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The Supreme Court
HCJ 2567/03

_____ v. Commander of the IDF
Forces in the West Bank
Filed on: 14 March 2003

At the Supreme Court
Sitting as the High Court of Justice

In the matter of:

1. _____ **Askar and his family**
Kafr Seida, District of Tulkarm
2. _____ **Ajaj and his family**
Kafr Seida, District of Tulkarm
3. _____ **Ouda and his family**
Kafr Seida, District of Tulkarm
4. _____ **Ajouj and his family**
Kafr Seida, District of Tulkarm
5. _____ **Ajani**
Kafr Seida, District of Tulkarm
6. _____ **Ouda and his family**
Kafr Seida, District of Tulkarm
7. **HaMoked: Center for the Defence of the Individual**
An association founded by Dr. Lotte Salzberger

all represented by attorney L. Tsemel,
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The Petitioners

v.

The Commander of the IDF Forces in the West Bank

by the State Attorney's Office
Salah-a-Din St.
Jerusalem

The Respondent

Petition

The Honorable Court is moved to summon the Respondent and to charge him with answering:

- a. Why he will not refrain from confiscating and/or demolishing and/or sealing the houses of the families described in this petition, all of which are located in Kafr

Seida in the District of Tulkarm, and in which the Petitioners and their families reside.

The Honorable Court is moved to render these orders nisi absolute.

As temporary relief:

The Honorable Court is moved to order the Respondent to refrain from taking any action on the houses which are the subject matter of this petition, pending the conclusion of all the proceedings in the Petition.

The Grounds for the Petition are as follows:

Starting after midnight, on the morning of 12 March 2003, until the late evening hours of 13 March 2003, IDF forces were present at Kafr Seida, in the District of Tulkarm. *At first, the IDF forces concentrated all males aged 15 and above at the village school.*

Approximately 600 men sat for a night, a day and a night at the school, without food or water, and most of them were released after midnight or in the early morning hours of 13 March 2003.

All of the men were bound with plastic handcuffs, were prohibited from using the restrooms, and besides an orange per person and maybe an apple, received no food whatsoever. From time to time, one of them was taken away for questioning.

To the best of the Petitioners' knowledge, since virtually all of them were held and handcuffed at the village school, an IDF soldier and a local youngster were killed during the siege of their village. On the "*Haaretz*" website it said, on 13 March 2003:

Staff Sergeant Fuchs, 21, from Kibbutz Gevat, was killed yesterday in exchanges of fire during an encounter with a terrorist squad from the Islamic Jihad in Kafr Seida, north of Tulkarm. Another soldier was lightly wounded. The Jihad member was killed in the battle.

After approximately 20-22 hours in which the males were held in the village school, they were slowly released, *and a full curfew continued in the village!* In the afternoon, 3 houses were blown up in the village, a house attributed to _____ Askar, a house attributed to _____ Ajaj and a house attributed to _____ Yassin. To the Petitioners' best knowledge, the tenants of the houses received no prior warning of the intention of damaging them, and the houses were blown up without any hearing.

IDF forces arrived at and ravaged most of the Petitioners' houses. They notified most of the Petitioners that they had to remove their possessions, as specified below, and prepare the house to be blown up.

Despite temporary cutoffs of the telephone network in the village, some of the Petitioners managed to call Petitioner 7, and following its communication with the representatives of the Respondent's legal advisor, an order was probably given to stop the rampage, and the engineering corps soldiers gathered the explosives. The IDF forces left the village much later.

*The representatives of the Legal Advisor [to the West Bank] refused to commit that the Respondent would not continue the destruction of the village, and made do with a partial undertaking that **the demolition of the houses would not continue until the dawn of 14 March 2003.***

This Petition is therefore filed with the utmost urgency.

