



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 42/2012

Carmel Grech

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Carmel Grech kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 fejn cahad talba 'to regularise existing boathouse';

Rat ir-risposta tal-Awtorita li ssottomettiet li d-decizjoni tat-Tribunal kellha tigi konfermata;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni Full Development Permission – PA/03244/06 ipprezentata fit-18 ta' Mejju 2006, l-appellant, f'sit f'ta' Taht il-Belt, Ghajnsielem, Ghawdex, talab:

"To regularise existing boathouse."

Illi t-talba giet michuda mid-Development Control Commission (DCC) permezz ta' rifjut tal-25 ta' Settembru 2006 ghar-ragunijiet segwenti:

"1 The site lies in a Rural Conservation Area. The proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

2. The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

3 The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

4 The site is located in an Area of Ecological Value as indicated in the Gozo and Comino Local Plan (2006), 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.

5 Structure Plan policy RC04 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.

6 The site is located on the side of a valley and the proposed development does not fall into one of those categories of development permitted in this type of location. It would therefore run counter to Structure Plan policy RC029, which seeks to prevent soil erosion and encourage the conservation and management of water resources."

Illi l-Perit John Saliba, fl-appell relattiv irrilevanti s-segwent: "The applicant Carmel Grech is a registered fisherman and this boathouse is essential for his daily work.

This small boathouse is only 21 sq.m. in area and is certainly not a form of urban development as is being alleged."

Illi l-Awtorita ressqet il-kummenti taghha inter alia kif gej:

"The site subject of the current application - PA3244/06 is located within an Area of High Landscape Sensitivity (AHLs), as designated by the Gozo and Comino Local Plan. Such designated areas are particularly important by virtue of their character, the view shed that they command or the features that render them so picturesque. In such areas, Gozo and Comino Local Plan Policy GZ-RLCN-1 sets out that "apart from the normal restrictions on development in rural areas, there shall be a strong presumption against the creation of new built structures (including cultivation and animal husbandry related structures) in AHLs". The proposed sanctioning, thus conflicts with such policy. The boathouse proposed to be sanctioned is out of context within its rural surroundings, which is mostly agriculture, and impinges on the rural landscape of the surroundings. The Planning Directorate

does not need to anticipate the potential impacts of the development, because such impacts are clearly evident on photos reds 11, 1 J and 1 K. The proposal thus also conflicts with Structure Plan Policies RC02 and RC04.

Moreover, from. site plan - red 1C - and aerial photo - blue 14A - it is noted that means of access to the marine environment by boat is currently not available. The proposed development would lead to the creation of access to and from the site, in particular to the coastal area. Since the 2004 aerial photos - see blues 14A and 14B - do not indicate the presence of any slipways/paths in the area, there is no justification for the proposed boathouse. The proposal thus conflicts with Structure Plan Policies SET11 and SET12, as boat storage does not necessarily need to be carried out on this site, otherwise uncommitted with this kind of development. The creation of such slipway/paths would also augment the visual and ecological impact of the development, in this proposed Level 2 or higher Ecological area.

Furthermore, the site abuts a designated Circular Walking Route and a Linear Country Parkway. Gozo and Comino Local Plan Policy GZ-RECR-3 encourages the upgrading of walkways identified as Circular Walking Routes. Allowing the proposed development along such a designated route would not be in the interests of the recreational potential of the area, and thus also conflicts with such policy.

Additionally, the site of the proposed development is located at the mouth of a valley system. According to Structure Plan Policy RC029 new physical development will not be allowed on the sides of valleys and especially on valley watercourses. Gozo and Comino Local Plan Map 8.3.1. identifies the site within a watercourse (as may be witnessed by the increased vegetation shown on aerial photo - blue 14B). The proposed development thus also conflicts with Structure Plan Policies RC028 and RC029.

-- Conclusion:

Allowing the proposed development would set an undesirable precedent for similar development which would, on a cumulative basis, lead to a significant overall change in the appearance of the locality to the detriment of the visual amenities of the area."

