



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

(TRIBUNAL TA' REVIZJONI TAL-AMBJENT U L-IPPJANAR)

S.T.O. PRIM IMHALLEF MARK CHETCUTI

Illum il-Hamis, 15 ta' Ottubru, 2020

Numru 9

Appell Nru. 6/2020

Emma Busuttil

vs

**L-Awtorita tal-Ippjanar
(gia l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar)**

Il-Qorti,

Rat ir-rikors tal-appell ta' Emma Busuttil tal-5 ta' Awwissu 2020 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-28 ta' Lulju 2020 li biha cahad it-talba ghal-'full regularisation application for an apartment at third floor fil-fond 26, Apt. 10b, Macem Court, Triq Sir Gorg Borg, Sliema';

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Illi dan l-appell jikkoncerna talba sabiex issir regolarizzazzjoni ta' appartament bin-numru 10a, fit-tielet sular ta' blokk ta' appartament, f'sit li jinsab fi Triq Sir George Borg, Sliema.

Illi l-izvilupp in mertu gie rrifjutat ghar-raguni li l-applikazzjoni m'hijiex konformi mar-Regolament 4 (5) (d) ta' l-Avviz Legali 285/16, u dan minhabba li l-izvilupp jinvolvi sub-division ta' residenzi u li ma ngabet l-ebda prova dokumentarja fil-forma ta' att ta' trasferiment, li juri li din is-sub-division seħħet qabel id-dħul fis-seħħ tal-istess Avviz Legali.

Illi l-appellant ipprezenta l-appell kontra din l-imsemmija decizjoni, f'liema appell qed isostni li l-izvilupp ghandu jitqies b'mod positiv, u dan ghaliex il-Kummissjoni ma setghet qatt tassumi li sehhet sub-division minghajr prova. L-appellant jissottolinea wkoll li il-propjeta` de quo ġiet akkwistata tale quale u li allura loneru qieghed fuq l-Awtorita` biex tipproduci prova li twettqet illegalita`, u li ma nhareg l-ebda enforcement.

Illi fir-rapport ipprezentat mill-Awtorita`, l-istess Awtorita` ndirizzat l-appell odjern bis-segwenti:

"In this request for appeal, appellant is stating that this request for development is justified in view that the proposed development satisfies all the requisites of the relevant policies. However, after noting all of appellant's arguments as presented in this request for appeal the Authority disagrees with these justifications and states that the development as proposed breaches the relevant policies. The Authority has examined all of the appellant's arguments and would highlight the following issues:

The appellant argues that client was not aware of any subdivision, however from the submitted plans (showing layout and configuration of premises), it is immediately pertinent to note that the existing rooms of the one bedroom apartment originally formed part of a larger apartment on site (previously number 10). This issue was immediately raised upon the first Regularisation Board meeting (see min 31), and for this reason, architect was requested to submit a transfer of deed in line with LN 285/16.

The required proof was not submitted by architect and in the absence of such proof, a site inspection was carried out by the Planning Commission in order to verify the abovementioned claim. In this regard, the Authority cannot agree with appellant's argument that the Commission merely assumed that a sub-division of property had taken place, since the PC's decision to refuse was taken following a site inspection which provided ample proof that the original apartment on site had been subdivided without permit. Particular attention was also drawn to the fact that the adjacent apartment has been refused regularisation permission through RG3789/17 and it became evident that these originally formed part of the same apartment.

To this effect, the Tribunal may wish to note the following conclusion drawn up by the Planning Commission:

"The site was inspected by the Planning Commission and it was verified that the entire residential block is composed of 3 apartments at each level. It is clearly

evident that apartment 10a presented in this application and apartment 10b presented in the other Regularisation Application RG 3789/17 once formed part as 1 entire apartment 10 which was subdivided into 2 respective apartments by a lightweight partition and access door and still sharing some infrastructure facilities and services. In accordance with Regulation 4 (5) (d) of the LN 285/16 cases of sub division of dwellings require the submission of a legal deed as part of the requirements of RG application. For this reason, the existing development application does not comply with the above regulation since no legal deed has been submitted” – see Board minute 40.