The uniqueness of this petition is that it encompasses *several families in Kafr Seida that fear for the fate of their houses*, and are petitioning together since they share the same concern, because it is their village which stands at the focus of a punitive rampage, which hits without distinction or warning;

The uniqueness of this petition is the revelation that *the Respondent, as a policy, demolishes houses pursuant to Section 119 of the Defense Regulations (Emergencies), without giving residents of area A a hearing and a right to turn to the courts.*

The uniqueness of this petition is that it brings into focus the arguments that are raised over and over again by Petitioner 7 and other petitioners, who petition the Supreme Court against the intentional destruction of property and houses, and who claim that the Respondent commits severe and dangerous punitive rampages, aimed at spreading horror and destruction, and that there is a genuine fear that its acts would be defined as war crimes, while implicating all those taking part in such acts.

The Petitioners

1. Petitioner 1 is the father of the deceased _____, a 22-year old single youngster who was killed by IDF fire on 11 March 2003. His body is still lying at the hospital in Tulkarm, since a full curfew has been imposed on Kafr Seida since the moment his death became known, and it was not possible to bury him.

Petitioner 1 was required to report to the school from the early morning hours of 12 March 2002, where he remained without food or drink until 2 a.m. on 13 March 2003.

He was questioned at the school about his deceased son, and replied that he did not know his whereabouts, his interrogators promised that they would kill him.

After his release, on 13 March 2003, he came home to find the house surrounded by IDF soldiers. At 14:00, the IDF soldiers forced him to open his store, located on the ground floor of his house. They placed explosives, electricity cables and other objects in the store, and informed him that they intended to blow up the house.

Only after the villagers managed to contact Petitioner 7, at around 19:00, did the soldiers remove the demolition equipment from his store, put him on a military jeep, and drive away.

Petitioner 1 is a storeowner and a farmer. His son was missing from home for a long time, as he had told his interrogators whilst under mass detention at the school.

Petitioner 1's house has two floors. On the first floor, there is a shop and a storeroom. The second floor is used as the residence of the entire family, Petitioner 1, his wife, his son who was arrested on 12 March 2003 at the school yard, his son _____, 15, a schoolboy, his son _____, 12, a schoolboy, his son _____, 7, a schoolboy, and his daughter _____, 3, a baby.

2. Petitioner 2, holder of I.D. No. _____, is the father of _____ Ajaj, with respect to whom it was claimed to his father that he was on the wanted list. The Petitioner is a 45-year old laborer. Since he was told that the Respondent was looking for his son, he fears that his house will be demolished, similarly to the houses of persons deemed to be wanted.

Petitioner 2's house has 3 floors. The ground floor is inhabited by the Petitioner, his wife and his minor children, 3 boys and a girl. The second floor is occupied by his married son, _____, his wife and two children.

The third floor is inhabited by his son _____ with his wife and two children. Petitioner 2's son, who is deemed to be wanted, has not lived in the house for more than 2 years.

3. Petitioner 3 is a laborer, and an owner of a house in Kafr Seida. It has been claimed that his son _____ Ouda has been on the wanted list for two years. The Petitioner does not know what is happening with his son, since he lost contact with him two years ago.

Petitioner 3's house has 3 floors. The Petitioner and his children reside on the first floor. The second floor is not occupied in practice, and the third floor is still under construction.

4. Petitioner 4, holder of I.D. No. _____, was born in 1931 and is a farmer by profession. To Petitioner 4's best knowledge, his son _____ Ajaj has been on the wanted list since the beginning of the Al Aqsa Intifada.

Soldiers arrived at the house and ordered the Petitioner's daughter-in-law to remove all possessions from the house, since it was about to be demolished.

The Petitioner owns two floors in his house. The Petitioner, his wife and 3 children live on the first floor. The apartment on the second floor is inhabited by his son who is deemed to be wanted, and the son's wife and two children.

Until the Intifada broke out, the son worked as a laborer in Israel, and held licenses to enter and work in Israel.

