HCJ 145/80

1. Jamait Askan Almoalmon Altaonia Almahdodet Almasolia
2. Husnei Sliman el Ashab
3. Azmi Hamed Abu Asav
4. Samia Abed Aleini Barkat

Versus

1. The Minister of Defense
2. The Military Commander of the Judea and Samaria Region
3. The Supreme Planning Council
4. Headquarters Officer for Internal Affairs
5. The Village Planning Committee

At the Supreme Court Sitting as a High Court of Justice
[22 December 1980, 16 October 1980, 28 June 1980]
Before the Justices M. Shamgar, A. Barak, H. Ben-Itto

Order Pertaining to the Planning of Towns, Villages and Buildings (Judea and Samaria) (No. 418), 5731-1971, [קמצ״מ] (Judea and Samaria) 1000, Articles 2 (Amended: [קמצ״מ] (Judea and Samaria) 1494), 7 (Amended: [קמצ״מ] (Judea and Samaria) 1422) – Proclamation Regarding the Administration of Rule and Justice (West Bank Region) (No. 2), 5727-1967, [קמצ״מ] (Judea and Samaria) 3, Article 2- Town Building Ordinance, 1936, Official Gazette, Supp. 1, (p) 153, (a)157, Articles 10, 10(1), 11, 13(2), 16(1), 18 (cancelled: [Statutes] 5725 307) - Order on the borders of the [גלילי] town building area of the district of Jerusalem, Official Gazette 1939, Supp. 2, (p) 73, (a) 90 – Order in Council, 1922, Laws of Palestine, Vol. III, (p) 2738, (a) 2569, Title 11 (cancelled: Official Gazette 5708, Supp. A1) – Order on [גליליים] area borders for town building, Official Gazette 1941, Supp. 2, (p) 1214, (a) 1447 – Notice of temporary approval of parcellation plan, District of Jerusalem, Official Gazette 1941, Supp. 2, (p) 1636, (a) 1949 – Notice of final approval of town building plan by the High Commissioner, Official Gazette 1942, Supp. 2, (p) 552, (a) 649 – the Planning and Building Law, 5725-1965, Statutes 307, Sections 77, 98.

Concise summary of judgment:
* Administrative law – administrative proceeding – cancelling authority
* Administrative law – zoning – building permit
* Zoning – building permit – cancellation thereof

Petitioner 1 is a cooperative association whose aim is to build a housing complex for teachers. For such purpose it purchased a plot of land in the proximity of the Atarot industrial area. Once the Petitioner was told that there is no chance that the building of a residential neighborhood in that location will be approved, the members of the association turned to ask for building permits, privately, without mentioning the connection there is between all of the applications. The personal applications were granted, each one in itself, and based on the building permits, the building of three first houses commenced. Shortly after the beginning of the construction, the licenses were frozen and cancelled by the competent authorities with the claim that they are illegal, hence the petition.

The HCJ ruled:
a. There is a material difference between the planning of an entire neighborhood and the discussion on the licensing of a single house, and those seeking to build an entire neighborhood cannot step into the shoes of those who wish to build a single house.
b. (1) Granting the licenses to the Petitioners without a parcellation plan and a detailed plan contradicted the Jordanian law from 1966 which was left in effect in Judea and Samaria and therefore, the planning authorities were authorized to cancel the licenses.
(2) The statements of the Supreme Court in the Igra Rama case (HCJ 16/50 [1])- according to which it is impossible to cancel building licenses after the same have been issued and after construction has begun, referred to a license which was duly issued in accordance with the law. The aforesaid does not apply to anyone constructing a building in violation of the provisions of a Town Construction Plan whilst relying on the license that was granted to him, since such a license has no legal value and is null and void.
(3) The rule which was set forth in the Igra Rama precedent (HCJ 16/50 [1])- according to which conferring the authority to grant a license does not imply that the same authority is authorized to cancel the same - does not refer to cases in which the legislator explicitly stated that the authority granting the license shall also have the authority to cancel the same.
(4) The Jordanian legislator conferred a clear and explicit authority to freeze building licenses which were issued and to cancel licenses which were issue unlawfully, hence there was authority to cancel the Petitioners' licenses.

Judgments of the Supreme Court which were cited:
[1] HCJ 16/50 *Igra Rama Ltd. v. The Tel Aviv City Council et al., Piskei Din* 5 229; *Labor Court Cases* 6 92.
[2] HCJ 123/64 *Kaliopi et al. V. The Local Committee for Town Planning and Construction, Tel Aviv Jaffa et al., Piskei Din* 18(3) 533.

Objection to an order nisi dated 7 March 1980. The order nisi was cancelled. The petition was denied.

A Huri, M. Huri - for the Petitioners;
R. Yarak, Senior Deputy A. to the State Attorney - for the Respondents.

