IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum il-10 ta' Dicembru, 2024

Rikors numru: BCT/42/2024 CV

Membri:

Avukat Christopher L. Vella L.L.B., Dip. Not., LL.D.(Melit.)
Perit Samuel Formosa B.E.&A.(Hons), M.Sc. Arch.(Lond), M.Sc.(Env.Pln.& Mgt.), A.&C.E.
Inġ. Johan A. Psaila B. Eng. (Hons.), Pg. Dipl. (Brunel)

Aaron Caruana

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal

Ra r-rikors tal-appell ippreżentat mill-Perit Pierre Poulton għan-nom ta' Aaron Caruana fejn permezz tiegħu huwa ppremetta u talab is-segwenti:

> *I refer to the appeal received by Mr. Aaron Caruana on the captioned site in Birzebbugia.*
>
> *Below please find evidence and clarifications to substantiate the appeal.*
> *The Authority's claim is that the works completed on the captioned could lead to damages to third parties. This is however untrue and without any basis whatsoever.*
>
> *A declaration has been filed in this sense on the 7th of October 2022 which was then further reinforced by DOC 204a on eapps on 18th October 2022.*

The photos shown below evidence that during the construction of the lower floors of the building the foundations of the site and the site at the back of the property were built independently and individually.

Infact the site at the back of the property was over excavated creating a huge inconvenience to my client who had to wait over 4 months until the back of the site was reinstated by the third parties.

Avoidance of Damages to Third party Procedures

It is in the interest of all parties most of all in the interest of my client to safeguard third parties from damages.
However given the circumstances and given that the nature of the working procedures on this site, in no instance was there a risk of any damages to third parties.
The only risk was the damage that could be suffered to my client's backyard and foundations by third party construction works.

Continuation of works from the first floor upwards

Although the works onsite were subdivided in two applications, namely PA 3340/18 and PA 08533/20 the works were continuous.
Moreover as previously stated the two developments were totally independent and no risk of damages to third parties were intensified.

Appeal from fine and Stopworks

The intervention that was completed on the 19th of June was mainly related to the reinstatement of the pavement and the section of street infront of the site (outside the limits of the site)

This intervention was necessary to avoid any risk of flooding of the site that could then initiate a risk of water reaching third-party property. Although this work involved interventions on a public road that is the responsibility of the local authorities (already paid by the applicant in the PA process), my client opted to pay for the works from his funds to eliminate any risks to third parties.

As a result, he is being penalised with an unjust fine.
In the circumstance and in view of the fact that my client always acted in the interest of all parties, we feel that the fine imposed by the BCA is unjust.

Moreover, given that the remaining works on the site relate to water tightness of the block and general finishes away from the back of the property that as explained previously is totally independent of third parties, it is hereby being requested that the stop notice is revoked.".

Ra r-risposta tal-Awtorita' li permezz tagħha wieġbet u eċċepiet is-segwenti:

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 jidher car li dan is-sit kien milqut min "stop works" (koppja annessa u mmarkata bhala 207a) u kwindi ma seta jsir l-ebda xogħol mingħajr l-approvazzjoni tal-awtorita';*
3. *Illi l-appellanti qiegħed jiddikjara li sar xogħol fuq il-paviment ta' quddiem is-sit. Dan ma huwiex ghal kollox korrett stante li hekk kif jidher mir-ritratti anessi u mmarkati komplessivament bħala Dok A, ix-xogħol ma kienx qiegħed jsir fuq il-bankina 'żda fis-sit eżattament fil-"front garden". Allura tali xogħol kien qiegħed jsir illegalment kontra id-deċiżjoni tal-Awtorita';*
4. *Illi l-appellanti jiddikjara wkoll li xogħol sar stante li kien hemm periklu li jkun hemm ingress ta' ilma, u dana setgħa wkoll jikkaġuna ħsara lil terzi. Apparti li l-Awtorita' qiegħed tikkontendi li dan ma huwiex minnu, pero' l-appellanti naqas wkoll milli jitlob permess lil Awtorita' sabiex jsir xogħol sabiex jkun evitat xi ingress ta' ilma futur.*
5. *Għaldaqstant fuq dak suindikat, l-Awtorita' appellata qiegħda umilment titlob lil dan l-Onor. Tribunal sabiex tiċħad l-appell odjern;*
6. *Salv eċċezzjonijiet ulterjur*

F'nota ohra mill perit ta l-appellant, huwa rribatta r-risposta tal-Awtorita billi ssottometta illi:

