



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 136/2012

Andrew Muscat

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Andrew Muscat tal-20 ta' Awwissu 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012 li cahdet applikazzjoni numru PA 4961/04 sabiex 'to demolish part of existing store for agricultural tools and to regularise remaining part';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:
Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fit-2 t'Awwissu 2005, wara rikonsiderazzjoni, rrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 4961/04 "Site at ix-Xaghra ta' Barbra, Nadur: To demolish part of existing store for agricultural tools and to regularise remaining part."

Ir-ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposal does not satisfy the criteria set out in paragraph 11.4 of the Structure Plan Explanatory Memorandum and so the proposal runs counter to Structure Plan policies AHF 5 and SET 11 and to the Malta Environment & Planning Authority's Policy and Design Guidance - Farmhouses and Agricultural Buildings.

2. The proposal makes no adequate provision for soft landscaping on the site. It would therefore detract from the visual amenity of the area and would not comply with Structure Plan policy BEN 17 which requires the landscaping of development.

3. The proposal, if accepted, 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 and similar localities to the detriment of the visual amenities of the area.

B. In-nota tal-Perit John Saliba ghall-Appellant, ipprezentata fis-7 ta' Settembru 2005, senjatament il-punti segwenti:

"I have already submitted confirmation from the Department of Agriculture and Fisheries and the ETC both

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dated 6 December 2004 stating that Andrew Muscat is registered as a full-time farmer.

The internal height of this agricultural store is 11 courses and the 12th course is the roof structure. It has been stated in the DPA Report that the height is 13 courses. As can be seen from the previously submitted photos this is not the case.

Olive trees (*Olea Europea*) are proposed to be planted to screen this agricultural store."

C. In-nota risponsiva ta' David Cassar ghall-Awtorita, ipprezentata fil-15 ta' Marzu 2006, inter alia l-punti segwenti:

"The Proposed Structure

Applicant is registered with the Agriculture Department as a full-time farmer. The amount of land registered with the Agriculture Department is of 3T 1S (0.355 Ha), marked in red on site plan red 17A - see letter red 17. Such a limited amount of tilled land does not justify the construction of a 15m² store, usually permitted by policy, let alone the huge store being proposed. Indeed the applicant is the owner of a supermarket - see red 15B - and the agricultural activity carried out by himself does not sustain full-time employment.

Moreover, paragraph 11.4 of the Structure Plan Explanatory Memorandum clearly states that bona fide full-time farmers are only eligible for a 15m² store. Additionally, paragraph 1.10.1 of the Design Guidance for Farmhouses and Agricultural Buildings, 1994 states that agricultural rooms must be no more than 9 courses in height. The structure proposed to be sanctioned has an area of approximately 90m² and a height of 13 courses, and thus conflicts with the above mentioned guidelines.

Landscaping

Landscaping must consider views into and out of the site and how the proposals relate to the site contours and the

structure of the surrounding landscape. The proposed landscaping indicated on section red 1D is not adequate to be used as a screen, and not sufficient to mitigate the eyesore that the store presents. The proposal, thus, runs counter to Structure Plan Policy BEN 17.

Gozo and Comino Local Plan

The Gozo and Comino Local Plan (Public Consultation document) designates the site as 'Strategic Space Gap' - see draft Map 14.7-A. Policy GZ-SETL-2 states that there shall be a strong presumption against the construction of new buildings or structures within Strategic Space Gaps. In these terms the proposal also runs counter to Structure Plan Policy BEN4.

Illegal Development on Site

Whilst part of the existing store is sought to be sanctioned, another part is only proposed to be demolished as part of the proposed development. This is not acceptable, as such part of the structure should have been demolished prior to the submission of the application, if it were really the applicant's intention to demolish it. While it is still standing, this part of the existing store is considered illegal development, not sought to be sanctioned and therefore the provisions of Circular PA 2/96 must apply."

D. Is-sottomissjonijiet tal-Perit John Saliba ghall-Appellant, bid-data tas-6 ta' Dicembru 2007 fejn gie rilevat li l-Appellant jahdem aktar minn tlettax-il tomna fil-vicinanze tas-sit in ezami.

