



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta ta' l-20 ta' Mejju, 2015

Appell Civili Numru. 61/2014

Sarah Ciantar Testaferrata Moroni Viani

vs

L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar

Il-Qorti,

Rat ir-rikors tal-appell ta' Sarah Ciantar Testaferrata Moroni Viani tat-12 ta' Dicembru 2014 minn kondizzjoni imposta fid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-25 ta' Novembru 2014 ghal tigidid ta' permess PA 5365/05 bil-PA 280/11;

Kopja Informali ta' Sentenza

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 jitratta l-kundizzjoni numru 4 fil-permess, PA 00280/11 ghal liema kundizzjoni l-appellanti ghamlet l-appell de quo.

Illi din il-kundizzjoni tghid hekk:

“No alterations to the original features of the facade of the Grade 2 scheduled building as indicated in GN362 of 2012 are acceptable as long as the scheduling is in force. New openings and/or widening of existing openings are not acceptable as long as the scheduling is in force.”;

Illi fl-Appell l-Appellanti spjegat hekk:

“We act for Ms Sarah Ciantar Testaferrata Moroni Viani (the "Owner") to appeal from Condition Number 4 in PA/00280/11 (the "Condition") relative to approved development works in her property in Alley Number One (1). Three Churches Street, Balzan (the "Property") shown on the attached Site Plan.

The Condition states that "no alterations to the original features of the facade of the Grade 2 scheduled building as indicated in GN362 of 2012 are acceptable as long as the scheduling is in force. New openings and/or widening of existing openings are not acceptable as long as the scheduling is in force".

The Condition particularly affects projected and approved works on the archway covered by permit PA 5363/05 "Doc B" leading from the public thoroughfare to the Property.

FACTUAL CONSIDERATIONS & SITE HISTORY

A list of the partners and associates and their qualifications is available at the address above or on our website.

1. The Owner acquired the Property by deed dated the 25 February, 2010 in the records of Notary Clyde La Rosa [copy attached as "Doc C The Property covers a superficial area of approximately one thousand and fifty one point eighty four square meters (1, 051.84 m²) and consists of a garden and a "remissa" annexed to it;

2. The Property was purchased as covered by development permit PA 5363/05 dated 26th January, 2007 which was issued by the Malta Environment and Planning Authority ("MEPA") for the full development of a "dwelling and swimming pool" [refer to attached "Doc B" The permit's compliance with all relative MEPA regulations and policies was confirmed by MEPA Officials [Mr George Delmar] just after the permit was modified by the MEPA Board on the 3rd December, 2009 [Minute 6587];

3. Development permit PA 5363/05 was subsequently confirmed by MEPA after various contestations were consistently dismissed as unfounded and without legal basis.

4. Such contestations were:

(i) A report by Dorothy Bonello to the auditor of MEPA presumably asking that the permit be revoked. This was also dismissed;

(ii) Three requests for revocation by objector Mrs Bonello and or family Bonello/Seychell or their representatives under Article 39A of the then applicable Development and Planning Act [Chapter 356, Laws of Malta] and under Article 77 of Chapter 504.

All contestation were made by members of family Bonello who appear to have missed out on the property in a judicial division with relatives. The Property is fragmented and forms part of at least three different properties.

The Owner commenced works on the Property following the go-ahead given by the Superintendence of Cultural Heritage (the "SCH") on the 15th November 2011.

At no point during the processing of PA 5363/05 which, as said, was considered as being in compliance with MEPA regulations and policies, did the SCH draw MEPA's

Kopja Informali ta' Sentenza

attention to any features of cultural importance within the Property and/or request to have the Property scheduled. The SCH only intervened much later whereby, following a report by Architect Bianco acting on behalf of the objectors, which report was deemed as unjustified by MEPA, it proceeded to request the properties scheduling.

Therefore:

An Emergency Conservation Order (ECO) was published on the 29th November, 2011 in the afternoon edition of the Government Gazette and; The Property was affected by a scheduling order dated April, 2012 which appeared in Government Gazette Number 18, 894 as Order Number 362.

The effects of this scheduling culminated in Condition Number 4 of PA/00280/11 which particularly affects projected works on the archway leading to the Property and which is hereby being contested;

The Owner is prejudiced by the Condition as it is prohibiting her from performing works which are covered by a valid permit [PA 5363/05] and which are necessary for her long term plans for the Property. Such plans mainly involve the necessity of widening the archway in the Property's facade which leads from the public thoroughfare to the Property.

Grounds of Appeal

The Owner submits that:

The scheduling at Grade 2 of the Property does not justify the Condition and its wide implications.

Grade 2: These are buildings of some architectural or historical interest or which contribute to the visual image of an Urban Conservation Area.

Permission to demolish such buildings will not normally be given.

Kopja Informali ta' Sentenza

Alterations to the interior will be allowed if proposed to be carried out sensitively and causing the least detriment to the character and architectural homogeneity of the building [emphasis added].

