



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Frar, 2015

Appell Civili Numru. 39/2014

Mario Fenech

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Mario Fenech tas-17 ta' Lulju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-1 ta' Lulju 2014 kontra d-decizjoni tal-konfiska ta' nos il-garanzija bankarja imposta f'konidzzjoni 6 tal-permess PA 5529/06;

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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:

Dan l-appell qed isir kontra t-tehid tas-somma ta' Eur 4,659 mill-Awtorita' li huwa ekwivalenti ghal-nofs l-ammont tal-garanzija bankarja mposta fil-kundizzjoni numru sitta (6) fil-permess PA 5529/06, li kienet tipprovdi dan li gej:

“This development permission is subject to a bank guarantee to the value of Lm4000 (€9317.49) to ensure that the facade is retained except for the opening of the door. The total amount of the bank guarantee shall be released to the applicant only upon the completion of the whole of the development hereby approved; upon confirmation by the Malta Environment and Planning Authority that the facade was retained; and subsequent to the issue of a Full Compliance Certificate for the whole development. If the facade is not retained, then the total amount of the bank guarantee shall be forfeited. Forfeiture of the bank guarantee will not preclude the applicant from the obligation of conforming to the approved drawings and conditions contained in this permission.”;

Illi fil-14 t'Ottubru 2011, il-Perit Emanuel Vella talab lill-Kummissjoni tal-Ambjent u l-Ippjanar sabiex tigi rilaxxata l-garanzija bankarja fl-ammont ta' Eur 9,317.49;

Illi l-Kummissjoni skont minuta numru 59 iddecidiet li zzomm nofs l-ammont tal-garanzija bankarja ghar-raguni segwenti:

“[...] the board considers that the interventions on the façade should have only been limited to the opening of a door as indicated in conditions 6 of permit. Regrettably it seems from the photos submitted in blue 57 that the original door together with a significant section of the ground floor has been replaced with little consideration to the proportions and features of the original. As a consequence the board considers that 50 percent of the bank guarantee Euro 4,659 should be forfeited.”

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Illi permezz ta' rikors datat 1 ta' Dicembru 2011, il-Perit Emanuel Vella talab li ssir revizjoni tad-decizjoni dwar it-tehid ta' nofs l-ammont tal-garanzija, imma l-istess Kummissjoni kkonfermat id-decizjoni u l-applikant gie formalment infurmat permezz ta' ittra datata 20 ta' Jannar 2012, u ittra ohra datata 1 t'Awissu 2012;

Illi sussegwentament l-applikant (illum l-appellant) prezenta dan l-appell kontra t-tehid ta' parti minn din il-garanzija bankarja, fl-ammont ta' Eur 4,659.

Ra l-appell tal-Perit Emanuel Vella f'isem l-appellant li jaqra' kif gej:-

"We write on behalf of Mario Fenech of 'Mariosa', Triq San Pawl Ta' Fief, Kercem, in order to file an appeal from the decision dated 1 August 2012 (see copy attached Doc A) taken by the EPC whereby 50% of the bank guarantee, for the value of €4659, was forfeited by MEPA.

This bank guarantee was forfeited for the following reasons:

1. The EPC considers that the forfeiture of the bank guarantee should stand in view that such release may undermine the whole system of the bank guarantees and may also act as a precedent to similar instances in the future.
2. Such situation could have been avoided had the architect followed the established procedure when situations as mentioned in his letter arise.
3. Moreover, in letter dated 16 November 2011 (see copy attached Doc B), the EPC stated that "Regrettably, it seems from the photos submitted by the enforcement officer following an inspection on site, that the original door together with a significant section of the ground floor have been replaced with little consideration to the proportions and features of the original. As a consequence the board considers that 50 percent of the bank guarantee amounting to €4659 should be forfeited."

Appellant gently submits that:

1. By virtue of permission PAS 529/06 he was granted permission to make an opening in the facade wall (mramma) to form a new door, one-metre wide, next to the existing door. The mramma was 800mm wide.
2. The opening and the formation of a 1 m door in the mramma necessitated the dismantling of a much wider opening than 1 m in order to form the masonry jambs and arch of the new door.
3. Appellant used this opening as temporary access to allow works to develop the site.

