QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

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

S.T.O. PRIM IMHALLEF MARK CHETCUTI

Illum L-Erbgha, 3 ta' Lulju, 2024

Numru 4

Appell Nru. 18/2024

Catherine Mizzi

vs

L-Awtorita tal-Ippjanar

Il-Qorti,

Rat ir-rikors tal-appell tal-applikant tal-25 ta' Marzu 2024 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-12 ta' Marzu 2024 li ikkonferma r-rifjut tal-applikazzjoni 'outline application proposed alterations to existing pre 1978 property', fiz-Zejtun;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:
Illi dan l-appell jikkoncerna l-applikazzjoni PA05062/21 tat-tip *outline development* li fiha saret talba sabiex isiru alterazzjonijiet ta' propjeta ezistenti ta' qabel l-1967. Is-sit in metru jinsab f'zona rurali maghrufa 'Bir Id-Deheb', iz-Zejtun.

Illi l-izvilupp propost gie rrifjutat mill-Awtorita' tal-Ippjanar ghar-raguni li m'hemmx evidenza li tipprova li l-uzu residenzjali tkompla sas-sena 1978, b'hekk il-proposta hija b'kunflitt ma' kriterju 3 tal-*Policy* 6.3 tar-*Rural Policy and Design Guidance* (RPDG) 2014, u tmur ukoll kontra kriterju 5a tal-*Policy* 6.2C tal-istess linja gwida. Ghaldaqstant huwa konkluz li l-proposta tmur kontra *Thematic Objective* 1.10 u *Rural Objective* 3 tal-i*Strategic Plan for Environment & Development* (SPED).

Illi permezz tal-appell odjern, l-appellant jirribatti fuq ir-rifjut tal-Awtorita' b'aggravju wiehed li fieh jargumenta li saret interpretazzjoni hazina ta' dak li tipprovdi l-*Policy* 6.3 ghaliex din ma tghidx li l-uzu ghandu jitkompla sas-sena 1978, u l-prefiss *"pre"* tfisser kull zmien qabel l-1978, jew qabel l-1992 kif indikat fil-klawsoli (a) u (b). Jindika li mhux kontestat li l-propjeta in kwistjoni tidher fir-ritratti mill-ajru tal-1946 u 1978, u li giet provduta dokumentazzjoni li certu Rosario Zammit kien rregistrat f'din il-propjeta kemm qabel l-1978 u l-1992.

Illi l-Awtorita' baqghet ferma fl-oggezzjoni taghha, u fir-risposta taghha tindika li hemm diversi inkosistenzi li juru li mhux il-kaz li l-post kien jintuza bhala residenza. L-Awtorita taghmel referenza ghall-apprezzament li sar fil-*case officer report* rigward idokumentazjoni sottomessa mill-appellanti, u tindika li minn dan jidher ampjament ċar illi dak li kien immarkat bhala razzett fil-fatt kienet biss kamra f'ghalqa li hija l-eqdem parti tal-binja. Tosserva li fil-pjanti din l-istruttura hija ndikata bhala zewgt ikmamar bi spazju ta' madwar 12 m.k. li jaghmila ferm difficli biex in tintuza bhala residenza. Tosserva li din il-binja kompliet tigi estiza, bl-gholi u l-mod ta' kif inhuma mibnija huma sinonimi ma uzu ta' natura agrikola, u tosserva li r-registri elettorali sottomessi jaghmlu biss referenza ghaz-zona, b'hekk dan wahdu ma jista qatt ifisser li l-persuna indikata kienet toqghod specifikament f'dan is-sit. Tindika wkoll li dak kollu li ngieb mill-appellant bhala allegatament prova ta' residenza jaghmel referenza ghal perjodi ferm qabel l-1978, u b'referenza ghad-decizjoni tal-Qorti tal-Appell citata mill-appellanti fil-kors tal-applikazzjoni, tishaq li hija għamlet lanaliżi tagħha skont il-ġurisprudenza kwotata. B'mod finali taghmel referenza ghal dak sottomess mill-Awtoritá għal-Ambjent u r-Riżorsi (ERA) u s-Sovrintendenza tal-Partimonju Kulturali (SCH), u tindika li l-konkluzjoni legitimma hija li l-proposta odjern qiegħda taghti lok ghal residenza gdida f'żona rurali li skont l-iSPED ma għandiex tiġi konsidrata.