Consequently, in view that no legal proof of transfer was provided; the regularization application was correctly refused by the Planning Commission (Regularization Permissions) since the existing development does not comply with Article 4 (5d) of Legal Notice 285 of 2016.”

Illi dan it-Tribunal ha konjizzjoni tal-inkartament tal-applikazzjoni odjerna nkluz tas-sottomissjonijiet maghmula mill-partijiet;

Ikkunsidra;

Illi dwar il-kwistjoni ta’ fuq min qieghed l-oneru sabiex tigi pprovduta evidenza, it-Tribunal jaghmel referenza ghall-Artikolu 95(2) tal-Att dwar l-Ambjent u l-Ippjanar tal-Iżvilupp liema Artiklu jipprovdi s-segwenti:

“Iżda l-oneru tal-prova li l-iżvilupp jew l-attività mhix konformi mar-regoli, regolamenti, pjanijiet u policies fis-seħħ fiż-żmien li l-attività jew l-iżvilupp gie mwettaq huwa fuq il-Kunsill Eżekuttiv.”

B’zieda ma’ dan, ir-Regolament 4 (5) (d) tal-Avviz Legali 285 tal-2016 jipprovdi wkoll illi:

“l-iżvilupp jinvolvi l-qasma ta’ abitazzjonijiet kemm il-darba tigi sottomessa prova dokumentarja konsistenti minn kuntratt ta’ trasferiment li juri li l-qasma seħħet qabel id-dħul fis-seħħ ta dawn ir-regolamenti”

Illi dwar dan, it-Tribunal jinnota li l-oneru li jaghmel referenza ghalih l-Artikolu 95(2) tal-Kap. 552 huwa f’kazijiet ta’ xi illegalitijiet li setghu twettqu, filwaqt li l-oneru li jaghmel referenza ghalih Regolament 4 (5) (d) tal-Avviz Legali 285 tal-2016 huwa f’kazijiet fejn gie ddikjarat xi qasma ta’ abitazzjonijiet.

Illi f’dan il-kaz, dan it-Tribunal jaghmel referenza ghall-ittra tal-Perit datata 7 ta’ Marzu 2018 gie indikat li m’għandux ikun hemm kwistjoni rigward is-sub-diviżjoni peress li l-propjetà odjerna għandha prospett fuq triq pubblika [Skont l-ittra a fol dok 24A fl-inkartament tal-RG3788/17]. Sussegwentament, fil-laqgħa tal-Kummissjoni tal-Ippjanar datata 6 ta’ April 2018, il-Kummissjoni talbet kjarifika jekk din il-propjetà kienetx fil-fatt sub-division ta’ abitazzjoni, f’liema kaz jigi pprovdut kuntratt ta’ trasferiment skont kif mitlub mil-Avviz Legali 285 tal-2016. F’dan il-kuntest, u fid-dawl tal-fatt li ma gie pprovdut l-ebda kuntratt, il-Kummissjoni għall-Ippjanar iddeċidiet li ssir spezzjoni fuq is-sit, u sussegwantament fil-laqgħa tal-Kummissjoni tal-Ippjanar datata 4 ta’ Mejju 2018 gie pprovdut is-segwenti:

“The site was inspected by the Planning Commission and it was verified that the entire residential block is composed of 3 apartments at each level. It is clearly evident that apartment 10a presented in this application and apartment 10b

presented in the other Regularistaion Application RG 3789/17 once formed part as 1 entire apartment 10 which was subdivided into 2 respective apartments by a lightweight partition and access door and still sharing some infrastructure facilities and services. In accordance with Regulation 4 (5) (d) of the LN 285/16 cases of sub division of dwellings require the submission of a legal deed as part of the requirements of RG application. For this reason, the existing development application does not comply with the above regulation since no legal deed has been submitted.”

