



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-20 ta' Gunju, 2013

Appell Civili Numru. 30/2012

**Frank Calleja**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' tal-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar tat-30 ta' Marzu 2012 mid-decizjoni tal-Bord tal-Appell dwar l-Ambjent u l-Ippjanar tas-16 ta' Marzu 2012 li laqghet l-appell ta' Frank Calleja in konnessjoni mal-applikazzjoni PA 1221/05;

Rat l-atti inkluz in-noti tal-partijiet.

Rat id-decizjoni tal-Bord tal-Appell li waslet ghal dan l-appell li tghid hekk:

Illi l-aggravji tal-appellant huma s-segwenti:

"This application was approved on 6 March 2008 subject only to a fine of €2,329.37 and submittal of a list of property. These two conditions were accepted and adhered to. In a letter dated 13 June 2008 the DCC requested that we liaise with the MEPA Legal Office so as to comply with a newly surfaced condition regarding any future ownership of the property. On 20 June 2008 the undersigned wrote to the MEPA Legal Office requesting formal documentation regarding this particular condition and how to proceed. No response from the Legal Office was forthcoming. My client is appealing against the legality of this procedure (i.e. the right of the DCC or Legal Office to take such measures) and the condition itself, that impinges on my client's fundamental rights, if the former issue is not upheld.

In a letter dated 26 September 2008 the DCC informed me that contestation of a condition can only be made by submitting a reconsideration. This appeal is being made also against this statement which would presuppose an acknowledgement of the application by the DCC of the condition referred to above, more so considering the strictly legal nature of the case in hand."

L-appellant rega' elabora dwar l-aggravji tieghu f'ittra ppresenatat fis-17 ta' Marzu, 2009 li fiha ssottometta:

"On behalf of my client, Mr. Frankie Calleja, and without prejudice to any of his interests in any future proceedings, I am appealing from the recent decisions taken by the Development Control Commission regarding this application, specifically on 3 points:

#### Reason 1 for Appeal

This application was approved on 6 March 2008 subject only to a fine of €2,329.37 and submittal of a list of property. These two conditions were accepted and adhered to. In a letter dated 13 June 2008 the undersigned wrote to the MEPA Legal Office requesting formal documentation regarding this particular condition

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and how to proceed. No response from the Legal Office was forthcoming. My client is appealing against the legality of this procedure (i.e. the right of the DCC or Legal Office to take such measures).

Reason 2 for Appeal

My client is also appealing against the condition itself, that impinges on my client's fundamental rights, if the former issue is not upheld.

Reason 3 for Appeal

In a letter dated 26 September 2008 the DCC informed me that contestation of a condition can only be made by submitting a reconsideration. This appeal is being made also against this statement which would presuppose an acknowledgement of the application by the DCC of the condition referred to above, more so considering the strictly legal nature of the case in hand.

MEPA Report to Planning Appeals Board dated 3 March 2009

First of all I would like to point out a very misleading statement made in MEPA's report to the Planning Appeals Board. In paragraph 1.0 "The proposal", MEPA state that the 'development is proposing the sanctioning of a new residential building ...'. The application PA 1221/05 was made to sanction a building constructed in 1982 as per PB 2421/82/4886/81. My client has been residing in this house for nearly 25 years, since he was 13 years old. In the 1980's such development permissions were typically used for residences, so much so that a condition in the permit prohibits use for furnished or holiday flats for tourists. The small differences between the originally approved drawings and the existing plans are mainly located at first floor level, which covers only 27 square metres and the internal configuration of the rooms. The footprint is practically identical and covers about 100 square metres well within the limit normally allowed.

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MEPA's only argument is that in December 2007 a policy was introduced informing prospective applicants for residential developments in agricultural settings that they would have to enter into some form of planning obligation to tie the ownership and occupation of the dwelling to the farm. My client submitted his application in 2005 long before this policy, which was a preliminary requirement on application, was introduced and should not therefore be coerced into submission."

