordinator present? Did he examine the matter personally? In administrative demolitions it is also necessary to base the affidavit on something, and I argue that there is not enough weight here. The visit on the 19th, the findings of the 19th and of the 27th are the same to me, and therefore I am not clear why the first order was issued, why the first order was revoked and why the new order was issued.

Adv. Segal-Elad: My colleague makes an argument which I find to be somewhat strange. The argument is by way of elimination that we did not prove well enough that the family lived in that house. It is the lacking which manifests itself in the room: there is no argument that this is a family which says that it lives in the separate house and you are wrong. How many evidence can be gathered to prove that I live in a certain apartment – there is no end to it!

Honorable Justice M. Mazuz: They should also show you which house to demolish? Advocate Rosenthal stated that their position is that the perpetrator and his family lived in the separate house.

Adv. Rosenthal: I submitted three affidavits with the objection, of the sister, the wife and the father which prove where they live. Do you want them to leave everything in the house to demolish it with its contents?

Adv. Segal-Elad: It is a preliminary remark and we shall soon get to the administrative remarks which prove that the house being the subject matter of the current order is the house in which they live. But when one hears the arguments of my colleague, he argues that the evidence brought by us are not sufficient to prove. There is no lacking which cries out "Here, this is the real house in which we live". With respect to the chain of events, on October 13th, on the day on which the attack was carried out, which was executed with the vehicle of Bezeq where the perpetrator worked, a horrendous and shocking attack, the perpetrator goes out with a butcher's knife after the ramming, I shall not go into details because it is shocking. On that same day the ISA coordinator visited the perpetrator's apartment. The coordinator who signed the affidavit. We wrote it also in the preliminary response which was attached hereto that specifies the chain of events, that is to say, he visited on the 13th as well as on the 27th. He is also here now. The objects were found of October 13th.

Honorable Justice Z. Zylbertal: Were they found in the same place in which they were photographed?

Adv. Segal-Elad: There is no doubt that had we known, in retrospect, that the file would depend on whether or not the perpetrator lived in that apartment, there would have clearly been a need to make different preparations.

Honorable Justice Z. Zylbertal: If you thought that the pay slips were important etc. it means that you were prepared to deal with such a possibility. So if you have already photographed them I cannot understand why not in their place.

Adv. Segal-Elad: The coordinator's visit was not intended to prove that the family was living there. What they usually do is mapping. The requests are submitted and in many cases are stopped in the preliminary

stages, but there are many requests and there has never been a situation in which someone claims that he lives in one house but in fact lives in another house.

Honorable Justice Z. Zylbertal: It does not make sense because on the one hand he took photographs and on the other hand not where they were located.

Adv. Segal-Elad: Indeed, more photographs should have been taken and in the places in which they were located and perhaps he should have also entered the separate building. I want to describe the occurrences as is also indicated by the affidavit of the above mentioned coordinator. A visit was conducted on October 13th. Two days later the petitioner's brother was questioned and said that in fact they were living in another house. This led the respondents to issue an order against the wrong house.

Honorable Justice Z. Zylbertal: This means that in their eyes what a brother says just like that in connection with a house against which demolition orders may be issued, has more weight than an independent impression?

Adv. Segal-Elad: After October 13th when they were in the right apartment, they came to the separate building on the 15th, the petitioner's brother was questioned and he pointed at the separate building, and on the 19th representatives of the Home Front Command visited said separate building because a structure should be visited before it is demolished, and they have already seen over there pictures on the walls and the report in response to the objection indicated that there were 2-3 beds. The purpose of the visit was not to determine whether or not people were living there. The purpose was to see the structure and that there was nothing extraordinary, and based on that the order was issued. When this issue was examined again by the ISA and I lower expectations in advance – the additional privileged information is not at the center of this file. The open information is also sufficient for the substantiation of the administrative evidence regarding the perpetrator's residence. And said information came into the possession of the same ISA coordinator who requested to hold back and enable him to go to the house again to check and see whether the perpetrator lived there or not. And the same representative arrives on October 27th and testifies that pictures which were hanging in the building being the subject matter of this order were transferred to the separate structure. And as he saw the real building and the separate structure, his impression was, also in the house visit report that there was an attempt to make a false representation that the family was living in the separate structure.

Honorable Justice M. Mazuz: There is no dispute that the separate structure is also owned by the family, and if the purpose is to deter, you can demolish the separate house. You issued a demolition order against it, haven't you?

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Adv. Segal-Elad: If it was our house then we could not have considered another alternative. It should be reminded that the committee can step into the shoes of possessors and impose costs.

Honorable Justice M. Mazuz: This is a show. We know that there are dozens of demolition orders. I have not yet heard of an owner who voluntarily comes and says: "come and demolish for me". The fact is that the order has been pending for 20 years and the house was not demolished. It is difficult to see the logic of this argument. There is a dispute here as to whether there is evidence or not. The fact that a separate building exists ostensibly makes it easier for you. You obtain the message of deterrence by the demolition of the house.