The Structure Plan for the Maltese Islands [December 1990] defines Grade 2 protection as:

Grade 2 protection.

The phrase in the condition that "new openings and/or

The Structure Plan is clear in stating that protection at Grade 2 is reserved for buildings "of some architectural or historical interest" which 'interest' should, presumably, be proved beyond doubt.

Additionally, the definition of Grade 2 protection does not pre-emptively forbid works on scheduled buildings. The fact that the law covers interventions on the interior of the building ["alterations to the interior" which "will be allowed if proposed to be carried out sensitively and causing the least detriment to the character and architectural homogeneity of the building"] does not a priori exclude works to the exterior. This, it is submitted is a wrong interpretation.

In fact scheduling does not exclude the possibility of demolition of scheduled buildings [" ... permission to demolish such buildings will not normally be given'¹ therefore logically it follows that interventions on scheduled property both on the exterior are not excluded but severely regulated.

The Condition appealed from stems from a wrong interpretation of the effects of scheduling and imposes greater restrictions than that defined by the definition of widening of existing openings are not acceptable" is with respect an addendum based on a wrong interpretation of scheduling.

The Property was scheduled on the basis of its previous alleged 'use' as a 'Casa del Gioco' not on architectural merits.

In researching the basis for the scheduling of the Property, it transpired that the Property was scheduled as a Grade 2 property due to its alleged past use as a "Casa del Gioco" and not due to its architectural merits.

Kopja Informali ta' Sentenza

This point of view is that expressed by the MEPA Board, the Directorate and the specialized units on various occasions throughout the planning process.

This declaration was made through MEPA's internal specialized units namely, the Cultural Heritage Advisory Committee and the Heritage Planning Unit within the Directorate.

Finally at the MEPA Board meeting held on February, 2012, when the building was scheduled various members of the Directorate and members of the Board declared that the building had no architectural merits which justify scheduling and that the sole reason for scheduling was due to its historical interest as an alleged casa del gioco which it is submitted based on flimsy hearsay evidence.

Once members of the technical department of the Authority [HPU] and the MEPA Board members agreed that the building had no architectural value meriting scheduling then the condition that "new openings and/or widening of existing openings are not acceptable" is with respect a specific limitation to an approved permit which was not sanctioned by the MEPA Board and is prima facie ultra vires.

The archway has already been subjected to and has suffered various interventions and is not in its original state.

Owner's Property within the scheduling is limited to an archway that has also been subjected and has suffered various intrusive/insensible interventions/alterations along the years. Such interventions/alterations are clearly visible through a simple ocular examination of the structure and are generally insensible to the archway and the manner in which it appears to have been originally erected.

The condition imposed by MEPA is clear and alterations to the original features of the facade of the Grade 2 scheduled building as indicated in GN362 of 2012 are acceptable as long as the scheduling is in force" [emphasis added].

The side walls supporting the archway which are to be widened by half a meter are not original since, as previously argued, the side walls of the archway have suffered several interventions over the years including, inter alia, plastering with cement and removal of the supporting walls.

Kopja Informali ta' Sentenza

Therefore solely on this point works covered by the permit should be allowed.

Moreover, the owner submits that all projected works on the Property will be carried out sensitively and will cause the least detriment possible to the character and architectural homogeneity of the "Remissa" while they will be supervised by knowledgeable and experienced professionals who have been entrusted with several works on various protected buildings including the main gateway to Valletta, a Grade 2 scheduled city which is also listed as a World Heritage Site with UNESCO.

It is therefore clear that projected works are in fact an opportunity at reducing the negative impact of past interventions on the archway and will ultimately benefit the structure itself.

Conclusion

To this extent, the Owner feels that the inclusion of Clause 4 in PA/00280/11"

Illi Jonathan Borg fis-seduta tas-27 ta' Settembru 2012 ikkonferma li huwa ghamel kejl fuq il-bieb in kwistjoni u spjega li l-qisien kienu: il-wiesa tal-bieb minn naha ta' isfel hija ta' 1.72 metres, fin-nofs 1.65 metres u fin-naha ta' fuq 1.62 metres.

Illi permezz ta' ittra datata 19 ta' April 2013 Anthony Pace, Superintendent of Cultural Heritage spjega:

"I refer to the previous position and correspondence about the subject in caption including:

1. The commendation of 23 August 2011 by the Superintendence of Cultural Heritage to MEPA for the Scheduling of the historic property at Alley 1, Triq Tliet Knejjes, Balzan

2. A follow up email by the Superintendence, of 24 November 2011 specifying: (A) that the entire historic palazzo is to be protected, and (B) that vehicular access

Kopja Informali ta' Sentenza

through the arched-way in Alley 1 is unacceptable as it requires the destruction of the said arched-way.