5. Petitioner 5 is the father of _____ Ajani, who is deemed to be wanted. For approximately two years, the family knows nothing about him. The Petitioner and his sons, like the other men in the village, were also subject to a lengthy detention of approximately 22 hours at the school, under the same harsh conditions described above. One of the Petitioner's sons was questioned about his brother while at the school, and was told that if he didn't bring his brother, he would be killed.

On 13 March 2003, at 17:00 or thereabouts, approximately ten army men arrived at the house, and called Petitioner 5. He opened the door and they entered the house and searched it. During the search, they informed the family members that if they didn't give _____ up, the army men would shoot them themselves.

The search at the house was performed maliciously, while wrecking havoc deliberately. **The soldiers broke all the glassware and china in the living room and kitchen, deliberately cut the armchairs with knives, removed clothes from the closets and scattered them around the house, and poured out food products. After staying in the house for approximately thirty minutes, they left.**

Petitioner 5's house has two floors. The first floor is inhabited by the Petitioner, his wife and his unmarried children. The son who is deemed to be wanted used to live with them.

It should be noted that _____, **the Petitioner's son, was killed by IDF soldiers who shot him inside the house on 17 November 2002.** The second floor is inhabited by _____, the Petitioner's son, his wife and his three small children.

6. Petitioner 6, I.D. No. _____, is married to an Israeli citizen, a resident of Baqa al Garbiyeh. He too was summoned to the school like all the males in the village, from where he was released earlier owing to his age.

The IDF forces came to Petitioner 6's house twice. In the first time they arrived on 12 March 2003, and were polite. In the second time they came on 13 March 2003 and behaved as **crudely as possible, like true ruffians. The soldiers broke all the glassware in sight, kicked all the furniture, took chairs and armchairs and deliberately threw them down on the floor, breaking them. They removed and scattered the entire contents of the kitchen, and broke all the household utensils. They found cans of paint and poured the paint from the cans on clothes they had scattered. The soldiers tore up the Israeli I.D. of the Petitioner's wife, _____, and until the time of writing of this Petition she has not found a gold medal that was hidden in her house.**

They said that they were looking for the Petitioner's son, _____ Ouda. They announced that they intended to demolish the house.

Only at 19:45, when the soldiers received notice to stop the proceedings, did they leave the house.

The Petitioner's house has three floors. On the first floor there are three rooms, a kitchen and a restroom. It is occupied by the children, and the son _____ also used to live there in the past. The Petitioner and his wife live on the second floor. The third floor is still unfinished, and is not occupied.

Two houses of the Petitioner's two brothers are attached to this house. His brother _____'s house has two stories, with his wife and four children, and the house of his brother _____, who lives in the one-story attached house, with his wife and four children.

7. Petitioner 7 is a legally registered association which protects human rights in the occupied territories.
8. The Petitioners do not know the full details of the events that preceded the intention of demolishing their houses, and therefore cannot complete this petition from the legal aspect, and will make do with mentioning the broad legal rules.
9. It is already clear that the IDF entered Kafr Seida of its own initiative, and at its own decision, and that the events occurred following this entry. The Petitioners shall claim that the act of demolition of the houses that took place should not be regarded as *part of a military operation*, but as a reckless and miscalculated decision of the army as a response to the locals' resistance to the entrance of the IDF forces, as a consequence of which, probably, a soldier was killed. The Petitioners do not know when the villager was killed.

10. Since the issuance of the Supreme Court's essential decisions on the procedures for the demolition of houses pursuant to Emergency Regulations 119, the situation in the field has completely reversed. Now the IDF has, in effect, complete and utter control of the entire West Bank region. There is no Palestinian freedom of action to speak of in any area, the classification of different areas with different levels of control is entirely inoperative, and the same control is exerted over all areas.
11. **The main element is the fact that the IDF soldiers had demolished 3 houses without prior notice, and the demolition operation was ceased only due to external intervention. It should be noted and emphasized that the Respondent exercised complete control over the telephone lines, and disconnected them according to his wishes and needs throughout the entire operation, and even during the gathering of the data used for this Petition. Had the [local] residents not had mobile telephones, this petition may never have been written.**

The Respondent should have given *all the house owners a proper hearing*.

