

***High Court of Justice 6642/08 Rabach Mohammad Asaf El-Latif and Yesh
Din against the Minister of Defense et al. – Summary of the Petition¹***

In the Supreme Court in Jerusalem
Sitting as a High Court of Justice

Bagatz 6642/08

1. Rabach Mohammad Asaf El-Latif
2. Yesh Din Organization, Reg. No. 58-0442622,
all by Advs. Michael Sfar and/or Shlomi
Zachary and/or Natalie Rosen and/or Neta
Patrick of 49 Achad Ha-Am Street, Tel Aviv
65206, tel: 03-6206947, fax: 03-6206950

The Plaintiffs

-- versus --

1. **The Minister of Defense, Mr. Ehud Barak**
2. **The commander of IDF Forces on the
West Bank, Aluf Gadi Shemani**
3. **Head of the Civil Administration, Tat-
aluf Yoav Mordekhai**
4. **Commander of Shai District of the Israel
Police, Nitzav Shlomi Kaatabi**
all by representatives of the State Attorney,
the Ministry of Justice, 29 Salach Ed-Din
Street, Jerusalem 91010
5. **The Givat Zeev Local Authority, of 44
Hamacabim Street, Givat Zeev 90917, tel:
02-5360106, fax: 02-5362477**
6. **Ayyelet Hashachar Association, C/o Mr.
Harush David, 24/3 Givat Yearim, Givat
Zeev**

The
Respondents

**URGENT PETITION FOR A CONDITIONAL
INJUNCTION AND AN INTERIM INJUNCTION**

This is a petition for **a conditional injunction** according to which the Hon. Court is asked to instruct the Respondents to attend and give reason, if they wish, why they should not adopt all the necessary measures for realization of the demolition orders which have been issued against a permanent structure (hereinafter: the Structure) which was built on the land of Petitioner No. 1, in Parcel 6, Plot 14 of the lands of the El-Jib village, at coordinate 2160/6403 in the “New Israel” grid.

Additionally, this is a petition for an interim injunction that will instruct the Respondents to adopt all the necessary measures in order to prevent the

¹ What is stated in this document constitutes a summary only of what is stated in deed of petition and is not intended to replace what is stated in the actual deed of petition and/or in the appendixes attached to the deed of petition. What is stated in this document is not be viewed as of legal significance in the process in High Court of Justice 6642/08.

continued building of the Structure, its connection to the infrastructures and any use thereof by any person and/or corporation, this being according to a final judgment in this Petition.

And these are the grounds in the Petition for a conditional injunction:

“He who prays unto the Holy One, blessed be He, with hands soiled by theft, is not answered.”

Midrash Exodus Rabba, XXII, 3

a. Preface

1. The subject matter of this Petition is an incursion made by Israeli citizens to the **private land** of Petitioner No. 1 (hereinafter: the Petitioner), a Palestinian resident of the village of El-Jib which is situated on the West Bank, an incursion which has continued without any effective enforcement reaction of the authorities who are responsible for the rule of law in the area. To our great disgrace, the trespassers built on the stolen land of the Petitioner a **synagogue** which is called by them “Ayyelet Hashachar”. This incursion, which has lasted for ten years, has recently worsened when the trespassers began to construct a new building close to the structure they erected a number of years ago on the private land of Petitioner No. 1.
2. The plot of the Petitioner borders on the built-up plot of the settlement of Givat Zeev. The incursion onto the plot owned by him began in 1998 and, over the years, the Petitioner has filed a number of complaints with the Israel Police, has adopted various legal processes, has been interviewed on the subject in the press and has done all he could to terminate the theft of his property.
3. The reaction of the authorities to the complaints of the Petitioner were the issuance of cessation of work orders and demolition orders against the illegal construction work, but no more than that. The trespassers from Givat Zeev have not at any stage come up against representatives of an enforcement arm of the law that compelled them **actually** to desist from their crime and obey the orders which the authorities issued and it is, therefore, no wonder that, with time, they expanded and enlarged their holding on the land of the Petitioner.
4. The village of El-Jib where the Petitioner resides is situated close to the settlement of Givat Zeev. The plot of the Petitioner, together with many other Palestinian lands, remained, however, on the eastern side of the separation fence, such that the Petitioner cannot freely reach his land. And thus, with the patronage of the separation fence, the theft of his property, which began before the construction of the separation fence, continues.
5. Despite the fact that a number of buildings were erected on the land of the Petitioner, among them a parking lot and other buildings, this Petition is focusing on the Structure which the Petitioners built a number of years ago

and to which an extension is currently being constructed and which is being used, no less, as a **synagogue** called “Ayyelet Hashachar”, containing a religious school with the name of “Hedvat Haim” (hereinafter: the Structure or the Synagogue). **How shameful that a synagogue and a religious school are constructed on stolen land.**

