

A new friction point: Settlement in Arab Musrara

June 2011

Like all the other settler enclaves in Palestinian neighborhoods in East Jerusalem, the emerging enclave in Arab Musrara is situated in a strategically important location.

Arab Musrara is a small Palestinian neighborhood east of Highway No. 1 -- the 1949 armistice line -- and near Damascus Gate, which is the most important entrance into the Old City leading to Temple Mount. Arab Musrara actually constitutes only a single block on the east end of Haneviim (The Prophets) Street. It begins with the restaurant-café complex opposite Damascus gate and ends at the intersection of the street with Highway No. 1. It includes 15-20 stores, behind which stands a small block of houses that are home to 20-25 Palestinian families. The strategic importance of this neighborhood stems not only from its proximity to the Old City and Temple Mount but mainly from the fact that it is at the heart of what can be called the main business center of East Jerusalem.

Like in all the other Palestinian neighborhoods where settler enclaves were created, here too the associations that back them enjoy cooperation with governmental institutions such as the Custodian General in the Ministry of Justice (who owns many of the neighborhood buildings) or the Ministry of Construction and Housing (which funds the private security guards who escort the settlers in and out of the housing complex). Like in other cases, in this case too the settlers claim that their only goal is to allow Jews return to live in buildings that were owned by Jews before Israel was founded and Jerusalem was divided. Like in other cases, in this case too there is not necessarily any connection (familial or other) between the Jews who owned the property before Israel was established and the Jews moving into it today.

The first homes of what is known today as Arab Musrara were built in 1875, as part of the process called "moving out of the walls." Both Jews and Arabs at the time wished to leave the boundaries of the Old City and improve their living conditions in areas outside of it; both Jews and Arabs began building north of Damascus Gate at that time, in what came to be known as Arab Musrara. The Arabs who moved there quickly found themselves geographically connected to other Arab neighborhoods north of the Old City; the Jews who moved there found themselves disconnected from the other Jewish neighborhoods, built mainly west of the Old City, on the road leading from it to Jaffa.

The Jewish part of the neighborhood was built at the initiative of Nissan Beck, a prominent public figure in the ultra-Orthodox Ashkenazi community, who wished to improve the living conditions of members of his community from the Old City's Jewish Quarter. Beck bought land opposite Damascus Gate and paid for the construction of the neighborhood, but it soon turned out that few members of his community wanted to live there. The neighborhood he built for ultra-Orthodox Ashkenazis was named "the Nissan Beck houses," but was actually divided into three different complexes: one for Jews from Georgia, one for Jews from the Caucasus and the third for Jews from Syria and Iraq. Arabs lived between and around the complexes and commercial areas developed. Neighborly relations were good: Jews and Arabs maintained stores next door to each other, which served both Jews and Arabs.

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The good neighborly relations lasted for decades but ended in great tragedy: on August 23, 1929, the first day of the so-called "Western Wall Uprising," dozens of Muslim protesters came from Damascus Gate and, armed with knives, raided the homes of the nearby Jewish neighborhoods. By the end of their raid on the Nissan Beck houses, they had left 19 Jewish corpses. Almost all the Jews who survived the killings abandoned their homes and shops and moved into safer Jewish neighborhoods. The abandoned buildings were occupied by Palestinian tenants and merchants, only some of whom contacted the Jewish owners and signed rental contracts with them.

At the end of the 1940s, with the establishment of Jordanian rule in East Jerusalem, the new administration registered all of those houses and stores in the name of the "Custodian of Enemy Property." The Jordanian custodian carefully registered all of the property that was Jewish-owned, signed protected tenancy contracts with the Palestinians who occupied it and started collecting key money and rent from them.

In 1967, following the Six-Day War, that property passed from the possession of the Jordanian Custodian of Enemy Property to the Custodian General in the Israeli Justice Ministry. The Israeli custodian continued collecting rent from the Palestinian tenants but at the same time acted, under an amendment of the law passed by the Knesset in 1970¹, to find the Jewish owners or their heirs. The four decades that had passed since Jews abandoned the neighborhood made finding them very difficult. The few who were located received ownership of their property, but the tenant protection law protected the Palestinians who lived there in the status of protected tenants and prevented their eviction. Some of the Israelis who repossessed their property preferred to sell it to those Palestinian tenants who agreed to buy it; the others continued to collect rent from them. One way or another, no Jew asked at the time, in the 1970s, to move back into a house that belonged to their family. That was the case until 2002, when a settler association called "Homot Shalem" entered the picture.

Homot Shalem was established by Rabbi Benny Elon, who was a minister and Knesset member on behalf of the Moledet party and who heads the Beit Orot yeshiva, which acts to increase Jewish settlement in the a-Tur and Mount of Olives area. One of the main activists in Homot Shalem is Tzahi Mamo, who is also active in the organization working to Judaize the neighborhood of Sheikh Jarrah and evict Palestinians who live near Rachel's Tomb, on the outskirts of Bethlehem. According to publications on websites identified with the right wing and settler movements, Homot Shalem has far-reaching plans. "Homot Shalem and its members managed to transfer or arrange Jewish possession of 12 complexes and courtyards out of 30 in Arab Musrara (...). Some are presently under private Jewish ownership and some are owned by the custodian general. Arabs still live in almost all of the apartments, but members of Homot Shalem say they plan to negotiate with the tenants, evict them by agreement and populate the entire complex with Jews, the way it was done in recent years in the Shimon Hatzadik area."²

¹ The Law and Administration Regulations Law (Combined Version), 1970, Section 5.