Judgment

Justice M. Shamgar: 1.(a) The Petitioners are a cooperative association for housing teachers and three of the association's members who were authorized to act on its behalf and manage the affairs thereof. As attested to by its name, the association's aim is to build a housing complex for teachers, and for such purpose it purchased a plot of land in Block 29505 in Kalandia in the proximity of the Atarot industrial area. In the beginning of 1978, the engineer Hasan Abu Shlabak, who acted on behalf of Petitioner 1, approached Mr. Shlomo Chyatt - who held office at such time and until the end of March 1980 as manager of the Planning Bureau in the Judea

and Samaria region according to the authority which was conferred upon him under Article 7 of the Jordanian law pertaining to the planning of the towns, villages and buildings from 1996 which applies to the aforesaid region - and sought to find out if there is a chance that the building of a residential neighborhood in the Kalandia region will be approved. Mr. Chyatt claims that he answered Mr. Abu Shlabak that due to the close proximity of the place to the industrial area, there is no chance that a housing project will be approved. Such type of answer as aforesaid was not confirmed by the affiants on behalf of the Petitioners however, in view of the development of the matter later on, it is highly probable that such an answer was indeed provided: as will be seen later, no application for a building license for the building of a neighborhood was submitted, however a number of individual residents filed applications for a license, separately and without stating the fact that these are individual licenses which are part of more comprehensive planning. There isn't any evidence before us that a detailed plan was filed at such time, which addresses the building of a neighborhood and the applications for a building permit, which were personally submitted by 24 members of the association, each addressed, as aforesaid, one building only without pointing to the comprehensive connection between them and without making reference to the association, Petitioner 1. The applications were submitted on four different dates, which are 1 August 1978, 9 October 1978, 2 January 1979 and 5 March, 1979. The application of twenty four members of the association was granted, and they did indeed receive building permits according to the aforesaid law of 1966 and the Order Pertaining to the Planning of Towns, Villages and Buildings (Judea and Samaria) (No. 418), 5731-1971. Mr. Chayatt's claim in his affidavit is that the planning echelon employees who handled the permit applications amongst the other applications which are submitted to them by the public, could not have discovered, in view of the applications, that they concern the planning of an entire neighborhood, regarding which, according to him, a different handling method and planning are required than those which are required upon the handling of an application pertaining to an isolated building. Therefore, the various ramifications of the building of a neighborhood, in the location with regard to which the licenses were issued, were not considered. *Inter alia*, there was no examination of the issue of the location of the neighborhood on the border of the industrial area, the access to and from the neighborhood from the existing and planned nearby roads, the planning of the paths inside the neighborhood, the need for the parcellation of the land according to a construction plan etc.

Pursuant to receiving the licenses, the Petitioners entered a contract with a construction contractor who purchased materials and approached the beginning of the construction. Currently, there are three beginnings of construction on the ground in the form of foundations and wall parts.

(b) When a nearby industrial plant observed the beginning of the construction in its proximity, the issue was raised before the planning authorities, and then they decided on 16 and 17 May 1979 to freeze the licenses according to the provisions of the law that applies to the matter, to which we have yet to return, until the clarification of the matter. According to the Respondents, this was done with the consent of the Petitioners' attorney, Adv. A. Shahada, but on this point there is a dispute before us, and for the case at bar it is not important that we resolve the same. The walls in the three aforesaid buildings were built, according to the Respondents' argument, in the period after the decision on the freezing.

Shortly thereafter, a meeting of the Supreme Planning Council was held, the Petitioners' representatives, including their attorney, also appeared before it, and on 24 July 1979, the Supreme Planning Council decided to cancel the twenty four building licenses. In order to provide the full picture, it would be appropriate to quote the Hebrew[1] text of the cancellation letter verbatim:

"To

Mr. Aziz Shahada, Adv.

Ramallah

Re: Decision of the Supreme Planning Council dated 24 July 1979

1. I hereby inform you that in its meeting dated 24 July 1979 the Supreme Planning Council deliberated the lawfulness of the 24 building licenses which were issued to your clients in the Kalandia region and whose numbers are:

    1. No. 3/5612 dated 9 October 1978
    2. No. 3/5427 dated 1 August 1978
    3. No. 1403/79 dated 5 March 1979
    4. No.131/3/79 dated 5 March 1979
    5. No.129/3/79 dated 5 March 1979
    6. No. 3/5620 dated 9 October 1978
    7. No. 3/5619 dated 9 October 1978
    8. No. 3/5616 dated 9 October 1978
    9. No. 3/5613 dated 9 October 1978
    10. No. 3/5426 dated 1 August 1978
    11. No. 3/5615 dated 9 October 1978
    12. No. 3/5618 dated 9 October 1978
    13. No. 3/5844 dated 2 January 1979
    14. No. 3/5845 dated 2 January 1979
    15. No. 130/3/79 dated 5 March 1979
    16. No. 3/5428 dated 1 August 1978
    17. No. 3/5429 dated 1 August 1978
    18. No. 3/5611dated 9 October 1978
    19. No. 3/5614 dated 9 October 1978
    20. No. 3/5617 dated 9 October 1978
    21. No. 3/5843 dated 2 January 1979
    22. No. 3/5846 dated 2 January 1979
    23. No. 3/5847 dated 2 January 1979
    24. No. 114/3/79 dated 5 March 1979

2. The Supreme Planning Council, after taking into consideration the reasons which were raised in your letter of 2 June 1979 to Mr. Ibrahim Elshela and after hearing your arguments before it, as well as your

[1] Translator's note: Hebrew quotation translated herein into English.

clients' arguments, decided to cancel the aforesaid licenses due to the unlawfulness which was revealed on their face.

3. The Council's decision was based on the reasons which were clarified to you in the course of the aforesaid deliberation.

4. The Supreme Planning Council shall order the Planning Bureau to examine the zoning plan which was filed by your clients and that is connected with the building of the teachers' neighborhood in the Kalandia region.

