



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 18/2012

George Catania

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' George Catania tal-24 ta' Frar 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Frar 2012 fejn ikkonferma r-rifjut ghall-applikazzjoni PA 3311/03;

Rat ir-risposta tal-Awtorita' li ssottmettiet illi d-decizjoni tat-Tribunal ghandha tigi konfermata;

Rat l-atti u semghet lid-difensuri partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

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Ikkunsidra;

B'applikazzjoni pprezentata fil-11 ta' Gunju 2003, PA 3311/03 l-appellant fil-farmhouse Morning Dawn, L-ahrax ta' Ghajn Tuta, limiti tal-Mellieha, talab:

"To sanction part of reconstruction of burnt out poultry farm (Area ABCD) and part extension of stores/garages and erection of boundary wall and landscaping. "

L-applikazzjoni giet michuda b'rifjut tas-26 ta' Settembru 2003 (Red 17); Saret talba ghal reconsideration Red 19, izda r-rifjut gie kkonfermat fit-13 ta' Settembru 2006, Red 62 ghar- ragunijiet segwenti:

"1. The new layout is very sporadic and unlike that approved in PB 5582/84 fails to achieve a grouped effect to minimise visual impact. Considering that the site is located in open terrain the new layout is visually obtrusive and adversely affects the ecological value of the area, running counter to the adopted Policy and Design Guidance: Farmhouses and Agricultural Buildings, and to Structure Plan policies RCO 4, RCO 8, RCO 9 and RCO 10.

2. The proposal runs counter to Structure Plan policy RCO 8, which states that in Rural Conservation Areas individual cultivators will be required to illustrate to the Malta Environment and Planning Authority how any planned agricultural development will not harm the ecological, archaeological, and scenic value of the Area.

3. The site is located in an Area of Ecological Value, where further human intervention, particularly in the form proposed, is not desirable. The proposal would therefore adversely affect the area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Structure Plan, particularly policies RCO 8, RCO 9 and RCO 10 .

4. Structure Plan policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value

will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan policy RC04.

5. The existing farm was not constructed according to permit PB 5582/84 and illegal land reclamation was also carried out (ECF 606/96 and ECF 149/99). The proposal therefore runs counter to Circular PA 2/96 which states that 'when existing building development on a site is wholly or partly illegal the DCC will not consider a development permit application relating to new development on that site, unless the development is regularised'."

Fl-appell tieghu l-perit Anthony Fenech Vella ghall-appellant ssottometta kif gej:

"Rezokont qasir ta' fatti

L-appellant hu 'full time farmer' bil-biljet tar-raba No 2992, u kien beda l-attivita ta' trobbija u zamma tat-tjur, b'licenzja valida (PBM078, kopja annessa), u ghal dan l-iskop kien bena razzett f'din iz-zona maghrufa bhala l-Ahrax ta' Ghajn Tuta, Mellieha, skond il-permess PB 3046/91/5582/84. Dan kien jikkonsisti f'erbgha t'imhazen kbar u twal, pero separati, u hu kien minflok bena tnejn kbar flimkien ma' l-istore li kien hemm ga fuq il-post. Din l-attivita hi l-wahda principali li minnha jaqla x'jiekol.

Xi snin wara, wiehed mill-irziezet gie moghti n-nar u nqered kemm il-bini u xi 9000 tigiega; fuq dan l-incident hemm ghaddejja inkjesta gudizzjarja .

Fl-ahhar tal-2001 u l-bidu tat-2002, hu rega bena dan il-mahzen flimkien ma' xi strutturi ohra u beda anke jtella il-hajt tad-dawra (boundary wall) bis-sejjeigh u minhabba li nharget Enforcement, tefa' applikazzjoni, PA 1918/02, ghall-issanzjonar taghhom u li, sfortunatament, waqfet nofs triq ghax ghadda iz-zmien ghal prezentazzjoni ta' domanda ta' rikonsiderazzjoni. B'hekk kellha terga ssir

applikazzjoni ohra (PA 3311/03) li qed naghmlu proprju dan l-appell fuqha.