Ra r-risposta tal-Awtorita' ippresentata fil-5 ta' Marzu, 2009 li fiha ssottomettiet:

"4.1 It is to be noted that this application was originally recommended for refusal by the Directorate, but this was overturned by the DCC in meeting held on 6th March 2008 wherein the Board decided:

"DCC 33-01A/08 held on 6 March 2008  
Approved 6-0 with the condition that the applicant shall submit a full list of  
property including the glass houses. Reasons for overturning: building existed previously, building does not exceed the 200sqm, minute 66."

Applicant had also submitted a list of registered properties as supplied by the Application Unit (IACS) of the Department of Agriculture. This was received by the Authority on 11 th March 2008

On the 21st April 2008, case was sent back to DCC so that the Board could endorse the inclusion of condition No. 2 vis-a-vis the decision as taken on 6th March 2008. In their reply, the DCC Board on 19th May 2008 stated that 'Condition referred to in the new Farms Policy 2.2B shall apply'. This Policy was already an approved policy in December 2007.

This was conveyed to applicant in letter dated 13th June 2008 wherein applicant was requested to liaise with the MEPA Legal Office so as to comply with Condition 2 that states the following:

"Before the issuing of the permit, the applicant will be required to enter into a planning obligation to tie the ownership and occupation of the dwelling to that of the farm as specified in Condition no. 1 above, so that the residential building is only sold/leased or transferred to a registered full time farmer in conjunction with the cultivated arable land as identified at the time of the issue of the permit for such dwelling and, in that case, the farm continues in operation."

Architect replied in letter dated 20th June 2008 stating that although the only issues which were discussed by the DCC were those regarding a list of properties and another regarding a fine, both of which were complied with, it was requested to inform him how to proceed to comply with this condition.

Fresh submissions were received from architect on 23rd June 2008 which stated that "On behalf of my client, Mr. Frank Calleja, I would like to clarify that the list of registered properties as supplied by the Application Unit (IACS) of the Department of Agriculture forwarded to MEPA earlier in March (and again with this letter), covering 57,000 sq.m. (51.5 tumoli) incorporates approximately 2,900 sq.m. (over 2 tumoli) of greenhouses. These are shown highlighted on the attached site plan (aerial photograph 2004)."

Case was referred back to DCC in view of architect's latest submission and DCC in minute No. 90 and No. 92 dated 27th August 2008 and 24th September 2008 reiterated that 'Permit to be issued as per blue 85' and 'Condition 2 to stand before permit is issued'

In this request for appeal, appellant is now claiming that the DCC did not decide to include such a condition and this particular policy is not relevant to this particular case. In this regard, the Authority disagrees with this statement for two major reasons.

The first being that it is not correct that the DCC did not decide that such a condition is to be imposed in the final permit conditions since the DCC declared more than once that this condition was decided upon by the Board and is to be included in the final permit conditions. The above case history clearly shows that the DCC had without any doubt decided upon the inclusion of such an important condition which is an intrinsic condition whenever new farmhouses are approved in view of the intense agricultural activity of applicants.

As regards to the condition's relevance, appellant's claim is also unfounded since in the PDG - Agriculture, Farm Diversification and Stables, December 2007, Policy 2.2B clearly states that apart from a list of 7 criterion which applicants have to abide to, this policy further states that:

The following occupancy condition will be imposed on any development permission:

'The residential occupation of the property shall be limited to:

1) an arable farmer, registered with the Department of Agriculture, working, or last working before retirement, in the locality, or

2) a widow or widower of such a person, and to any resident dependants'

The applicant will be required to enter into a planning obligation to tie the ownership and occupation of the dwelling to that of the farm, so that the residential building is only sold/leased or transferred to a registered full time farmer in conjunction with the cultivated arable land as identified at the time of the issue of the permit for such dwelling and, in that case, the farm continues in operation.