Illi dan it-Tribunal ha konjizzjoni tal-inkartament tal-applikazzjoni mertu ta' dan l-appell u tas-sottomissjonijiet li saru mill-Partijiet;

Ikkunsidra
Illi dan l-appell jirrigwarda zvilupp ta' propjeta f'zona rurali li qed tigi ndikata millappellanti bhala 'residenzjali', bl-Awtorita' rrifjutat il-proposta minhabba nuqqas ta' prova li l-uzu residenzjali tkompla sas-sena 1978.

Illi l-appellant jargumenta li saret interpretazzjoni hazina ta' dak li tipprovdi l-*Policy* 6.3 u jindika li fil-process tal-applikazzjoni giet provduta dokumentazzjoni li certu Rosario Zammit kien rregistrat f'din il-propjeta kemm qabel l-1978 u qabel l-1992.

Illi fl-evalwazzjoni tal-Awtorita, il-provi residenzjali mressqa gew ikkunsidrati hekk kif segwenti:

"Criterion 5(a) of policy 6.2C requires that the use of the building is limited to a use already legally established or covered by permission, with the glossary in the RPDG defining the terms legally established as "Unless specified otherwise in the policy document, the term 'legally established' refers to any intervention, including land-use change and land reclamation covered by development permission or that which is visible on the 1978 aerial photographs."

Several documents were submitted by architect in relation to the claimed residential use of the property, including extracts from the electoral registers for the years 1933, 1939, 1945 and 1946, copies of contracts and a testament and a correspondence from the Agriculture Directorate dated 2021. The submitted documentation is supported by two notarial statements at documents 41B and 48B, which detail the transfer of the property from the original to the current owners and how these refer to the claimed residential use of the property.

In the first statement by notary at document 41B, it is stated that Catherine Mizzi (the applicant in question) is the current owner of the farmhouse built on the field measuring 4,386sqm situated in the area of Bir id-Deheb, in the limits of Zejtun, at times also declared as being in the limits of Ghaxaq. Reference is made to the two official survey sheets dated 1914 and 1957 which show that the farmhouse was already constructed in the year 1914. The notarial statement explains how the mentioned farmhouse was assigned to Catherine Mizzi by virtue of a deed of partition dated August, 2020, wherein she and her sister partitioned the immovable property they inherited from Consligio Bonnici. The latter had previously purchased the field and farmhouse from Joseph Zammit (son of Rosario Zammit) by virtue of a deed dated June, 1968 (a copy of which is available at document 41B). The statement also describes how the mentioned field and farmhouse were assigned to Joseph Zammit in the deed of partition of the property owned by his father Rosario Zammit dated May, 1968.

The old contract submitted in pg.13 at document 41B outlines the transfer of the property from Rosario Zammit to Joseph Zammit and refers to 'l-ghalqa li qieghda iz-Zejtun..tal-kejl lghalqa kollha ta hmistax il-tomna…flimkien mar-razzett li huwa mibni fuqa'. The other contract dated June, 1968 at document 48B also refers to the 'l-ghalqa li qieghda f'Bir idDeheb, fil-limiti taz-Zejtun jew Hal-Axiak, fil-kontrada "Tal-Barrani" denominata "Tal Ghadam", flimkien mar-razzett bla numru li jinsab mibni fuqa marcata bl-ittra A fil-pjanta li tinsab annessa'. A copy of a plan showing the location of the field and building was also submitted at document 48B, which according to the statement by notary, is the plan annexed to the same deed. This plan confirms that the site mentioned in the contract is the same one being applied for.

The Directorate also makes reference to the submitted electoral registers at documents 41B, 41E - 41H, which show that during the years 1933, 1939, 1945 and 1946, Rosario Zammit was registered at an unnamed and unnumbered property located in the limits of 'Bir id-Deheb' at Ghaxaq. The statement by the Agriculture Directorate at document 41B also mentions Rosario Zammit, stating that the plot marked 738 was registered in his name since the year 1944 and that he lived at a F/H at Bir id-Deheb, Ghaxaq (see pg.11 in document 41B). According to this statement, this land was later registered on his wife Carmela Zammit in 1967 and later on Guzeppi Bonnici in 1969. However, both these individuals resided in different addresses and not on this site. In the year 1971, the land was registered on Consiglio Bonnici, and although the information provided by the Department of Agriculture indicates that he resided at the same address, this is not supported by any residential proof such as electoral registers.

