

At the Supreme Court Sitting as the Court for Civil Appeals

C.A. 4067/07

Before: The Honorable Deputy President E. Rivlin
The Honorable Justice E. Rubinstein
The Honorable Justice Y. Danziger
The Appellants Mahmud Khalil 'Abd al-Fattah Jabareen and 486 others

V.

The Respondents: 1. The State of Israel
2. The Development Authority
3. The Custodian of Absentee Property
Appeal against the judgment delivered on 22.2.2007 by the Honorable Judge A. Abraham of the Nazareth District Court in joined cases: C.F. 568/04, C.F. 569/03, C.F. 570/03, C.F. 571/03, 572/03, 573/03, 574/03
Date of hearing: 21 Elul 5769 (10.9.2009)

Representatives of the Appellants: Attorney H. Jabareen; Attorney A. Mahajneh; Attorney W. 'Asliyya; Attorney Suhad Bishara; Attorney 'Adil Budayr

Representative of the Respondents: Attorney M. Golan

[...]

Judgment

Justice Y. Danziger:

We have before us an appeal against the ruling of the Nazareth District Court (the Honorable Judge A. Abraham) dated 18.3.2007 that rejected the claims of the Appellants to void or annul the expropriation of 1953, and determined that the Development Authority will be registered as the owner of the land in the framework of land regulation procedures.

The Factual Background

1. The area that is the subject of the appeal is Block 20420, a 200-dunum plot in the region of Megiddo (hereinafter: **the land**). The plot is part of an area of approximately 34,000 dunums that were expropriated on 15.11.1953 in accordance with a notice issued by then Minister of Finance, Levi Eshkol, pursuant to his authority set in Article 2 of the [Land Acquisition Law \(Validation of Acts and Compensation\) 5713-1953](#) (hereinafter: **the Land Acquisition Law**). the expropriation document signed by the Minister of Defense stated that:

“Pursuant to my authority under Article 2 ... I hereby testify that the following three stipulations were in effect in regard to the land described in the appendix:
(1) that on the 6 Nisan, 5712 (1 April, 1952) it was not in the possession of its owners;
(2) that in the period between 5 Iyar, 5708 (14 May, 1948) and 6 Nisan, 5712 (1 April 1952) it was used or assigned **for purposes of essential development, settlement or security**;
(3) that it is still required for any of these purposes;
And it shall, therefore, be vested to the Development Authority from 8 Kislev 5714 (15 November 1953).”
[Emphases not in the original Y.D.)

Today there is a planted forest and a “Mekorot” [national water carrier] facility (comprising an area of approximately 20 sq. m.) on the land.

2. Conflicting claims to rights to the land were submitted during the land regulation process of Block 20420 which was conducted under the Land Registration Ordinance (New Version) 5729-1969: appeals by residents of Umm al-Fahm (the Appellants) claiming a right to the land; an appeal by the Custodian of Absentee Property claiming a right to the land pursuant to the [Absentees’ Property Law 5718-1958](#) [sic]; and an appeal by the Development Authority claiming a right to the land pursuant to the aforementioned expropriation.

[...]

23. The principal question raised by the appeal before us is whether there are grounds to order the nullification or cancellation of the 1953 expropriation in whose frameworks the lands that are the subject of the appeal were vested to the Development Authority. This question is divided into two secondary questions: the first, whether there are grounds to order the annulment of the expropriation because from the outset there was no public need for this expropriation? The second, should the Court order the annulment of the expropriation because the land was not used for the stated purpose of the expropriation and, hence, this purpose was unheeded?

[...]

Should an Order be Issued Declaring the Expropriation Null and Void?

24. The Appellant's contention focuses on the examination of the question whether from the outset, i.e. the time the expropriation order was issued, and the stipulations set in Article 2 of the Land Acquisition Law were met. Article 2 determines the following:

“(a) Property in respect to which the Minister testifies in a certificate he signed and which met the following three stipulations:

(1) that on 6 Nisan, 5712 (1 April, 1952) it was not in the possession of its owners;

(2) that in the period between 5 Iyar, 5708 (14 May, 1948) and 6 Nisan, 5712 (1 April 1952) it was used or assigned for purposes of essential development, settlement or security;

(3) that it is still required for any of these purposes;

Shall be vested to the Development Authority and be regarded as free from any charge, and the Development Authority may forthwith take possession thereof.

