

Kopja Informali ta' Sentenza



QORTI TA' L-APPELL

**S.T.O. PRIM IMHALLEF
SILVIO CAMILLERI**

**ONOR. IMHALLEF
ALBERT J. MAGRI**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tat-3 ta' Dicembru, 2010

Appell Civili Numru. 74/2010/1

**Therese Gatt, Frank Salt,
u Dr. Austin Bencini**

v.

Supritendent tas-Sahha Pubblika

Il-Qorti:

Preliminari:

Fid-19 ta' Frar, 2010 il-Bord tas-Servizzi Generali kostitwit in forza tal-Artikolu 44 tal-Kap. 94 tal-Ligijiet ta' Malta

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ppronunzja ruhu dwar kwistjonijiet sanitarji rizultanti minn zewg permessi ta' bini kif hawn taht riprodott:-

RE: PA 1191/09 – SITE AT TOWER ROAD, C/W, TRIQ HOWARD STREET C/W SIR GEORGE BORG STREET, SLIEMA.

RE: PA 02220/93 – TO DEMOLISH EXISTING HOUSE AND CONSTRUCTION OF BASEMENT AND GROUND FLOOR GARAGES, SEVEN FLOORS AND PENTHOUSE AT 240 TOWER ROAD, SLIEMA.

The General Services Board at its meetings of the 25th November 2009, 4th February 2010 and 17th February 2010 discussed the above mentioned cases. In view of the fact that the two cases are very closely related the Board decided to deal with the two cases concurrently.

Noting that premises 239 is a corner plot and therefore has no statutory requirements for a back yard;

Noting that the owner/s of premises 241 had a public deed relating to the size of the yard and the height of the adjoining wall with the previous owner/s of the premises that now form part of premises 239;

Noting that owner/s of premises 239 respected such agreement and planned for a yard even if such yard was not required by virtue of the fact that premises 239 is a corner plot;

Noting that the owner/s of premises 240 had a private agreement relating to the size of the yard with the previous owner/s of the premises that now form part of premises 239;

Considers that the permit issued in respect of premises 240 not to be in line with sanitary regulations in view of the fact that such permit was issued on the basis of a private agreement and not on the basis of a public deed as required by law.

Sanctions the size of the yard in premises 241 and the adjoining yard in premises 239.

Is not in a position to sanction the size of the yard for premises 240 unless an agreement is reach between the owners of premises 240 and 239 regarding the space to be left between the back walls of the two parties and fresh plans submitted.

Minn din id-decizjoni appellaw:

a) ir-rikorrenti odjerni, Therese Gatt, Frank Salt, u Dr Austin Bencini, appell numru 74/2010 li, bhala sidien separatament ta' tlett appartamenti fil-blokk ta' appartamenti li jgib in-numru 240 Tower Road, Sliema appellaw billi, hassew ruhhom aggravati bil-fatt li l-Bord tas-Servizzi Generali naqas li jissanzjona l-wisa' tal-bitha tal-fond 240 Tower Road, Sliema.

b) Christine Craig, Malcom Craig u Ingrid Kidder, appell numru 73/2010 li, bhala proprjetarji individwali ta' tlett appartamenti wkoll fil-blokk ta' appartamenti li jgib in-numru 240 Tower Road, Sliema, hassew ruhhom aggravati bil-fatt li l-Bord imsemmi naqas li jissanzjona l-kejl tal-bitha retroposta fl-assenza ta' att pubbliku redatt a tenur ta' l-Artikolu 97(1)(n)(ii) tal-Kap 10 tal-Ligijiet ta' Malta meta l-istess blokk ta' appartamenti kien gie kostruwit bl-approvazzjoni tas-Suprintendent tas-Sahha Pubblika u tal-MEPA.

c) Hemm ukoll l-appell tas-sidien tal-blokk ta' appartament bin-numru 241 Tower Road, Sliema, (appell numru 63/2010) nkwantu bhala sidien tal-istess blokk kienu koncernati bil-wisa' tal-bitha ta' blokk li qed jinbena flok dar li kienet iggib in-numru 27, Sir George Borg Street, Sliema, li llum tifforma parti mill-izvilupp maghruf bhala 239 Tower Road, Sliema.

Kien ghalhekk li l-appellanti fir-rikorsi numri 73 u 74 tas-sena 2010 filwaqt li talbu li din il-Qorti thassar u tiirevoka s-sentenza tal-Bord tas-Servizzi Generali, billi tigi sanata l-bitha retroposta ghall-appartamenti taghhom, filwaqt li l-appellanti fir-rikors numru 63/2010 talbu li din il-Qorti

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tordna lill-istess Bord jiddikjara li l-bitha ta' wara tal-fond gia` 27, Triq Sir George Borg, Sliema ghandu jkollha wisa' ta' ghoxrin pied u tmien pulzieri (20' 8").

Gara li fir-rikors tal-appell numru 63/2010 intavolat minn JK Properties Ltd et giet eccepita n-nullita` tas-sentenza fuq riportata billi gie allegat li fil-proceduri quddiem il-Bord tas-Servizzi Generali kien hemm ksur tal-principji fondamentali tal-partijiet.

Illi din l-eccezzjoni giet deciza favorevolment ghall-appellanti u filwaqt li s-sentenza tal-Bord tas-Servizzi Generali tad-19 ta' Frar, 2010 giet annullata, l-atti tal-kawza regghu gew rinvjati quddiem il-Bord biex jirregola ruhu u jiddeciedi skont il-ligi.

Illi dan l-appell jitwieled mid-decizjoni tad-19 ta' Frar, 2010 hawn fuq imsemmija li, kif inghad, giet dikjarata nulla. In vista ta' din in-nullita` li tolqot dawn il-proceduri, din il-Qorti tastjeni milli tiehu aktar konjizzjoni ta' dan l-appell u tirrinvoja l-atti quddiem il-Bord tas-Servizzi Generali biex dak il-Bord jiehu konjizzjoni mill-gdid tal-mertu u jiddeciedi skont il-ligi.

Fic-cirkostanzi l-ispejjez ta' dan l-appell ghandhom jigu sopportati kwantu ghal nofs mill-appellanti u kwantu ghar-rimanti nofs mill-intimat Supretendent tas-Sahha Pubblika.

< Sentenza Finali >

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