Based on the submitted documentation and notarial statements linking Rosario Zammit with the applicant and site in question, the possibility that the existing building was once used as

a residence is not being ruled out. However, from the submitted documentation, it is evident that any previous residential use ceased prior to the year 1978 and no evidence was submitted to prove that this continued up until the year 1978. Hence, the proposed residential use cannot be considered as 'legally established' in terms of the definition expressed in the Glossary of the RPDG, consequently running counter to criterion 5(a) of policy 6.2C." [Skont il-case officer report a fol 54a fl-inkartament tal-PA5062/21]

Illi mis-suespost jirrizulta li l-Awtorita ghamlet analizi dettaljata tad-dokumentazzjoni sottomessa mill-applikanti fid-dokumenti 41a/b, u 48a sa 48h, u filwaqt li huwa pertinenti li jigi osservat li r-referenza ghal certu dokumenti bin-numru 41 kellhom ikunu ndikati bhala dokumenti bin-numru 48, b'dan bl-ebda mod ma jbiddel is-sustanza tal-analizi li saret minnaha tal-Awtorita. Illi fil-fatt l-appellant ma jipprovdi l-ebda indikazzjoni dwar xi nuqqas jew nuqqasijiet min-naha tal-Awtorita fil-konsiderazzjoni taghha ta' din id-dokumentazzjoni jew xi nuqqas fil-verifiki taghha.

Illi mid-dokumentazzjoni sottomessa mill-appellant jirrizulta li filwaqt li fil-kuntratt tal-1968 a fol 48b hemm indikat li l-propjeta in kwistjoni tinkludi razzett bla numru, ir-registri elettorali li jindikaw li certu Rosario Zammit kien irregistrat fi propjeta bla isem u bla numru fil-limit ta' 'Bir id-Deheb' jaslu biss sas-sena 1946. Illi jirrizulta li kien ghal din ir-raguni li filwaqt li ma' gietx eskluza l-possibilta li l-propjeta f'xi zmien kienet tintuza bhala residenza, l-Awtorita ipprocediet bir-rifjut taghha. Dan minhabba nuqqas t'evidenza li l-allegat uzu residenzjali tkompla sal-1978, b'dan gie anke rifless fir-raguni tar-rifjut imposta.

It-Tribunal josserva li l-appellant huwa korrett meta jindika li s-snin 1992 u 1978 rispettivament indikat fil-kriterji 3(a) u 3(b) tal-*Policy* 6.3 [Skont ir-rikors tal-appell, ir-referenza ghal dawn hija kriterji hija klawsoli 6.3(a) u 6.3(b)] jinkludu l-prefiss *"pre"* [Fil-kaz tal-kriterju 3(a) hemm indikat 'prior to 1992', filwaqt fil-kaz tal-kriterju 3(b) hemm indikat 'pre-1978'], pero dan ghandu jittiehed fil-kuntest ta' dak li tirregola din il-*policy*, ossia residenzi ezistenti fl-ODZ. Dan ifisser li l-uzu residenzjali mhux biss ghandu jkun beda qabel dawn iz-zewg *cut-off dates*, ossia 1992 fil-kaz ta' kriterju 3(a) u 1978 fil-kaz ta' kriterju 3(b), izda li l-uzu residenzjali jkun tkompla matul is-snin b'mod li tali uzu ikun ezistenti meta tkun saret lapplikazzjoni. Illi l-appellant fl-ebda mument ma ressaq xi tip ta' prova rigwardanti kif tkompla matul is-snin wara l-1978 jew l-1992, filwaqt li r-ritratti sottomessi a fol 1j wkoll jonqos milli jaghtu xi hjiel ta' kif l-allegat uzu residenzjali tkompla matul is-snin. Ghaldaqstant jirrizulta li interpretazzjoni tal-Awtorita ta' dak li tipprovdi l-*Policy* 6.3 kienet wahda korretta, u konsegwentament l-Awtorita gustament irrifjutata din l-applikazzjoni.