In kwantu ghar-ragunijiet tar-rifjut ahna nsostnu:-

1. Raguni No. 1 "Layout is sparodic'

Fit-trobbija ta' l-animali, huma importanti zewg fatturi, il-kontroll tal-friex tal-mart fir-razzett u ventilazzjoni naturali li jghin anke ghal kontroll ta' ambjent intern. Ghalhekk, anke l-ewwel razzett li gie approvat (u hawnhekk irridu wkoll nigbdu l-attenzjoni li l-forma longineja hi l-aktar wahda addatata ghat-trobbija tat-tigieg) kien jikkonsisti ga fi tlett imhazen distinti u separati, pero paralleli. Dak tal-lum isegwi din il-forma u allura jista' jidher sporadiku, min-naha l-ohra ihalli aktar skop ghal landscaping li jista' jmewwet l-effett tal-massa tal-bini.

2. RC08

Il-policy titkellem fuq 'cultivators' u ma hijiex qeda issir distinzjoni bejn policy intiza ghal tip ta' attivita- biedja, u ohra - zamma u trobbija ta' animali. Tant huma distinti li anke id-Dipartiment ta' l-Agricoltura tohrog licenzji separati. L-appellant ma hux bidwi imma rahhal u x-xoghol tieghu jirrikjedi l-uzu ta' bini li hu necessarju u li anke hu llum rregolat mill-ligijiet ta' l-Unjoni Ewropeja. Hemm certu ammont ta' struttura bazika li ma tistax tghaddi minghajrha u, ghalhekk, id-domanda ghandha tkun aktar fuq il-linji li ga la darba giet approvata din l-attivita, x'ghandhom ikunu r-rimedji biex din tithalla timxi filwaqt li jigu mitigati l-effetti negattivi taghha?

3. RC0 8,9 u l0

Is-sit jinsab lokalizzat go wied mistur minn kullimkien tant li ma jidher propju minn imkien u dan ghandu jkun vantagg li ghandu jghin lill-Awtorita tohrog minn din il-veduta stretta tal-problemi u, bhal ma ghamlet bla tlaqliq f'zoni aktar sensitivi li huma aktar vizibbli, kif ukoll approvat bini u/jew estenzjonijiet kbar waqt il-mori ta' l-istess applikazzjoni ta' ssanar, tikkoncentra fuq il-mizuri ta' mitigar.

Ezempji ta' dawn il-permessi huma:

PA 1095/99 'Villa Betsaida'
PA 749/01 u PA 7278/97 Riviera Hotel u
PA 5876/95 Razzett tal-Majjali Ta' Msid

4. RCO 4

Jekk dan is-sit, tant mistur, ghandu valur xeniku qawwi, l-ewwelnett wiehed irid jiftakar fil-'commitment' mpoggi bl-ewwel permess li hareg u li kien anzi jinkludi il-kundizzjoni li kien irid jitella l-hajt tad-dawra qabel ma jigi opera; li kieku dan sar dak iz-zmien kien ifisser li s-sit kollu kienet tkun possibilment mizruha sigar; hekk illum ghad hemm possibilita li jitnaqqas dan l-impatt li illum jigi wkoll ikkunsidrat negattiv.

5. Cirkolari 2/96

Hu appunti dan l-iskop ta' din l-applikazzjoni pero nahsbu li qeghdin jigu mdeffsa illegalitajiet kommessi minn terzi f'artijiet u li ma ghandniex kontroll fuqhom u li ahna ga pprotestajna fuqhom."

Mario Scicluna ghall-Awtorita rrileva s-segweni dwar l-imsemmija applikazzjoni:

"The Authority is basing this appeal at this stage on the fifth reason for refusal since the appeals board cannot consider this application before this matter is resolved.

The reason that this application cannot be considered is because:

- Illegal tipping onto garigue for land reclamation has been carried out and an enforcement notice ECF 606/96 was issued and is still operative on site. The sanctioning of this development is not being requested.
- The existing structure adjacent to that marked "C" on the submitted plans was build without a permit and its sanctioning is not being requested .
- The two structures marked as "A" and "B" on the submitted drawings were not build according to original

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permit PB 55582/84. The sanctioning of the deviations is not being requested.

Without prejudice to the above, the Authority reserves the right to make submissions on the merits ie. on the other reasons for refusals, when and if the matter regarding policy circular 2/96 is decided."