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4. The tribunal is to note also that the adjacent site was also being developed (PA03238/05) at the same time that appellant was carrying out works. These two buildings had a similar facade with an identical door. The DCC found no difficulty in allowing the dismantling of the whole facade of the adjacent building because it reasoned out "the widening of the existing door is indispensable for the development of the site since opening will be temporary to allow works after which it will be re-instated".

5. Therefore, MEPA gave permission for the temporary widening and reinstatement of a similar door on the adjacent property. The facade of the adjacent building can be seen on the attached photo. Therefore, appellant rightly feels that he is being discriminated.

6. Furthermore, while in appellant's case a bank guarantee of Lm4000 was requested by MEPA, in the case of the adjacent building a bank guarantee of only Lm1,000 was imposed.

7. Finally, as can be seen from the photos submitted, the facade has been re-instated and the proportions and features of the original facade have been retained.

8. In view of the above, appellant kindly requests the refund of the sum of €4,659, which sum has been unjustly forfeited by MEPA.”;

Ra n-nota responsiva tal-Awtorita' dwar dan l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fil-25 t'Ottubru 2012, u li jaqraw kif gej:

“5.2 The Directorate has the following comments to make:

5.2.1 Introduction

Originally, permit PA 5529/06 was approved by DCC Board for the demolition of existing building, retaining of façade and construction of dwelling house with swimming pool.

This is an appeal is requesting the full release of a Bank Guarantee of Lm4000 (€ 9317.49) imposed by DCC Board in sitting dated 25th June, 2007 to ensure retention of the façade except for the opening of door.

5.2.2 Timeline of Events leading to Appeal

In letter dated 22nd July, 2011 (Doc 21 in PA File) the appellant was informed that the Bank Guarantee in connection with permit was due to expire, and was requested to extend its validity for a further period of one year to avoid forfeiture of the Bank Guarantee. After a Landscaping Scheme (bound by Condition 8 of permit)

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was deemed acceptable by EPD in July 2011 (Doc 19 in PA File), a request for Final Compliance Certificate by the appellant in September 2011 was granted by MEPA on 11th October, 2011 (Doc 27 in PA File).

The appellant presented a letter dated 14th October, 2011 requesting that on issue of the FCC the Authority should therefore release the Bank Guarantee of € 9317.49 bound in Condition 6 of permit.

After case was reverted to Planning Directorate to regard the request made by appellant, it was documented to the EPC Board (in Minute 29) that from photos submitted in Blue 57 the original door together with a significant section of the ground floor has been replaced with little consideration to the proportions and features of the original. As a consequence, the Board considers that 50% of the Bank Guarantee (€ 4659) should be forfeited.

In comments provided by appellant (letter Doc 32a dated 1st December, 2011) it was stated that the opening of the door involved the replacing of a section of the original door because these were too close. However, the proportions and features of the original façade has been retained. Appellant is also stating that comparison of photos will show that the façade was restored to its original state.

In January 2012 the appellant was informed by MEPA (Doc 34a dated 20th January, 2012) that the Commission considers that the interventions on the façade extended beyond those approved and therefore the Commission reconfirms that 50% of the Bank Guarantee should be forfeited. A balance of €4659 is to be retained until works are rectified as per EPC instructions. Further correspondence dated 1st August, 2012 by MEPA further confirmed the EPC intentions since the forfeiture of the Bank Guarantee should stand in view that such release may undermine the whole system and act as a precedent to similar instances in the future.

A second Minor Amendment to permit was applied for on 8th August, 2012 regarding the shifting of door openings and internal alterations. Although this minor amendment was approved on 29th August, 2012, the reporting officer clearly stated that the shifting of the door on the main elevation and the internal wall may be justified in view of EPC recommendation to retain 50% of the Bank Guarantee as a fine against the contravention of permit conditions ... the decision to retain percentage of Bank Guarantee remain subject to EPC decision.

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Therefore, in spite of the appellant's arguments that the Bank Guarantee should be released in full following the Minor Amendment approval, the principle of its approval was solely based on the fact that 50% of the Bank Guarantee had been forfeited, thus enabling it possible for the sanctioning to be considered. Hence, issuing the full amount of the Bank Guarantee will not only undermine the system and act as a precedent to other similar instances, but is also not possible following approval to sanction in the minor amendment since such decision would not have been possible had 50% of the Bank Guarantee not been forfeited.”;

Ra s-sottomissjoni ulterjuri tal-Avukat Dr. Joseph Grech għall-appellant prezentata fil-24 t'April 2013, li jaqraw hekk kif gej:

“Reference is here being made to the second statement that was prepared by the MEPA.