Conclusively, the Authority states that the reasons for this appeal are unfounded since the facts show that the DCC's decision clearly show that the Board did decide that this intrinsic condition had to be included in this permit and

this condition is also a fundamental element of this particular policy through which genuine farmers are eligible for new farmhouses in ODZ. Its absence is considered to create an unmonitored situation wherein new buildings could easily be erected on false pretensions and later be transferred to non genuine farmers. This issue was thoroughly discussed during the formulation of this policy and its inclusion was one of the major reasons which new farmhouses are still permissible in ODZ area today. In this particular case, the Authority sees no reason why appellant, after submitting the requested list of land which is to justify the new farmhouse, does not fully abide with the policy's requirement and its omission could lead to an undesirable precedent."

Ra n-nota ulterjuri tal-Awtorita' tat-8 ta' Ottubru, 2009 li biha ssottomettiet:

"As regards to the Authority's para 1.0 of the report which refers to this building as 'new', it is to be clarified that the word new is used to differentiate from an 'old' building as existed prior to 1968 and which thus, does not require a planning permission to justify its existence .

Regarding the affidavit of Perit Patrick Calleja, while this includes a list of events which are alleged to being the most relevant to this case, reference is made to the Authority's appeals report where further facts were identified in which it was shown that the DCC had confirmed that the planning obligation formed part of the initial approval by the Board as confirmed by the several DCC's minutes in the PA file under appeal.

The Authority's first appeals report lists the chronology of events in which the DCC emphasised more than once that the Policy 2.2B should be fully adhered to and later, when the formal conditions were formulated and file sent back to DCC, the Board minuted that 'Condition No. 2 is to stand'.

In this case under appeal, in view that applicant had objected to condition no. 2 upon his knowledge of its

inclusion and content, the Directorate had again forwarded file to the Board specifically requesting guidance whether the initial DCC approval decision had in fact included the imposition of a planning obligation in line with condition no. 2. The official reply by the DCC through minutes in file were always in the affirmative and in that the DCC had in fact approved this permit with the inclusion of a planning obligation as required by Policy 2.2B of the PDG - Agriculture, Farm Diversification and Stables, December 2007.

As regards to the last paragraph which stated that since this application was submitted in 2005, such a planning obligation should not be relevant since the cited policy document came into force in December 2007, the Authority states that this Policy Document does not include such an exclusion and when it was formally approved, all pending and new applications submitted to the Authority for assessment were all assessed according to this policy document's provisions and hence, all eventual decisions which related to this policy document had included the relevant 'reasons for refusals' or 'conditions' which reflected the proposed development unacceptability or approved in relation to the provisions of the document as approved in December 2007. The case under appeal, although submitted in 2005 was not decided upon prior to December 2007 and hence, when the DCC eventually decided its final decision on 06.03.08, this decision was taken vis-a-vis this policy document. It thus only logically follows that if policy (2.2B) could eventually accept the sanctioning of this particular building in view of applicant's eligibility, if the same policy request a planning obligation to ensure the genuine justification of a residential building in ODZ, such a condition forms an intrinsic part of that decision and hence cannot be waived off.

Ra l-verbal tal-10 ta' Marzu, 2010 li bih l-appell gie differit ghal decizjoni;

Ra l-atti tal-appell kif ukoll tal-applikazzjoni in kwistjoni u tal-inkartamenti tal-permess PA 5599/00;



Sema' l-partijiet.

Ikkunsidra:

Illi l-appellant qed isostni illi l-Kummissjoni avzatu b'ittra datata 26 ta' Settembru, 2008 li l-kundizzjoni numerata "2" fl-abbozz tal-permess li jinsab a fol Blue 85 tal-inkartament tal-applikazzjoni ma setghetx tigi imposta. Ir-ragunijiet li qed jaghti huma: (i) L-applikazzjoni originarjament giet deciza waqt laqgha tal-Kummissjoni tas-6 ta' Marzu, 2008. Waqt din id-decizjoni l-unika kundizzjonijiet li gew impost kienu multa u l-kundizzjoni li l-appellant jissottometti lista ta' proprjeta. L-appellant isostni illi ladarba ma gietx imposta il-kundizzjoni numru "2" inserita fl-abbozz tal-permess a folio Blue 78 tal-inkartament tal-applikazzjoni, din il-kundizzjoni ma setghetx tigi imposta wara, u li l-permess messu inhareg minghajr tali kundizzjoni. Tabilhaqq isostni l-appellant hu ircieva zewg ittri minghand l-Awtorita datati 20 ta' Marzu, 2008 li jirreferu ghal dawn iz-zewg kundizzjonijiet imma mhux ghall-kundizzjoni in kwistjoni; (ii) L-appellat qed isostni li b'din il-kundizzjoni l-Kummissjoni kienet qed tilledielu d-dritt ta' proprjeta; (iii) illi hu kien gie infurmat illi hu seta' jikkontesta id-decizjoni li tigi inserita dik il-kundizzjoni jekk jitlob rikonsiderazzjoni.