(b) The property shall be vested to the Development Authority as of the date specified in the said certificate; the certificate may only be issued within one year from the day this law comes into force, and shall be published in Reshumot [Law Registry] as early as possible after the day of its issue...”

[...]

26. [...] there are no grounds for deliberating the argument concerning the non-fulfillment of the stipulations set in the expropriation certificate as court rulings determined that the terms set in the certificate are peremptory. Even if it was remotely possible to challenge these terms, the Appellants did not provide any evidence whatsoever that contradicts them and, in light of the many years that have passed since the expropriation, it is difficult, if not impossible, to raise any objections to them.

27. Moreover, as shall be seen below, it is not possible to maintain that the land was not used over the years for the purpose of the expropriation and, therefore, there are no grounds to the Appellants' argument that the non-fulfillment of the purpose of the expropriation testifies to a lack of need for the expropriation in the first place.

Should the Expropriation Order be annulled because the Land is not being used for the Purpose for which it was appropriated?

28. The Appellants' argument in this regard is that the purposes for which the land is used are not compatible with the purpose of the expropriation (essential settlement and development needs), and that the recognition of these uses as compatible with the Lands Acquisition Law is not in keeping with the proper interpretation of the law, particularly in view of the provisions of the [Basic Law: Human Dignity and Liberty](#) and the constitutional protection of the right to property. In order to examine these arguments, we shall initially and briefly review the background to the enactment of the Land Acquisition Law and its purpose.

29. The background to the legislation of the Land Acquisition Law was deliberated by this court in C.A. 3535/04 *Dinar v. the State of Israel-Minister of Finance* (unpublished 27.4.2007) (hereinafter: the Dinar case). As specified in the Dinar case, the features of the Land Acquisition Law are unique and different from other expropriation laws as it is a type of "emergency legislation" that was enacted against the backdrop of the early days of the state during which land was seized without an anchor in the law. This law granted retroactive validity to the seizure of land by the authorities of the state in the period between the day the state was established and 1.4.1952, and its powers were limited to a period of only one year. The arrangement set in the Land Acquisition Law grants retroactive legal force to the seizure by the state of abandoned land for settlement or security purposes and, additionally, establishes a mechanism for compensating landowners whose properties were expropriated ...

30. The articles of the Land Acquisition Law, including the term "essential settlement and development needs" set in [Article 2](#) must be interpreted against this backdrop.

31. As known, one of the essential stipulations in expropriation is that the land will be appropriated for a public need of some kind. Each one of the expropriation laws clearly defines purposes for which it is permissible to confiscate land. A fundamental requirement is that the land will in fact be utilized for the public purpose for which it was appropriated for the entire period of the expropriation ...

32. [Article 2](#) of the Land Acquisition Law determines a list of three purposes for which the Minister is entitled to expropriate land. These are: essential development, settlement or security needs. It is possible to study the interpretation that ought to be given to these terms in the rulings of this Court on matters of expropriations, whilst giving weight to the uniqueness of the Land Acquisition Law.

[...]

33. As known, this Court has often recognized the need for “green areas” such as a nature reserves, forests orchards etc. as a public purpose in the context of various expropriation laws, including the Land Acquisition Law, when the declared purpose of the expropriation was settlement or development needs.

[...]

35. Undeniably, the Basic Law: Human Dignity and Liberty has an impact on the interpretation of the various expropriation laws, and this is evident in the rulings of this Court. However, as indicated above, the Land Acquisition Law is an exception, and must be interpreted principally against the backdrop of the period in which it was enacted. This was the only time during which it was actually possible to act according to it (as the validity of the law was limited to only one year, and a year after it came into force it was no longer possible to expropriate lands pursuant to it). It may be said that the Land Acquisition Law “ground to a halt” and, therefore, I believe that the impact of the Basic Law: Human Dignity and Liberty on it, if any, is minimal. Indeed, due to the special nature of the Land Acquisition Law it was held by this Court that it is not apparently possible to apply the **Karasik** rule [see *Karasik v. State of Israel*, HCJ 2390/96] – concerning the annulment of an expropriation in light of a change in the purpose of the expropriation – to expropriations carried out pursuant to the Land Acquisition Act (see the Sabih case, the Dinar case).