3. Publication in the Malta Government Gazette of 23 March 2012 of a Scheduling Order for the conservation of the historic palazzo at Triq it-Tliet Knejjes, Balzan, as a Grade 2 Building. This Scheduling Order covers a single historic building which is currently divided between two addresses:

- Alley 1 in Triq it- Tliet Knejjes, Balzan and
- 5 and 6, 'The Orangerie' Triq it-Tliet Knejjes, Balzan

It should be noted furthermore that the property in question is one of the most important architectural monuments in the urban core of Balzan. The property was already highlighted as being 'worthy of preservation' in an official report of 1944 by Sir Hannibal Scicluna, then Acting Director of the Museums Department. The property is described in this report as 'Palace; circa 1600; Three Churches Street No. 5 and 6 and Alley No I'.

Please be informed that in terms of the Cultural Heritage Act, the Superintendence of Cultural Heritage has issued a Conservation and Protection Order on 19 April 2013, copy of which is being attached.”;

Fil-Cultural and Protection Order datat 19 ta' April 2013 gie ddikjarat hekk:

“With reference to MEPA permits

a. PA1811/08: To construct new boundary wall in new back garden in exchange for granting part of width of garage to create new internal passage way at 5 & 6 'The Orangerie' Triq Tliet Knejjes Balzan, and

b. PA0280/11: Renewal of Development Permission PA5363/05. Site at Alley 1 in Triq Tliet Knejjes, Balzan, the Superintendence objects to any works being carried out that will cause damage to the original architectural fabric of this historic property.

Kopja Informali ta' Sentenza

In view of the seriousness and irreversible damage that may be caused to the original fabric of this architectural monument, you are hereby being instructed in terms of the Cultural Heritage Act to desist from carrying out any works that run counter to the Cultural Heritage Act and/or to the Scheduling order published in the Government Gazette on 23 March 2012, including any works aimed at:

- 1) Creating a new pedestrian doorway through the front wall of the Palazzo, as approved in permit PA1811/08; and
- 2) Widening of the existing historic arch-way to allow vehicular access in Alley 1, Triq Tliet Knejjes, Balzan as approved in permits PA 5363/05 and PA0280/11.

The Superintendence is aware that to-date no such works have yet been carried out on site.

Any works carried out in contravention of this Conservation and Protection Order will constitute a breach of the Cultural Heritage Act and will be treated in terms of Article 53 and 54 of the same Act.”;

Fis-seduta tal-11 ta' Gunju 2013 xehed Nathaniel Cutajar ghas-Superintendent tal-Wirt Kulturali li spjega, fost affarijiet ohra, in generali u dwar l-ittri datati 19 ta' April 2013:

“Mhux minnu. Dawn l-ittri l-objective taghhom hu sempliciment li ahna minn dejjem mill-ewwel korrispondenza fuq dan il-kaz imur lura ghal numru ta' snin, ilna naghmlu illi, il-propjeta' in kwistjoni li illum maqsuma f'zewg propjetajiet, hija ta' valur kulturali. Dan kien il-hsieb originali tas-Superintendence li minn dejjem hadet passi biex tiprotegi il-fabric tal-istruttura u ghamilna id-distinzjoni bejn struttura u l-grounds wara l-gnien. Il-permessi originali ghandhom zewg elementi wiehed illi jirrikjedi ticrit, twessiegh tal-access minn naha tas-sqaq u minn accessi ohra li hemm bzonn illi jintmiss il-binja nnifisha. Parti ohra li hija binja li huwa landscaping struzzjoni fuq in-naha ta' wara ta' dak li huwa l-gnien. Il-posizzjoni taghna kienet illi waqt li enfasszajna li l-binja ghandha tigi protetta ghax kienet ta' valur, partikolarment il-faccata, fuq wara l-landscaping u l-kostruzzjoni kienu ta' concern inqas, ta' perikolu inqas ha nghidu hekk, dment illi jithalla spazju madwar il-binja originali. Fil-fatt, dak il-hsieb bqajna ghaddejin bih sal-recommendation for scheduling li hija marbuta fuq il-binja specifikatament bil-constrain li jinzamm spazju miftuh wara halli ir-relazzjoni mal-gnien jibqa' jinqara ghalkemm mhux ovjament l-istess gnien ghax sa dakinhar kien gie skavat, kien inbidel. Kien fatt attwali. Din l-ittra kienet li bqajna nzommu dak il-punt illi l-fabric originali tal-binja arkitettonika ghandha tigi protetta u kienet

Kopja Informali ta' Sentenza

semplicement qed izzomm principju li kienet minn dejjem l-ewwel wahda. In line with the scheduling. Din l-ittra hija re-assertion ta' dak l-istess principju.

Domanda:

X'effett taht il-Cultural Heritage Act, ghandha l-Conservation and Protection Order.