6. A few months ago, members of Petitioner 2, the human rights organization Yesh Din, discerned that new work was taking place for expansion of the Synagogue such that it would spread over additional areas of the land of Petitioner No. 1. Following this discovery, applications were made to the authorities and it was even clarified that cessation of work orders and demolition orders had also been issued for the Structure. Despite all these, the work continues, the thieves continue to hold on to the theft in broad daylight and without shame and the law enforcement bodies, namely Respondents 1 – 4, are doing nothing.
7. This Petition requests that the Hon. Court instruct the Respondents to activate the demolition orders that have been issued and to enforce the cessation of work orders which they themselves signed. When the Petitioners released that in effect there was no intention of stopping the ongoing and increasing breach, and when correspondence on behalf of the Petitioners had no result, the Petitioners were left with no choice but to ask for welfare from the Hon. Court.
8. In this case, the welfare that is sought by the Court is, of course, intended, first and foremost, to end the damage to the rights of Petitioner No. 1. But Petitioner No. 2, an Israeli human rights organization, also seeks the involvement of the Court for an additional reason with a public-Israeli hue **Petitioner No. 2 will also ask the Hon. Court to issue the orders sought in the Petition for the reason that the acts of the trespassers in this case, who built a synagogue on land that was not theirs, stains the Jewish citizens of Israel with a serious moral stigma of a breach of the Eighth Commandment which states simply: “Thou shalt not steal”. The gravity of the Commandment is immeasurable when the theft takes place (as it were) in the name of and on behalf of Judaism.** And also for this reason there is place for immediate involvement of the Hon. Court – to put an end to an offensive act taking place in broad daylight and bringing into disrepute the religion which gave to mankind a moral codex which serves to this day as a basis for all human ethical teachings.

b. Factual Background

I. The Parties to the Petition

9. Petitioner No. 1, Mr. Rabach Mohammad Asaaf El-Latif, a resident of the village of El-Jib, is one of the owners of Plot number 14 in Parcel 6 in the lands of the El-Jib village. The plot is situated on land that is not arranged and is registered in the registers and property tax in the name of the father of the Petitioner. In accordance with an order of inheritance of the Shari’a Court in Jerusalem, the Petitioner is one of the heirs of his father.

10. Petitioner No. 2, the Yesh Din Organization, is an Israeli human rights organization whose main activity focuses on strengthening and reinforcing law enforcement processes on the West Bank.
11. Respondent No. 1 is the Minister of Defense of the State of Israel. Respondent No. 1 is responsible for the Civil Administration on the West Bank.
12. Respondent No. 2 is the commander of IDF Forces on the West Bank and he holds all the powers of administration and legislation of the area held by the State of Israel in *occupatio bellica*, this being in accordance with the rules of the international humanitarian law and the laws of *occupatio bellica*. In particular, Respondent No. 2 is responsible for maintenance of public order and protection of the property of the inhabitants in the area subject to *occupatio bellica*, as will be explained subsequently in the Petition.
13. Respondent No. 3 is the head of the Civil Administration to whom Respondent No. 2 delegated the powers of administration of civilian life in the occupied territories. Inter alia, Respondent No. 3 is responsible for enforcement of the planning and building laws which apply in the area, including the issuing of cessation of work orders.
14. Respondent No. 4 is the district commander of the Israel Police who is responsible, inter alia, for enforcement of the law on Israelis who breach the law in the West Bank.
15. Respondent No. 5 is the Givat Zeev Local Council on the boundary of whose area of jurisdiction the Synagogue which is the subject of this Petition and some of whose residents it serves has been built. It has been added for the sake of caution and because it represents the Israeli inhabitants of the area and is responsible for enforcement of the planning and building laws in its area.
16. Respondent No. 6, the Ayyelet Hashachar Association, is, to the best of the knowledge of the Petitioners, responsible for the incursion and for construction of the Structure which is the subject of this Petition. The Petitioners do not know the registered number of the Association because a check with the Registrar of Associations showed a number of associations of similar name. At the same time, and as will be specified below, an association of similar name was the addressee for cessation of work orders and demolition orders which have been issued over the years.

II. The Incursion, the Construction, the Applications and (lack of) Response of the Authorities:

17. Until 1998, the Petitioner farmed the area and the lands on which the Structure is located, undisturbed. In 1998, foreigners invaded his land and he filed a complaint thereon with the Beit El Police. Following the complaints, the Police stopped the development work which had been done on his land and, in 1999, a final order for cessation of work and demolition of the

Structure was issued. But, after a short time, and without any actual enforcement, the construction work continued. Following renewal of the work, the Petitioner filed a number of complaints to the offices of the Civil Administration in Beit El but these had no results.