5. In the event that for purposes of the aforesaid deliberation the Planning Bureau will need to receive further technical and engineering details from your clients, the Planning Bureau will notify you accordingly.

Sincerely,

(-)

Shlomo Amar

Chairman of the Supreme Planning Council"

(c) Meanwhile, the Petitioners filed a detailed plan but the handling thereof was delayed since at this stage, Respondent 3's examinations and deliberations began on the route plans and in particular the national road Ben Shemen-Atarot, which will run nearby. It also became clear, *inter alia*, that part of the planned neighborhood sprawls into the territory of the Jerusalem Zoning Committee and therefore requires an approval of another planning authority. In the middle of this year, and after the petition was already filed, deliberations were held before Respondent 3 pertaining to the planning of the roads and regarding the detailed plan which was submitted by the Petitioners. The Petitioners and their attorneys were also invited to the deliberation pertaining to the detailed plan. Respondent 3's decision with regard to the detailed plan was issued on 8 May 1980, in the following language:

"The Council's decisions

Surveying headquarters officer [קמ״ט מדידות] (member) points in the plans which were filed by the association that in the Jerusalem border is the line [sic] that is marked in red and was also marked on the detailed plan of the neighborhood and therefore it runs, in a large part thereof, in the detailed plan that was filed. As a result of this, the Council does not address the territory that is beyond the Jerusalem border since it is not in its authority to grant licenses for an area that is beyond the Jerusalem border. The Supreme Planning Council has noted all of the reasons which were presented by the professional bodies on its behalf and on behalf of the planners of the road system in the region and the S.P.C. has also noted the reasons which were brought by the attorneys of those presenting the plan for the plan's approval. The S.P.C. hereby decides to reject the plan which was presented by the teachers' association for the construction of a

residential neighborhood in the Kalandia region, on the following grounds: -

1. The planners of Highway No. 4 and the Ben Shemen-Ataroat Road presented the updated plan with regard to the branching out of the aforesaid roads before the S.P.C. and the Council was forced to deduce that such branching out does not allow the approval of the plan, since a considerable part of the area that is contemplated in the plan is within the area that is expropriated for purposes of the interchange and/or within the line of the building which will be declared by the S.P.C., if and when such plan will be approved thereby.

2. The S.P.C. believes that for purposes of the deliberation of the plan before it, it is authorized to take the updated interchange plan into account, although the same has not yet been officially submitted thereto, since the presentation thereof by its planners left no doubt in the hearts of the members of the Council with regard to the sincerity, necessity and proximity of the submission thereof to the Council.

3. The proximity of the industrial area in Israel to the location of the plan and the proximity of defense plants led S.P.C. to decide that that it would not be possible to approve the plan so long as there was no comprehensive planning pertaining to the region to which the plan belongs. Therefore, the S.P.C. refrained from deliberating the details of the detailed plan before it, however the S.P.C. did note a number of points: -

   a. The neighborhood is located adjacent to the industrial area.

   b. A highway runs and an interchange is located on the border of the neighborhood.

And therefore, on the face of things it seems that the building of a residential neighborhood under such conditions cannot be approved.

The Supreme Planning Council wishes to emphasize that the deliberation of the plan was held today after pressure was applied by the Petitioners in the petition that was filed with the Supreme Court in HCJ 145/80, and that the Council made efforts to seriously deliberate the plan based on all of the data which was before it on the date of the decision. The S.P.C. is aware that such data may change and therefore the Council determines that if and when such circumstances will change, the Council will be willing to re-inspect a new plan which will be presented by the teachers' association or any other body on its behalf".

2. In the petition before us, the Petitioners complain about the cancellation of the building licenses and ask that the decisions pertaining to the freezing of the licenses and the cancellation thereof will be declared null and void.

The Petitioners further move that the Respondents will give reasons why they will not approve the detailed plan which was filed by the Petitioners, and alternatively, why

they will not decide the same. As aforesaid, the plan was meanwhile deliberated, but the Petitioners' application was denied, hence the issue of the approval of the plan remains unchanged.

Thus, there are two issues which must be examined by us: the one pertains to the matter of freezing the licenses and the cancellation thereof, and the other revolves around the manner of the handling of the Petitioners' detailed plan, and the validity and reasonability of the decision not to approve the plan.

In order to understand the background for the Petitioners' and Respondents' acts, it would be correct to provide a concise description of the relevant provisions of the law, below.

3. The law: (a) in accordance with the Proclamation Regarding the Administration of Rule and Justice (West Bank Region) (No. 2), 5727-1967, published on 7 June 1967:

> 2."the law which existed in the region on 28 Iyar 5727 (7 June 1967) will be valid, so long as the same does not contradict this proclamation or any and all proclamations or orders which will be issued by me, and with the modifications deriving from the establishment of the Israel Defense Forces’ rule in the region".

The law pertaining to zoning matters which existed in the region on 7 June 1967, is the Planning of Towns, Villages and Buildings Law (Provisional Law No. 79) from 1966 which took effect upon the publishing thereof in the official Jordanian newspaper no. 1952 dated 25 September 1966, p. 1921. This law cancelled the Planning of Towns, Villages and Buildings Law (no. 31) for 1955, and the latter cancelled the applicability, in the Judea and Samaria region, of the Town Building Ordinance, 1936, which was legislated at the time of the British Mandate and remained in effect in the Judea and Samaria region after the annexation thereof by the Jordanian kingdom by virtue of the law pertaining to the laws and regulations which are effective in the two banks of the Hashemite Jordanian kingdom since 16 September 1950.