36. I believe that in light of the interpretation given by this Court to the term “settlement and development needs” as specified above, it can be stated that the purpose of afforestation is in keeping with settlement and development needs, taking into account that the existence of green areas contributes to the welfare of the public and that it constitutes a part of the overall development of the region.

[...]

Summary

40. In light of all of the aforesaid, I shall propose to my colleagues to reject the appeal in all matters that pertain to the question of the validity of the expropriation and to return the deliberation of the conflicting ownership claims to the District Court. In the circumstances of the matter, I shall recommend to my colleagues not to issue an order for expenses.

Deputy President E. Rivlin

I concur.

Justice E. Rubinstein

A. I agree with the opinion of my colleague, Justice Danziger. I wish to add a few points – beyond this specific case - on the forest as a public need that constitutes a part of settlement needs. Among the Appellants' contentions was the claim that this is not the case and that pursuant to the Forests Ordinance 1926, afforestation cannot be regarded as such a need. My colleague wrote (paragraphs 5-32-33) that in wake of previous rulings (recently H CJ 7578/07 *Dahamsheh v. the Israel Lands Administration* (unpublished)), afforestation – and the designation of other green areas – was recognized as a public purpose in respect to various expropriation laws, and that “the purpose of afforestation is in keeping with settlement and development needs, when taking into account that the existence of green areas contributes to the welfare of the public and constitutes a part of the overall development of the region” (paragraph 36).

B. I would like to add that the subject of afforestation in a place that was barren or abandoned beforehand was central to the ethos for which the State of Israel was established – to develop the country and to make the desert bloom. I will provide a few examples. Since the days of the Bible the love of the land has been tied to the subject of trees. A significant number of biblical verses refer to the planting of trees for food, for example “When you come into the land and you will plant any kind of tree for food, you are to consider the fruit forbidden...” (Leviticus 19:23); “and I will bring my people Israel back from exile and they will rebuild the ruined cities and live in them; they will plant vineyards and drink their wine; they will plant gardens and eat their fruit” (Amos 9:14). The prophet Isaiah, speaking about the desolate wilderness, compares it to neglected forests: “On that day their strong cities will be like the abandoned areas of the wooded heights and the hilltops, which they deserted because of the children of Israel, and there will be desolation” (Isaiah 17:9); and in the words of the Babylonian Talmud (Sanhedrin 90 H' A' - and Rabbi Abba said “there is no end to the diaspora other than the one that was already pronounced, ‘But you, O mountains of Israel, shall shoot forth your branches and yield your fruit to my people Israel, for they will soon come home’” (Ezekiel 36:8). In the *Bible Encyclopedia C' 722, 735* (under the entry “forest”), Professor M. Zohary states that:

“The relationship of the people to trees and to the forest is not seen in the Bible as being solely utilitarian, but also as part of the cultural milieu that was very closely tied to trees and forests and to the feeling of respect the people had for them, as can be seen by the large number of fables and poetic phrases that derive from the life of the tree and the forest.”

Also see M. Zborodski "Orchards and Forests in the Time of the Bible" *Book of Festivals E'* (1963) (Dr. Lewinsky, Editor), 418.

C. In the Mishna (Rosh Hashana 1:1) it is said that:

"On the First of Shvat, the new year for the trees, in the words of the House of Shamai; The House of Hillel says on the fifteenth of the month."