E. In-nota second statement ta' David Cassar ghall-Awtorita, ipprezentata fis-17 ta' Jannar 2008, inter alia l-punti segwenti:

"The Planning Appeals Board may wish to note that on the 14 December 2007 the Policy and Design Guidance - Agriculture, Farm Diversification and Stables has been approved.

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If it is confirmed by the Agriculture Department that the applicant tills 13 tumoli of land, then the latest approved policy only allows the construction of a 20 square metre store. The 90 square metre building sought to be sanctioned greatly exceeds the permissible floor area."

F. In-nota tal-Perit John Saliba ghall-Appellant, ipprezentata fis-7 ta' Frar 2008. Ma din in-nota gew annessi kopji ta' dikjarazzjoni mid-Department of Projects and Development, Agriculture Branch, Section IACS - Gozo, in sostenn tad-dikjarazzjoni tal-istess Appellant li hu rregistrat bhala bidwi sa mis-sena 1990 u li jahdem mill-inqas 2,5070 Ha raba.

G. Il-verbal tas-Seduta numru 10 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fl-4 t' April 2008, precizament il-punti segwenti:

"[L-Avukat Dott. Anthony] DeGaetano jiddikjara illi l-Awtorita ghamlet l-istudju fuq l-area vis a vis l-agricultural policies il-godda ta' Jannar 2008 u jirrizulta illi xorta wahda s-sit jaqa' taht strategic open space gap skond mappa 14.7/A ta' Local Plan ghal Ghawdex u allura, tmur kontra Policy GZ/SETL/2. Oltre dan kieku kellha tigi kkunsidrata bhala agricultural building , bil-parametri ta' din il-Policy 2.4A, l-aktar li kien jinghata kien ikun ta' 20 metri kwadru u mhux ta' 90 metru kwadru. L-istess Policy zammet farm li wiehed irid ikollu registrata f'ismu rnill-inqas sentejn qabel ma ssir l-applikazzjoni, u skond l-Agrikoltura dak iz-zmien kellu biss tlett tomniet u siegh."

H. Ix-xhieda ta' Carmel Theuma ufficjal fi hdan id-Dipartiment tal-Agrikoltura prodott mill-Awtorita, moghtija bil-gurament waqt is-Seduta numru 13 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fit-8 ta' Mejju 2009, senjatament il-punti segwenti:

"Qed nigi muri ittra iffirmata minni datata 25 ta' Jannar 2008 indirizzata 'to whom it may concern', u nispjega li s-sistema taghna tahdem billi jigi l-bidwi u jindikalna liema raba qieghed jahdem hu, ahna imbaghad nirregistrawha fuq ismu u jkun jista' japplika ghal ghajnuna fuq ir-raba.

Qabel kien hemm ukoll il-Farmers Registration Card u kien johrog biljett tar-raba l-antika bl-ammont indikat fuqu minghajr pjanti mieghu. Kien ikun hemm l-isem tal-lokalita tar-raba u jekk ikollha xi laqam kif tkun maghrufa. Bis-sistema li ahna nohorgu ma jaghti ebda titolu fuq il-propreta ghalhekk ahna ma nidhlux fil-kwistjoni jekk ir-raba tkunx bi qbiela Jew titlu iehor. Jiena nikkonferma l-kontenut tal-ittra tieghi tal-25 ta' Jannar 2008. Qieghed nipprezenta l-kopji tal-Farmers Registration Card originali li hija bil-format l-antik. Qed nesebixxi wkoll computer version taghha. L-ewwel wahda qed tigi markata dok. CT1 u t-tieni wahda dok. CT2 u minn dawn iz-zewg dokumenti jirrizulta l-kejl li jiena ddikjarajt fl-ittra tieghi tal-25 ta' Jannar 2008. Qed nesebixxi wkoll dok. CT3 li huwa dokument mahrug mid-Dipartiment tal-Artijiet u li jirrelata ma din ir-raba. Fil-prezent fuq is-sistema tal-APIS jirrizulta li Andrew Muscat jahdem 25 tomna u zewg kejljet. Jiena nghid illi l-konkluzjonijiet tieghi huma mir-records illi ghandna ma jfissirx illi l-appellant m'ghandux aktar raba f'idejh. Irrid nispejga pero fuq l-APIS is-sistema ma taghtinix il-laqam tal-art illi ghandu f'idejh l-appellant. Qed nara il-pjanti esebiti fit-23 ta' Novembru 2007 u jiena nikkonferma li dawn il-pjanti li ghadni kemm gejt muri jinsabu kollha fix-xaghra ta' Barbra u qed jigi esebiti f'dan l-istadju dokument ARI li hija pjanta li tindika l-artijiet kollha fl-istess akkwata kif indikatu fuq il-pjanti illi ghadni kemm rajt. Qed nesebixxi wkoll dok. CT4 certifikat tal-ETC illi juri li l-appellant huwa registrat bhala full-time farmer. Qed nesebixxi wkoll bhala dok. CT5 l-ittra b'referenza ghal access li kien sar minn naha taghna fuq talba tal-MEP A liema access kien sar fil-21 ta' Dicembru 2004."