The laws were indeed changed as described below, but the aforesaid law from 1955 set forth in Article 38 thereof that all of the regulations which were published and all of the plans which took effect according to the Ordinance of 1936 shall be deemed as promulgated according to the aforesaid law from 1955. Furthermore, according to Article 8 of the law from 1955, a table was also included in the first annex thereto which explicitly addressed the planning areas that were determined according to the Ordinance from 1936, and it was set forth that the same will be deemed as published according to the aforesaid law. Below, we have yet to address the contents of the table, insofar as the same concerns the region contemplated in the dispute before us. In any event, it can already be determined at this stage, that the planning acts of the aforesaid type, which were instituted by virtue of the provisions of the Town Building Ordinance, either at the time of the British Mandate or after the expiration thereof, as well as in the period of the Jordanian military government in Judea and Samaria (1948-1950) or after the annexation by Jordan from 1950 and until the legislation of

the law from 1955, remained in effect also after the law from 1955 was legislated, insofar as not by explicit secondary legislation.

The described continuity did not end in 1966: according to Article 68 of the Planning of Towns, Villages and Buildings Law from 1966, all of the regulations which were issued according to the town planning laws which were effective before the legislation of the law from 1966, as well as all of the plans which were prepared according to such regulations, shall be deemed effective upon the taking effect of the law from 1966, as if the same were lawfully issued and according to the provisions of the aforesaid law.

(b) According to Article 10 of the Town Building Ordinance it was possible to establish town planning areas. Article 11 of the Ordinance determined, *inter alia*, that from the time when a town planning area shall have been established, no building shall be constructed or demolished or rehabilitated and no change, addition or repair of the building (other than internal repairs) shall be performed therein, unless a permit was first received from the Local Zoning Committee.

Each Local Committee was obligated to submit an outline town planning scheme to the District Committee in connection with all of the land in the region, and once such a scheme was submitted, building permits were issued only according to the aforesaid scheme, so long as the District Committee did not approve otherwise (Article 13(2) of the Ordinance). The scheme was deposited for inspection and objections and at the end of the period which was defined in the Ordinance, the District Committee was entitled to approach the High Commissioner and ask for his authorization for the scheme to take effect (Article 18 of the Ordinance).

(c) The law from 1966, according to which the planning authorities of Judea and Samaria operate, confers various authorities upon the Jordanian Minister of the Interior, the Supreme Planning Council in which the Minister holds office as chairman, the Central Bureau for the Planning of the Towns and Villages, the District Committees for Town Planning and the Local Committee for Town Planning. There is no room here to specify all of the authorities, but for the purpose of our case one should make reference to that according to Sub-Articles 6(c) and (d) of the law, the Supreme Planning Council was authorized -

> "(c) To issue an order cancelling or amending any license which was issued according to this law, if it shall become clear to the council that such a license was issued unlawfully and that it contradicts the development plans and the regulations and the orders and the directives.
>
> (d) To issue an order cancelling or amending any and all licenses for land development, as the council shall deem fit in the following cases: -
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> -1 The license pertains to constructing buildings or other acts of any kind, provided that it (the cancellation or the amendment) precedes the end of such acts.

> -2 The license pertains to changing the use of the land, provided that the cancellation or the amendment shall not have a decisive effect on the acts of constructing the building or any other act. Provided that if any and all licenses for land development shall have been cancelled or amended by an order that shall have been issued according to this article, the Minister shall order the Town Planning Committee that issued the license-upon the filing of an application to the Minister, within three months from the date of the delivery of the order by any and all holders of rights in this land, which specifies the costs incurred by them due to the commencement of the land development or the damage which was incurred by them due to the cancellation or the amendment-to pay the aforesaid person or persons fair damages for the costs and damage as aforesaid. However no damages shall be paid due to any and all damage which was created by the depreciation of the value of the use of the land, pursuant to the aforesaid cancellation or amendment".

According to Article 7, The Central Bureau for the Planning of Towns and Villages is responsible, *inter alia*, for the preparation of the regional planning schemes for all of the districts and for providing the help and guidance to the local authorities for town planning. The District Committee was authorized, according to Article 8, to approve specified planning schemes and to issue orders and performance warnings, whilst the District Committee exercises the authorities of the Local Committee. The Local Committee is obligated, *inter alia*, according to Article 9, to institute all the means that are required in order to ensure the performance and fulfillment of the provisions of the aforesaid law or of any and all approved schemes or provisions of regulations which were issued or are deemed as issued according to the aforesaid law (see in this context Article 68 of this law, which was mentioned in Sub-Article (a) above). Article 13 authorizes the Minister according to the recommendation of the Supreme Planning Council to declare the area as a planning area. Sub-Article 13(3) of the law determines pertaining to areas which have been declared prior to the commencement of the law:

> "Notwithstanding the provisions of this law, any and all planning areas from amongst the areas which are mentioned in the table, that is annexed to this law, as well as other planning areas, which were previously declared in the official newspaper but did not appear in the aforesaid table, should be deemed as planning areas which were declared according to a Minister's order in accordance with this article; from the commencement of this law".