Risposta:

Tinhareg taht il-Cultural Heritage Act mhux bhala planning u hija poter li s-Superintendence ghandha biex tiprotegi propjeta li hemm medda. Propjeta kulturali ovjament. Mela il-Conservation Order hija mahsuba biex taghti, (hija bicca ghodda legali li tohrog mill-Cultural Heritage Act u l-ghan huwa) hija bicca ghodda straordinarja biex tiehu passi biex tiprotegi wirt li jista' jkun hemm, li hija mhedda jew li tista' tkun mhedda. Din intuzat f'dan il-kuntest.

Domanda tat-Tribunal:

F'terminu ta' Planning u Development il-Conservation Order x'differenza taghmel as against de-scheduling?

Risposta:

Il-Conservation Order hija poter li huwa ezercitat mis-Superintendence. M'hijiex planning tool. Ahna ikkupjajna l-parties kollha involuti biex ikun suggett ghal informazzjoni. Hija a re-stating lil hinn mill-pozizzjoni mehuda fis-scheduling recommendation. Anzi biex niprotegu l-pozizzjoni mehuda fis-scheduling.”;

Fis-sottomissjonijet taghha, l-appellanti spjegat:

“1.Fatti preliminari.

Kopja Informali ta' Sentenza

L-appellanta kellha permess [Numru PA 5363/05] sabiex isir zvi/upp "to erect dwelling house with swimming pool" fis-sit Alley 1, Triq t-Tliet Knejjes Hal-Balzan.

Illi fil-25 ta' Marzu 2011 u cioe qabel l-gheluq tal-perjodu ta' validita' tal-permess fuq citat l-appellanta applikat [PA 280/11] sabiex l-istess permess jigi estiz ghall-perjodu ulterjuri ta' hames [5] snin liema applikazzjoni giet approvata u l-permess mibghut fil-25 ta' Mejju 2012.

Illi l-izvilupp propost fil-permess originali [Approved documents PA 280/11/1/ A u PA 5363/05/4BC/48D/48E/100A/100B and Construction method statement PA 5363/05/114/ A/114B] gie emendat bl-inkluzjoni ta' klawsola wahda u cioe kundizzjoni erbgha [4] li ttenni:

"no alterations to the original features of the facade of the Grade 2 scheduled building as indicated in GN362 of 2012 are acceptable as long as the scheduling is in force. New openings and/or widening of existing openings are not acceptable as long as the scheduling is in force".

Illi dan huwa appelllimitat fuq din il-kundizzjoni.

2. Sfond qasir dwar l-iskedar tal-bini fi Triq it-tlett, Knejjes Balzan.

Illi jkun understatement' jinghad li l-girien ghamlu minn kollox sabiex dan l- izvilupp ma jsehx kif dan it-Tribunal zgur jinduna mill-qari tal-atti ta' dan l-appell.

Issir biss referenza ghal dak li ntqal u gie ddikjarat bil-miktub minn ufficjal tal-Heritage Protection Unit fi hdan l-Awtorita f'Lulju 2011 illi iddikjaraw illi there appears no valid justification for the withdrawal of the permit from a cultural heritage aspect. There are no immediate plans for scheduling this and abutting properties, sabiex wiehed japprezza minn xiex ghaddiet l-appellanta.

Illi sussegwentement [fl-2012] saret pressjoni mill-objectors fuq is-Supretendent tal-Patrimonju Kulturali li minn naha tieghu akkomodhom billi nonostante li qatt ma kien oggezzjona ghall-applikazzjoni u permess originali, ghamel pressjoni sabiex il-gnien u l-binja li hija accessibbli minn tlett propjetajiet u senjatment Les Orangerie Triq it-tlett, Knejjes Balzan , Casa Pompei Triq it-tlett, Knejjes Balzan u Propjeta fi Sqaq

Kopja Informali ta' Sentenza

Numru 1, Triq it-tlett, Knejjes Balzan jigu skedati bl-uniku SkOp2 li jigi annullat il-permess PA 5363/05 kif mgedded.

Illi t-talba ghall-iskedar tal-gnien giet michuda u ghaddiet in gudikat ghaliex ma sarx appell [la mis-supretendent u l-anqas mill-objectors] waqt li il-propjeta accessibbli mill-propjetajiet fuq riferiti fi Triq it-tlett, Knejjes Balzan giet skedata minhabba l-allegat uzu taghha bhala casa del gioco.

Appell ipprezentat mill-permess (PAB 67/07 RT) datat 6 ta' Marzu, 2007 liema appell gie michud ; Rapport minn Dorothy Bonello lill-Awditur tal-MEPA, li wkoll gie michud b'rapport tal-20 ta' Lulju, 2009; Tlett talbiet ghar-revoka tal-permess taht l-Artiklu 39A tal-Kap 356 u, sussegwentement, l-Artiklu 77 tal-Kap 504 tal-Liglijiet ta' Malta lkoll michuda.

L-effett tal-iskedar fuq l-permess tal-appellanta skond l-Awtorita hu li minhabba l-iskedar l-intervent fuq il-bieb ta' remissa li kien approvat fil-permess PA 5363/05 issa gie revokat.