18. The failure of the Police and the Civil Administration made possible the erection of a number of buildings on the land of the Petitioner, namely: a parking lot for busses and a structure that, according to the sign affixed to its outer wall, serves as an activity center for the Beitar Youth Movement. **Clearly it is not only the fact that the construction was done on the land of the Petitioner and his family which makes it illegal but also the fact that the construction was carried out not according to building permits and contrary to the outline plan applying to the area.**
19. The Petitioner did not give up and searched for additional tracks for action against the trespassers. He contacted the Law Organization and asked for their help. The organization granted legal aid in those days to residents of the West Bank on various matters. The attorneys of Law started various processes and apparently, to the best of the recollection of the Petitioner, were able to compel the Inspection Department of the Civil Administration to issue cessation of work orders and further final demolition orders for the structures.
20. Following these matters, and when the demolition orders and the cessation of work orders were not realized, the Petitioner was informed by the Law Organization that the only way open to him was to submit a Petition to the Hon. Court with the demand for enforcement of the orders which had been issued but they explained that they were unable to do so in his name. Since the Petitioner did not have financial sources to hire the services of a private attorney, such a petition was not submitted and construction of the Ayyelet Hashachar Synagogue was completed and it was opened and has since been used for worship of the residents of Givat Zeev.
21. Either way, in October 2007, Ms. Hagit Efron, who served then and serves now as coordinator of the settlements follow-up team of "Peace Now", sent a letter to Respondent No. 3, in which she demanded to know why the orders issued back in 1999 were not being put into effect. Specifically, she wanted to know why the Civil Administration was allowing the Synagogue to continue to exist there despite the final demolition orders which had been issued for it.
22. On November 1, 2007, the reply of the Spokesman of the Civil Administration was received, and he confirmed that "*as at present, a valid demolition order is pending in the matter of the Structure*". He also added: "*Complaints have been submitted on the matter to the Israel Police*" but he ended with the regular sentence in cases along the lines of this of a demand for enforcement of the planning and construction law for Israelis in the West Bank: "***Continued handling of the Structure will be decided according to the fixed procedures and orders of priority for dealing with illegal construction***", in other words: Never.

III. Expansion of the Synagogue

23. At the beginning of May 2008, Mr. Dror Atkes, who coordinates the lands project of Petitioner 2, noticed that massive construction work was being carried out in the back yard of the Synagogue. Following this, Mr. Atkes sent a letter to Respondent 3 in which he reported the criminal deed to him and asked for measures to be taken to prevent its continuation. In parallel, on May 14, 2008, Petitioner No. 1 filed a complaint with the Binyamin Police about trespassing.
24. On June 2, 2008, the reply of the Public Complaints Officer at the Civil Administration, who answered the aforementioned letter from Mr. Atkes in the name of Respondent 3, was received. In his reply, the following particulars were given:
 - a. *The Structure of the Ayyelet Hashachar Synagogue was erected without a permit on private land;*
 - b. *On March 16, 2008, a cessation of work order (apparently in relation to the extension work) was handed over;*
 - c. *On May 6, 2008, a demolition order was hung on the Structure in view of the fact that the construction work was continuing despite a cessation of work order.*
 - d. *On May 15, 2008, a complaint was submitted at the Givat Zeev Police Station by the Inspection Coordinator of the Civil Administration.*
25. In practice, nothing was done physically to stop the work and even less so for putting into effect the various cessation of work orders which had been issued for the Synagogue (those issued in 1999 prior to the extension works of this year and those issued following implementation of the extension works). Meanwhile, and correct to the date of the writing of these lines, the construction of the extension skeleton has been completed and the Structure is ready for stone covering and connection to the infrastructures.
26. So, therefore, the bottom line is that criminals took over the land of the Petitioner back in 1998. The authorities knew of this illegal incursion and acted for the issue of cessation of work orders and demolition orders which were issued in 1999, but they were never implemented. Complaints to the Israel Police produced nothing and it is doubtful if anyone ever investigated the crimes which were perpetrated against the Petitioner and his property and the property of his family. Additional work which was carried out this year was met with the same paper response of cessation of work orders, demolition orders, complaining to the Police and none of these had or have any expression on the ground.
27. Almost ten years after the initial incursion, some scores of Givat Zeev residents are still praying in a synagogue located on stolen land, the rotten

fruits of the failure of the Israeli governmental authorities not meeting the most basic of civic, not to mention Jewish, moral principles.