² Moshe Yerushalmi, The Shimon Hatzadik Area Returns to Jewish Hands, "Shaarim," June 22, 2005, <http://muni.tik-tak.co.il/web/news/luchot1.asp?modul=9&codeClient=1365&CodeSubWeb=0&id=42150&kategory=1000> (Hebrew).

The story of the Shubash family that lived in Arab Musrara for decades illustrates the new reality emerging there. The story begins with a protected tenancy agreement signed in the early 1940s between Zachariah Dabrashvilli, the heir of Georgian Jews who lived there until 1929, and Kamal Shubash, a Palestinian who purchased the right to live in his home from him for key money. Until 1948, Shubash paid the rent to Dabrashvilli; from 1948, after the division of the city separated them from each other, Shubash continued paying rent to the Jordanian Custodian of Enemy Property. Kamal Shubash died in January 1967. Right after his death, the Jordanian custodian signed a new rental agreement with all five of his children, his heirs. Doris Shubash, Kamal's daughter who lived in the apartment during the Six-Day War, continued paying rent to the Israeli custodian after the war.

In February 1974 she received a letter from the custodian telling her that the apartment in which she lived was "released to the possession of its owners," and that it was now owned by Tamar Dabra, the heir of Zachariah Dabrashvilli, the man with whom her father had signed the original rental contract. The custodian also told Shubash she must stop paying him rent for the apartment and that in order to continue paying rent legally she would have to contact Tamar Dabra. For that purpose, he gave her the name and address of a Tel Aviv lawyer who represented her. Shubash's lawyer sent a letter to Dabra's lawyer but received no reply. Not only did Tamar Dabra's lawyer refrain from contacting Shubash; Tamar Dabra herself refrained from doing so too, for no less than 26 years.

The contact between Doris Shubash and her landlord resumed only in 2002, two years after a woman named Channa Yachin bought ownership of the apartment from the Dabra family. Yachin went to the Jerusalem Magistrate Court demanding to evict Shubash from the apartment. She based her claim on the argument that Shubash had lost her right to be considered a protected tenant because for decades she avoided paying rent to the Dabra family.

In their answer to the suit, Shubash's lawyers claimed that for all of those decades the Dabra family showed no interest in the apartment or in collecting rent for it, and also reminded the judges that in 1974 Shubash approached the Dabra family's lawyer, who also refrained from showing any interest in the apartment. Shubash's arguments were rejected by the court and after a long legal process the claim of eviction was accepted. "We conclude that the appellant (Shubash) failed to explain convincingly her failure to pay rent for more than 30 years," ruled Jerusalem District Court Justice Orit Efal-Gabbay before ordering Doris Shubash evicted from her home.³

The apartment was evacuated and shortly thereafter settlers moved into it. In the copious material that accumulated in the legal file concerning this apartment there is no reference to the identity of Channa Yachin, the woman in whose name the claim of eviction was made and who transferred the apartment to the settlers who live in it today. The only thing that can be learned is that the lawyer who submitted the claim of eviction on behalf of Yachin is Eli Shmuelian, who appears in the documents of the registrar of associations as the representative of the Homot Shalem association.

This is not a unique or exceptional case. The eviction of the apartment in which the Shubash family lived and the way ownership of the apartment passed on from its original Jewish owners, who showed no interest in it for decades, to a settler

³ CA 9310/06, Doris Shubash v Channa Yachin, judgment from June 4, 2007.

organization that presumes to be the successor of the Jews who lived in the neighborhood before 1929, reflect the processes underway in Arab Musrara. The right wing websites say it clearly. "The initial inhabitation of Arab Musrara (by Jewish settlers) was preceded by an investigation by members of Homot Shalem," said an article posted on the Moreshet site.⁴ Homot Shalem's investigation, said the article, led to the identification of some of the offspring of the original residents of the neighborhood and purchase of their rights to the houses; then members of Homot Shalem, carefully using all of the sections of the tenant protection law, saw to the eviction of the Palestinian tenants and the insertion of settlers in their place. "These are Jewish-owned houses and we bought them from the heirs themselves," Benny Elon said recently. "We occupied the houses without any help by the custodian."⁵

However, the story of the Abu Nida family's little coffee shop shows that the custodian too is working to evict Palestinian from Arab Musrara. The building on 13 Haneviim St., that for decades has housed a coffee shop as well as a card club for the area's elderly, belonged in the 1920s to Rivka Jenoshvilli. The Custodian General at the Justice Ministry, who inherited ownership of the building from the Jordanian Custodian of Enemy Property, could not locate Jenoshvilli or her heirs. In the claim of eviction he filed against the Abu Nida family he calls her "the absentee;" he introduces himself as the "administrator of the abandoned property of Rivka Jenoshvilli, the wife of Eliahu (henceforth: 'the absentee')."⁶

According to the legal documents in this file, the little coffee house was rented by the Jordanian custodian to Mohammed Bakeer, who rented it a few years later to Sobhi Abu Nida. After the death of Abu Nida it passed on to his son, Ibrahim Abu Nida, and when Ibrahim died in November 2005 it went to his widow Majda and their children. For all that time the Abu Nida family paid the protected tenancy rent regularly, first to the Jordanian custodian and then to the Israeli.