Illi dan l-intervent kien jikkonsisti fi twessiegh tal-bieb minn 1.76m ghal 2.50m. L-effett ahhari hu li l-car port approvat fid-drawings fuq citati issa ma jistax jintuza ghaliex tnehha l-access ghall-vetturi.

3. Il-mertu tal-appell.

Illi l-appellanta tirreferi ghas-sottomissjonijiet taghha maghmula fl-appell taghha tal-15 ta' Gunju 2012 u zzomm ferm fuqhom.

Illi l-appellanta se tillimita s-sottomissjonijiet taghha ghall-posizzjoni legali li hadet l-awtorita ossia li ma jistax isir zvilupp/intervent fuq bini skedat fit-tieni grad. Huwa koncess u rrikonoxxut li l-posizzjoni legali attwali hi in linja generali permess ta' zvilupp jitlef l-effikacija tieghu f'kaz li s-sit mertu tal-izvilupp sussegwentement ghall-hrug tal-permess jigi skedat. Hu pero sottomess li dan il- principju ma japplikax ghall-izvilupp in dizami ghaliex:

Mhux ragonevoli [reasonableness] tenut kont ic-cirkostanzi tal-kaz;

Kopja Informali ta' Sentenza

Huwa konfliggenti mal-permessi approvat precedentement;

Il-bieb tar-remissa mhuwiex "originali".

Id-definizzjoni ta' skedar fit-tieni grad fil-pjan ta' struttura huwa kif gej:

Grade 2: These are buildings of some architectural or historical interest or which contribute to the visual image of an Urban Conservation Area. Permission to demolish such buildings will not normally be given. Alterations to the interior will be allowed if proposed to be carried out sensitively and causing the least detriment to the character and architectural homogeneity of the building [emphasis added].

Illi l-Awtorita qed tinterpreta dan ir-regolament fis-sens li l-ebda intervent ma jista jsir assolutament fuq bini li huwa skedat salv jekk tali intervent ikun intern u maghmul b'mod sensitiv. L-appellanta ssostni li din hija nterpretazzjoni hazina kemm minnha nfisha u kemm kontradetta minn diversi permessi li nghataw tul is-snin ghall-interventi f'bini skedat.

Illi qabel xejn huwa mportanti li nzommu saqajna mal-art u nifhmu l-kuntest tal-izvilupp li gie affetwat mid-decizjoni tal-Awtorita u cioe t-twessiegh ta' bieb ta' remissa go sqaq li huwa "engulfed" minn bini recenti konsistenti f'garage mibni xi snin ilu u d-dar tal-objectors [Casa Pompei mibnija fis-seklu li ghadda]. L-izvilupp ma jikkonsistix f'demolizzjoni imam f'intervent zghir.

Illi huwa sottomess li tali intervent huwa permessibbli ghar-ragunijiet segwenti: L-intervent mhux se jnaqqas mill-"visual image of the Urban Conservation area."

L-iskedar sar minhabba ragunijiet kulturali u mhux arkitettocini kif jidher mill- minuti tal-laqgħa tal-Awtorita" liema ragunijiet jirrizulta li kienu zbaljati kif jidher mir-rapport tal-arkitett Edward Said anness ma din in-nota.

L-intervent kien gja meqjus bhal accettabbli mill-Heritage Advisory Unit tal- Awtorita meta gie approvat;

Kopja Informali ta' Sentenza

L-intervent kien gja gie meqjus u evalwat fi hdan il-principji li kien zvilupp fi Urban Conservation Area [UCD 8] u ghalhekk gja ghadda mill-gharbiel ta' zona skedata; Il-projibizzjoni tal-intervent imur kontra l-permess approvat mill-awtorita' numru PA 5363/05 li jinkludi car-port sabiex jevita parkeggjar fit-triq.

L-intervent huwa kumplimentari u konness mal-permess PA /1811/08- li gie kkonfermat minn dan it-Tribunal diversament presedut permezz tad-decizjoni tal-15 ta' Marzu 2013 Appell Numru 356/11/CF fl-ismijiet Rita Bonello vs L-Awtorita ta' Malta dwar L-Ambjent u Ippjanar et. Il-ftuh fil-faccata tal-bini skedat ntervent accettabli "ghaliex .. fi kwalukwe kaz ser issir il-parti tal-hajt li diga huwa minsus bl-ingal/i tal-hajt tal-garage li nbena mieghu [mal faccata tal-bini skedat] .. • din ma ninsewx hija decizjoni li nghatat wara l-iskedar.