L-Awtorita' qed issostni li ladarba il-kundizzjoni numru "2" fuq imsemmija tohrog mill-paragrafu 2.2A tal-Policy and Design Guidance on Farmhouses and Agricultural Buildings approvat f'Dicembru, 2007 u li kien hemm riferenza ghalha ukoll fir-rapport lill-Kummissjoni a folio Blue 64 tal-inkartament tal-permess, il-kundizzjoni in kwistjoni kienet implicita fid-decizjoni tal-Kummissjoni.

Din il-policy 2.2A taqra hekk:

"Permission may be granted for the erection of a single dwelling unit for an arable full time farmer outside the development boundary (ODZ), provided that all of the following criteria are satisfied:

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(1) The arable cultivated land holding of the applicant is located at least 1 kilometer away from a designated urban area or a rural settlement as defined in a Local Plan;

(2) The applicant is a full time registered farmer, registered as an arable farmer with the Department of Agriculture, who for three consecutive years prior to the application, sold at least Lm10,000 (23,294 euros) worth of produce each year at the official markets and has not already benefited from this policy or from any other decision permitting an ODZ residence;

(3) The applicant's registered arable cultivated land holdings occupy a total land area of at least 30 tumoli in size;

(4) The applicant submits an official statement from a qualified public notary, together with all relevant official documentation and evidence, stating, to the satisfaction of MEPA, that the applicant was not, during the last 10 years prior to the application, the owner of any another dwelling within 1 (one) kilometre of the proposed site;

(5) the proposed dwelling is not located within a scheduled, listed, designated or protected area or site of ecological, scientific, cultural, archaeological or landscape value;

(6) The proposed dwelling is located on the arable land registered in the name of the applicant with the Department of Agriculture, and all the 30 tumoli are located within a radius of not more than 1 kilometer;

(7) The proposed dwelling does not exceed a height of 7 metres measured externally from existing ground level, has a footprint which does not exceed 150 sq.m (measured externally, including any internal courtyards) and a total floorspace of not more than 200 square meters. No recreational facilities or other unrelated structures, such as swimming pools and tennis courts will be permitted. The site should have an existing access to public road network;

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Provided that all conditions of this policy are adhered to, the conversion or redevelopment of existing permitted structures on arable land being farmed by the applicant is preferable to the construction of a new building. The following occupancy condition will be imposed on any development permission:

'The residential occupation of the property shall be limited to:

- 1) an arable farmer, registered with the Department of Agriculture, working, or last working before retirement, in the locality, or
- 2) a widow or widower of such a person, and to any resident dependants'

The applicant will be required to enter into a planning obligation to tie the ownership and occupation of the dwelling to that of the farm, so that the residential building is only sold/leased or transferred to a registered full time farmer in conjunction with the cultivated arable land as identified at the time of the issue of the permit for such dwelling and, in that case, the farm continues in operation.  
"