[...]

"Qed nigi muri Red 17 fil-PA file inkun f'pozzjoni f'seduta ohra li ngib id-dati precizi ta' meta l-artijiet gew registrati fuq isem l-appellant."

J. Ix-xhieda ulerjuri ta' Carmel Theuma ufficjal fi hdan id-Dipartiment tal-Agricoltura prodott mill-Awtorita, moghtija bil-gurament waqt is-Seduta numru 27 tal-Bord ta' l-Appell

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dwar l-Ippjanar, mizmuma fit-2 t'Ottubru 2009, precizament il-punti segwenti:

"Jiena qed nesebixxi kopja tal-original tar-raba kollha li giet registrata fuq Andrew Muscat fis-sena 2003 meta kien hemm il-qlib tas-sistemali qeghdin komplessivament jigu immarkati Dok. CT Din hija meta l-appellant irregistra fissistema LPIS. FI-2002 bdejna il-qlib tas-sistema u n-Nadur kien sar fl-2003 il-ghaliex konna mxejna rahal rahal. Id-data tas-16 t'Ottubru 2003 ndikata taht il-firma tal-bidwi, hija id-data li ahna niehdu bhala d-data effettiva ta' meta gie registrat fis-sistema. Irrid nghid li ahna ma naghmlux verifiki sakemm ma jirrizultalniex li hemm konflitt fuq l-istess bicca raba. Dan iffisser, li tidhol applikazzjoni u ninnutaw li diga kien hemm applikazzjoni ohra fuq l-istess bicca. Sakemm ma jkunx hemm dak il-kunflitt, ahna niehdu d-dikjarazzjoni tal-bidwi bhala fatt."

K. Il-verbal tas-Seduta numru 15, mizmuma fit-3 ta' Marzu 2011, senjatament il-punt segwenti:

"[L-Avukat Dott. Anthony] DeGaetano jaghmel referenza ghall-Artikolu 14(4) tal-Avviz Legali 514(4) tal-Avviz Legali 514 tal-2010 li ma jippermettix iktar li talba ghal tnehhija ta' illegalita f'applikazzjoni, izda din trid titnehha qabel ma tinghata decizjoni."

L. Il-verbal tas-Seduta numru 71, mizmuma fis-6 t'Ottubru 2011, precizament il-punt segwenti:

"Jonathan Attard [recte Borg] ghall-Awtorita ikkonferma li l-pjanti li pprezenta biex jissanzjona, jaqblu ma dak li hemm fuq il-post billi l-illegalitajiet li kien hemm tnehhew minn fuq il-post."

Waqt l-istess seduta giet ipprezentat nota third statement ta' Jonathan Borg ghall-Awtorita, li titratta l-punti segwenti:

"The Authority notes that notwithstanding the fact that the appellant demolished part of the illegal store, the part being requested to be sanctioned has an area of circa 90 sq.m. Albeit the Department of Agriculture confirmed that

the appellant has about 23 tumoli of land registered to his name, only about 13 of these tumoli are within 1 km of the site (see Red 43B in PA file - Department of Agriculture Declaration). According to policy 2.4 of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables, farmers with such an amount of land are only eligible for a maximum of 20 sq.m and with a height less than that being requested for sanctioning. However given that the appellant was already granted a permit by way of PA 4996/97 for a 29 sq.m store, no more storage space may be permissible.