Fis-second statement taghha l-Awtorita kkummentat kif gej:

"In these submissions, appellant has submitted copies of licenses for the keeping of poultry, latest copy valid up to 31.12.06. No site plan of the licensed farm was included to evaluate the location and extend of the licensed buildings.

The only permit that exists on this site refers to PB 5582/84 as issued on 12th September 1991 "To erect poultry farm ...". However, in time, illegal development had been carried out on the area as marked relevant (in blue) to the site of PA 3311/03 (under appeal) which consisted in:

ECF 606/96 - Ghandek zvilupp minghajr permess li jikkonsisti fi tfiegh ta' materjal imhallat li jinkludi terrapien, hamrija, demel etc. kif ukol depositu ta' materjal tal-bini fuq l-istess art

ECF 93/00 - Ghandek tfieg ta' materjal u rdim.

ECF 135/02 – Ghandek zvilupp li jikkonsisti minn bini ta' zewg imhazen imsaqqfa fuq tnax-il filata, u dan kollu minghajr permess.

All of the above illegal development is still on site and all three enforcement notices are still active. The only application which seeks to sanction parts of the above illegal development is PA 3311/03 (this appeal) but according to the submitted drawings marked "Red 1E & 1F having a note "Red to be erected and Yellow to be

removed", only two structures are being requested to be sanctioned.

This contrasts to the existing situation as verified by the enforcement unit, recent photos of the site inserted in the PA file and as verified during the site inspection carried out by the Planning Appeals Board on 2nd July 2007.

In this respect, attached is an orthophoto of the existing structures along with notes on each structure / area vis-a-vis its present planning statuses. In brief, this includes:

Structure A was not built on its permitted location and the sanctioning of its present location is not being requested in this appeal.

Structures C & F were built without permit and their sanctioning are not being requested in this appeal.

Area G was converted into a dog sanctuary with ancillary structures and facilities (which also include the use of structures permitted for poultry production and their sanctioning are not being requested in this appeal).

Area H is served by ECF 606/96 and ECF 93/00 due to illegal dumping but their sanctioning are not being requested in this appeal. This is evident from the plotting in the Mapserver of these two enforcement notices vis-a-vis the area marked in blue in the original site plan Red 1 D of application under appeal. Attached color site plan explains in more detail this issue.

Additionally, whilst the original permit was limited to a poultry farm and the proposal is still requesting the reconstruction of a poultry farm, the 'existing' situation differs from a 'poultry farm' and hence, all the existing uses have also to be sanctioned through a new application which would included a comprehensive survey of all the existing structures and uses and hence would not be subject to PA Circular 2/96 (re reason for refusal No. 5 of this application under appeal).

The notion for a need of a new application to sanction the existing structures and uses has been forwarded by the Authority through its first reply to this request for appeal and was confirmed by inspections by the enforcement unit and from the site inspection as carried out by the Planning Appeals Board. In these circumstances, the Authority states that until such time that all the illegal structures and uses are removed from site, this request for development cannot proceed since this application was limited to the sanctioning of only two structures and hence, does not sanction all the structures / uses and the material deposited in the area. In this respect, the provisions of PA Circular 2/96 are still valid and prohibit any further development until all the illegal development is first removed or sanctioned.

In this regard, the Authority reiterates that in line with its previous reports, the requested development goes against the present planning policies relevant to this area and states that the DCC's decision to dismiss this request for development was justified and hence respectfully requests the Planning Appeals Board to dismiss this request for appeal."

Ikkunsidra ulterjorment:

L-appellant mhux qed jipproponi zvilupp gdid f'area sensitiva, barra z-zona ta' l-izvilupp, hu qed jitlob liji sanzjonat zvilupp originarjament approvat fit-12 ta' Settembru 1991, PB 582/84, "to erect poultry farm".

Mid-dokumenti ezebiti rrizulta li l-appellant jahdem full time fit-trobbija tat-tigieg.

Bit-trapass taz-zmien, snin ghall-precizjoni, saru zdidiet fil-bini, skond l-appellant b'konsegwenza ta' incendju fuq is-sit, u zviluppi ohra li skond l-Awtorita m'humiex koperti bil-permess.

