

## **QORTI TAL-APPELL**

### **IMHALLFIN**

**S.T.O. PRIM IMHALLEF SILVIO CAMILLERI  
ONOR. IMHALLEF TONIO MALLIA  
ONOR. IMHALLEF JOSEPH AZZOPARDI**

**Seduta ta' nhar il-Gimgha 2 ta' Marzu, 2018.**

**Numru 20**

**Rikors numru 138/17 TM**

**Mario Sciberras**

**v.**

**Suprintendent tas-Sahha Pubblika u Victor Vella  
ghall-kull interess li jista' jkollu**

**Il-Qorti:**

Rat li dan hu appell wara decizjoni tal-Bord tas-Servizzi Generali li nghatat fit-3 ta' Marzu, 2017, li in forza taghha l-oggezzjoni ta' Mario Sciberras fuq aspetti tal-permess ghall-izvilupp li nghata lil Victor Vella gie michud.

Dan Victor Vella kien talab li jinghata lil l-permess mill-Awtorità ta' Malta dwar l-Ambjent u l-Ippjanar (il-MEPA) sabiex jibni 3 *dwellings plus pools* gewwa x-Xewkija, Ghawdex. Mario Sciberras irregistra l-interess tieghu f'din l-applikazzjoni a tenur tal-Att dwar l-Ambjent u l-Ippjanar tal-Izvilupp (Kap. 504 tal-ligijiet ta' Malta) u oggezzjona peress li l-proprjetà li kienet proposta ma kienx se jkollom btiehi fuq wara u cioe', fuq dik il-parti li maghha hemm l-appogg tieghu. L-oggezzjoni saret a bazi ta' dak li jipprovdi l-Artikolu 97(n) tal-Kodici tal-Ligijiet tal-Pulizija (Kap. 10 tal-ligijiet ta' Malta) li jrid li:

*“Kull dar ghandu jkollha warajha bitha ghaliha biss”.*

L-applikazzjoni ta' Victor Vella giet approvata mill-MEPA, u minn tali decizjoni Mario Schembri ressaq appell a tenur tal-provvedimenti tal-Artikolu 102(4) tal-imsemmi Kap.10 tal-ligijiet ta' Malta quddiem il-Bord tas-Servizzi Generali (il-Bord). Dan l-appell gie originarjament michud mill-Bord ghax qieset li Sciberras ma kellux dritt ta' appell. Dik id-decizjoni giet revokata minn din il-Qorti b'sentenza tad-29 ta' April, 2016 li, wara li qieset li Sciberras kellu dritt ta' appell, baghtet l-atti lura ghal quddiem il-Bord biex iqis il-kaz mill-gdid. B'decizjoni tat-3 ta' Marzu, 2017, l-appell interpost minn Sciberras rega' gie michud, din id-darba fuq il-meritu.

Id-decizjoni tal-Bord hija s-segwent:

*“By means of a judgment delivered by the Court of Appeal dated 29<sup>th</sup> April 2016, the Court of Appeal decided that “f'dan il-kaz il-Bord naqas meta*

*iddecieda b'mod generiku u kategoriku illi terza persuna m'ghandiex dritt legali li tressaq apell quddiem il-Bord. Ghal din ir-raguni d-decizjoni tal-Board (General Services Board), ta'Mejju 2015 ma tiswiex. Billi dan hu bizzejjed biex id-decizjoni tal-Bord tithassar, ma hux mehtieg illi inqisu wkoll l-ewwel aggravju dwar nuqqas ta' motivazzjoni."*

"Consequently the acts of this case were referred back to the General Services Board in order that the Board may decide the case afresh.

"The facts of the case are as follows:

- 1) "PA 257/14 was submitted by Victor Vella, the applicant, for the Construction of 3 dwellings plus pools.
- 2) "Mr. Mario Sciberras is the registered objector in the said application process, the objector.
- 3) "The objector raised an objection with regards to the approval of the Sanitary Engineer of the plans presented by the applicant.
- 4) "The objection presented by the objector refers to the fact that the approved plans, two of the three dwellings, do not have a backyard and the rear wall of the said dwellings is adjacent to the dividing wall between the property of the objector and the properties being constructed by the applicant.
- 5) "PA 2573/14 was approved by MEPA and construction works have been undertaken.
- 6) "The hearing of the appeal to the General Services Board in connection with the objection raised by the objector following the decision of the Sanitary Engineer was heard after the approval of the MEPA permit.

"The objector is basing the objection on the provisions of the Code of Police Laws namely section 97(1) (n).

"Based on the provisions of the said article, the objector contends that the plans of the two dwellings that have been approved by MEPA that do not have a courtyard at the rear of the property are in breach of the provisions of the sanitary laws in the Code of Police Laws.

"On the other hand, the applicant claims that the site is a restricted site at law in the sense that the length of the building does not exceed 12m and consequently a court-yard is not required at the rear of the said tenement.

### **"Considerations**

"The objective of a courtyard at the rear of a building is intended to ensure light and ventilation in all rooms and parts of the building. In fact, the law provides for an exemption from such a requirement as per article 97(n)(v).

“The application presented by the applicant includes the construction of three dwellings. Two dwellings are adjacent to the property of the objector and the rear wall of the dwellings being developed are adjacent the party wall of the objectors property whereas one of the dwellings is adjacent to the party of the objector’s property where the court-yard at the rear of the objector’s dwelling is situated.

