

March 2011

Un-neighborly Neighbors: The Maale Zeitim Settlement's War of Attrition against the Hamdallah Family

Since East Jerusalem was annexed to Israel in 1967, Israel has employed a variety of methods to strengthen and deepen its hold on it, primarily by the massive construction of houses. Over the last 43 years Israel built more than 50,000 housing units for the Israeli public beyond the Green Line in Jerusalem, presently housing about 200,000 Israelis.

In addition to the government construction, another policy, of building ideological settlements in the midst of Palestinian neighborhoods, has also been pursued in East Jerusalem, especially since the early 1990s. The settlements are usually promoted by private right wing organization and focus on the area of the historic basin of the Old City. Their goal is to break up the Palestinian homogeneity of those neighborhoods and prevent territorial contiguity between the Palestinian core of Jerusalem and the surrounding Palestinian areas. Although these projects are initiated by private organizations, they enjoy the clear and sweeping support of the relevant official and public bodies, including the planning authorities, which routinely grant these settlement plans all of the necessary permits and allow them high building densities. Today there is at least one extreme ideological settlement in each of the Palestinian neighborhoods in the Old City and in the historic basin surrounding it.

This paper describes the largest of those settlements, Maale Zeitim, and the war of attrition its leaders have been waging against the Hamdallah family, whose home has, for decades, been turned into an enclave in the midst of the settlement built around it. This campaign aims to evict the family and expand the settlement at the expense of its home.

History of Settlement in Ras al Amud

The Maale Zeitim settlement, located in the northeastern part of the neighborhood of Ras al-Amud, was built on land purchased by the settlers' patron, Dr. Irving Moskowitz, from religious seminaries belonging to the Wohlin and Chabad organizations. The seminaries managed to register the ownership of the land in their names after the annexation of East Jerusalem, under the Israeli law allowing Jews to claim ownership of property they owned before 1948, but preventing the same right from non-Jews.¹ At the end of a 20-year legal campaign against the al-Gol family – the family of the mukhtar of Ras al-Amud, in whose name some of the land was registered with the Jordanian registrar of lands – the seminaries were recognized by the court as the legal owners of the land, which they sold to Moskowitz in 1990.

Upon purchase of the land, Moskowitz began planning and constructing a settlement on it. Today, Maale Zeitim is the largest settlement inside a Palestinian neighborhood in East Jerusalem, with more than 100 populated housing units.

¹ In the same way, Jewish organizations and trusts obtained land that they had previously owned in other neighborhoods in East Jerusalem, such as Silwan and Sheikh Jarrah. Most of that land was transferred to right wing organizations, which provide groups of settlers for those neighborhoods.

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But the settlement plans in the area go well beyond the existing complex. On the other side of the street stands an 11 dunam complex, containing a large building that, until three years ago, housed the headquarters of the Israeli police for the Judea and Samaria District. In this case, the Bukharian Community Committee claimed ownership of the land dating back to the Ottoman period. When Israeli courts recognized the claim of Jewish ownership, the police headquarters was evacuated from the building and was relocated to the E-1 area between Maale Adumim in Jerusalem, as part of an exchange agreement between the Committee and the Israeli police.

Once the police headquarters evacuated the building, the Bukharian Community Committee, apparently with the encouragement and support of settlement groups, submitted a building plan for the complex, including the construction of more than 100 housing units, public buildings, a swimming pool, country club, library, parking area and more. This plan is still on the drawing boards of the planning authorities in Jerusalem, but meanwhile the Jerusalem municipality has approved construction of 14 housing units in the existing building, which will apparently constitute the vanguard for the massive settlement planned there. According to the plan, the two settlements of Maale Zeitim and Maale David will eventually be connected by a bridge to create a settlement complex housing over 1000 Jewish settlers in the middle of Ras al-Amud, a few hundred meters from the Temple Mount/Haram al-Sharif, the most explosive core of the Israeli-Palestinian conflict.

War of Attrition against the Hamdallah Family

In addition, a further expansion of dozens of housing units is planned along the western flank of Maale Zeitim. This expansion, however, is blocked by the presence of a Palestinian family, the Hamdallahs, who live in a rickety house in the heart of the area slated for construction. The head of the family, which includes three households, used to work for the al-Gol family, against whom the seminaries led a legal suit for ownership.² Over the last 16 years, Moskowitz has been pursuing four simultaneous claims in different courts of law, but has not yet managed to evict the family.

First Moskowitz petitioned the court in 1995, demanding to evict the three families. Since the family claimed they were never informed of the suit, they did not submit a writ of defense, and therefore the eviction claim was accepted ex parte, with no defense. Advocate Shlomo Lecker, who has been representing the Hamdallah family for the last decade, made a motion in 2000 to cancel the aforementioned judgment, and subsequently a compromise was reached, by which the judgment would be limited so that it would not apply to the original area where the family has lived since the 1950s (defined in the compromise agreement as the "red area"), but only to areas to which the family, according to the petitioners, moved later. This compromise agreement was validated as a verdict on September 14, 2000.