Dan il-Bord wara li ra bir-reqqa l-inkartamenti tal-appell u tal-applikazzjoni wasal ghal konkluzjoni li bhala stat ta' fatt illi rninkejja dak li ssottomettiet l-Awtorita, meta il-Kummissjoni kienet ddecidiet li tilqa' l-appell u specifikatament imponiet iz-zewg kundizzjonijiet fuq imsemmija hija ma kienet qed tikkunsidra li timponi dik il-kundizzjoni li eventwalment giet avzata lill-appellant bl-ittra tat-13 ta' Gunju, 2008 u eventwalment notifikata lillu bl-ittra tas-26 ta' Settembru, 2008. Di fatti l-ewwel abbozz tal-permess li jinsab a folio Blue 78 tal-inkartament tal-applikazzjoni ma fihijiex tali kundizzjoni. Qari tal-minuti fl-inkartament tal-applikazzjoni bhal per eżempju minute 79 juri bic-car illi l-Area Manager involut, li originarjament kien irediga l-abbozz tal-permess a folio Blue 78 minghajr il-kundizzjoni in kwistjoni, issa kien qieghed jiddubita x'kienet iddecidiet il-Kummissjoni u jaghti zewg

eventwalitajiet. Kien f'minute 80 li hemm riportat li l-Kummissjoni ddecidiet li ddahhal din il-kundizzjoni gdida. Ghalhekk dan il-Bord hu konvint illi f'dawn ic-cirkostanzi meta l-Kummissjoni ddecidiet li jinhareg il-permess fis-6 ta' Marzu, 2008 hija ma kinitx la b'mod esplicitu u lanqas implicitu qed timponi tali kundizzjoni.

L-appellant qed isostni ukoll illi tali obligazzjoni imposta mill-kundizzjoni in kwistjoni tilledi d-drittijiet tal-proprejta tieghu. Din mhijiex normalment materja li tista' tigi investigata minn dan il-Bord. Imma dan il-Bord ma jistax ma jinnotax illi meta l-Kap. 356 fl-40 jirreferi ghal "Planning obligations" jipprovdi kif gej:

"40. (1) Obligazzjoni dwar l-ippjanar tista' ssir f'dawk il-kazijiet fejn l-Awtorita, meta tigi biex taghti permess ghall-izvilupp, taghzel li timponi fuq l-applikant ghall-permess ghall-izvilupp obligazzjoni –

(a) biex jaghmel xoghlijiet –

(i) fl-art li dwarha qed jintalab permess ghall-izvilupp, jew

(ii) f'xi art ohra, jew

(iii) fl-art imsemmija fiz-zewg sub paragrafi (i) u (ii) ta' dan il-paragrafu; jew

(b) biex jaghmel xi pagament jew jaghti xi dritt jew beneficcju estraneju fejn l-Awtorita tikkonsidra li jkun fl-interess ta' l-ippjanar xieraq taz-zona. L-Awtorita ghandha tizgura li tottjeni dawn il-beneficcji jew gwadanji permezz ta' kondizzjonijiet li jigu inkluzi f'permess ghall-izvilupp jew permezz ta' obligazzjoni dwar l-ippjanar li ghandha ssir b'kuntratt pubbliku maghmul bejn l-applikant ghall-permess ghall-izvilupp ma' l-Awtorita.

(2) Kull persuna interessata f'art tista', bi ftehim ma' l-Awtorita', tidhol f'obligazzjoni dwar l-ippjanar -

(a) li tirrestringi l-izvilupp jew l-uzu ta' dik l-art b'xi mod li jista' jigi specificat;

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(b) li titlob operazzjonijiet jew attivitajiet specifici li ghandhom isiru, fi, fuq, taht jew fuq dik l-art;

(c) li titlob li dik l-art tintuza' b'xi mod li jista' jigi specificat; jew

(d) li titlob soma jew somom li ghandhom jithallsu lill-Awtorita f'data jew dati specifika jew perjodikament."