Il-bini skedat gja gie sotto post ghal diversi interventi kollha bil-permess tal-Awtoritajiet koncernati tul iz-zmienijiet, inkluz il-bini ta garage, tarag u front garden fuq il-faccata, dar kompluta tal-objector ma parti tal-faccata u diversi addizzjonalitajiet strutturali fuq il-bjut u terazzini;

L-intervent de quo mhux se jsir fuq parti originali tal-faccata imma fuq ilgnub tar-remissa li m'humiex originali. L-appellanta ipprezentat provi, mhux kontradetti" li l-I-gnub tal-bieb tar-remissa mhux originali, huma mkahhlin bis-cement u b'hekk ma jistax jinghad li se jsir intervent fuq "original feature". Il-perit Konrad Buhagiar kkonferma fir-rapport/ tieghu esebit mill-appellanta li

"The intradoss was redefined when the door was widened at an earlier date and the jambs that exist today do not testify to the authentic geometry of the doorway."

Fuq dan il-punt biss huwa bir-rispett sotto mess li dan it-tribunal jista jiddeciedi l-appell billi jilqaw ghaliex l-izvilupp konsistenti fit-twessiegh tal-bieb tar-remissa huwa permissibli ghaliex huwa ntervent fuq struttura li mhiex originali.

L-intervent propost se jsir b'mod sensitiv taht supervizjoni u a bazi ta' rapport mill-perit Konrad Buhagiar li huwa l-perit arkitett espert in materja u li jirrapresenta lil Renzo Piano fix-xogholijiet ta' bieb il-Belt. It-twessiegh tal-bieb tar-remissa hu konformi mal-policies UC06, UCO 8, UCO 10 u Ben 2 tal-Pjan ta' Struttura stante li jirrispetta u jirrispekkja l-bini, spazji, veduti urbani u skyline kif rikjest min dawn il-policies.

Kopja Informali ta' Sentenza

L-interpretazzjoni tal-Awtorita' hija kontradetta minn diversi permessi li hargu tul iz-
zmien, ezempji recent huma:

PA 3792/11, Villa Alhambra Triq Tonna Triq Rudolf Sliema;

PA0349/01 Roseville, St Anthony Street Balzan;

PA 1835/13 u PA 5889/08 Lombard Bank, 225A, Tower Road, Sliema;

Fl-ahharnett n-nuqqas ta' ragonevolezza totali u bilanc meta wiehed iqis li qatt ma
kien hem m applikazzjoni ghall-demolizzjoni tal-bini u ghalhekk l-Awtorita kellha bl-
akbar rispettt tinnota li d-dar skedata hija soggetta ghal diversi interventi ta' natura
ferm aktar estensivi minn semplici twessiegh ta' bieb ta' remissa.

Konkluzjoni.

Illi tenut kont ic-cirkostanzi u ghar-ragunijiet premissi huwa sottomess li kundizzjoni
numru 4 fuq citata ghandha titnehha u/jew fin-nuqqas ta' tnehhija m'ghandiex bir-
rispett timpedixxi l-intervent ossia zvilupp accett fil-permess PA 5363/05 sabiex il-
bieb tar-remissa jitwessa kif propost skond id-direzzjonijiet u s-sorvelianza tal-perit
arkitett Konrad Buhagiar.”;

L-Objectors kif debitament rappresentati mill-Prof Lino Bianco ssottomettew li r-
rapport sottomess mill-Prof Bianco fl-Appell 245/12 datat 20 ta' Frar 2013 ghandu
jiffirma parti integrali minn dan l-Appell.

F'dan ir-rapport gie sottomess:

“1.0 Reference is made to the third party planning appeal.....renders it null and
void”.

Ikkunsidra ulterjorment :

Illi ghalhekk dan it-Tribunal f'dan l-Appell irid jiddeciedi jekk il-kundizzjoni imposta
fil-Permess relattiv (kundizzjoni numru 4) li kienet tirrigwarda alterazzjonijiet fil-
faccata kienitx kundizzjoni accettabbli jew le. Il-kundizzjoni hija cara: no alterations

Kopja Informali ta' Sentenza

to the original features of the façade of the Grade 2 scheduled building as indicated in GN 362 of 2012 are acceptable as long as the scheduling is in force. New openings and/or widening of existing openings are not acceptable as long as the scheduling is in force.

Dwar dan, l-argument tal-Appellanti huwa:

“The scheduling of the property does not a priori exclude the carrying out of the works covered by permit number 5363/05 as renewed;

Ignores the fact that the MEPA Board and its officers declared that the building does not merit protection due to its architectural merits;

Is based on a wrong interpretation of a Grade 2 scheduled building as enshrined in the Structure Plan for the Maltese Islands [December 1990];

Fails to take into account that the building was scheduled merely due to its historical use and that its architectural merits were declared to be dubious. Fails to appreciate that the works consisting of the widening of the retaining walls by half a meter will be carried out on recent interventions and not on original features;”

It-Tribunal ezamina bir-reqqa l-argumenti migjuba mill-Appellanti izda, jibqa l-fatt li fuq il-faccata relattiva hemm scheduling kif indikat fi GN 362 tal-2012. Xejn ma jwaqqaf lill-Appellanti sabiex jibda bi proceduri sabiex ikun hemm descheduling ta' din il-faccata izda sakemm tibqa din is-scheduling f'dan l-istadju huwa l-kaz li l-kundizzjoni tigi rispettata. Din il-kundizzjoni giet ulterjorment rispekkjata fil-Conservation Order datata 19 ta' April 2013. Ghalkemm din l-Conservation Order ma tiffurmax mertu ta' dan l-Appell, il-fatt tal-hrug tieghu, bhala tali, tiffurma parti mill-fatti evidenzjali quddiem it-Tribunal u ma' tistax tigi nJORATA.