However, legal challenges concerning the "red area" continued.³ The settlers' lawyers claimed they had building permits and approved outline plans, allowing them to build

² CF 193/69

³ The seminaries filed a claim against the Hamdallah family in 1989 for expanding the existing building and building a fence in excess of the original building where the family lived. The claimants' demand to evict the family from the yard was rejected, but the court forbade the family from performing construction on the land. CF 5068/89

in the complex a project with 119 housing units, a commercial center, a synagogue, a kindergarten and an underground parking lot, and that the failure to evacuate the "red area" prevented the realization of those building plans and caused their clients grave economic damage.

The Hamdallah family argued that the head of the family had bought the land legally and in good faith from the mukhtar al-Gol, since there was no reason to doubt al-Gol's registration as owner of the land. In addition, since the Hamdallah family had occupied the property continuously since 1952, they claimed adverse possession, which provides them with a status of protected tenants on the property, preventing their eviction.

In a decision from July 21, 2005, Judge Yitzhak Shimoni accepted the Hamdallah family's claim of adverse possession concerning the building and the yard -- in the condition they were in until 1989. This meant that what was built until 1989 would remain intact, while the family could be evicted from buildings constructed after 1989.⁴ Moskowitz's appeal against this decision to the District Court was rejected, as was his motion to appeal to the Supreme Court.⁵

But that was not the end of the attempts by Moskowitz and his lawyers to evict the Hamdallah family from their home. In 2007 Moskowitz filed a new suit against the family,⁶ claiming that the Hamdallahs had not evacuated the areas the court had ordered it to evacuate in the judgment from 2005, and therefore he demanded compensation of more than 4 million shekels for using those areas over the years, as well as for the remainder of the area to which Moskowitz claimed ownership. This suit actually meant the cancellation of the statute of limitations the court had already decided on, and therefore, the Hamdallah family's lawyer, Shlomo Lecker, made a motion to reject the suit in limine. This motion was accepted by the court. Moskowitz appealed this District Court decision too, and a hearing on his appeal is due to be held shortly in the Supreme Court.⁷

Meanwhile, ignoring the District Court's acceptance of the motion, Moskowitz's lawyers have for a number of months been pressing for execution procedures against the Hamdallah family, claiming, once again, that they did not evacuate what the court had ordered them to evacuate in its judgment from 2005. The family, on the other hand, claimed that it did, in fact, evacuate the two warehouses as ordered by the court, and that a third warehouse was destroyed long ago. As for the yard surrounding the house, the family maintains that this area was defined by the court as part of the original property, and therefore the evacuation order did not apply to it.

Moskowitz's lawyers turned to the police, claiming that the Hamdallah family had re-entered the warehouses they had cleared out. However, the police that arrived on the scene determined that the warehouses were empty and took no action against the Hamdallah family. In response, Moskowitz's lawyers petitioned the High Court of Justice against the police, and initiated an execution office file, demanding execution of the judgment from 2005.

⁴ CF 11564/95

⁵ Permission for Civil Appeal 781/06

⁶ CF 9620/07

⁷ CA 2044/10

In a new procedure with the execution office, Moskowitz's people objected to the stay of the evacuation proceedings, attaching a deposition by their lawyer, Eitan Geva, which expressed an interpretation that completely contradicts the judgment given about the building. According to this interpretation, Moskowitz's people can take over the yard adjacent to the house and enter a room that is inside the house, which is to say to settle in a central room in the Hamdallah family's residence and take over the yard, and thereby bring about the de facto eviction of the family.

An urgent motion was made to the Jerusalem magistrate court to grant a declaratory remedy saying that Judge Shimon's judgment was fully executed before it was heard. The request for a declaratory remedy was attached to an urgent motion to stay execution proceedings, which was rejected by Judge Miriam Lifshitz Privas. Another motion to stay proceedings was submitted but not decided on yet. Meanwhile, an officer from the Shalem police station told Hamdallah's lawyer that the deadline for executing the judgment according to Lawyer Geva's interpretation was scheduled for March 13, 2011.

Parallel to the court proceedings, Hamdallah's lawyer continues to exhaust proceedings with the execution office and another motion to stay proceedings was prepared, claiming there is grounds to hold a hearing on the sides' claims and not allow the execution of the execution procedures according to Moskowitz and his lawyer.

Even though the Hamdallah family's lawyers have so far managed to repel the proceedings against them, they are deeply concerned that ultimately, the tireless efforts and inexhaustible resources invested by Moskowitz in the attempt to evict the Hamdallah family from their home and open the way to expand the Maale Zeitim settlement will exhaust the Hamdallah family, economically and emotionally, and achieve their goal.

These concerns, shared by lawyer Shlomo Lecker, are not baseless; experience in East Jerusalem proves that the settlers' determination and almost inexhaustible resources usually tend to bear fruit. The concern is especially grave because of the special strategic importance the settlers attach to the Ras al-Amud area, and their determination to continue expanding Jewish presence in the area. The concern is based not only on the far-reaching building plans that are already wending their way through the planning pipelines for the Maale Zeitim and Maale David settlements, but also on information indicating several additional complexes in the area that have already been handed over to the settlers, but whose ownership they have not yet publicly claimed. The years-long war of attrition the well-heeled settlers are waging against the Hamdallah family, which has been forced to fight for its home against the well-greased machine the settlers are using against it, is another indication of the seriousness of their intentions. Again, this is happening in the center of Palestinian Jerusalem, in the most explosive core of the Israeli-Palestinian conflict.