Of likewise importance is the fact that at the time of application (in 2004) the appellant had only 3 tumoli of land registered to his name. The rest of the 23 tumoli of land have been registered later on. Policy 2.4 of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables states that the land must be registered for a period of at least 2 years prior to application in order for stores to be granted. This means that no amount of land registered on the appellant's name at this point may justify such a store. What is required at this stage is afresh application."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex jigi ssanat mahzen agrikolu li jinsab barra z-zona tal-izvilupp ta' n-Nadur, Ghawdex.

Ir-raguni ghar-rifjut huma bbazati fuq il-fatt li l-proposta hi in kontravvenzjoni tal-policies AHF 5, SET 11 u BEN 17 tal-Pjan ta' Struttura kif ukoll il-Policy and Design Guidance - Agriculture, Farm Diversification and Stables (gja Farmhouses and Agricultural Buildings).

Jigi rilevat li l-Appellant hu registered full-time farmer u li jahdem ftit iktar minn tlett tomniet raba (0.355 Ha), cjoe ferm inqas mill-ammont minimu ta' raba indikata fil-paragrafu 1 tal-policy 2.4A tal-Policy and Design Guidance - Agriculture Farm Diversification and Stables, sabiex ikun jista' jikkwalifika ghal mahzen zghir ta' mhux

aktar minn hmistax-il metru kwadru. Din il-policy hi wkoll sostenuta mill-paragrafu 11.4 tal-iStructure Plan Explanatory Memorandum.

Fil-kaz in ezami, il-mahzen li qed jigi ssanat ikopri firxa ta' disghin metru kwadru. In oltre, kwalsiasi mhazen agrikolu ma jridx jissupera it-3.2 metri gholi meta mkejjel minn barra, mentre dan in ezami hu msaqqaf fuq hdax il-filata (madwar tlettax il-filata meta mkejjel minn barra).

L-Awtorita targumenta wkolli i-landscaping kif propost mhux sufficjenti sabiex tittaffa l-gerha li dan il-mahzen jikkawza fil-kuntest tal-kampanja li fiha jinsab. Targumenta wkoll li in kwantu l-policy GZ-SETL-2 u l-Mappa 14.7-A tal-Pjan Lokali, is-sit in ezami jaghmel parti minn strategic open gap fejn inter alia, zvilupp gdid ma jistax jigi permess.

Qamet ukoll kwistjoni fir-rigward ta' parti mill-izvilupp li kienet tirrizulta illegali u li ma gietx indikata ghas-sanar. Din kienet ghada ma tnehhiex dakinhar li gie ntavolat l-appell odjem. Jidher pero li fil-frattemp, l-Appellant ottempera ruhhu mal-Artikolu 14 tal-Avviz Legali 514 tal-2010 u li din l-illegalita tnehhiet minn fuq il-post.

Jibqa' ghalhekk inter alia l-argument tal-kobor tal-mahzen li jista jigi koncess fl-appell odjem. Skond dikjarazzjoni tal-istess Appellant (u kkonfermata mid-Dipartiment tal-Agrikoltura), jidher li illum jahdem madwar tlettax il-tomna fil-vicinanze tas-sit in ezami (u mhux tlieta kif originarjament kien sottomess). Dan qed jinghad fil-konfront tal-paragrafu la tal-policy 2.4A suesposta, ghax minbarra rekviziti ohra, jigi kkunsidrat biss l-ammont ta' raba li huma registrati f'isem l-Appellant almenu sentejn qabel ma giet intavolata din l-applikazzjoni. Jirrizulta li fis-sena 2004 (cjoe meta saret din it-talba), l-Appellant kien jahdem biss madwar tlett tomniet.