The law discusses in detail the manner of preparation of general and detailed regional plans. In the event that a detailed scheme shall have been submitted, pursuant to the preparation and the commencement of a district or general scheme, the holders of the rights in the land or the buildings or the other assets which are included in any scheme, as asset holders or otherwise, are entitled to file their objections to the scheme and the same will be deliberated in the District Committee. The District Planning Committee is obligated to ask the manager of the Central Bureau to re-examine an approved general development scheme in order to introduce into it the amendments or additions that are required, at least once every ten years (Article 25).

Land that is included in the area of the scheme should not be parcellated into parcels, the area of each one of which is smaller than ten dunam, and such parcellation of land should not be registered, except according to a parcellation scheme that is approved by the Local Committee, and any and all parcellations of land which is in a planning region, and any and all registrations which will be performed pertaining thereto contrary to these provisions, shall be deemed according to the provisions of Article 28(1) of the law as void, whether or not there is an approved planning scheme. Any and all land parcellation schemes should be compatible with the approved and detailed planning scheme. Pertaining to the granting of building licenses, Article 34 unequivocally determines that:

> "(1)- Work that requires the receipt of a license – within the declared planning areas - should not be started and land should not be planned or developed or used in a manner which requires the receipt of a license, except after a license shall have been received for the work or the planning or the development or the usage. And no such license should be issued other than subject to the provisions of this law and the regulations which shall have been promulgated under this law, as well as the general and specified planning scheme or the parcellation plan, and all of the orders and the directives which constitute an integral part thereof.
>
> (2)- The development of land or construction of a building within an area which shall have been declared as a planning area but the developing plan shall not have yet been approved, must be subject to temporary supervision pertaining to the planning and construction and by such supervision it should be ensured that the development or the establishment of the building will not contradict, in the opinion of the District Planning Committee, the provisions and goals of the planning scheme that is being prepared or a planning scheme which will be prepared in the future.
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> (3)- The development of land or construction of a building within an area which shall have been declared as a planning area but no developing plan shall have been prepared therefor, should be subject to temporary supervision in all that pertains to the planning and construction, and the Local Committee is entitled to decide, with the consent of the District Committee, to refuse to issue a license of any kind for development work in the area for a period which will be no greater than one year, during which the planning authorities will prepare the planning scheme for the area".

Article 38 of the law discusses the acts of supervising the development (a term which also includes the construction according to the aforesaid law) and sets forth very detailed provisions pertaining to the termination of the work which is being performed contrary to a license or contrary to regulations or orders and directives which are valid or contrary to an approved scheme. Article 38(2) states in this context:

> "If a license shall have been issued for developing land and construction according to inadequate and misleading data, the planning committee that issued the license may decide on the cancellation thereof and then any and all construction or development work which shall have been performed

according to the license which was cancelled, shall be deemed as work which was performed without a license. For purposes of this article, a notice must be dispatched regarding the decision of the committee to the person in whose name the license shall have been issued, and the provisions of this article will apply in all that pertains to the acts that are required for the supervision of the development and the buildings".

(d) The order with regard to Planning of Towns, Villages and Buildings (Judea and Samaria) (No. 418) set forth adjustment provisions which derive from the institution of the IDF rule in the area. According to the provisions of Article 2 of the order, authority, which was conferred on the Minister by law, shall be conferred on the supervisor who was appointed by the commander of the area; The authorities of the District Committee are entrusted to the Supreme Planning Council and the authority of a village council is entrusted to the Village Planning Committees. According to Article 7 of the order, the Supreme Planning Council was conferred the authority to amend, cancel or condition the validity of any and all schemes or licenses. Hence, Article 7 of the order expands the authority that is conferred in Sub-Articles 6(c) and 6(d) of the law and adds thereto. At the same time it is clear that nothing in the general language of article 7 of the order confers the power to cancel a scheme or a license arbitrarily or on irrelevant grounds, namely, not for the purposes of the planning and construction.

(e) The provisions of the Town Building Ordinance were exercised at the time in the area, where the land is located, on which the Petitioners intended to establish their neighborhood. In the second addendum to the official newspaper dated 26 January 1939, an order of the High Commissioner was published, by virtue of his authority under Article 10(1) of the Ordinance, which declared a town planning area, which includes the area in which the aforesaid land is located. The area was referred to as the Jerusalem district regional town planning area with regarding to its domain the order determined as follows:

> "The area shall comprise the whole of the jerusalem" Areas and areas of municipal corporations within the district, with the exception of all existing town planning District, and of such other town planning areas and May be declared as such respectively from time to time. Areas of municipal corporations within the district as Of the jerusalem district, signed the limits of the area are indicated by a blue line on/203/38plan no.tp District building and town planning commission, a by the high commissioner and the chairman, jerusalem Copy of which is exhibited at the district commissioner's Offices, jerusalem, and may be inspected during the usual office hours". [הציטוט לא ברור, וגם שליפת פסק הדין ממאגר ממוחשב לא הועילה לסדרו.]

Namely, the borders of the area corresponded to the administrative border of the Jerusalem district, as the same was determined by the High Commissioner according to Section 11 of the Order in Council, 1922, apart from areas which were fixed as separate town planning areas. Incidentally, a copy of the tp/203/38 map was filed with the Court by the Respondents (Exhibit Res/21). The aforesaid order was cancelled on 4 September 1941 (second addendum to the official newspaper from 4 September 1941) at which time a new order of the High Commissioner was published, again, by

virtue of his authority under Article 10(1) of the Town Planning Ordinance. The new order did not create a material change in the legal situation because according thereto, the High Commissioner again ordered that each one of the administrative districts shall be a town planning area, and the planning area which was declared as aforesaid shall correspond to the borders of the administrative district, apart from separate town planning areas therein, as the same shall have been declared or will be declared from time to time. This order which was executed by the chief secretary of the mandate government on 30 August 1941, and took effect on 4 September 1941, also declared the Jerusalem district regional planning area which corresponded to the borders of the Jerusalem district with the reservations which were specified above that are irrelevant in the case before us.