Appellants would like to point out that this sage which has been ongoing for a number of years is based on mere misconceptions and misinformation which are resulting in serious prejudice to the same appellants.

Appellants are hereby submitting two colour photos marked Document A wherein it is amply clear that their property is most probably the one which is most in line with UCA. Indeed neighbouring tenements have facades which are definitely not in line with UCA policies at least insofar as garage doors are concerned.

Moreover, the argumentations being put forward by MEP A are not understandable due to the fact that it was the same MEP A which on the 11th October, 2011 issued the Final Compliance Certificate, a copy of which is hereby being attached and marked as Document B. It is obvious to one and all that if all the objections being put forth by MEPA at this stage were really present, MEPA itself would not have issued the same compliance certificate.

It is interesting to note that MEPA is mostly objecting not to the development itself - which was actually covered with a MEP A permit – but to the methodology used during the same development.

It is humbly being submitted that this case is a genuine case where the appellants have done their very best to abide by all the conditions imposed by MEP A whilst operating upon the advice given by their architect so as to ensure that both the permit conditions as well as the stability of the building during the construction phase would not be compromised.

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As one may clearly observe from the documents which are being submitted together with this letter, it is amply clear that MEPA's insistence on not releasing all the guarantee is totally unfounded and that appellants should be granted the full release of their bank guarantee."

Ra l-file PA 5529/06;

Ra l-atti kollha ta' dan l-appell.

Ikkunsidra ulterjorment:

Illi l-aggravvji mressqa mill-appellant huwa s-segwenti :-

1. Illi l-alterazzjonijiet fil-faccata, cioe' l-ftuh ta' bieb gdid, kien jirrikjedi ftuh akbar fil-faccata u li kien utli sabiex ikun hemm access ghall-izvilupp 'l gewwa fis-sit (para. 1, 2 u 3 fl-appell);
2. Illi zvilupp simili gie permess fis-sit adjacenti ghal fond mertu ta' dan l-appell (permess numru PA 3238/05) fejn l-Awtorita' ma sabietx oggezzjoni ghal-ftuh tal-faccata b'mod temporanju, b'garanzija ta' Lm 1,000 u mhux Lm 4,000 kif gie impost fil-permess odjern; ghaldaqstnat l-appellant qieghed jigi diskriminat para. 4, 5 u 6 fl-appell);
3. Illi l-faccata giet riprestinata fl-istat originali taghha (para. 7 tal-appell);
4. Illi l-Awtorita' harget il-final compliance certificate u ghaldaqstant ma kelliex oggezzjoni ghall-izvilupp kif sar (fin-nota ta' sottomissjoni tal-24 t'April 2013).

Illi dan it-Tribunal seta' jinnota li l-ewwel aggravvju huwa ammissjoni tal-appellant li sar zvilupp li jmur oltre minn dak li gie permess. Il-permess PA 5529/06 kien intiz sabiex jinzamm il-faccata ezistenti ghajr ghal-fetha ta' bieb addizzjonali. Il-garanzija bankarja kienet propju ndirizzata saie x tizgura li l-faccata ezistenti tinzamm fl-intier taghha, ghajr ghal-fetha tal-bieb. Inoltre, ma jidhrix li fil-process tal-applikazzjoni, l-applikant ressaq xi 'works method statement' sabiex jindika kif ser isir ix-xoghol ta' twaqqiegh, u ghaldaqstant huwa evidenti li x-xoghol minnu deskritt li sar fil-faccata imur oltre minn dak li gie approvat fil-permess.

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Illi t-tieni aggravju huwa relatat mal-impozizzjoni tal-garanzija bankarja. F'dan ir-rigward, dan it-Tribunal jidhirlu li dan l-aggravju jmur lil 'hin mill-mertu ta' dan l-appell. L-appell huwa specifkament dwar il-konfiska ta' parti mill-ammont tal-garanzija bankarja skont kif gie impost fil-kundizzjoni numru 6 sucitat, u ma jidhirx li l-applikant kien f'xi stadju talab rikonsiderazzjoni fir-rigward ta' din il-kundizzjoni.