In fatti hargu diversi eriforcement notices, ECF 606/96; ECF 93/100, u ECF 135/02, li ghadhom 'in vigore' billi ma

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sarx appell minnhom, u l-anqas ma gew regolarizzati b'applikazzjoni sanatorja.

Dawn l-irregolaritajiet huma dettaljatament specificati fl-orthophoto tas-sit anness mas-second statement tal-Awtorita, dawn jinkludu:

1. L-istruttura approvata bil-Permess PB 5582/84 ma nbnietx fuq is-sit indikat fil-pjanta approvata; izda nbniet aktar vicin l-istruttura l-oħra approvata bl-istess permess. Mhux qed jintalab sanctioning ta' dan, bl-applikazzjoni mertu ta' dan l-appell,

Parti mis-sit giet konvertita f'Dog Sanctuary, pero mhux qed jintalab sanctioning.

Fuq parti mis-sit oħra sar illegal dumping li wkoll mhux qed jintalab sanzjonar tieghu.

Inbniet struttura oħra fuq is-sit bla permess - izda mhux qed jintalab sanzjonar tagħha. Dan kollu jikkonferma li l-proposta hi in kontravvenzjoni ta-Cirkolari 2/96, illum Artikolu 14 tal-Avviz Legali 514 ta' 2010.

F'dawn ic-cirkostanzi, kif tajjeb sostniet l-Awtorita, jinhtieg li ssir applikazzjoni gdida, konformi mar-rekwiziti tal-Artikolu 14 tal-Avviz Legali 514 ta' l-2010, partikolarment is-subinciz (3) hawn riprodott:

"(3) Meta sanzjonar ta' zvilupp illegali jigi mitlub f'applikazzjoni għall-zvilupp id-deskrizzjoni tal-proposta u d-disinni għandhom jindikaw b'mod car l-izvilupp li għandu jigi sanzjonat sabiex jigi zgurat li l-izvilupp illegali jiffirma parti mill-applikazzjoni ta' zvilupp."

It-Tribunal għalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma r-rifjut tat-13 ta' Settembru 2006 għall-applikazzjoni PA 3311/03.

Ikkunsidrat

L-appellant qed iressaq is-segwenti aggravji:

1. It-Tribunal iddecieda punt ta' ligi hazin meta ma kkonsidrax kwazi l-aggravji kollha tal-appellant.
2. Il-commitment li hemm rigward l-ezistenza tal-permess precedenti konsistenti fi trobbija tat-tigieg mnejn jghajjex il-familja tieghu.

L-ewwel aggravju

Il-Qorti hi tal-fehma illi l-aggravji mressqa in sostenn ta' appell minn rifjut ghandhom jigu kkunsidrati mit-Tribunal bhala spjegazzjoni ghall-ilqugh jew cahda ta' appell u jekk l-istess Tribunal jiddeciedi l-kaz fuq kwistjoni minghajr ebda kont tal-aggravji jkun qed jaghti lok ghal nuqqas ta' smigh xieraq fil-konfront tal-appellant. B'daqshekk ma jfissirx pero illi la darba t-Tribunal isib gustifikazzjoni legali ghar-rifjut ta' appell fuq kwistjoni dibattuta, ghandu xorta jidhol fl-aggravji l-ohra b'tali mod li jekk ma jaghmilx hekk ikun qed jichad xi dritt tal-appellant li jista' jitqies punt ta' ligi li fuqu tista' tincappa d-decizjoni moghtija mill-istess Tribunal. Tali argumentazzjoni tkun assurda. Ovjament kull kaz fih il-fattispecie tieghu u din il-fehma tal-Qorti trid tigi miftehma fil-linji gwida taghha fis-soluzzjoni ta' kull vertenza simili.

F'dan il-kaz l-appellant kellu permess ghar-razzett ghat-trobbija u zamma ta' tjur (PB 3046/91/5582/84) fiz-zona maghrufa bhala l-Ahrax ta' Ghajn Tuta, Mellieha. F'xi zmien l-istruttura li kien bena inharqu u fl-2001 rega' bena mahzen, xi strutturi ohra u beda jtella' boundary wall. Inhareg enforcement u saret applikazzjoni ghal sanzjonar li waqghet u saret l-applikazzjoni taht skrutinju ta' din il-Qorti li kienet ghal sajonar ta' parti mir-rikostruzzjoni tal-poultry farm u part extension ta' stores/garages u t-tlugh tal-boundary wall u landscaping.