12. **A principal argument in this petition is the argument that the Respondent *is not entitled to damage the houses at all, according to any international and moral criteria which prohibit collective punishment. However, also according to the case law that has evolved in this Honorable Court, the Respondent is not entitled to damage any of the apartments located on any of the floors in all the buildings, other than the residential apartments of proven saboteurs.*** None of the persons on the wanted list is such, and the acts of Petitioner 1's deceased son most certainly do not justify demolition.

There is no justification for collective punishment

13. Much ink has been spilled on the principles underlying the opposition to pointless collective punishment; moreover, the manner of the IDF's conduct in the village, insofar as it is now known, gives rise to a substantial concern of illegal activities pursuant to the criteria of international law.

It is feared that the Respondent **has a pool of houses for demolition, which he is holding as bargaining chips, with the intention of using them at his will.**

It is feared that the 3 houses that were demolished were houses from such a pool, and that the Petitioners' houses are nothing but further potential for the pool.

Had the security forces believed, in real time, before entering the village, that there was any **need or justification** for damaging the house, they would have done so *after*

giving prior notice and a hearing. However, there is no doubt that the damage is nothing but a reaction.

14. A summary of the criteria for demolition and confiscation considerations, from which inferences can be made regarding confiscation and sealing, may be found in HCJ 2772/92 *Alamarin v. IDF Commander in Gaza Strip*, *Piskei Din* 46, 3, p. 693. On p. 700, the Hon. Justice Bach lists, among the relevant factors for the military commander's decision:

- a. **What is the seriousness of the acts attributed to one or more of those living in the building concerned, with regard to whom there is definite evidence that they committed them?...**
- 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?... the factual position in this regard may influence the scope of the commander's decision.**
- c. **Can the residential unit of the suspect be separated in practice from the other parts of the building? Does it, in fact, already constitute a separate unit?**
- d. **Is it possible to destroy the residential unit of the suspect without harming the other parts of the building or adjoining buildings? If it is not possible, perhaps the possibility that sealing the *relevant* unit is sufficient should be considered.**
- 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?**

15. As far as the Petitioners are aware, their houses do not meet any of the criteria.

The illegality of the act of damaging the house

16. From a conversation with the Assistant to the Legal Advisor attorney Sigal Admoni, it appears that it is the IDF's policy *not to give an argumentation right for demolitions pursuant to Section 119 of the Emergency Regulations to residents of area A.*

This unequivocal statement was made to the undersigned as a fixed, recognized, declared and unchallengeable policy!

It is a flagrant deviation from the Honorable Court's decision, and an unjustified, rash and uncalculated use of decisions issued by the Honorable Court in a series of decisions.

17. The Honorable Court will be moved to receive separate complementary legal arguments on the damage to the house, which have been omitted from this petition due to the haste in which it was written.
18. This Petition is accompanied by an affidavit by the Petitioners' attorney, on the contents of the Petition, which was taken from the Petitioners or their family members on the telephone. The affidavit further states that the power of attorney that was given to Petitioner 7 by the Petitioners on the telephone has been re-confirmed on the telephone to the undersigned.
19. It shall be stated that in the evening of 13 March 2003, the undersigned called the Respondent's Legal Advisor, and only when contact was made with the ever helpful Adv. Lotstein, Deputy to the West Bank Legal Advisor, and with attorney Admoni, was the undersigned promised that no more demolitions of houses would be performed in the village during the night.

They did not agree to make commitments regarding demolitions in the coming days.

20. In view of the aforesaid, and in view of all of the above, the Honorable Court is moved to issue orders as requested.

L. Tsemel, Attorney

Counsel for the Petitioners