Ghaldaqstant mhux il-kompitu ta' dan it-Tribunal li jirrevedi l-ammont tal-garanzija bankarja, imma l-appell huwa limitat dwar jekk il-Kummissjoni kinietx korretta fid-decizjoni li tikkonfiska parti mill-ammont tal-garanzjina bankarja. L-appellant qiegħed jitlob sabiex l-Awtorita' tirrifondi lura l-ammont kollu li gie konfiskat.

Illi l-Kummissjoni nnotat li l-bieb ezistenti (remissa) kien nhatt u nbena mill-gdid bi stil u proporzjoni differenti minn dak ezistenti, u dan kontra l-kundizzjonijiet tal-permess. Illi l-appellant irribatta billi għamel referenza għall-final compliance certificate mahrug mill-Awtorita' fil-11 t'Ottubru 2011, u dan qabel ma saret it-talba għar-rilaxxament tal-garanzijan bankarja.

Illi dan it-Tribunal huwa tal-fehma li l-Kummissjoni kienet korretta dwar l-analizi tax-xogħol li sar fil-faccata li jmorru oltre minn dak approvat. Huwa evidenti skont kif muri fir-ritratt a fol 57 fl-inkartament tal-PA 5529/06 li parti sostanzjali tal-faccata fil-livell terran gie demolit, inkluz il-bieb remissa ezistenti, u rega' ttellgha mill-gdid, bil-gebla tal-kantun gdid.

Illi l-compliance certificate nharget fuq dikjarazzjoni li 'structure works have been completed and that the whole of the development specified above has been carried out in complete accordance with terms, conditions and limitation of the development permission and with the approved plans and drawings', (a fol 56 fl-inkartament tal-PA 5529/06), imma kif gie ammess fl-appell stess, dan ma kienx minnu, peress li kellha tigi miftuha l-parti t'isfel tal-faccata, u dan kontra l-permess kif mahrug.

Illi dan it-Tribunal qiegħed jaqbel mal-osservazzjoni tal-Kummissjoni li l-bieb remissa bil-karatteristici arkitettoniku originali gie mitluf, u dak li gie mibni mill-gdid jista' jitqies biss bhala bieb simili, pero ma giex replikat il-karatteristici u l-proporzjon ta' dak ezistenti. Hawnhekk il-Kummissjoni ma kelliex triq ohra, u kien korrett id-decizjoni ta' konfiska ta' parti mill-ammont tal-garanzija bankarja kif impost fil-kundizzjoni numru 6 u dan għar-raguni li parti mill-faccata li kellha tigi preservata giet fil-fatt mwaqqa' u għaldaqstant ma giex segwit il-permess ta' zvilupp kif mahrug.

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Illi l-intervent sabiex il-faccata tigi miljorata, b'kisi u kulur appropjat huwa biss intervent li kien maqbul mal-Awtorita' sabiex jittaffa l-hsara li saret bix-xogholijiet ta' kostruzzjoni, imma bl-ebda mod ma jirrendi l-izvilupp konformi mal-permess kif mahrug, u ghaldaqstant dan it-Tribunal qieghed jaqbel mad-decizjoni tal-Kummissjoni li tikkonfiska parti mill-ammont tal-garanzija bankarja hekk kif gie impost fil-kundizzjoni numru 6 fil-permess PA 5529/06.

Ghal dawn il-motivi, l-appell qieghed jigi michud.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwenti:

1. It-Tribunal applika hazin il-ligi ghal mertu tal-kaz. Il-kondizzjoni ghal garanzija bankarja kienet marbuta maz-zamma tal-faccata hlief ghal inkluzjoni ta' bieb iehor. Sar minor amendment li gie accettat mill-Awtorita u ghalhekk il-permess originali gie emendat, u wara inhareg final compliance certificate fil-11 ta' Ottubru 2011. Iz-zamma ta' parti mill-garanzija ghaliex sar il-minor amendment accettat mill-Awtorita wara l-hrug ta' final compliance certificate hu ghalhekk abusiv u kontra l-kondizzjoni imposta mill-istess Awtorita billi l-permess originali u l-minor amendment gew approvati u inhareg il-compliance. In oltre u sussidjarjament iz-zamma ta' nofs il-garanzija qua ammont ma hu stabbilit minn ebda ligi li jissostanzjaha.