Fil-Kap. 504 li ha post il-Kap. 356 dwar l-istess materja hemm pprovdut fl-Artiklu 76 kif gej:

"76. (1) Obbligazzjoni dwar l-ambjent u l-ippjanar tista' ssir dawk il-kazijiet meta l-Awtorita, meta tigi biex tohrog licenza jew permess ghall-izvilupp, taghzel li timponi fuq l-applikant xi obbligazzjonijiet:

(a) biex jaghmel attivita' jew xoghlijiet

(i) fl-art li dwarha qed jintalab permess ghall-izvilupp, jew

(ii) f'xi art jew zoni ohra, jew

(iii) fl-art jew zoni msemmija fiz-zewg sub paragrafi (i) u (ii); jew

(b) biex jaghmel xi pagament jew jaghti xi dritt jew beneficcju estranju fejn l-Awtorita tikkunsidra li jkun aktar xieraq. L-Awtorita ghandha tizgura li tottjeni dawn il-beneficcji jew gwadanji permezz ta' kondizzjonijiet li jigu inkluzi f'licenzja jew f'permess ghall-izvilupp jew permezz ta' obbligazzjoni dwar l-ambjent u l-ippjanar li ghandha ssir b'kuntratt pubbliku maghmul bejn l-applikant ghall-licenza jew permess ghall-izvilupp mal-Awtorita.

(2) Kull persuna, bi ftehim ma' l-Awtorita, tidhol f'obbligazzjoni dwar l-ambjent u l-ippjanar:

(a) li tirrestringi l-izvilupp jew l-uzu ta' dik l-art b'xi mod li jista' jigi specificat;

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(b) li titlob operazzjonijiet jew attivitajiet specifici li ghandhom isiru, fi, fuq, taht jew fuq dik l-art jew zona;

(c) li titlob li dik l-art jew zona tintuza' b'xi mod li jista' jigi specificat; jew

(d) li titlob somma jew somom li ghandhom jithallsu lill-Awtoria f'data jew dati specifika jew perjodikament."

Minn qari akkurat ta' dawn iz-zewg disposizzjonijiet tal-Kap. 356 u tal-Kap. 504 jidher car illi l-obbligazzjonijiet li l-Awtortia tista' timponi skond l-att principali ma jinkludux limitu ghad-dritt ta' bejgh ta' proprjeta. Ghalhekk il-policy 2.2A in kwantu tindika illi "The applicant will be required to enter into a planning obligation to tie the ownership and occupation of the dwelling to that of the farm, so that the residential building is only sold/leased or transferred to a registered full time farmer in conjunction with the cultivated arable land as identified at the time of the issue of the permit for such dwelling and, in that case, the farm continues in operation" hija ultra vires ghax tmur oltre dak li l-artikli fuq imsemmija tal-Kap. 356 u Kap. 504 jipprovdu.

Ghalhekk dan il-Bord jidhiru illi l-Kummissjoni messa harget il-permess skond il-kundizzjonijiet li hemm imnizzla fid-dokument a fol Blue 78 tal-inkartament tal-applikazzjoni, originarjament redatt mis-Senior Planning Officer Jeffrey Vella.

Ghal dawn ir-ragunijiet il-Bord jilqa' l-appell tal-appellant, jirrevoka t-talba tal-Kummissjoni ossia tal-Awtorita li biha talbet lill-appellant jaghmel l-obbligazzjoni msemmija fl-ittra tal-Kummissjoni tat-13 ta' Gunju, 2008 iffirmata minn Marlene Attard u d-decizjoni tal-Kummissjoni kif kontenuta fl-ittra tas-26 ta' Settembru, 2008, u tordna lis-Segretarja tal-Kummissjoni tal-Ambjent u l-Ippjanar tohrog il-permess lill-appellant skond l-applikazzjoni tal-appellant li ggib in-numru PA 1221/05 u skond il-pjanti gja approvati mill-Kummissjoni (u cioe Site plan a folio Red IC, Block plan a folio Red 53K u pjanti a folio IE) u u dan biss bil-kundizzjonijiet elenkati fid-dokument li jinsab a folio Blue 78 tal-inkartament tal-applikazzjoni PA 1221/05.