Ghalhekk dan l-Appell qed jigi michud.

Ikkunsidrat

Kopja Informali ta' Sentenza

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal injora l-aggravju tal-appellant li gie interpretat hazin l-effett ta' conservation order u skedar grade 2 fuq binja li gia kellha permess validu inkluz it-twessiegh tal-bieb tar-remissa li hu l-pern tal-appell;
2. Bil-permess PA 5365/05 gie stabbilit dritt u legitimate expectation fuq il-ftuh fil-bieb tar-remissa. Bit-tigdid li inghata PA 280/11 gie krejat legitimate expectation li ser jigi rikonfermat il-permess. L-emergency conservation order f'Novembru 2011 u l-iskedar fl-2012 saru biex igibu fix-xejn il-permess peress illi l-permess originali kien jippermetti t-twessiegh tal-bieb tar-remissa minn 1.76 metru ghal 2.50 metru biex ikun jista' jsir l-internal development li kien jinkludi carport u drive way. L-appellanti xtrat il-proprjeta bil-permess vigenti fl-2010.

L-ewwel aggravju

Huwa car li dan hu appell minn kondizzjoni imposta mill-MEPA fl-applikazzjoni ghal renovar ta' permess li kien ilu ezistenti bla mittiefes ghal aktar minn erba' snin. Il-permess originali PA 5365/05 inhareg qabel ma saret conservation order u mbaghad scheduling grade 2 tal-proprjeta, liema ordnijiet saru qabel giet deciza l-applikazzjoni ta' renovar tal-permess.

Huwa car ukoll illi l-appellanti la qed jattakkaw l-conservation order u anqas is-scheduling grade 2. Qeghdin isibu oggezzjoni ghal kondizzjoni specifika imposta mill-Awtorita dwar il-ftuh ta' aperturi jew estensjoni ta' fethiet ezistenti li huma projbiti sakemm hemm is-scheduling. Din il-kundizzjoni tkompli u hi sussidjarja ghall-ewwel parti tal-kondizzjoni li ebda alterazzjoni ghal 'original features' tal-faccata ma jitqiesu accettabbli sakemm hemm is-scheduling.

L-appellanti kienu ferm cari fl-appell. Huma qed joggezzjonaw ghal tali kondizzjoni ghaliex il-bieb tar-remissa jew archway li jridu jwessghu mhix originali u fit-tieni lok il-ligi stess fi grade 2 buildings ma teskludix interventi anki fil-faccata li ma jhassrux mill-importanza storika jew arkitettonika tal-binja tant hu hekk illi l-istess ligi tghid li 'demolition will not normally be allowed'. Dan ifisser illi mhux eskluż a priori jew tassattivament certu element ta' diskrezzjoni fi hdan l-Awtorita u t-Tribunal.

Kopja Informali ta' Sentenza

L-Awtorita kienet skjetta fil-projbizzjoni. Dak li intalab mill-appellanti lit-Tribunal hu illi wara li t-Tribunal jikkunsidra l-principju legali konnessi ma' conservation order u skedar u dak permissibbli o meno, (a prescindere minn sfurmaturi ta' pressjoni maghmula mill-girien ghal hrug tal-conservation order u/jew l-iskedar u/jew il-kondizzjoni infisha mill-Awtorita), jiddeciedi jekk tali kondizzjoni imposta kinitx wahda ragonevoli fil-parametri amministrattivi u tekniko/guridika tenut kont tac-cirkostanzi kollha inkluz dawk teknici marbuta ma' dak li kien fil-fatt il-kontestazzjoni unika tal-appellanti cioe t-twessiegh tal-bieb tar-remissa.

Il-kwistjoni kienet wahda teknika u fattwali izda dipendenti fuq arugmentazzjoni legali tal-effetti ta' skedar u conservation order in generali u fil-kuntest ta' din l-applikazzjoni.

Il-Qorti tqis illi tali kwistjoni kienet tirrikjedi mit-Tribunal approfondament mhux biss tal-ligi izda wkoll wiehed partikolari u skrupoluz tal-fattispecie proprju tal-kaz.