Illi ghalhekk jidher li fid-decizjoni taghha, il-Kummissjoni tal-Ippjanar indirizzat fid-dettal l-aspett tas-sub-division, fejn fost lohrajn il-Kummissjoni indikat li waqt l-access fuq is-sit il-blokk residenzjali kollu huwa magħmul minn 3 appartamenti f'kull livell, u li huwa ċar li l-appartament 10a ipprezentat f'din l-applikazzjoni u l-appartament 10b pprezentati fl-applikazzjoni l-oħra tarRegularistaion RG 3789/17 kienu jiffurmaw parti bħala appartament wiehed, kif ukoll li din is-sub-division hija rizultat ta' lightweight partition and access door, u li dan iz-zewg appartamenti ghadhom jaqsmu xi faċilitajiet u servizzi infrastrutturali.

Illi it-Tribunal jagħmel referenza wkoll ghar-Regolament 4(1)(ċ) ta' l-Avviz Legali 285/16 li jesigi li “flimkien mal-applikazzjoni, l-perit tal-applikant għandu jissottometti ukoll id-dokumentazzjoni li ġejja: (vi) prova dokumentarja li tikkonferma li l-użu speċifiku jikkonforma mad-dispożizzjonijiet tas-subregolament (5)(ċ) u (d)”

Illi ghalhekk il-Kummissjoni tal-Ippjanar kienet korretta fit-talba taghha li jigi pprovdut kuntratt li juri li sub-division ta' labitazzjoni fuq is-sit odjern, u cioe` appartament 10a, u li dan sar skont kif mitlub mis-sub-regolament 4(1)(ċ)(vi) ta' l-Avviz Legali 285 tal-2016. In vista tal-premess u minhabba li l-appellant naqas milli jipprovidi kuntratt li juri li sub-division seħħet qabel iddħul fis-seħħ tal-Avviz Legali 285 tal-2016, dan it-Tribunal m'għandux triq oħra hlief li jichad l-aggravju imressaq mill-appellant..

Ghal dawn il-motivi, it-Tribunal qieghed jichad dan l-appell u jikkonferma d-decizjoni tar-rifjut tal-applikazzjoni RG 3788/17.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jindirizza ilmenti ta' sustanza tal-appellant fosthom l-insistenza tal-appellant li qatt ma saret subdivision u ma kien hemm ebda enforcement notice; in-nuqqas tal-Kummissjoni li iggib prova ta' dak li kien hemm bhala stat ta' fatt qabel l-allegat subdivision tant li rapprezentant tal-Awtorita xehed li ma sabx il-file originali fuq is-sit, u fin-nuqqas it-Tribunal kellu jillimita ruhu jekk it-talba kinitx ser tikkreja 'injury to amenity';
2. It-Tribunal wasal ghal konkluzjoni tieghu fuq konsiderazzjonijiet irragonevoli billi qies li kien hemm subdivision tal-appartament minn access li kien sar fuq il-post fejn ikkonstata lightweight partition u access door u li z-zewg appartamenti jaqsmu s-

servizzi, minghajr prova ta' kif kien qabel u inoltre tefa' fuq l-appellant il-prova li s-subdivision sehhet qabel id-dhul fis-sehh tal-Avviz Legali 285 tal-2016 meta ma kellux prova dwar illegalita;

3. It-Tribunal ikampa d-decizjoni tieghu wkoll fuq l-artikolu 95(2) tal-Kap. 504 li ma kienx ghadu dahal fis-sehh fid-data tad-decizjoni.

L-ewwel aggravju

Inghad diversi drabi li skont il-gurisprudenza, decizjoni trid tkun motivata biex ma taqax fin-nassa tan-nullita pero ma jfissirx b'daqshekk li kull lanjanza hi x'inh i trid tigi indirizzata sakemm id-decizjoni u l-motivazzjoni ikunu jolqtu s-sustanza tal-vertenza u tinghata raguni spjegata u legali ghad-dibattitu litigju. L-appellant isostni li t-Tribunal ma setax jasal ghal konkluzjoni li wasal bla prova ta' kif kien is-sit qabel l-applikazzjoni meta l-istess appellant isosnti li qatt ma saret subdivision.