> ***"Appeal from Enforcement***
> *Evidence of unjust fine*
> *The reply from the BCA refers to works done in the property's front garden.*
>
> ***<u>This is totally incorrect and misleading.</u>***
>
> *I refer to the sketch presented below showing the location of the remedial works done in green. My client's property is marked in red.*
> *The area does not include any front garden. The site is located in an old Quarry that was over 4m deep. Part of the Quarry extended in the Public Road. Mr. Caruana opted to reinstate the public road which was considered very dangerous for walking pedestrians at his own expense until the local authorities choose to complete the rest of the road.*
> *It should be emphasised that this is totally in line with the provisions of the avoidance of Damages to third parties that not only considers damages to buildings but also aims to avoid damages and nuisance to the public in general."*

Fir-Risposta ulterjuri tal-Awtorita' tal-Bini u l-Kostruzzjoni għall din is-sottomissjoni, l-Awtorita argumentat illi

"Illi l-Awtorità tikkontendi li ulterjorment ghal dak li hemm indikat fir-risposta tal-Perit P. Poulton apparti dak li gie indikat fir-risposta tal-Awtorita' sar xoghol iehor minghajr permess fejn tinkludi wkoll l-kostruzzjoni ta' sulari addizzjonali waqt li kien hemm ordni ta' waqfien mix-xoghol datata 19/1/2023 (e-apps 207a)"

Ra l-atti u d-dokumenti kollha.

Ra l-verbali tas-seduti kollha li seħħew quddiem it-Tribunal.

Ra d-deposizzjonijiet tax-xhieda li tressqu quddiem it-Tribunal.

Ra li l-partijiet iddikjaraw l-istadju tal-provi tagħhom magħluq.

Semgħa it-trattazzjonijiet finali tal-partijiet.

Ra li l-kawża tħalliet għal-llum għas-sentenza.

Ikkunsidra:

Dan l-appell huwa dwar ordni tal-Awtorità tal-Bini u l-Kostruzzjoni li permezz tagħha l-appellant ġie ordnat iwaqqaf ix-xogħlijiet ta' żvilupp fis-sit li jinsab fi Plot 5, Triq Dun Gorg Zammit, Birzebbuga u kif ukoll ġiet imposta multa fl-ammont ta' elf ewro (€1000). Il-bażi tal-ordni u l-multa huwa s-segwenti :

*"Fid- 19 ta' Gunju 2024 kif ukoll fix-xhur u fis-snin ta' qabel, saru xogħlijiet ta' kostruzzjoni li mhux konformi mal-Leġislazzjoni Sussidjarja 623.06, senjatament minħabba li bdejt xogħol ta' KOSTRUZZJONI MINGĦAJR ma ssottomettejt d-dokumentazzjoni kollha kif meħtieġ u MINGĦAJR l-approvazzjoni bil-miktub mill-Awtorita' tal-Bini u l-Kostruzzjoni*I."

Il-Perit Pierre Poulton xehed fejn spjega li kien hemm żewġ permessi fuq is-sit in kwistjoni, l-ewwel wieħed għall-ewwel żewġ sulari u garaxxijiet u mbagħad permess ieħor biex jitkomplew is-sulari. Fl-ewwel permess, PA 3340/18, il-perit stqarr li nġiebet *clearance* ai termini tar-Regolament 26 u dan peress li ma kienx hemm bini biswit is-sit. Huwa spjega ukoll li sadanittant, bdiet tinbena ukoll sit oħra ta' terzi wara dik odjerna

u ghalhekk l-iżvilupp waqaf ghal perjodu qasir u reġa tkompla sakemm tlesta il-bini shell form f'Ottubru / Novembru tas-sena 2022. Rigward it-tieni permess, ċioe, PA 08533/20 ma jirrizultax li ġew sottomessi id-dokumenti meħtieġa u lanqas ma ġie prezentat li ħarġet xi *clearance* mill-Awtorita fuq il-kumplament tal-iżvilupp.

Xehed ukoll ir-rappreżentant tal-Awtorità responsabbli mill-każ odjern, Noel Massa li kkonferma bil-gurament illi fid-19 ta' Ġunju tal-2024 kien sar xi xogħol meta diġa kien hemm ordni maħruġa fid-19 ta' Jannar 2023 fuq is-sit peress li kien hemm xi dokumenti neqsin li ma gewx ntavolati mal-Awtorità tal-Bini u l-Kostruzzjoni.