## **Ikkunsidrat**

- L-Awtorita qed tilmenta minn din id-decizjoni in kwantu
1. Il-kondizzjoni numru 2 imposta fl-abbozz ghal hrug tal-permess temani minn Policy and Design Guidance on Farmhouses and Agricultural Buildings approvat f'Dicembru 2001 liema kondizzjoni kienet implicita fid-decizjoni tad-Development Control Commission ghal hrug tal-permess u kwindi d-decizjoni tal-Bord li jordna l-hrug tal-permess minghajr din il-kondizzjoni hi applikazzjoni hazina tal-ligi, aktar u aktar meta hu obbligu legali skond l-artikolu 69 tal-Kap. 504 li jigu applikati l-policies vigenti fi zmien li jinhareg il-permess.
  2. In-nullita tad-decizjoni tal-Bord meta ppronunzjat ruhha dwar punt ta' natura kostituzzjonali u cioe jekk l-kondizzjoni kinitx tilledi d-dritt ta' proprjeta tal-appellat.
  3. Interpretazzjoni zbaljata tal-ligi mill-Bord meta ddecieda illi l-policy msemmija hi ultra vires ghax tmur kontra dak li jghidu l-artikolu 40 tal-Kap. 356 jew l-artikolu 76 tal-Kap. 506.

L-appellat irrisponda li t-Tribunal ikkunsidra illi la darba l-Kummissjoni kienet iddisponiet mill-kwistjoni billi ordnat li jinhareg il-permess lill-applikant ai termini tal-kondizzjonijiet elenkati fl-istess decizjoni tas-6 ta' Marzu 2008 ma kienx lecitu ghall-Awtorita li timponi kondizzjoni ohra meta din ma kinitx esplicitament jew implicitament inkluzo fl-istess decizjoni.

Inoltre kull Awtorita f'Malta hi obbligata tosserva l-Kostituzzjoni u drittijiet fundamentali u hu korrett li fl-interpretazzjoni tal-ligijiet li jigi osservat dak li hu permissibli fil-kamp tad-drittijiet fundamentali biex jasal ghal interpretazzjoni korretta tal-ligi minghajr ma jkun qed jinvadi l-gurisdizzjoni tal-Qorti idonea biex jigu trattati kwistjonijiet kostituzzjonali. L-appellat isostni li meta l-Awtorita imponiet il-kondizzjoni marret ultra vires il-ligi billi l-Awtorita kienet qed tirrestringi t-trasferiment tal-proprjeta mhux l-uzu taghha.

## **Konsiderazzjonijiet tal-Qorti**

Dan l-appell jittratta kwistjonijiet delikati. L-ewwel kwistjoni hi dwar dak li ddecidiet id-Development Control Commission fir-rigward ta' din l-applikazzjoni. Il-file relevanti hu dak tal-Awtorita li hu l-perm tal-ewwel aggravju mqajjem. Il-Bord tal-Appelli ddecieda illi dak deciz mid-Development Control Commission fis-6 ta' Marzu 2008 rabat lill-Awtorita u l-Awtorita ma kellha ebda jedd timponi kondizzjoni li ma tohrogx implicitament jew esplicitament mid-decizjoni tad-Development Control Commission tas-6 ta' Marzu 2008, intqal x'intqal wara mill-istess Kummissjoni.

Il-Qorti tqis dan bhala punt ta' dritt li minnu hu lecitu li jsir appell. Il-Qorti taqbel mal-pronuncjazzjoni skjetta li ghamel il-Bord tal-Appell dwar il-poteri tal-Kummissjoni u l-obbligi taghha u konsegwentement kif u safejn id-decizjonijiet taghha jorbtu lil Awtorita.

Fis-6 ta' Marzu 2008 il-Kummissjoni ghall-Kontroll tal-Izvilupp approvat permess b'zewg kundizzjonijiet cari u specifici, wahda ta' hlas ta' multa u l-ohra ghal lista tal-proprijeta ezistenti fuq is-sit. Ma imponiet ebda kondizzjoni ohra. Ma rabtet ebda wahda minn dawn il-kundizzjonijiet ma xi obbligu iehor. Aktar minn hekk id-decizjoni ma kinitx wahda provizorja jew kundizzjonata u ghalhekk baghtet lura d-decizjoni lill-Awtorita ghal aktar informazzjoni jew investigazzjoni qabel taghti decizjoni finali.

