IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Today, 3rd October, 2024

Rikors numru: BCT/44/2024

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.

Trevor Leyland

vs

Awtorita' tal-Bini u l-Kostruzzjoni

The Tribunal,

Having seen the appeal filed by means of email dated 24th July, 2024 which the appellant submitted, amongst others, the following: "*I was under the impression from the MEPA website that as long as we advised MEPA that emergency works were being carried out e could continue. I am sorry if I got this wrong. When we started to remove the tiles, the bedroom floor / garage ceiling started to fall in. We immediately braced the walls and the cantilever balcony. As the floor had already collapsed it seemes sensible to carry out emergency repairs and replace the concrete floor that is also the cantilever for the balcony. I was very concerned about the balcony. This did create some noise for 1 to 2 days. (...) You kindly allowed us to finish the emergency work and make things safe after speaking to my Architect and vieweing*

the work. (...) I am sorry if we got things wrong but a 2000 euro fine seems a lot, can this please be reviewed?"

That by said appeal, the appellant is contesting the Authority's decision dated 5th July, 2024 by which it inflicted the administrative penalty of two thousand euros (€2000) after having determined that "*fil-4 ta' Lulju, 2024 kif ukoll fil-granet u fix-xhur ta' qabel, saru xogholijiet ta' kostruzzjoni li mhux konfermi mal-Legislazzjoni Sussidarja 623.06, senjatament minhabba li bdejt xoghol ta' demolizzjoni u bini minghajr ma ssottomettejt d-dokumentazzjoni kollha kif mehtieg u minghajr l-approvazzjoni bil-miktub mill-Awtorita`tal-Bini u l-Kostruzzjoni".* (on July 4, 2024 as well as in previous days and months, construction works were carried out that were not in line with Subsidiary Legislation 623.06, this because you commenced demolition and building works without submitting the all documentation as required and without written approval from the Building and Construction Authority.)

Having seen the reply filed by the Authority by which it submitted as follows:

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 as can be seen from the attached photos and marked as Doc A, it is evident that work was being carried out without any authorization from the Authority, and also that no application or notification was made that there was any structure that was dangerous. In the circumstances, for the work that was being done without authorization the penalty posted is justified.*
3. *Accordingly, on what has been indicated, the appealed Authority is humbly asking this Hon. Tribunal to reject the present appeal.*
4. *Save further exceptions.*

Having heard the testimony of the appellant during the sitting of the 10th Setember, 2024.

Having heard the testimony of the Building Inspector Michael Simic during the sitting of the 24th September, 2024 when the appeal was put off for judgment for today.

Having Considered

That Reg 7(12) tal-LS 623.06 expressly provides as follows:

> *The commencement of any works of excavation, demolition or construction may take effect only after the Building and Construction Authority provides clearance in writing*

That it is, in fact, the appellant himself who admits through his own appeal that, when the building inspectors repaired onsite, they found ongoing works (which he describes as emergency works required after a roof of the site collapsed) and continues to excuse himself for this lack of awareness from his end as he was under the belief that "*as long as we advised MEPA that emergency works were being carried out we could continue*". During his testimony he confirmed that:

> *I had never heard of the Buildings and Construction Authority but through an online search I determined that for such works we had no need for an online permit but only to inform them that works will be carried out. I asked an architect to prepare that request and at the same time the works were continuing.* (…) *Upon being asked by the Tribunal, I can confirm that unfortunately the documents prepared by my architect were no submitted before the BCA representative turned up.*

The Building Inspector confirmed through his testimony the works onsite being carried out as the laying of concrete on the roof of a garage which appeared demolished, as also evidenced by the photos presented. He also confirmed that the Authority had not received any communication in relation to the commencement of such works.

For the Tribunal, all the evidence submitted confirms that works were in actual fact being carried out onsite without the required prior authorisation of the Authority. With regards to the allegation that these were emergency works, the Tribunal notes that such remedial works were rendered necessary precisely because works had already commenced onsite, at least through the removal of the tiles, causing the roof to collapse, this at least according to the version given by the appellant. The appellant promptly proceeded to demolish and re-construct the roof without the required prior authorisation. It is therefore an undisputable fact that works were taking place onsite without the prior written permission of the Authority as expressly required

by the law. The Legislator did not render this prior approval by the Authority dependant on any other condition or alternatively to approval by the Planning Authority.

That this necessarily means that the Authority was legally justified in imposing the aministrative penalty.

That the Tribunal also notes that by his appeal, the appellant also laments that the penalty imposed is excessive given the circumstances. In this regard the Tribunal notes that the Authority has chosen to impose an extremely high penalty given the nature of the default and also the fact that the Authority official himself authorised the works to continue and finish when he repaired onsite. No explanation was given for this decision to impose such a penalty even though the Authotity insists on this in its reply to the appeal.

The Tribunal determines that there do not result aspects of this case of sufficient gravity to warrant such penalty. Although the Tribunal understands that the legal obligations imposed on developers must always be srcupulously adhered to, it still finds that, taking into account the circumstances of the case, the penalty of two thousand euros (€2000) is an exaggerated one and that there is room for a substantial reduction of the penalty.

Taking into account the particular circumstances of the case, the extent of the development and the reason behind its commencement but also the fact that, as the appellant's own testimony, works were voluntarily commenced without seeking prior authorisation from the Authority under the mistaken belief that a Planning Authority permit would suffice, the Tribunal finds that it would be appropriate to reduce such penalty to the sum of five hundred euros (€500).

Decide

For these reasons the Tribunal is partially upholding the appeal and thus reducing the administrative penalty to five hundred euros (€500) whilst otherwise confirming the decision dated 5th July, 2024.

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