It-Tribunal jibda biex jagħmel referenza għal Regolament numru 4 tal-Avviż Legali 136 tal-2019 li jagħmilha ċara li dawn ir-regolamenti huma applikabbli għal kwalunkwe xogħol ta' kostruzzjoni li jinvolvi:

(a) skavar,
(b) id-demolizzjoni jew tneħħija ta' kull struttura eżistent
(c) il-bini ta' sulari addizzjonali jew ħitan ta' sapport jew strutturi fuq xi proprjetà ta' jew okkupata minn terzi persuni;
(d) il-kostruzzjoni ta' bini ġdid jew sulari addizzjonali biswit proprjetà eżistenti ta' terzi persuni

Fl-ewwel permess, cioe PA 3340/18, gie dikjarat li nġiebet *clearance* ai termini tar-Regolament 26 tal-Avviż legali 136 tal-2019, mill-Awtorita ghal dan l-izvilupp - dikjarazzjoni li ma gietx kontestata mill-Awtorita, fil-waqt li fit-tieni permess, cioe, PA 08533/20, jidher ċar skond ir-regolament numru 4 tal-Avviż Legali 136 tal-2019 li r-rekwiżiti mitluba f'dawn ir-regolamenti japplikaw.

Ghalhekk, it-Tribunal jagħmel referenza għal Regolamenti numru 6 u 7 tal-Avviż Legali 136 tal-2019 li jagħmilha ċara li hemm numru ta' obbligi, rikjesti mit-tali Avviż Legali li ghandu l-iżviluppatur qabel ma jibda kif ukoll waqt kwalunwke stadju tal-proġett, li huma s-segwenti:

> *6. (1) L-iżviluppatur għandu jiżgura li xogħlijiet tad-demolizzjoni, skavar jew kostruzzjoni li jaqgħu taħt id-dispożizzjonijiet ta' dawn ir-regolamenti għandhom ikunu assiguratib'mod adatt u adegwat sabiex ikopru kull ħsara waħdanija jewrikorrenti kkaġunata lil proprjetà ta' terzi persuni, diżabilità lil persuni jew mewt li*

tirriżulta mix-xogħolijiet jew attività ta' kostruzzjoni mwettqa mill-iżviluppatur u l-kuntratturi li jkunu qegħdin jaħdmu fuqis-sit ....
(2) L-iżviluppatur għandu jissottometti lid-Direttur kopja tal-kopertura ta' assigurazzjoni, skont is-subregolament (1), flimkien ma'ittra mill-assiguratur ....

(3) B'żieda mad-dispożizzjonijiet tas-subregolamenti (1) u (2),l-iżviluppatur għandu jissottometti garanzija bankarja lid-Diretturgħall-attivitajiet kollha ta' kostruzzjoni li m'humiex imniżżla fir-regolament 26.

7.(1) Mhux aktar tard minn ġimgħatejn (2) qabel majinbdew xixogħlijiet ta' skavar, demolizzjoni jew kostruzzjoni li jaqawtaħt dawn ir-regolamenti, il-perit tal-proġett għandu jissottometti d-dikjarazzjonital-metodu relattiva skont ir-Raba', il-Ħames u s-SittSkedi u rapport dwar il-kondizzjoni tal-proprjetà skont is-Seba' Skedali inħarġet bil-lingwa bl-Ingliż biss, fuq websajt li jippreskrivi d-Direttur.

It-Tribunal jagħmel referenza ukoll għal sub-Regolament 7(12) li jgħid:

(12) Il-bidu ta' kwalunkwe xogħol ta' skavar, demolizzjoni jew kostruzzjoni jistgħu jidħlu fis-seħħ biss wara li l-Awtorità tal-Bini u l-Kostruzzjoni tagħti approvazzjoni bil-miktub.

It-Tribunal jinnota li peress li dawn ir-regolamenti huma applikabbli għall-permess PA 08533/20, l-izviluppatur kellu l-obbligu li jottjeni *clearance* mill-ġdid mill-Awtorita għar-rgiward ta' dan il-permess. Għaldaqstant l-Awtorita' kienet korretta fid-deċiżjoni tagħha li tordna t-twaqqif tax-xogħlijiet odjerni u f'li timponi l-penali in kwistjoni.

Għaldaqstant dan it-Tribunal ser jgħaddi sabiex jiċħad l-appell u jikkonferma l-Avviż ta Infurzar u l-penali amministrattiva imposta.

Decide

Dan it-Tribunal, għar-raġunijiet fuq imsemmija qiegħed jiċħad l-appell u jikkonferma d-deċiżjoni tal-Awtorità tal-Bini u l-Kostruzzjoni ta' nhar id-19 ta' Gunju, 2024.

**********VERU KOPJA TAL-ORIGINAL**********

Dr Christopher L Vella	**Perit Samuel Formosa**	**Inġ. Johan A. Psaila**
Chairperson	**Membru**	**Membru**