It-Tribunal josserva ulterjorment li fir-risposta taghha l-Awtorita' tqajjem ukoll thassib firrigward tal-allegat uzu residenzjali minhabba l-iskala tal-istruttura originali, u l-gholi u lmod tal-binja kif kompliet tigi estiza, kif ukoll minhabba li r-registri elettorali sottomessi jaghmlu biss referenza ghaz-zona ta' 'Bir-id-Deheb' minghajr ebda enumerar jew isem talpropjeta. It-Tribunal josserva li l-binja ewlenija ta' qabel l-1967 hekk kif murija fil-pjanta a fol 193c tinkludi tlett kmamar li jmissu ma' xulxien, bitha u kamra fuq in-naha l-ohra talbitha, bil-kejl estern ta' dawn il-kmamar jammonta ghal circa 65 m.k. u l-kejl intern tal-istess jammonta ghal circa 43 m.k., b'kamra ohra zghira fil-livell tal-bejt li fiha kejl intern ta' circa 5 m.k. Illi fil-fehma tat-Tribunal, id-daqs ta' dawn il-kmamar huwa wiehed ferm ristrett, u fuq bazi ta' probabbilta ma' jistax jigi konkluz li din hija l-istess binja li l-imsemmi Rosario Zammit indikat fir-registri elettorali kien jabita fiha.

Illi oltre minn hekk, jirrizulta li fir-rifjut taghha l-Awtorita elenkat indikat ukoll li hemm ksur tal-kriterju 5a tal-*Policy* 6.2C li jesigi li l-uzu tal-bini jkun "a use already legally established and/or covered by a development permission". Illi f'dan ir-rigward, it-Tribunal jaghmel referenza ghal decizjoni ricenti moghtija mill-Qorti tal-Appell fil-kawza fl-ismijiet Nicholas

Bianchi vs L-Awtorita tal-Ippjanar, fejn fir-rigward tat-terminu *legally established* gie kkunsidrat kif segwenti:
"F'dan il-kaz il-pern tal-kwistjoni hi l-applikazzjoni tal-policy 6.2A li tesigi fost affarijiet ohra zewg kondizzjoniiet partikolari relevanti ghal kaz biex tigi sodisfatta. Jehtieg li l-applikant jipprova li l-binja koperta b'permess ta' zvilupp hi binja li saret qabel l-1978. Dwar dan ilkriterju ma hemmx kontestazzjoni ghax hi binja ta' qabel l-1978. Tesigi wkoll li l-uzu taghha kien 'legally established'. It-tifsira ta' legally established' tinsab fil-glossarju tal-Att li tirreferi ghal kull intervent fuq art li kopert b'permess jew li jidher mir-ritratti mill-ajru tal-1978. Billi l-uzu propost hu dak residenzjali t-Tribunal qies li tali uzu kellu jidher firritratti tal-1978 u sab li l-uzu pruvat ta' residenza kien jasal biss sal-1959. Jekk l-uzu kellux ifisser f'kull zmien qabel l-1978 jew sal-1978 hi kwistjoni ta' interpretazzjoni. Linterpretazzjoni tat-Tribunal li l-uzu jrid iwassal sal-1978 hi wahda ragonevoli u ma jistax jinghad li tmur kontra l-kelma tal-policy, izda biss interpretazzjoni li seta' jasal ghaliha tTribunal u fejn din il-Qorti ma tistax tissindika."

It-Tribunal josserva li filwaqt li fil-kaz odjern il-policy inkluza fir-rifjut hija 6.2C mhux 6.2A, dan iz-zewg policies jinkludu referenza ghat-terminu 'legally established', b'hekk dak li gie kkunsidrat mill-Qorti fil-kawza supra-cittata huwa wkoll relevanti ghall-kaz odjern stante li lallegat prova residenzjali tasal biss tas-sena 1946, ossia ferm qabel is-sena 1978.

Decide:
Ghal dawn il-motivi, it-Tribunal qieghed jichad dan l-appell u jikkonferma d-decizjoni tar-rifjut tal-applikazzjoni PA05062/21.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwenti:

1. It-Tribunal kien zbaljat meta qies li ai fini tal-policy 6.2A tal-RPDG 2014 l-uzu kellu jwassal sal-1978. Jikkritika sentenza tal-Qorti li irrefera ghaliha t-Tribunal u sostna li interpretazzjoni tat-Tribunal ta' policy hi sindakabbli mill-Qorti u ma tiddependix jekk tali interpretazzjoni hix ragonevoli. Kwistjoni ta' ligi hi rimessa ghal Qorti biss. Izid li l-kelma 'pre 1978' fil-policy tirreferi biss ghal perjodu qabel l-1978 u mhux necessarjament li tkun fis-sehh sal-ahhar tal-1977. Daqstant iehor ma jirrizultax li l-fond kellu jibqa' jintuza bhala abitazzjoni sal-ahhar tal-1977. Wara kollox razzett hu kumpless ta' kmamar li ghandu fih uzu kemm ta' abitazzjoni u ghal bhejjem u makkinarju agrikolu. Jikkritika wkoll il-kontradizzjoni li ghamel it-Tribunal meta qal li hemm prova li kien uzat bhala abitazzjoni sal-1946 imma qal imbaghad li mhux possibbli jew probabbli li kienu joqghodu n-nies fih minhabba c-cokon tieghu. Jaccenna wkoll ghad-definizzjoni ta' 'legally established' u jsostni li dak li tghid il-policy hu biss li l-istruttura tidher fir-ritratti mill-ajru tal-1978. L-uzu ma jistax johrog mir-ritratti mill-ajru.