In the claim of eviction he filed against the Abu Nida family, the custodian relied on a single argument. He claimed that the Abu Nida family transferred the coffee shop to the ownership of Mohammed Qastero, a resident of Silwan who does not have the status of a protected tenant in the property. Once ownership was transferred to Qastero, the Abu Nida family's protected tenancy expired and therefore Qastero is required to replace the protected tenancy rent paid by the family (less than NIS 200 per month) with real rent (which the government assessor set at NIS 2600 per month). Since for two years Qastero refused to pay the increased rent, the custodian demanded evacuation of the structure.

The Abu Nida family denied in court that they had sold the café to Qastero. Both they and Qastero claimed that Qastero was only managing the business for them. Judge Shirley Renner accepted the argument and thereby annulled the demand to pay real rent and canceled the grounds for eviction. But in her verdict, the judge showed a considerable degree of judicial activism and ordered the café evacuated on the basis of an argument that was not even made in the claim of eviction. According to the protected tenant law, ruled Justice Renner, protected tenancy of a business must not be transferred to an heir who, before the death of the business owner, was not a

⁴ Ibid.

⁵ Nir Hasson, "A new friction point in East Jerusalem," Ha'aretz, April 15, 2011, <http://www.haaretz.co.il/hasite/spages/1225172.html> (Hebrew).

⁶ CC 10846/05, The Custodian General as administrator of property of the absentee Rivka Jenoshvilli wife of Eliahu v Majda Abu Nida et al, Amended Statement of Claim, Jerusalem Magistrate Court.

partner to the business management; Majda Abu Nida and her sons, added the judge, were not partners with her husband and their father in managing the café and therefore the tenancy agreement expired and they must return the structure to the custodian.⁷

The Abu Nida family appealed the judgment. The main claim by lawyer Muhannad Jabbara, who filed the appeal on behalf of the family, was that Justice Renner based her judgment on an argument that was not even in the custodian's claim of eviction and therefore the Abu Nida family could not defend itself against it even though it absolutely denies it. "I emphasize," wrote lawyer Jabbara in his appeal, "that the claim of eviction constituted the framework with which the appellants (the members of the Abu Nida family) contended, and therefore the appellants' defenses against the claim were limited and restricted to rejecting what was argued without addressing at all the question of the status of Appellant No. 1 (Majda Abu Nida), of whom it was not claimed in any context that she is devoid of a status in relation to the shop, and of whom it was not claimed in any context that she does not have protected tenancy rights to the property." The appeal, submitted to the Jerusalem District Court on March 16, 2011,⁸ is still pending.

The settlers' presence in Arab Musrara is becoming more tangible and prominent everyday. In one of the complexes they occupied they have been performing extensive repairs for months; in another they have defiantly hung a large Israeli flag and at the entrance of the third complex they installed a prominent steel door that distinguishes it from the other residential complexes in the neighborhood. On one visit by representatives of Ir Amim to the neighborhood they saw three Israelis in civilian clothes, guarded by four armed border police, identify themselves as "Shabak" (the Israel Security Agency) and enter the settler complex behind the steel door. The settlers themselves are guarded, every time they go in and out of the neighborhood, by civilian guards, whose presence in the neighborhood increases every day and often causes friction and tension. Rumors have recently been circulating among the Palestinian residents of the neighborhood about the settlers' future plans. According to one, they are going to fill the neighborhood's alleys with security cameras; according to another, they are also going to install an electric gate at the only entrance to the neighborhood, so that only its registered tenants will be allowed to be in it. Even if there is no way to verify the veracity of these fears, their very existence indicates the atmosphere of tension and intimidation created in Arab Musrara as a result of the settlers' presence in it.

The experience accumulated in the past in other neighborhoods shows that the Judaization and settlement processes in Palestinian neighborhoods of Jerusalem are very hard to stop. In the specific case of Arab Musrara, these Judaization processes have an added symbolic meaning. The division line between West and East Jerusalem, drawn in 1949, created a unique situation in Musrara: the west side of the neighborhood, which was once populated mainly by Palestinians, became a Jewish neighborhood, whereas the East side, which used to be populated by Jews, became an Arab neighborhood. This reality, which perhaps reflected a kind of fragile and partial justice, is quickly being eroded.

⁷ CC 10846/05, Judgment, given on January 18, 2011.

⁸ CA 31176-03-11, Majda Abu Nida et al v Custodian General as administrator of property of the absentee Rivka Jenoshvilli wife of Eliahu, submitted to the Jerusalem District Court by lawyer Muhannad Jabbara on March 16, 2011.