IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Today, 21st August, 2024

Rikors numru: BCT/36/2024

Members:

Avukat Philip M. Magri LL.D. M.A. (Fin. Serv.) M.Phil.

Perit Robert Sersero BE&A(Hons), A&CE

Ing. Anthony Camilleri B.Mech.Eng (Hons), FVCM (Hons) L. (Mus.) V.C.M. (Hons.), A. (Mus.) L.S.M.

Rabbi Chaim Segal

vs

Awtorita' tal-Bini u l-Kostruzzjoni

The Tribunal,

Having seen the appeal by which the decision dated 3rd June, 2024 was being contested for the following stated reasons:

1. No construction work was done
2. We had to do critical safety and cleaning action.

Having seen the reply filed by the Authority whereby it is stated that :

1. *Illi l-Awtorità appellata qegħda umilment tissottometti li kwalunkwe deċiżjoni meħuda kienet in konformita' ma' dak rikjest mil-liġi, u kwindi korretta f'kull aspett;*

2. *Illi waqt l-ispezzjoni kondotta mill-Ufficjal tal-Awtorita` l-Maniger tas-Sit ikkonferma li kien qieghed isir 'shuttering'ghal gurnata ta'wara, liema xoghol jidher car mir-ritratti annessi u mmarkati bhala Dok A.*

3. *Ghaldaqstant fuq dak suindikat, l-Awtorita` appellata qiegheda umilment titlob lil dan l-Onor. Tribunal sabiex jichad l-appell odjern.*

4. *Salv eccezzjonijiet ulterjuri.* [1]

Having seen that during the sitting dated 9th July, 2024 the Tribunal ordered the continuation of proceedings in the English language.

Having seen all acts and documents;

Having heard the testmony of the applicant Robbi Chaim Segal during the sitting of the 9th July, 2024 during which sitting the applicant declared that he did not have any further evidence to submit.

Having heard the testimony of the Building Inspector Roland Scicluna during the sitting of the 17th July, 2024, also under cross-examination.

Having also seen that the Authority similarly declared that it did not have any further evidence to produce during the sitting of the 17th July, 2024.

Having also seen that the case was adjourned for delivery of judgment for today.

[1] 1. That the appealed Authority humbly submits that any decision taken was in accordance with what is required by law, and therefore correct in every aspect;
2. That during the inspection carried out by the Authority's Officer the Site Manager confirmed that 'shuttering' was being done for the following day, which work is clearly seen from the attached photos and marked as Doc A.
3. Accordingly, on what has been indicated, the appealed Authority is humbly asking this Hon. Tribunal to reject the present appeal.
4. Saving further pleas.

Considered

That the appealed decision concerns works being caried out in breach of Subsidiary Legislation 623.08 in view of works carried out on a Sundar. The latter provides as follows:

> *THIRD SCHEDULE (Regulations 6 and 9)*
> *Reducing Pollution*
> *Nuisance abatement.*
> *1. The permissible hours for works which generate noise that may be heard from outside the site boundary shall be as follows:*
> *(a) works shall not commence before seven in the morning (7:00 am) and shall cease at eight in the evening (8:00pm);*
> *(b) it shall not be lawful to make use of:*
> *(i) a mechanical excavator with a hydraulic hammer; or*
> *(ii) a pneumatic drill, before half past seven in the morning (7:30 am) and after four in the afternoon (4:00 pm) and all day on Sundays and public holidays;*
> *(c) during the period between fifteenth (15th) June and thirtieth (30th) September, demolition works or excavation shall not be allowed in tourism zones as may from time to time be established by the competent authority for tourism:*
> *Provided that, exemptions from this paragraph may only be granted by the competent authority for tourism, unless there are safety concerns, in which case the Authority shall only allow works to render the site safe;*
> ***(d) no construction works shall be carried out on Sundays and public holidays;***
> ***(e) in the case of emergencies works may take place at any other time whilst it shall be mandatory to inform the Authority during its first hour of subsequent business;***
> ***(f) any exemption from the provisions of paragraphs (a), (b), (c), (d) and (e) shall require the approval of the Authority and may require the setting of specific conditions for such works.*** (…)
> (emphasis added)

Through his appeal, Rabbi Chaim Segal contends that no construction work was done saving for "*critical safety and cleaning action*". It is therefore not contested that the day on which the

Building Inspector visited the site was a Sunday, specifically, the 2nd June, 2024. On the other hand the appeal is based on the assertion that there was no breach of law as no constuction works were being carried out if one excludes the work which were rendered necessary, precisely in view of critical safety issues and cleaning.