Din il-Qorti tqis illi -z-zewg kwistjonijiet gew trattati mit-Tribunal biex wasal ghal konkluzjoni tieghu. Apparti li dawn huma kwistjonijiet ta' fatt li mhux sindakabbli mill-Qorti, it-Tribunal indirizza l-kweziti imsemmija. Hu semma l-istat fattwali tas-sit u ikkonkluda mill-provi cioe mill-fatti fizici li setghu jigu kostatati bl-on site inspection; illi l-blokka kellha tlett appartamenti f'kull livell; illi l-pjanti juru li dan kien apartment wiehed u l-perit tal-applikant naqas li jgib prova mod iehor skont l-Avviz Legali 285/2016. Taqbel jew ma taqbilx mal-konkluzjoni raggunta ma jfissirx li t-Tribunal ma qies l-aggravju tal-appellant. Qies u ghazel li jistrieħ aktar fuq il-provi mressqa mill-Kummissjoni milli n-nuqqas ta' provi cari mill-applikant fejn jidher li t-Tribunal ma strahx biss fuq il-kelma tal-applikant.

Ghalhekk l-aggravju qed jigi michud.

It-tieni aggravju

It-Tribunal wasal ghal konkluzjoni li dan qatt ma kien apartment separat u mhux wiehed flimkien ma' dak bin-numru 10a, mill-provi imressqa. Kellu kull jedd iqis il-provi u jasal ghal konkluzjoni tieghu. Il-fatti li wasluh jiddeciedi kif iddecieda huma gia imsemmija mill-Qorti fl-ewwel aggravju u ma hemmx xejn li jirrizulta irragonevoli meta wiehed iqis li l-applikant ma xejjen ebda wahda minn dawn il-provi ta' fatt. Il-kwistjoni dwar l-Avviz Legali 285/2016 giet ukoll indirizzata mit-Tribunal u din il-Qorti

ma tistax taqbel mal-appellant li t-Tribunal tefa' l-prova tas-subdivision fuq l-applikant.

Bhala fatt jirrizulta li kien l-applikant talab regolarizzazzjoni. Din ir-regolarizzazzjoni taqa' fl-ambitu tal-Avviz Legali 285/2016. Il-fatti juru li din l-applikazzjoni u ohra bin-numru RG3789/17 huma dwar zewg appartamenti bin-numri 10a u 10b. It-Tribunal qies mill-fatti illi originarjament dawn l-appartamenti kienu wiehed, konsiderazzjoni ta' fatt fuq kwistjoni teknika li din il-Qorti ma ghandhiex tissindaka. La darba l-applikant kienet qed titlob ir-regolarizzazzjoni ta' apartment li issa hu maqsum fi tnejn japplika skont l-istess artikolu 4(5)(d) cioe fejn l-izvilupp hu qasma ta' abitazzjonijiet kif irrizulta lit-Tribunal (f'dan il-kaz minghajr prova kuntrarja konkreta da parti tal-applikant), allura l-applikant ghandu jipprovdi kuntratt ta' trasferiment li juri l-qasma cioe li kienu zewg appartamenti qabel id-dhul fis-sehh tar-regolamenti. Din hija prova li kellha taghmilha l-applikant u la darba ma saritx l-applikazzjoni ma setghetx tirnexxi.

Ghalhekk l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju hu bla siwi. Fil-konsiderazzjonijiet tieghu ghalkemm it-Tribunal semma l-artikolu 95(2) tal-Kap. 504 (recte 552) jidher car li dan kien lapsus calami. Dan l-artikolu ma intqies bhala raguni ta' rifjut izda biex it-Tribunal jikkomparah ma' dak li jrid l-Avviz Legali 285/2016 qua oneru ta' prova. Il-konsiderazzjoni kienet intiza bhala paragon bejn diversi artikoli ta' ligi mhux ghax kienet direttament rilevanti ghal soluzzjoni tal-vertenza li b'mod sostanzjali kienet iddur ma' dak li jrid l-Avviz Legali 285/2016. Del resto kien l-appellant stess li semma l-artikolu 95(2) tal-Kap. 552 quddiem it-Tribunal.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Emma Busuttill u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-28 ta' Lulju 2020.

Spejjez għall-appellanta.

Mark Chetcuti

Prim Imhalled

Anne Xuereb

Deputat Registratur