L-Awtorita irrilevat, u dan hu kollu indikat fid-decizjoni taghha illi nonostante s-sanzjonar mitlub fl-applikazzjoni kien hemm diversi fatturi ohra rilevanti b'enforcement notices li ma ntalbox li jigu sanzjonati.

Il-Qorti tqis illi dawn huma kwistjonijiet ta' fatt li anki jekk dibattibli qua piz ta' prova l-Qorti ma ghandhiex tidhol fihom. Dak li hu relevanti hu illi t-Tribunal qies li dawn il-kwistjonijiet ta' fatt jaghtihom piz probatorju favur l-Awtorita u jorbothom ma' dak li trid il-ligi fi kwistjonijiet simili ta' sanzjonar. It-Tribunal applika l-artikolu 14 tal-Avviz Legali 514 2010 subinciz 3 li jghid hekk:

Meta sanzjonar ta' żvilupp illegali jiġi mitlub f' applikazzjoni għal żvilupp, id-deskrizzjoni tal-proposta u d-disinni għandhom jindikaw b' mod ċar l-iżvilupp li għandu jiġi sanzjonat sabiex jiġi żgurat li l-iżvilupp illegali jiffirma parti millapplikazzjoni ta' żvilupp.

Ghalhekk ikkonkluda illi l-appellant naqas li jgib dan kollu fl-applikazzjoni tiegħu u ghalhekk f'dan is-sens u ghal din ir-raguni wahedha, l-applikazzjoni kellha tigi michuda. Billi dan l-Avviz Legali, fil-fehma tat-Tribunal kien josta li l-applikazzjoni jkollha xi validita, hu ghalhekk inutili li t-Tribunal jidhol f'aggravji oħra dwar valur xeniku u ekologu tas-sit u l-applikazzjoni o meno ta' policies li jikkoncernaw distinzjoni bejn bidwi u rahhal, u r-raguni ta' sahha jew sigurta fil-mod kif saru l-binjiet il-godda. Dawn l-aggravji kienu kollha subordinati għat-tema legali principali cioe jekk l-applikazzjoni setghetx tigi kkonsidrata fit-termini ta' dak li jiddisponi l-Avviz Legali msemmi.

Kwindi l-aggravju tal-appellant f'dawn ic-cirkostanzi, li bl-ebda mod ma jattakka l-validita tal-applikazzjoni tal-Avviz Legali 514 tal-2010 għal kaz fis-sens applikat mit-Tribunal ma kien ta' ebda siwi.

It-tieni aggravju

L-appellant isostni illi l-kwistjoni tal-commitment għandha ggib in-nullita tad-decizjoni tat-Tribunal billi ma gietx trattata mill-istess Tribunal. Il-Qorti ma tifhimx dwar liema commitment l-appellant qed jirreferi ghalih. Il-Qorti qed tipprezumi illi l-appellant qed jallaccja l-permess originali mal-applikazzjoni prezenti. F'dan il-kaz pero mkien ma qed jinghad li l-permess originali għandu jigi rtirat. Dak li qed jinghad mit-Tribunal hu illi dak li sar u jezisti fil-

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prezent mhux konformi ma' dak approvat fil-permess originali u dak li gie rigettat fid-decizjoni tat-Tribunal hu sanzjonar kif u safejn mitlub bl-applikazzjoni l-gdida PA 3311/03 li bl-ebda mod ma hi teskludi li fil-fatt fuq is-sit kien jezisti zvilupp approvat bil-permess 582/84 'to erect poultry farm'. Ghalhekk dan l-aggravju ma fih ebda fundament u lanqas b'xi mod ma gie spjegat jew zviluppat fl-appell odjern.

Decide

Ghalhekk il-Qorti qed tichad l-appell ta' George Catania u tikkonferma id-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Frar 2012. L-ispejjez jithallsu mill-appellant.

< Sentenza Finali >

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