Il-Bord zamm access fuq is-sit in kwistjoni, fl-4 ta' April 2008, fejn gie registrat l-verbal segwenti. L-appellant jirrileva illi huwa full-time farmer recte 'fishermen' u l-post in kwistjoni jintuza bhala store u fil-fatt il-Bord ikkonstata numru ta' affarijiet relatati mas-sajd fl-istess garaxx. L-appellant jiddikjara wkoll illi jhaddem 5 minn nies fis-settur tas-sajd. Jiddikjara wkoll illi dan huwa l-uniku post fejn jista' jqieghed l-affarijiet li jidhru storjati fl-istess binja. Jiddikjara wkoll illi dan nbena madwar 3/4 snin ilu. Jiddikjara illi ilu fil-mestier tas-sajd mill-1982 u qabel kien jistorja l-affarijiet tas-sajd go garaxx tal-familja pero llum ghaddejnin proceduri legali fuq il-qasma ta' l-istess binja.

Dr. De Gaetano jirrileva li l-enforcement fuq il-post kien hareg fuq Manuel Azzopardi u l-appellant jiddikjara li Emanuel Azzopardi huwa persuna mizzewweg lit-tifla tieghu b'dana kollu il-garaxx in kwistjoni huwa fuq isem l-appellant Carmel Grech.

Il-Bord ikkonstata wkoll illi l-binja tinsab wara parapett illi jaghti ghal passagg illi jwassal dritt go speci ta' slip way ghal bahar.

Ir-rappresentanti tal-Awtorita jirrilevaw ukoll illi meta nhareg l-enforcement fis-sena 2006 il-konkrit ta' quddiem il-garaxx ma kienx qieghed hemmhekk u gie maghmul ricentament u dan kif jidher mir-ritratt 1K fl-applikazzjoni PA3224/06 li minnha qed isir l-appell odjern.

Illi permezz t'affidavit l-appellant ikkonferma taht gurament inter alia kif gej:

"Jiena direttur tal-kumpanija Mediterranean Trawlers Company Limited (999046). Xoghli dejjem kien ta' sajjied full-time u l-familja tieghi dejjem rabbejta mill-qliegħ li naqla mill-bahar. Il-kumpanija ghandha diversi dghajjes

Kopja Informali ta' Sentenza

fosthom il-Mazzarjola u dghajsa ohra bin-numru ta' registrazzjoni MFA 386. Irrid nghid li fis-sit in kwistjoni kien hemm diga kamra pero li kellha s-saqaf imwaqqa. Peress illi ma kellix fejn indaħhal id-dghajsa bin-numru ta' registrazzjoni MFA 386, jien wara li gibt il-permess tal-kummissarju tal-artijiet estendejt il-hitan u ghamilt is-saqaf tagħha biex inkun nista' ndaħhal din id-dghajsa li jiena kont nuza ghas-sajd tiegħi mill-bajja tax-Xatt l-Ahmar. Din il-kamra ilha hemm dan iz-zmien kollu u ghadha tintuza sa lllum mhux minni peress illi jiena mradt serjament imma minn ibni Manuel Grech. Fiha ghadu jsir l-istess uzu kif dejjem sar u cioe biex inpoggi fiha d-dghajsa u l-affarijiet tas-sajd. Nghid ukoll li l-kamra fiha biss hames metri (5m) tul b'tliet metri u nofs (3.5m) wisa. Hi gholja biss disa' (9) filati u ma tagħmel l-ebda kuntrast mal-ambjent li hemm fl-istess inhawi. Għalhekk insostni illi jiena għandi drift illi nissanzjona dina l-kamra"

Ikkunsidra ulterjorment:

L-appellant qed jipproponi li jissanzjona l-kamra li tidher fir-ritratti mmarkati 1k, 1J u 1I fil-file PA 3244/06; kamra tal-bricks mibnija fuq 9 filati.

L-unika gustifikazzjoni dedotta mill-appellant hi li hu sajjied full-time u l-kamra għandu bżonnha biex fiha jpoggi d-dghajsa - MFA 386, u affarijiet tas-sajd.

Applikazzjonijiet għall-izvilupp ma jigux deciza fug htigijiet personali izda skond il-Pjan ta' Zvilupp u policies ta' lppjanar fejn jigu kkunsidrati wkoll kiwsjtonijiet materjali, u ta' estetika u sanita. L-artikolu 69(1) tal-Att X ta' l-2010 Kap. 504 jelenka l-konsiderazzjonijiet li l-Awtorita hi bil-ligi obligata li tagħmel fl-ipprocessar tal-applikazzjonijiet. Dan l-artikolu jissostitwixxi għalkemm mhux identiku, l-artikolu 33 tal-Kap. 356.