Konsiderazzjonijiet tal-Qorti

Il-kwistjoni li tinsorgi f'dan l-appell hi wahda ta' natura legali u mhux fattwali billi dak i qed jigi dibattut fl-aggravju tal-appellant hu d-dritt tal-Awtorita li tesigi z-zamma ta' parti minn garanzija li allegatament mhix konformi mal-kondizzjoni minnha imposta fil-permess PA 5529/06 li fil-fehma tal-appellant tali zamma ma kinitx gustifikata fil-ligi skond ic-cirkostanzi u fatti li irrizultaw. Ghalkemm hu minnu illi din il-Qorti trid thares lejn il-fatti li taw lok ghal dan l-aggravju, il-mertu tieghu hu wiehed ta' konformita o meno mal-ligijiet ta' ippjanar rizultanti mill-fatti accertati.

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It-Tribunal dahal fil-kwistjoni legali insorta mill-aggravju billi sostna li l-compliance certificate li hu l-pern tal-oggezzjoni legali hareg fuq dikjarazzjoni li l-binja saret in konformita mal-permess PA 5529/06 meta hu ammess fl-istess atti ta' appell li ma giex segwit sew dak li kien approvat tant li intalab minor amendment fuq ix-xogholijiet maghmula u dan fattwalment gie kostatat mill-istess Tribunal.

Din il-Qorti mhix ser tidhol fl-aspett fattwali ta' dak li kellu jsir skond il-permess u dak li sar peress illi din hi kwistjoni purament teknika afdana f'idejn it-Tribunal. Il-Qorti qed tistrieħ fuq dak li ikkostata t-Tribunal bhala stat ta' fatt. Dak li hu stramb pero hi d-dicitura uzata mit-Tribunal meta qal fir-raba paragrafu ta' qabel l-ahhar tad-decizjoni li l-compliance certificate hareg fuq dikjarazzjoni. Ma hemm ebda accenn ghal min ghamel id-dikjarazzjoni biex inhareg il-compliance certificate ghalkemm hemm accenn ghal fol. 56 tal-inkartament tal-PA 5529/06. L-Awtorita appellata fir-risposta tal-appell taghmel is-sottomissjoni taghha fuq din il-kwistjoni u tghid illi compliance certificate ma hux timbru ta' legalita ghal dak li ma jsirx skond il-permess u tikkwota c-cirkolari 1/97 dwar il-compliance certificate u sentenza tal-Prim Awla fl-ismijiet **Brian Cutajar et vs Joseph Mamo et** (876/2009) deciza fl-1 ta' Novembru 2009.

Qabel ma tidhol f'din il-kwistjoni tajjeb li jsir riassunt tal-kronologija tal-fatti liema kronologija hi differenti minn dik kwotata mill-appellant. L-Awtorita fis-sottomissjonijiet taghha quddiem it-Tribunal tghid hekk:

In letter dated 22nd July, 2011 (Doc 21 in PA File) the appellant was informed that the Bank Guarantee in connection with permit was due to expire, and was requested to extend its validity for a further period of one year to avoid forfeiture of the Bank Guarantee. After a Landscaping Scheme (bound by Condition 8 of permit) was deemed acceptable by EPD in July 2011 (Doc 19 in PA File), a request for Final Compliance Certificate by the appellant in September 2011 was granted by MEPA on 11th October, 2011 (Doc 27 in PA File).

The appellant presented a letter dated 14th October, 2011 requesting that on issue of the FCC the Authority should therefore release the Bank Guarantee of € 9317.49 bound in Condition 6 of permit.

After case was reverted to Planning Directorate to regard the request made by appellant, it was documented to the EPC Board (in Minute 29) that from photos submitted in Blue 57 the original door together with a significant section of the

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ground floor has been replaced with little consideration to the proportions and features of the original. As a consequence, the Board considers that 50% of the Bank Guarantee (€4659) should be forfeited. In comments provided by appellant (letter Doc 32a dated 1st December, 2011) it was stated that the opening of the door involved the replacing of a section of the original door because these were too close. However, the proportions and feature of the original facade has been retained. Appellant is also stating that comparison of photos will show that the facade was restored to its original state.

In January 2012 the appellant was informed by MEPA (Doc 34a dated 20th January, 2012) that the Commission considers that the interventions on the facade extended beyond those approved and therefore the Commission reconfirms that 50% of the Bank Guarantee should be forfeited. A balance of €4659 is to be retained until works are rectified as per EPC instructions. Further correspondence dated 1st August, 2012 by MEPA further confirmed the EPC intentions since the forfeiture of the Bank Guarantee should stand in view that such release may undermine the whole system and act as a precedent to similar instances in the future.