Anke jekk ghall-grazzja tal-argument it-tlettax il-tomna kienu gja registrati f'isem l-Appellant odjern dakinhar li ghamel it-talba, permezz il-paragrafu 3 tal-istess policy 2.4A, ma tlettax il-tomna raba jista' jigi permess mahzen

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b'arja sa ghoxrin metru kwadru - xorta wahda ferm inqas mid-disghin li qed jigu ssanati. In oltre. I-Awtorita tirrileva li l-Appellant kien diga nhariglu permess ghall-mahzen ta' 29 metri kwadri (PA 4996/97) u li zgur m'ghandux bzonn izjed spazju.

Fic-cirkostanzi ghalhekk, dan l-appell ma jimmeritax kunsiderazzjoni favorevoli.

Il-partijiet rilevanti tal- Policy and Design Guidance - Agriculture, Farm Diversification and Stables tal-2007, rilevanti ghal-mertu in ezami huma s-segwenti:

"Permission may be granted for the construction of a building (or an extension to an existing building) for the storage of farm machinery and agricultural equipment, provided that all of the following criteria are satisfied:

1. the applicant submits an official statement from the Department of Agriculture stating, to the satisfaction of MEPA, that:

a. the applicant is a farmer, registered as an arable farmer with the Department of Agriculture, operating an officially registered arable farm [...] for at least 2 consecutive years prior to the application;

b. the applicant has a satisfactory history of producing substantial and genuine agricultural crops (including organic crops) for human consumption, or for processing, during the last 2 consecutive years prior to the application;

c. the applicant's registered arable farm occupies a total land area (i.e. arable agricultural land) of at least 5 tumoli in size, [...];

3. no building for storage purposes will be permitted on arable farms [...] of less than 5 tumoli. A storage building with a total floorspace of not more than 15 square metres (measured externally) may be permitted on an arable farm (see criterion 1c of this policy) of between 5 and 10 tumoli; a storage building of not more than 20 square metres (measured externally) may be permitted on an arable farm (see criterion 1c of this policy) of between 10 and 20 tumoli; [...]

4. the proposed development is located on arable land [...] registered in the name of the applicant with the Department of Agriculture, and all of this land [...] is located within a radius of not more than 1 kilometre from the footprint area of the proposed building. No other storage building will be permitted on the applicant's holding within a radius of 1 kilometre from the footprint area of the proposed building;"

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan it-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut ghall-PA 4961/04 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fit-2 t'Awwissu 2005.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal applika rettattivament kondizzjoni procedurali tal-Policy and Design Guidance – Agricultural Farm Diversification and Stables 2007 ghal applikazzjoni li saret qabel l-introduzzjoni tal-policy;
2. It-Tribunal cahad fil-mertu l-applikazzjoni billi l-kobor tal-bini li kien qed jintalab jigi sanat kien ferm aktar minn dak li trid il-ligi u cahad l-appell u ma kkonsidrax li l-appellant kien nehha l-illegalita mhix mitluba ghal sanar u ghalhekk it-Tribunal messu akkorda sanzjonar ghal qies permess skond il-policy;
3. It-Tribunal accetta l-argument tat-Tribunal li l-applikant gia kellu mahzen bil-permess ta' 29 metru kwadru u ma kellux bzonn izjed spazju u ma ndagax dwar il-veracita ta' dan, fejn jirrizulta li dan il-mahzen kien jinsab aktar minn kilometru l-boghod mis-sit mertu tal-applikazzjoni.

L-ewwel aggravju

Jidher prima facie illi t-Tribunal zbalja meta kkonsidra illi l-kundizzjoni li applikant kellu jkun qed jahdem l-minimu ta' art imposta fil-policy tal-2007 mill-anqas sentejn qabel l-applikazzjoni u applikaha kontra l-appellant. It-Tribunal

sostna li l-applikant kellu jkun konformi ma' policy li saret fl-2007 meta l-applikazzjoni saret fl-2006 u ghalhekk il-policy ma kinitx tezisti u l-applikant ma setghax jottempera ruhu maghha. Dan ma jaghmilx sens. Kien ikun legittimu t-Tribunal li jsostni pero li meta giet applikata l-policy fiz-zmien tad-decizjoni l-applikant kellu jkun konformi ma' dik il-policy fl-aspetti kollha taghha biex tigi applikata favorevolment fil-konfront tieghu u dan a bazi tad-duttriina tal-ius superveniens. Fil-fatt mindu dahlet il-policy irrizulta li l-applikant kien jahdem bizzejjed raba biex jikkwalifika sabiex l-applikazzjoni tieghu tigi kunsidrata. Avolja l-Qorti ma taqbilx li t-Tribunal ikkunsidra dan l-aspett legali kif imiss pero t-Tribunal ma bbazax id-decizjoni fuq din il-kwistjoni izda fuq aspetti ohra principalment id-daqs tal-izvilupp li kien qed jigi propost u li kien in kontravvenzjoni tal-policy imsemmija.