Kontrarjament ghal dak sottomess mill-Awtorita fir-risposta tal-appell, it-Tribunal naqas li jindirizza kull aspekt tal-vertenza. Jibda biex jiehu l-linja, fil-fehma ta' din il-Qorti, legalment sfortunata, li jara jekk il-kundizzjoni kinitx wahda accettabbli. Din mhix kwistjoni semplici ta' jekk tistax l-Awtorita taghmel jew le kondizzjoni. Ir-risposta ghal tali kwezit hu wiehed semplicistiku mehud f'din il-perspettiva. It-Tribunal kellu jindirizza l-aggravju mhux jekk il-kondizzjoni mehuda per se hix accettabbli ghaliex fl-ambitu ta' skedar tali kondizzjoni hi accettabbli fis-sens li hi permessa. Pero ma kienx dan l-aggravju imressaq, kif fuq inghad. Invece t-Tribunal la darba sab li l-faccata hi skedata u ma hemmx proceduri ta' descheduling ma seta' jaghmel xejn.

Dan mhux minnu legalment. It-Tribunal kellu jindirizza l-aspetti teknici ta' dak propost u jekk din kinitx kompatibbli ma' dak permess fejn hemm scheduling. Tali deliberazzjoni kienet twassal ghal decizjoni informata, kunsidrata u ezawrjenti tal-kwezit migjub quddiemu. It-Tribunal ghandu l-poter li f'certi cirkostanzi fejn jirrikjedi informazzjoni jew elucidazzjoni teknika ulterjuri, jirrinviija l-atti lura lil Awtorita biex taghti risposti, ir-ragunijiet aktar ampji u li jindirizzaw l-aspetti teknici, arkitettonici u storici imqajma fl-isfond ta' dak mitlub. Dan aktar u

Kopja Informali ta' Sentenza

aktar meta tali kwistjonijiet qamu wara li kien inhareg permess validu u vigenti pendenti ezitu ta' applikazzjoni ta' renova.

Il-Qorti tqis illi t-Tribunal ma indirizzax l-aggravju bl-ebda mod u ghalhekk tilqa' l-appell tal-appellant bhala fondata fuq dan l-ewwel aggravju.

It-tieni aggravju

Dan l-aggravju ma ghandux jigi kunsidrat mill-Qorti billi ma tqajjimx bhala aggravju ta' appell quddiem it-Tribunal liema appell kien cirkoskritt ghar-ragonevolezza tal-impozizzjoni mill-Awtorita tal-kondizzjoni imposta minnha dwar il-fetha tal-bieb tar-remissa. Madankollu u sabiex ma jkunx hemm ripetizzjoni inutili fil-proceduri li ser jergghu jsiru quddiem it-Tribunal minhabba l-akkoljiment tal-ewwel aggravju, il-Qorti ser tindirizza l-ilment fil-qosor. L-appelleant ma jistax ihallat l-effetti u rimedji minn skedar jew conservation order mar-rimedju mitlub biex titnehha l-kundizzjoni 4 mir-renova tal-permess. Il-kwistjoni hi biss dwar renova ta' permess. Il-permess ikkreja dritt kwezit favur is-sit izda soggett ghal kondizzjoni li l-izvilupp kellu jsir entro t-terminu moghti. Darba li l-izvilupp ma jkunx sehh entro t-terminu dak id-dritt ma jibqax kwezit tant li trid tintalab renova altrimenti l-permess jispiccalu s-sahha kollha tieghu. Din ir-renova ghandha issir qua aspettativa legittima tal-applikant jekk il-ligijiet, pjanijiet u policies jibqghu l-istess. Izda meta jkun hemm kambjament, f'dan il-kaz radikali bl-impozizzjoni ta' conservation u scheduling, allura l-izvilupp irid jaddatta ruhu ghalihom biex ir-renova tohrog. Jekk il-kondizzjonijiet tal-permess originali ma jirrispekkjawx l-istat attwali tal-ligijiet ta' ippjanar allura l-izvilupp irid jigi attwat u kondizzjonat bihom. L-applikant ma jista' jivvanta la ebda dritt a priori jew xi aspettativa bazata fuq permess li qed jigi mitlub ir-renova tieghu meta fil-frattemp il-ligi tal-ippjanar inbidlet u kull renova trid tkun konformi mal-ligijiet vigenti. Dan kollu qed jinghad biex igib fix-xejn l-argument tal-appellant illi l-permess fl-istadju ta' talba ghal renova tah id-dritt li mhux possibli li jigi mittiefes jew fin-nuqqas, xi aspettativa li kollox jibqa' kif kien anki fejn hemm bdil sostanzjali tal-parametri kif jista' u safejn jista' jsir zvilupp.

Ghalhekk l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell tal-appellanti in linea ma' dak deciz, tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-25 ta' Novembru 2014, u turrinvija l-atti lura lit-Tribunal biex jerga' jiddeciedi l-appell mill-gdid. Spejjez ghall-Awtorita.

< Sentenza Finali >

-----TMIEM-----