“The plans that were approved by the Planning Authority and the Sanitary Engineer show the dwellings that are adjacent to the objector’s party wall without a court yard at the rear whereas the dwelling that is adjacent to the objector’s rear court-yard has a court yard at the rear.

“The fact that the two dwellings that are adjacent to the objector’s part wall as of a length that is less than 12 meters, the necessity of a court-yard at the rear of the said properties may be dispensed. Moreover, the lack of a court yard at the rear of the said property does not in any manner negatively affect the sanitary conditions of the objector’s property since the said constructions does not reduce the light or ventilation of the property.

“Moreover, as a state of fact, given that the properties are less than 12 meters, and the law provides for an exemption from the requirement of a court-yard at the rear in such case, the General services Board considers there is no reason to uphold the objection submitted by the objector”.

Mario Sciberras issa ressaq dan l-appell ghall-quddiem din il-Qorti u apparti aspetti procedurali, l-ilment tieghu hu marbut ma’ interpretazzjoni allegatament zbaljata li tal-Bord ghall-proviso tal-imsemmi Artikolu 97(n) li fil-paragrafu (v) tieghu jipprovdi eccezzjoni ghad-disposizzjoni li trid li kull dar ghandu jkollu warajha bitha.

Din l-eccezzjoni tghid li din ir-regola tista’ tigi dispensata meta l-wisa` tal-art li fuqha ghandu jsir il-bini jkun zghir. Il-Bord qies din l-eccezzjoni applikabbli peress li z-zewg binja adjacenti l-proprjeta` tal-appellant huma zghar cioe`, anqas minn 12-il metru.

Din il-Qorti taqbel mal-aggravju tal-apellant, fis-sens li, skont il-ligi, biex tkun applikabbli l-eccezzjoni relattiva, hija “*il-wisa` ta` l-art*” li trid tkun zghira u mhux id-daqs tal-bini. Il-kliem tal-ligi huwa car u ma hemmx lok ta’ interpretazzjoni: huwa biss “*Meta l-wisa` ta` l-art li fuqha ghandu jsir il-bin*” ikun zghir li l-awtorita` kompetenti tista’ tiddispensa mill-bitha mehtiega. Meta r-regola tkun hekk cara wiehed ma ghandux jara jekk altrimenti jinholoqx pregudizzju, ghax meta l-ligi timponi regola, u aktar u aktar eccezzjoni ghall-istess regola, l-interpretazzjoni trid issegwi d-dettami tal-ligi (ara bhala rifless fuq dan il-punt il-kawza **Mizzi v. Corso** deciza minn din il-Qorti fit-8 ta’ Mejju, 2003, li kienet tittrata meritu tad-distanzi stabbiliti mil-ligi bhala servitujiet). Huwa biss fil-kaz li l-eccezzjoni titqies applikabbli, skont id-dettami taghha, li l-awtorita` kompetenti trid tara jekk l-applikazzjoni tal-eccezzjoni jwassalx ghal “*hsara ghas-sahha tan-nies*” li joqghodu fil-vicinanze. Din id-diskrezzjoni hija utilizabbli biss f’kaz li jkun hemm lok ghall-applikazzjoni tal-eccezzjoni li, kif intwera, pero`, ma hemmx f’dan il-kaz.

L-appellat Vella qajjem ukoll kwistjoni relatata mal-interess guridiku tal-apellant peress li, skont hu, dan m’ghadux sid tal-proprjeta` adjacenti. Dan il-punt ma giex diskuss u deciz mill-Bord u, allura, teknikament, ma jistax isir appell minnu. Inoltre, tul il-proceduri, il-proprjeta` adjacenti dik ta’ Vella dejjem giet deskritta bhala “*the objector’s property*” u ma saretx prova kuntrarja. Barra minn dan, fis-sentenza li tat din il-Qorti fid-29 ta’ April, 2016, imsemmija aktar qabel, intqal li “*fl-iprocessar tal-applikazzjoni tal-*

*applikant Vella, l-appellant gie meqjus bhala persuna interessata (third party objector)*” u skont il-ligi, persuna interessata ghandha dritt tapella mid-decizjoni tal-awtorita` relattiva.

Peress li din il-Qorti sejra tilqa’ dan l-appell fuq il-meritu, ma tarax li hemm skop li jigu trattati d-deficenzji procedurali sollevati mill-appellant. Tara, pero`, li trid tirrimarka li meta tinghata decizjoni minn tribunal jew bord kwazi gudizzjarju, kif inhu dan il-Bord, is-sentenza, u anke l-kopja taghha, trid turi min kienu l-aggudikaturi li ddeliberaw u taw dik id-decizjoni. Dan ikun irid jirrizulta *ictu oculi* u mhux bi prezunzjoni.

Ghaldaqstant, ghar-ragunijiet prezenti, tiddisponi mill-appell ta’ Mario Sciberras billi tilqa’ l-istess, thassar u tirrevoka s-sentenza tal-Bord tas-Servizzi Generali tat-3 ta’ Marzu, 2017 u tilqa’ minflok l-oggezzjoni tal-appellant Mario Sciberras fuq l-approvazzjoni tal-enginier sanitarju fil-kaz tal-applikazzjoni ta’ Victor Vella.

L-ispejjez ta’ dawn il-proceduri jithallsu mill-appellat Victor Vella.

Silvio Camilleri  
Prim Imhallef

Tonio Mallia  
Imhallef

Joseph Azzopardi  
Imhallef

Deputat Registratur  
rm/mb