The Tribunal has considered the supporting evidence filed by both parties. The Authority's Builing Inspector Roland Scicluna confirmed as follows:

> "(W)*hen we arrived on site, I could actually hear construction noises. Asked by the Tribunal what kind of noises these were, I recall hammering noises.* (…) *One of the works from the construction site opened for us. They were carrying out shuttering works, I noticed that they were placing the shuttering in anticipation of works relative to the construction of a roof. Asked by the Tribunal, I believe there were 3 workmen on site. I confirm that I spoke to them* (…) *and one of them confirmed that they were preparing the shuttering in anticipation of the concrete that was to be delivered the following day.*" The same was also confirmed under cross-examination: "*As the workmen himself stated, this shutter was needed in anticipation of works that had to be carried out the following day. I am being asked whether apart from the workmen, I can confirm that the concrete works had to be done the following day, and I can also say that I spoke to the site manager who confirmed this with me. When I am referring to the site manager, I am referring to the appellant who I am recognising on screen.*"

Photos were filed to indicate the site visited and the works as seen by the building inspector onsite.

On the other hand Rabbi Chaim Segal stated that the only 'work' being carried out on site "*were safety works. There was a faulty lamp that needed to be replaced.*" But he also confirms that "*There were shutters that needed to be moved, however on Sunday, I say that no construction works were being done. The only works that were carried out were those of cleaning of the site. Therefore, the only work carried out was fixing of the safety issues by moving the shutters, cleaning the site and replacing a lamp.*" Asked by the Tribunal to qualify his assertion that all works were required to address a safety issue, he stated "*these shutters had to be removed from one floor to the next because these shutters are under the lamp which*

health and safety asked us to fix. I explained that we had to move these shutters in order to reach the lamp".

The Tribunal has often noted that the prohibition of works on Sundays and public holiday is extensive as evidenced by the definition of 'works' under LS 623.08:

> *"works" means the permanent works and the temporary works, or either of them as appropriate, and include excavation, demolition, construction, building services works and finishingworks*

From the evidence produced, it transpires clearly that the works involved, at least, the moving and laying of shuttering onsite with the consequent hammering noises which were noted by the inspector onsite. These amount to works which were necessarily prohibited on a Sunday under SL 623.08 which includes, in such prohibition, all building services works even of a temporary nature.

It should also be noted that the law extends its prohibition also to works which might be necessasited in view of an emergency and the law itself indicates the procedure which is to be followed by the applicant in such circumstances. In particular, as already cited above, the Third Schedule under its paragraph 1(f) expressly requires the approval of the Authority for the carrying out of emergency works exceptionally to said prohibition.

It is amply clear that this procedure was not adopted by the applicant in this case given that the request made by their architect via email dated 31st My, 2024 seeks a "*concession for works* (…) *for next Sunday, 2nd June, 2024 as works now fell behind schedule and these must recoup to respect committed deadlines*", this when, *ex admissisis*, the applicant's architect was supposedly aware of the emergency necessitating such works on Sunday. To this effect, the appellant himself confirms that: "*I clarify that the request made by my architect was not for safety works to be carried out on Sunday but in actual fact for construction works to be carried out. I also explained that as no reply was received from the Authority, we decided to proceed with what was critical in terms of safety for the site. I confirm that this issue of safety was already there when my architect sent the request even though my architect did not expressly refer to it.*"

The Tribunal determines that, were such works truly required in view of a critical issue of safety, the architect would have clearly stated this in justification for his request and, in any case, awaited the due approval as required by law before proceding further. On the other hand, the reason given by the architect in his email is one which tallies with the reason also given by onsite to the Inspector (i.e. that shuttering was required in anticipation of concrete works to be done on the following day).

To the Tribunal the above suffices to exclude any valid justification for the the carrying out of works on Sunday in breach of the clear prohibition stated in the law. Not only did the applicant fail to adduce clear evidence of the manner in which the moving of shutters, cleaning of site and replacement of lamp could be categorised as emergency works in terms of law but also, even had this been the case, the procedure to be followed in such cases was completely ignored by the applicant who proceded with the works even in the absence of an authorisation by the Authority.

In such circumstances, the Tribunal has no choice but to reject the appeal and confirm the appealed decision as correct in terms of law.

Decide

Consequently, the Tribunal, for the above-mentioned reasons, rejects the appeal and confirms the decision dated 3rd of June, 2024.

Dr Philip M. Magri	**Perit Robert Sersero**	**Ing. Anthony Camilleri**
Chairperson	Membru	Membru