Although the Mishna engages in the date that determines the setting aside of harvest tithes, the importance of the tree arises from it, and it was for a good reason that the 15th of the month of Shvat was set, as decreed by the House of Hillel, as the new year for the trees which was celebrated on a small scale through the ages as a holiday during which Jews in the Diaspora commemorated their love of the land by eating the fruit of the land of Israel. When Jewish settlement was renewed in the days of the revival, this holiday and the planting of trees became a symbol of the land and the Zionist ethos. For several generations the holiday has been celebrated by planting, singing the song "*Thus go the planters*" that was written by Yitzhak Shenhar and Yedidia Admon, and my wife, myself and our daughters participated in these celebrations a generation apart. Regarding afforestation in the country, see G. Biger and N. Lipschitz, "*A Man is a Tree in the Field*" (1998), and the above, *Green Dress for a Country, Afforestation in Eretz Israel, the First Hundred Years 1850-1950* (2000), that concerns the history of afforestation until the establishment of the state, including the activity of the Jewish National Fund over several generations.

It must be noted that the relationship to plants was expressed in the early 19th century in Rabbi Nachman of Breslau's poem "*The Song of Wild Plants*" (see the tie to the love of the country in the *Book of Festivals E*, 398).

D. S.Y. Agnon, in his story "Under the Tree" (ibid, *Book of Festivals*) writes " many crafts were imposed upon us by the place, to plow, sow, reap, thresh and sheave, to plant and hoe....but settling in the Land of Israel is great..."; See also A. Zeiman " *From Contributions of Olive Trees to Old-Growth Forests*" Ibid, E', 450, that describes the history of the initial tree planting enterprise following the death of Binyamin Ze'ev Herzl in 1904; In other words, even prior to the First World War, "it came to mind that it is necessary to dedicate most of the Fund's resources only to the planting of fruitless trees for the national afforestation of the land" (p. 451). Following the war, afforestation was introduced in locations that are unsuitable for agriculture (p. 455).

E. Ben-Gurion, speaking at the ceremony that marked the planting of the President's Forest stated "the tree is a source of joy" (ibid, p. 470):

“Of all the blessed deeds we undertake in this country, I do not know if there is a more fruitful enterprise, and one whose results are as beneficial, as the planting of trees. Trees add beauty to our country’s landscape. They enhance the climate and add health. Both fruitless trees that are called barren trees and fruit trees are a source of strength. Corners of the world that were remote were able to find their livelihood and a source of life and food only owing to the planting of trees. It is vital to learn how to fully exploit this to cover all of the mountainous territory of our country that is not suitable for other purposes with trees.”

Any additional words would only detract from this.

F. Professor Yael Zerubavel, in her article “The Desert as a Mythical Space and a Site of Memory in Hebrew Culture,” in the Book *Myths in Judaism – History, Philosophy, Literature* (M. Idel and I. Gruenwald editors, 2004, 223), describes (p. 229) the perceptions of the pioneering Zionist settlement of itself by means of a quote from the “mythological” book written by the educator and author Eliezer Smoli, *The Frontiersmen of Israel*: reviving “a huge forest that covers the beautiful hills of the Galilee, and the forest is an ancient one, a forest of oak and Pistacia trees, carobs and such whose exposed areas are fertile meadows – suitable for the grazing of sheep and cattle.” Planting is portrayed in contrast to the desolate desert; According to this vision, natural woodlands must also be transformed into a “paradise of crops and fruit trees” (p. 230). Planting and vegetation are, therefore, part of the vision; In his poem “In the Mountains the Sun already Flames” (*You Should Ring Twice* edited by Gilad Ben Shach and Rafi Ilan, 2002, 57), Natan Alterman writes “We’ll dress you a gown of concrete and cement, and we’ll spread for you carpets of gardens over the redeemed earth of your fields, the crops will jingle their bells.”

G. We see, then, that the forest is perceived as an essential part of the development of the country, and therefore as a public need and a public purpose of the first order. I join the opinion written by my colleague. In other words, I concur.

H. And finally, I will note that I contemplated whether to return the deliberation of the matter of absenteeism and conflicting claims to the District Court and ultimately decided to join my colleague also in regard to question.

As decided in the ruling of Justice Y. Danziger

Delivered today, 17 Tevet 5770 (3.1.2010)

E. Rubinstein 54678313 – 4067/07