The declaration of the area remained in effect as explained above also when the law from 1955 was legislated (see Article 38 of the law) and also after the beginning of the law from 1966 (see Article 68 of the law), since the continuity of the validity of the order from 30 August 1941 was not terminated, according to the evidence which was brought before us by both parties, by the publishing of any regulation at the time of the mandate or at the time of the Jordanian rule, which cancelled the declaration on the planning area or took the area, containing the land which is contemplated in the deliberation, out of the aforesaid planning area.

Incidentally, the Petitioners' learned counsel, Adv. Shahada, stated in an affidavit which was filed with us that the aforesaid Jordanian law from 1955 cited amongst the orders which were left in effect an order from 30 August 1941 that was published in the official gazette from 1 November 1929, and he wondered which order this could refer to. It seems that the typographical error which befell the Jordanian law can be easily clarified: the official gazette was indeed published on 4 September 1941 as aforesaid however, the official newspaper's number was 1129 and this probably caused the mistake, which created the date 1 November 1929 which is not compatible with the data before us.

In the second addendum of the official newspaper from 8 December 1941, a notice was published by virtue of the provisions of Article 16(1) of the Towns Building Ordinance bearing the sub-title "notice on a temporary approval of a parcellation plan, Jerusalem district", according to which a temporary approval was issued to a scheme named Jerusalem district regional town planning scheme no. 5/Rj and which states that the map tp/362/41 and the regulations which constitute part of the scheme were deposited in the offices of the district administration in Jerusalem, and at the offices of the town planner.

The tp/362/41 map is not before this court, however, the language of the notice literally specifies what the borders of the scheme are, stating that: "The boundaries, in accordance with the notice published in gazette no. 1129 of the 4th of September 1941 The boundaries of the 1941,th september 4of1129 The jerusalem district, exclusive of all declared town scheme coincide with the administrative boundaries of ".planning and municipal areas [כנ״ל לגבי הציטוט]

In the second addendum of the official newspaper from 16 April 1942, a notice was published pertaining to the High Commissioner's final approval of the aforesaid

scheme and it was determined that the scheme will take effect fifteen days after the publishing of the notice in the official newspaper, namely, on 1 May 1942.

In view of the aforesaid, the said approved scheme /5rj is valid until today, by virtue of the transitional provisions in the Jordanian laws from 1955 and 1966.

4. (a) The main question which is now before this court in view of the essence of the provisions of the law the principles of which were summarized above, is the question: Is the subject matter of this deliberation governed by the provisions of Sub-Article 34(1) of the law from 1966 or perhaps Sub-Articles(2) or (3) apply to the matter? As we recall, Article 34(1) addresses a declared planning area, regarding which a general and detailed planning scheme or a parcellation plan was approved, or regulations, orders or directives were published. Sub-Article 34(2) addresses an area which was declared as a planning area, the development plan with regard thereto was prepared but not yet approved. Incidentally, this provision is similar in trend to the provisions of Articles 77 and 98 to the Zoning Law 5725-1965, which applies in Israel.

Article 34(3) discusses an area which was declared as a planning area, pertaining to which a development plan has not yet been prepared.

(b) When a declared planning area is concerned regarding which a plan has been published, a license cannot be granted, according to the statements in Article 34(1) of the aforesaid law, other than subject-

> "to regulations which were promulgated under this law as well as the general and detailed development plan or a parcellation plan and all the orders and directives which constitute an integral part thereof."

In the case of an area with regard to which a plan is under preparation, the issuance of the building license is subject to the temporary supervision, as stated in Article 34(2), that is being performed by the planning authorities, which were determined by the law, as stated *inter alia* in Article 38 thereof. The supervision must guarantee that the development or the construction of the building will not contradict, in the opinion of the District Planning Committee, the provisions and goals of the planning scheme that is under preparation or a planning scheme which will be prepared in the future.

If a development plan has not yet been prepared, and the area concerned was declared as a planning area, the granting of the license is entrusted to the temporary supervision, as aforesaid in Sub-Article 34(3), and this legal provision also authorized the Local Committee, with the consent of the District Committee, to refuse to issue a license in the course of any period which will be no longer than one year, during which the planning authorities will prepare the planning scheme for the area.

(c) The Petitioners' claim is that their case is governed by the provisions of Sub-Article 34(3), namely, that this is an area which was indeed declared as a planning area but there is no scheme with regard thereto and therefore, the construction is subject to supervision and it of course requires a license, however if a license was issued without the committee using its authority to suspend its decision for a year, then the license should be deemed valid and the provisions pertaining to the

cancellation of a license which was already granted which are specified in the aforesaid law, are inapplicable.