Ghalhekk ghalkemm dan l-aggravju ghandu jigi milqugh pero dan hu biss ezercizzju akkamediku mhux tali li jwassal ghar-revoka tad-decizjoni wahdu billi ma kienx il-punt principali li fuqu giet deciza l-kwistjoni tant li t-Tribunal accetta ghal grazzja tal-argument l-konformita tal-applikazzjoni mal-policy tal-2007 u dahal f'aspetti ohra tal-policy.

It-tieni aggravju

Mhux minnu kif jallega l-appellant li t-Tribunal iddecieda li l-appellant ma kienx nehha parti mill-bini illegali sad-data tad-decizjoni u dan hu rifless b'mod car f'pagna 7 tad-decizjoni. Dak li pero sab oggezzjoni ghalih it-Tribunal hu illi l-parti li kienet qed tintalab tigi sanzjonata kienet ferm oltre dak permess mill-istess policy. L-appellant jargomenta illi t-Tribunal kellu ghalhekk japprova s-sanzjonar sa limitu ta' bini permess mill-policy. Din pero mhix punt ta' ligi li fuqha hemm dritt ta' appell izda kwistjoni fattwali ta' planning afdana fid-diskrezzjoni tat-Tribunal. It-Tribunal iddecieda li kif saret it-talba b'binja li tissupera l-arja li tista' tigi ssanata b'aktar minn erba darbiet dak permess mill-policy u b'gholi li wkoll jikkontravvjoni dak li trid il-policy kellu jigi rifjutat. Din id-diskrezzjoni mhix sindakabbli mill-Qorti li ma ghandha

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ebda poter li fuq fatti teknici jew interpretazzjoni tal-policy tordna mod iehor minn dak deciz mit-Tribunal.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju wkoll ma jistax jigi milqugh. L-appellant isostni li t-Tribunal naqas li jivverifika dak li qalet l-Awtorita cioe li l-applikant gia kellu mahzen iehor kopert b'permess u ma kellux bzonn iehor. Jirrizulta mill-atti illi din is-sottomissjoni saret mill-Awtorita u ma gietx kontradetta mill-appellant. In oltre dak li qed isostni l-appellant f'dan l-appell cioe li l-mahzen kopert b'permess hu aktar minn kilometro l-boghod ma tirrizultax mill-atti quddiem it-Tribunal. L-appellant ma jistax f'dan l-appell iqajjem punti ta' fatt li ma gewx dibattuti quddiem it-Tribunal u appartu li bhala fatti din il-Qorti ma ghandhiex tissindaka l-konsiderazzjonijiet tat-Tribunal, ma jirrizultax anqas li dan il-fatt kien zbaljat u li l-fatt zbaljat kien il-fattur determinanti li wasal ghad-decizjoni li jirrendiha unsound u unsafe fil-ligi u kwindi revokabbli ghax manifestament ingusta.

Ghalhekk dan l-aggravju qed jigi michud.

Decide

Ghalhekk filwaqt li l-Qorti qed tilqa' l-ewwel aggravju tal-appellant u tichad it-tnejn l-ohra pero billi l-ewwel aggravju ma biddel xejn sostanzjalment mir-raguni li fuqha giet ibbazata d-decizjoni tat-Tribunal u cioe li s-sanzjonar tal-izvilupp xorta jmur kontra l-policy tal-2007 Design Guidance – Agriculture Farm Diversification and Stables u ghalhekk ma setghax jigi approvat, tichad l-appell ta' Andrew Muscat u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tal-31 ta' Lulju 2012. Bl-ispejjez kontra l-appellant.

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