28. Hence the Petition and hence its urgency.

c. The Legal Argument

29. Notwithstanding the requests of the Petitioners, it can be discerned that nothing was actually done to halt the illegal construction works and to enforce the cessation of work and demolition orders which they themselves issued. This failure of the Respondents is not an exceptional phenomenon throughout the West Bank, an area which suffers from criminal neglect of everything to do with enforcement of the law and its application on the ground, particularly with respect to offences in the sphere of planning and construction in the Israeli sector, most of which are out of ideological reasons.

30. As stated, since the construction work was reported to the Respondents, the work has continued without disturbance. No real step was taken to bring about a cessation of the construction work and it would seem that no-one in the Israeli government is at all concerned.

31. Tens of thousands, perhaps hundreds of thousands, of words have been written about the lack of effective law enforcement on Israeli law-breakers in the West Bank. The problem of enforcing the law on Israelis has been accompanying the occupation since the settlement project began. The procedures of the Attorney-General explicitly determine that the Israel Police shall be responsible for enforcing the law on Israelis in the West Bank. The IDF retains the general responsibility and the procedure also determines that in a case of a breach of the order to which IDF soldiers arrive first, then, until arrival of the Police, the IDF is responsible for enforcement of the law.

32. None of the procedures and none of the reports, however, has improved the situation and law breaking on the part of Israelis in the West Bank has not met with any fitting response to this very day. See, inter alia:

- “From the point of view of the law: Law enforcement on Israeli citizens in the West Bank” **Yesh Din** (June 2006);
- “Agreement by silence: The policy of law enforcement on settlers in the territories”, **Betzelem** (March 2001).

33. Article 43 of the Hague Regulations regarding laws of warfare, which applies to territory subject to *occupatio bellica*, determines that the authority and **the obligation** of the military commander in the area is to maintain order and security in the area under his control. To this is to be added what is stated in Article 27 of the Hague Regulations, which determines that:

“Protected persons are entitled [...] and shall be protected against all acts of violence or threats thereof [...].”

34. The taking over control by the settlers of the lands of the Petitioner and their doing there as they choose, this being without any practical hindrance on the part of the Respondents, constitutes a breach by the Respondents of everything to do with their obligations according to international humanitarian law, as it is also a breach of the obligations imposed on the Respondents pursuant to Israeli law. The obligation imposed on the Respondents is, as noted, one that **requires active involvement for the purpose of law enforcement**. And, as the Hon. Court ruled in the Murad case:

“Without doubt, one of the main obligations imposed on the military commander in this framework is the obligation to uphold respect for the law in the area” (See Bagatz 9593/04 **Rashid Murad, Head of the Yanun Village Council versus the Commander of IDF Forces in Judea and Samaria**, Tak-El 2006(2), 4362 (2006).)

35. The enforcement neglect spread in all areas but the gravest feature would appear to have occurred in the sphere of offences against the planning and construction laws, where the settlers have been aided by the authorities themselves.

d. The Desired Welfare

36. The situation described in this Petition is serious and outrageous. The Petitioner requested the protection of the authorities and they did nothing and, if they did do anything at all, it was inadequate and in practice they permitted continued construction work of the trespassers to his land and on his land. Accordingly, the Petitioner was left with no choice but to seek welfare from the Hon. Court that it compel the authorities, Respondents 1 – 4, to keep their legal obligation and carry out what is imposed upon them pursuant to international law, military legislation and Israeli constitutional and administrative law.

37. With respect to these Respondents, we request that the Court issue an order requiring them to take all necessary measures to give effect to the cessation of work orders and the demolition orders which they have issued for the Structure that is the subject of the Petition.

38. We knew, and therefore the Petitioners did not rush to file the Petition: This Hon. Court has indeed stated more than once that it is not in the habit of issuing declarative orders saying that the law has to be enforced. And so, in the case before us, the extensive correspondence, innumerable applications to the Respondents and the sorry result on the ground ***prove clearly and beyond all doubt that the competent authorities have totally renounced their obligation to enforce the law*** and that they ***are desisting from complying with their obligation in an unreasonable manner***.

In view of all that has been stated, the Hon. Court is requested to issue a conditional injunction as sought at the beginning of this statement of Petition

and, after receipt of the response of the Respondents and the hearing of oral arguments, to make them absolute.

Wherefore, the Hon. Court is requested to bind the Respondents with the costs of the Petitioners and also legal fees with the addition of lawful VAT and interest.

Shlomi Zachary, Adv.

Michael Sfard, Adv.
For the Petitioners