Fil-kaz in ezami irrizulta li s-sit fejn tinsab din l-kamra li qed jintalab li tigi sanzjonata hu Rural Conservation Area, u Area of Ecological Value kif indikata fil-Gozo and Comino Local Plan 2006. F'din l-area partikolari, l-izvilupp propost hu in kontravenzjoni ta' diversi Policies tal-Pjan ta'

Struttura, fosthom RCO 2, SET 11, BEN 5, RCO 4, RCO 29 u l-istess Gozo and Comino Local Plan ippublikat f'Lulju 2006; kif korrettement l-Awtorita iccitat fir-rifjut ghall-applikazzjoni,

F'dawn ic-cirkostanzi, l-appell ma jistax jigi kkunsidrat favorevolment;

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma r-rifjut tat-28 ta' Settembru 2006 (Red 28 fil-file) ghall-applikazzjoni PA 3244/06.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkonsidra li l-kamra mhix urban development, hi ta' daqs zghir u ma taghmel ebda kuntrast mal-ambjent fl-inhawi;
2. In-nuqqas tat-Tribunal li jikkonsidra kwistjonijiet materjali u ta' estetika skond l-artikolu 69(2) tal-Kap. 504.

Il-Qorti ser titratta z-zewg aggravji flimkien. Kuntrarjament ghal dak sottomess mill-appellant it-Tribunal ikkonsidra l-fatti tal-kaz mill-ottika tal-policies applikabbli u dan fit-terminu tal-artikolu 69(1) tal-Kap. 504. Ikkonstata li s-sit qiegħed f'rural conservation area fejn skond policy RCO 2 mhux permess ebda forma ta' urban development. Ghalkemm l-appellant issostni li l-kostruzzjoni mhix urban development u ghalhekk implicitament mhix applikabbli ghalha l-policy RCO 2 pero ma jispjegax allura liema policy hi applikabbli. Ghalkemm il-kwistjoni dwar applikazzjoni ta' policy hi konsidrata bhala punt ta' ligi pero hu obligu tal-appellant li jiddikjara liema policy kellha tigi applikata, haga li l-appellant naqas li jagħmel u ghalhekk il-Qorti ma tistax tqis attendibbli s-sottomissjoni li t-Tribunal ma kkonsidrax il-kwistjoni taht dan l-aspett.

L-appellant issostni li l-kamra ma tagħmilx kuntrast mal-ambjent li hemm fl-inhawi u din hi kwistjoni li t-Tribunal injora u naqas li japplika l-artikolu 69(2) fejn kellu jqis ukoll kwistjonijiet materjali ta' estetika. Lanqas f'dan l-aspett ma għandu ragun l-appellant. It-Tribunal ikkonsidra li din hi

area of ecological value u tmur kontra l-policy RCO 4 fejn 'areas of scenic value will be protected and enhanced'. Dak li spjega t-Tribunal hu illi ghalkemm l-appellant sahaq li hu full time fisherman u juza l-izvilupp ghal dghajsa, tali konsiderazzjonijiet ta' htiega mhux bizzzejjed biex jeghlbu konsiderazzjonijiet ibbazati fuq policies vigenti u l-pjan ta' zvilupp fejn ukoll jigu konsidrati kwistjonijiet materjali ta' estetika u sanita. F'dan il-kaz it-Tribunal uza d-diskrezzjoni afdana lilu fuq il-kwistjoni fattwali ta' estetika a bazi tal-fabrikazzjoni tas-sit fejn ta piz akbar ghal policies vigenti milli fuq il-htiega tal-applikant. Tali kwistjoni del resto hi wahda f'data f'idejn it-Tribunal u ma tidholx fil-parametri ta' appell fuq punt ta' ligi. Ghalhekk ma jirrizultax illi t-Tribunal naqas li jikkonsidra l-aggravji tal-appellant izda kkunsidrahom u wasal ghal konkluzzjoni li l-policies vigenti ma kienux jippermettu tali zvilupp fic-cirkostanzi.

Decide

Il-Qorti ghalhekk qed tichad l-appell ta' Carmel Grech u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012. L-ispejjez kontra l-appellant.

< Sentenza Finali >

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