Adv. Segal-Elad: I agree. The main question is where the perpetrator's family lives. This is the question.

Honorable Justice M. Mazuz: What I ask is why this is so relevant for you. A 20 year old demolition order is pending. It is not a consideration according to Regulation 119. The question is where he lives. If there are doubts and they declare of another house which is also owned by them what is your interest to insist on A and not on B? This is the question.

Adv. Segal-Elad: Also on the issue of deterrence, eventually we believe that the perpetrator lived in the building being the subject matter of the petition at hand. The family wishes to refer to another house. In that sense what is their interest? I don't think they will answer this question but it can be answered.

Honorable Justice Z. Zylbertal: Does the public at large know? It is a family matter.

Adv. Segal-Elad: I am not a prophet but to come and present it as a different building, it is on the social networks and everywhere. We attribute to it importance and weight. I say again that I am not a prophet.

Honorable Justice I. Amit: Do you have pictures? Perhaps of the small single story house? The separate house. So that we can get an impression.

Adv. Segal-Elad: I have aerial photographs. Not the interior of the house, but from the air.

Honorable Justice I. Amit: Mr. Rosenthal do you have any?

Adv. Rosenthal: I have a photograph. Submits to the court.

Adv. Segal-Elad: Submits an aerial photograph.

Honorable Justice M. Mazuz: The separate house is in red?

Adv. Rosenthal: Yes.

Honorable Justice I. Amit: Anything else Adv. Elad?

Adv. Elad-Segal: Yes. It is important to note that the opinion which was submitted also refers to aspects which are "difficult" for the respondents. The second part that was mentioned by my colleague about the creation of a circle of terror, the opinion does not disregard it.

Honorable Justice Z. Zylbertal: The file speaks for itself.

Adv. Elad-Segal: The consideration of the security agencies or the political level also exists. These data are also taken into account. It has a deterring effect.

Honorable Justice I. Amit: Adv. Segal please come and show us with the consent of your colleague said material.

Adv. Rosenthal: Excuse me. My colleague said that the open material was sufficient.

Honorable Justice I. Amit: Counsel, it is not advisable because then the presumption is created.

Honorable Justice Z. Zylbertal: Counsel are you willing to prepare a paraphrase for Adv. Rosenthal?

Adv. Elad-Segal: Yes. This is the house visit report from October 27th, and a report of the questioning of the brother.

Adv. Rosenthal: Why can't I have them?

Honorable Justice I. Amit: We shall soon see.

Adv. Segal-Elad: All the material in our possession is obviously classified as confidential. These are the paraphrases. What we have here I cannot give to my colleague.

Adv. Rosenthal: You do not have a visit report from the 13th?

Adv. Segal-Elad: The paraphrase is in the response.

Honorable Justice I. Amit: We shall already see. One second. We have here two intelligence items. What your colleague said is OK.

Adv. Segal-Elad: We have the remarks of the coordinator regarding his impression on the 13th and on the 27th. Our argument is that these two items are not the most important thing but they certainly add to the evidence in our possession.

Honorable Justice I. Amit: Do you have the report of the 13th here?

Adv. Segal-Elad: It is here in one copy. I can show your honors. It is a report that I was in the house and precisely the report from the 27th is the one which...

Honorable Justice I. Amit: We can understand why they do not want it to be given. Beyond what was said there is nothing in essence or content other than these two items which we mentioned.

Adv. Rosenthal: I do not understand why there is no affidavit of the coordinator. Based on what did they arrive to the house on the 13th if not according to data of said coordinator?

Adv. Segal-Elad: You are wrong but carry on. On the 13th we came to the right house. My colleague helps me. They arrived to the right house in the first place.

Adv. Rosenthal: But I don't understand why there is no affidavit?

Honorable Justice I. Amit: Does counsel have anything else other than the complaint about the affidavit?

Honorable Justice Z. Zylbertal: What was the relation between the two?

Adv. Segal-Elad: There are two perpetrators who are cousins They executed the attack.

Adv. Rosenthal: Cousins. This is correct.

Honorable Justice Z. Zylbertal: Was he present?

Adv. Rosenthal: I have the affidavit of the father. What does he want, does he want me to bring the entire village to come and say where he lives.

Honorable Justice Z. Zylbertal: I do not want to get into it. Whether there was a photograph of some window.

Adv. Rosenthal: The photographs should be real so that I will be able to come and say here. I do not want to repeat my argument. You have already heard.

Decision

Deferred for deliberation.

Adv. Rosenthal: Your honors I have a request. I request 48 hours before, that you notify me if you intend to demolish.

Adv. Segal-Elad: The court commented that on weekends it was not appropriate to give notices on Saturday. Friday - Saturday were counted in terms of hours and beyond 48 additional hours were given.

Honorable Justice I. Amit: Thank you very much.

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