A second Minor Amendment to permit was applied for on 8th August, 2012 regarding the shifting of door openings and internal alterations. Although this minor amendment was approved on 29th August, 2012, the reporting officer clearly stated that the shifting of the door on the main elevation and the internal wall may be justified in view of EPC recommendation to retain 50% of the Bank Guarantee as a fine against the contravention of permit conditions ... the decision to retain percentage of Bank Guarantee remain subject to EPC decision.

Il-Qorti hi propensa taccetta din il-kronologija li tirrizulta fil-maggor parti mill-atti u tifhem illi l-faccata kif inhi kienet lesta qabel inhareg il-final compliance certificate. Il-minor amendment b'ix il-permess ikun konformi ma dak l-attwalment mibni ghal mument ma hux pertinenti. Dan jinghad ghax ir-rabta bejn l-Awtorita u l-applikant kienet tinsorgi mill-kundizzjoni 6 fil-permess PA 5529/06 gustament riportat fis-shih mit-Tribunal.

Il-garanzija imposta b'din il-kundizzjoni kienet marbuta maz-zamma tal-faccata b'zieda ta' bieb liema garanzija tigi rilaxxata mal-ikkompletar tal-izvilupp; konferma li l-faccata inzammet u wara l-hrug ta' full compliance certificate.

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Jirrizulta illi l-binja kienet lesta meta hareg il-final compliance certificate mill-Awtorita fil-11 ta' Ottubru 2011 u l-faccata inzammiet hliet ghaz-zieda tal-bieb. Dak li sussegwentement irrizulta lil Awtorita hu li l-mod kif sar l-izvilupp inkluz il-fetha tal-bieb il-gdid ma kienx jirrispekkjaw il-fattizzi originali tal-izvilupp kif approvat iktar milli jekk inzammietx jew le l-faccata, u ghalhekk meta saret talba ghat-tnehhija tal-garanzija mill-applikant saret spezzjoni mill-Awtorita fejn irrizultalha d-diskrepanzi u dan wara l-hrug tal-final compliance certificate. L-Awtorita hasset li ghandha tikkonfiska nofs il-garanzija.

L-Awtorita direttament u t-Tribunal indirettament jimmitigaw l-effett tal-final compliance certificate billi l-Awtorita issostni li dan jinhareg biss fuq dikjarazzjoni tal-perit tal-applikant minghajr mal-Awtorita tkun qed taccetta li l-izvilupp hu konformi ghal permess. It-Tribunal isostni illi l-mod kif saru l-bibien tal-faccata ma irrispekkjawx id-disinn arkitettoniku originali li intilef u kwindi kienet korretta d-decizjoni tal-konfiska ta' parti mill-garanzija.

Din il-Qorti tqis illi biex it-Tribunal wasal ghal din id-decizjoni naqas li jifli sew il-konsegwenzi legali naxxenti mill-hrug tal-final compliance certificate. Dan ic-certifikat ma jhalli ebda riservi u hu mahrug mill-Awtorita fuq ir-responsabilita taghha.

Il-Qorti tirreferi f'dan l-istadju ghal cirkolari 1/97 tal-MEPA intiza ghall-procedura biex thaffef l-ghoti ta' servizz ta' ilma u dawl skond il-ligi principali sussegwenti ghal hrug ta' compliance certificate. Din ic-cirkolari taghti l-fakulta lil perit tal-parti li jiccertifika li l-izvilupp hu konformi ghal permess u a bazi tieghu jinhareg il-compliance certificate. Il-paragrafi 2.3, 2.4 u 2.7 ighidu l-Awtorita tohrog 'compliance certificate' fuq dikjarazzjoni tal-perit tal-applikant u li tali certifikat ma hux verifika tal-kontenut tad-dikjarazzjoni. Dan hu konformi mad-decizjoni tas-sentenza tal-Qorti fuq citata. In oltre l-istess paragrafu izid li jekk hemm varjazzjonijiet fil-permess li jehtiegu sanzjoni l-Awtorita tista' tirrifjuta li tohrog ic-certifikat. Mehud wahdu, dan il-paragrafu isahhah it-tezi tal-Awtorita li l-hrug tac-certifikat ma jezonerax b'daqshekk lil aplikant milli jkun konformi mal-permess anqas li b'daqshekk giet sodisfatta l-kondizzjoni 6 mal-permess li titkellem fuq il-compliance certificate. Pero l-kondizzjoni 6 issemmi 'full compliance certificate' u skond l-artikolu 2.13 tal-istess cirkolari jinghad illi l-Awtorita tohrog final compliance certificate fejn tikkonsidra li l-izvilupp sar a sodisfazzjon tal-Awtorita skond il-permess u l-kundizzjonijiet tieghu.