Il-Qorti tirreleva illi r-raguni tar-rifjut tal-applikazzjoni hi msejsa fuq il-policy 6.2C (criterion 5a) u policy 6.3 (criterion 3). Jidher li l-applikazzjoni hi intiza biex isiru alterazzjonijiet fi proprjeta mibnija qabel l-1967. Jirrizulta wkoll li l-appellant mhux isostni li hi applikabbli xi policy ohra oltre l-policy 6.3 li fuqha wara kollox hu mibni l-appell cioe t-tifsira taghha ghal kaz in ezami. Hu principju kemm il-darba sostnut fil-gurisprudenza illi l-Qorti hi marbuta mat-talbiet jew f'dan il-kaz l-aggravji u huma dawn biss li ghandhom jigu decizi. Jekk il-Qorti tikkunsidra kwistjonijiet mhux imqajma tkun qed tiehu r-riskju li taqa' fl-ultra jew extra petita. Ghalhekk kull sottomissjoni li saret mhux referibbli ghal policy 6.3 (criterion 3) ma hix relevanti ghal mertu ta' dan l-appell u mhux ser tigi kunsidrata.

Nghaddu ghalhekk ghal kaz. Il-policy 6.3 tirrerefi ghal 'extensions to existing dwellings ODZ'. It-titolu wahdu gia jaghti indikazzjoni dwar dak li qed jigi propost. Il-frazi 'existing dwelling' tfisser b'mod semplici li hemm fond ta' abitazzjoni ezistenti li ghalih qed jintalbu zidiet. Il-kriterju 3 jghid li l-applikant irid jaghmel prova li l-proprjeta kienet uzata bhala residenza qabel l-1992 jew li l-fond ta' abitazzjoni hu munit b'permess ta' zvilupp jew li kien jezisti qabel l-1978.

Qalet hazin l-Awtorita li l-uzu residenzjali kellu jigi pruvat sal-1978 ghax kriterju 3 tal-policy 6.3 ma jghidx hekk. Tghid li l-fond ta' abitazzjoni kien jezisti qabel l-1978. Madankollu l-Awtorita u t-Tribunal dahlu fil-mertu tal-kwistjoni cioe l-prova li kellu jaghmel l-applikant li l-fond kien uzat f'xi zmien qabel l-1978 bhala abitazzjoni. It-Tribunal, lil hinn mill-kwistjoni jekk l-uzu bhala abitazzjoni jwassalx sas-sena 1978, wasal ghal konkluzjoni fattwali li l-provi la jaghtu certezza li l-provi dokumentarji esebiti mill-applikant humiex jirreferu ghall-istess proprjeta u f'kull kaz il-kobor tal-istrutturi ta' qabel l-1967 li jidhru fil-pjanti huma tant zghar li fuq bazi ta' probabilita ma jistax jigi affermat li din hi l-istess binja li l-awtur tar-rikorrenti gie indikat bhala residenti fiha fir-registri elettorali esebiti. Appell hu biss fuq punt ta' ligi mhux punt ta' fatt. La darba l-apprezzament tal-fatti sar mit-Tribunal u nghataw motivazzjonijiet ragonevoli ghaliex wasal ghal konkluzjonijet fattwali, din il-Qorti ma ghandhiex is-setgha li tissindakahom. Ghalhekk la darba ma hemmx il-prova fattwali li s-sit in kwistjoni qatt kien ghal 'uzu ta' abitazzjoni' kull kunsiderazzjoni legali ohra maghmula, tajba jew hazina, xorta twassal ghar-rifjut tal-applikazzjoni.

Decide

Ghalhekk il-Qorti, ghal ragunijiet moghtija f'din is-sentenza, tichad l-appell ta' Catherine Mizzi u tikkonferma r-rifjut tal-applikazzjoni PA5062/21 fit-terminu ta' dak deciz Spejjez ghall-appellanti.

Mark Chetcuti
Prim Imhallef

Anne Xuereb
Deputat Registratur