To remind here, that also if the Petitioners' matter would have been governed solely by the provisions of Sub-Article 34(3), this would not have derogated from the authority of the Supreme Planning Council to cancel the effect of a license by virtue of the statements in Article 7 of the aforesaid order 418, if it was led to do so due to planning considerations, however, the issue of the applicability of order no. 418 does not arise in the case at bar, since the contemplated area is an area regarding which there exists a valid scheme since 1942, which was not cancelled until now, and whose continuing effect derives from the provisions pertaining to continuousness of laws which were included in the Jordanian laws from 1955 and 1966, all as specified above. It follows that the case is governed by Sub-Article 34(1), according to which a license should be issued only subject to the planning scheme which applies to the area and the regulations which constitute a part thereof.

(d) Before we continue to examine the meaning of the applicability of Article 34(1) it is correct to further note that had there been grounds for the Petitioners' argument according to which today there is no valid scheme which applies to the area, then too, their case would have been examined according to Sub-Article 34(2) and not Sub-Article 34(3), since it is universally agreed that the issue of the planning of the roads which will cross the contemplated area is now being deliberated, and this issue is amongst the basic components of any planning, as arises, *inter alia*, from the statements in Article 14(1)(h) of the law from 1966, and also from the provisions of Article 15(1)(b)(3) therein. Hence, in any case it was possible to ensure by supervision that the establishment of the building will not contradict the provisions and the goals of the planning scheme that is under preparation, or a planning scheme which will be prepared in the future (see the language of Sub-Article 34(2), as the same was quoted above.

5.(a) The path which the Petitioners took indeed has many faults and the data before us is inconsistent with the conclusion that the Petitioners were not aware of this: above I mentioned Article 28 of the law which determines clear directives pertaining to land parcellation plans, and the same were not fulfilled in the case at bar. Furthermore, the regulations of scheme /5rj clearly set forth in Article 17 thereof that –

> Only one building apart from an outbuilding shall be" For building development shall be included within detailed errected on an unsubdivided plot and all land to be used Or parcellation schemes and submitted for the approval Of the district commission prior to the registration of".new titles [כנ"ל לגבי הציטוט]

It follows that the plan also determined that so long as no parcellation was performed into parcels, it is only possible to construct one single building on the whole plot of land. The obligation to file a detailed plan was also clearly included within the terms which are set forth under Article 17 (see also Articles 40 and 41 of /5rg Regulations), and this obligation was not fulfilled in the first stage, before the licenses were issued.

(b) Furthermore, it is hard to believe that the Petitioners were not aware that there is a material difference between the building of an entire neighborhood and the building of a single house. The law from 1966 explicitly lists the questions which must be examined in the context of the planning, and the Petitioners did not address most of these questions at all, when they initially filed their applications. Article 15 determines as follows, that the local regional planning scheme must set forth provisions pertaining to the trade, parking spaces, garages, the crowdedness and gaps between the buildings and the number of buildings which may be constructed, the public buildings, schools, methods of transportation to the area and within it, including the public passage rights, etc. Anyone, even if he is not familiar with town planning issues, understands that there is a material difference between the planning of an entire neighborhood and the deliberation on the licensing of a single house, and the Petitioners offered no reasonable explanation why they made, by the manner of filing of the applications, a representation vis-à-vis the planning authorities, that they concerned separate buildings, the applications for the construction of which were being submitted without any connection between them, and not the planning of a neighborhood.

6. Against these questions the Petitioners raised two objections: First, so they argued, there is an accepted custom, according to which, applications for licenses for single buildings are approved routinely and without in-depth examination and inquiries, and therefore they did not believe then – and they also do not believe now – that they should have been treated differently. Second, also if they had wanted to act according to the existing plan, they could not have done so since it is not possible to find the map, which is part of the plan /5,rj and the absence of the map is identical in meaning to the absence of a plan.

As for the claim that applications for licenses to build single buildings are routinely approved, I believe that this cannot serve as a reasonable explanation for the route which was taken by the Petitioners. Petitioner 1 is an association which was founded for purposes of the building of a neighborhood, and its name attests to its aim. The license applications did not even hint at the fact that these applications were part of a comprehensive plan for the building of a neighborhood. Furthermore, nothing was stated in the application, that each one of the applicants for the permit is part of a larger group, which has a joint plan. As has already been mentioned several times above, there is a material and fundamental difference, from the aspect of town planning, between the building of an entire neighborhood and the building of a single house, and those seeking to build an entire neighborhood cannot step into the shoes of those who wish to build a single house, and the matter is clear.

Nor have I found any substance to the Petitioners' second argument according to which they were entitled to assume that there is no valid plan since there is no map.

As aforesaid, a notice was published in the official newspaper on the final approval of the plan bearing the serial number /5,rj which applies to the entire town planning area of the Jerusalem district, other than the special town planning areas which were determined for the cities Jerusalem, Hebron, Beth Jallah, Beth Lehem, Jericho, Ramallah, and El Birah (see the map /203/38,tp filed with us). As can be recalled, the language of the aforesaid orders defined that the planning areas correspond to the areas of the administrative district, such that the borders of the planning area may be

inferred also without studying the map, but from turning to the aforesaid regulation pertaining to the administrative districts, which was published according to the Order in Council. From the aforesaid verbal description of the borders it clearly arises that the area in which the Petitioners' land is located is within the range of the plan (since it is not within the borders of the town planning areas of Jerusalem, El Birah or Ramallah).

Incidentally, if any part of the neighborhood is planned in the area of the city of Jerusalem in the borders thereof from 28 June 1967, it is clear that an application in connection with the construction should be submitted to the Jerusalem local committee, and this was not done until now.