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Jidher lil Qorti illi l-Awtorita fil-11 ta' Ottubru 2011 hareg final compliance certificate kif jidher mill-istess dokument esebit. It-Tribunal kellu ghalhekk jara l-effetti ta' dan fil-isfond tal-kondizzjoni 6 irrISPettivament minn dak li sehh wara. It-Tribunal kellu jevalwa jekk l-Awtorita setghetx darba li harget mhux 'compliance certificate' kif kellha dritt taghmel skond l-artikolu 2.3, 2.4 u 2.7 biex izzomm fermi d-drittijiet taghha izda 'full compliance certificate' kellhiex id-dritt li tostakola t-talba ghal ghoti lura tal-garanzija mitluba mill-applikant anki jekk wara irrizultalha li l-izvilupp ma hux ezatt kif approvat u sussegwentement l-applikant talab minor amendment li gie akkordat. Dan jinghad irrISPettivament jekk wara l-Awtorita setghetx tiehu l-passi li jidhrilha jekk jirrizulta li l-permess ma giex segwit ad unguem u jekk emendi ghal permess setghux jintalbu u jigu approvati. It-Tribunal kellu jevalwa sew dak li gie impost bil-kondizzjoni 6 fil-permess u jara jekk il-kondizzjoni gietx ottemperata irrISPettivament minn dak li rrizulta wara lil Awtorita u r-ragunament tal-Awtorita li taccetta minor amendment ghax kienet qed tpatti ghalih biz-zamma ta' nofs il-garanzija. It-Tribunal kellu jaghmel paragon bejn paragrafu 2.13 u 2.7 tac-cirkolari 1/97 u jistabilixxi jekk hemmx distinzjoni bejniethom u l-effetti taghhom fid-dawl ta' din il-vertenza. Skond ir-riżultanzi legali li jasal ghalihom it-Tribunal jiddependi l-ezitu tat-talba originali tal-applikant ghat-tehid lura tal-garanzija.

Il-Qorti tirrimarka biss illi l-ligijiet u policies anki cirkolari jridu jigu interpretati b'mod li jaghti certezza lil partijiet u anki lil terzi dwar l-import ezatt ta' compliance certificate u d-distinzjoni, jekk hemm, ma final compliance certificate.

Il-Qorti tqis illi dawn il-konsiderazzjonijiet iwasslu lil Qorti biex tilqa' l-appell ghalkemm mhix ser tiddeciedi hi jekk il-hrug tal-final compliance certificate poggjex lil Awtorita fil-pozizzjoni irriversibbli li jzomm xi parti mill-garanzija b'riserva ta' kull dritt iehor skond il-ligi tal-ippjanar ghal dak li irrizulta wara lil Awtorita. Billi t-Tribunal ma kkonsidrax il-kwistjoni legali imqajma kif imiss ghalkemm seta' gie indott f'dan mill-istess applikant li ma hux ezatt fil-kronologija tal-fatti u anki l-mod li imposta l-aggravju ikun qed jigi lez id-dritt tad-doppio esame jekk il-Qorti taghti l-opinjoni taghha f'dan l-istadju.

In kwantu ghat-tieni parti tal-aggravju tal-appellant, jekk jirrizulta lit-Tribunal li l-kondizzjoni 6 giet leza allura d-dritt tal-Awtorita hu li jzomm il-garanzija kollha kif imposta u l-fatt li jzomm biss parti, hi kemm hi, hi koncessjoni fakoltativa u ex gratia tal-istess Awtorita favur l-

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applikant, li ma ghandux interess li jopponi l-quantum ghax l-obbligu assunt minnu kien li jitlef il-garanzija kollha.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Mario Fenech fis-sens deciz u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-1 ta' Lulju 2014, u tirrimetti l-atti lura lit-Tribunal biex jerga' jiddeciedi l-kwistjoni in linea mas-sentenza ta' din il-Qorti, bl-ispejjez kontra l-Awtorita.

< Sentenza Finali >

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