The existence and validity of a plan arise from the provisions of the mandatory law and the aforesaid Jordanian laws, and of the orders which were published by virtue thereof, and the same were not changed also by the Israeli military administration. It is not the absence of a map which caused the chain of events before us, and led the Petitioners to seek building licenses in the manner they did, but the Petitioners' disregard for the fact that there is a plan with regard to the area whose regulations can be obtained and that in any event, it is necessary to act in the context of the 1966 law, some of whose provisions were concisely cited above. Had the Petitioners filed a plan for the buildingof a neighborhood, and the handling thereof would have been delayed due to the absence of a map or due to the lack of clarity deriving therefrom, there would have been room for grievance on their part, since it is not they who should suffer from the absence of the map according to which they are required to act, but this is not what caused the error.

The summary of this point, the Petitioners did not refrain from submitting a parcellation plan and a detailed plan as required by law and from the valid plan because of the absence of the map /5,rj, but they chose the route which they did whilst disregarding the existence of a valid plan.

No reasonable grounds were presented to us as to why the loss of a map must automatically entail the cancellation of a plan which was duly approved beforehand; obviously such an unfortunate phenomenon, on the other hand, obligates the planning bodies to take immediate action, but that is not the issue which was raised here.

7.(a) One can only conclude that the granting of the licenses without a parcellation plan and without a detailed plan contradicted the law from 1966, whether or not there was a plan; All the more so when it becomes clear that with regard to the area in which the land is located, there exists a valid plan still from 1942, whose regulations the Petitioners ignored.

(b) The outcome of the aforesaid (אור לעיל צ״ל אמור לעיל) is that the planning authorities were authorized to cancel the licenses in accordance with the authority thereof according to Article 6(c) of the law from 1966.

(c) The Petitioners wished to argue, alternatively, that the licenses could not have been cancelled, after they were issued and after the construction began, and in this matter they based their arguments on the statements in HCJ 16/50 [1], on p. 237, 238.

This claim is unfounded due to a number of reasons: First, the statements of the Court in the aforesaid HCJ 16/50 [1] referred to a license which was duly issued in accordance with the law (see: there, on p. 241 opposite the letter B) and as Justice Agranat (as was his title then) says there, nothing in the aforesaid claim can assist anyone constructing a building contrary to the provisions of the town building plan, based on the license which was granted to him, since such a license has no legal value and is null and void. Second, the rule – whereby one cannot infer from the conferring of the authority to grant a license that that same authority granting the license is also authorized to cancel the same (there, on p. 237 opposite the letter F) – refers to cases where the legislator did not explicitly determine that the authority which grants the license will also have the authority to cancel the same (see: HCJ 123/64 [2], on p. 540).

In the case at bar, the Jordanian legislator conferred a clear and explicit authority to freeze licenses which were already granted (Article 38 of the law), and to cancel licenses which were unlawfully issued contrary to the provisions of a plan (Article 6(c) of the law) and hence, whoever ordered the cancellation of the licenses was authorized to do so.

8. The second central argument which was raised by the Petitioners addressed the issue of the planning of the routes due to which the Petitioners' plan for the building of a neighborhood was denied when the same was deliberated several months ago. Similarly to their argument pertaining to the cancellation of the licenses, they sought to deem the acts which were taken in their respect as expressions of the trend to deny them their rights for political reasons.

I have found no substance to this argument. All of the considerations which were considered by the Respondents are relevant planning considerations: Both the matter of the proximity of the neighborhood to an industrial area, and the issue of route planning are pertinent considerations where zoning issues are contemplated, and not an iota of evidence was brought according to which there is an intention to limit the Petitioners and prevent them from building their neighborhood. The Respondents' answer is that they already approved similar neighborhoods and that they are about to approve the establishment of additional neighborhoods that are similar, and this argument which they made was not refuted or challenged.

It is of course possible to understand the Petitioners' grievance in view of the long period of time that has lapsed since they began handling their plan, and the many financial investments which they meanwhile invested pursuant to their engagement with contractors and the purchase of building materials. Now it becomes clear to them that they will not be able to build the houses and this prejudices them of course, from a personal and economic aspect. As I mentioned above, the blame lies largely with the petitioners, who instead of taking the main road and performing their acts honestly and openly, chose an alternative route which entailed the complications described above. However, also the Respondents did not act properly since they too should have been aware of the absence of a parcellation plan, and of the need to examine the issue of whether the single applications for licenses as they were submitted, are compatible with the general plan /5rj. The method whereby single licenses are granted, without examining and checking as required by law, is of course the original sin. There are no doubt cases in which license applicants are fortunate in receiving a quick positive

response, however from the aspect of the planning goals, including the prevention of environmental hazards, this system can, sooner or later, cause problems as transpired in the case at bar.

We are not expressing our opinion here on the question of whether the Petitioners, who first received licenses which later had to be canceled, are entitled to damages according to the aforesaid law, because this issue needs to be examined by the competent authorities under the law.

On the other hand it seems to us that it will be only just and fair if the Respondents will now assist the Petitioners in obtaining alternative land on which they will be able to plan and build their neighborhood.

In view of the aforesaid, I would cancel the order nisi and deny the petition.

Justice A. Barak: I agree.

Justice Ben-Itto: I agree.

It was decided to cancel the order nisi and deny the petition.

The Petitioners shall bear the expenses of the Respondents, including legal fees, in the sum of NIS 1,000.

Issued today, 15 Tevet 5741 (22 December 1980)