F'dawn ic-cirkostanzi l-Awtorita ma setghetx timponi hi kundizzjoni li l-Kummissjoni ghall-Kontroll tal-Izvilupp maghruf bhala DCC ma imponiex. Aktar u aktar id-DCC ma kellu ebda jedd ibiddel, jemenda, izid jew inaqqs dak li kien ordna u rabat bih lill-applikant u l-Awtorita.

Hu pacifiku illi d-DCC hu l-id eżekuttiva tal-Awtorita u ghandha l-jedd li tiddeciedi billi tichad jew tapprova permessi fuq kull materja hlief daww specikament afdati lill-Awtorita skond l-Istrument ta' Delega tal-Awtorita mahrug fl-1997. Il-Kummissjoni hi marbuta b'dak li tiddeciedi u ma ghanhiex il-jedd li wara hrug ta' permess bil-kundizzjonijiet minnha imposti jew rifjut ta' permess



ikollha ripensament u zzid kundizzjonijiet ohra, aktar u aktar meta dawn il-kundizzjonijiet ikunu qed jigu avvanzati mill-Awtorita nfisha minghajr ma jidher li dan intalab jew seta' jigi dezunt minn xi kundizzjoni imposta mill-Kummissjoni. Jekk il-Kummissjoni riedet timponi l-kundizzjoni li ddahlet wara mill-istess Kummissjoni dan setghet taghmlu liberament hi fl-ghoti tal-permess fis-6 ta' Marzu 2008 kif kellha kull dirt li taghmel izda mhux li zzid kundizzjoni li qatt ma giet imposta fil-hrug tal-permess originali. Il-Policy and Design Guidance on Farmhouses and Agricultural Buildings kien maghruf ghal Kummissjoni u setghet applikatu fil-parti rilevanti tieghu meta tat id-decizjoni izda la darba tat id-decizjoni kif tatha rabtet lil partijiet u lilha nfisha ma' dak li ddecidiet.

Ghalhekk dan l-aggravju qed jigi michud.

In kwantu ghat-tieni u tielet aggravju tal-Awtorita jidher prima facie li hemm diskrepanzi bejn dak li jghidu l-Kap. 356 u 504 fl-artikolu 40 u 76 rispettivament dwar planning obligations dwar l-uzu tal-art ma' dak li jstipula qua planning obligations l-paragrafu 2.2A tal-Policy and Design Guidance on Farmhouses and Agricultural Buildings approvat fl-2007 fejn hemm stipulati anki restrizzjoni fuq kif u safejn jista' jsir trasferiment tal-art u abitazzjoni in kwistjoni.

Dak li pero jinteressa lil din il-Qorti hu jekk il-Bord tal-Appell kellux il-poter li jidhol f'din il-kwistjoni billi si strata ta' kwistjonijiet ta' natura kostituzzjonali dwar id-dritt u liberta tal-proprjeta u di piu li jiddikjara illi policy hi ultra vires ghax tmur kontra l-Kap. 356 jew 504.

Il-Qorti tqis li dawn il-kwistjonijiet ma kinux ta' kompetenza tal-Bord kif lanqas huma ta' kompetenza ta' din il-Qorti bil-poter limitat taghha li tirrevedi biss kwistjonijiet ta' ligi mqajma u decizi mill-Bord tal-Appelli. Dak li ddecieda l-Bord ma kienux kwistjonijiet legali relatati ma applikazzjoni ta' zvilupp izda kwistjonijiet ta'drittijiet tal-bniedem li ghandhom jigu processati fis-sede idonea u hemm biss. Inoltre kwistjonijiet ta' jekk policy hix ultra vires xi ligi wkoll taqa' fil-mansjonijiet tal-Qrati ordinarji

mhux ta' ebda Bord u anqas ta' din il-Qorti. Il-policy tikkostitwixxi provediment jew regola li jrid jigi applikat kif jistipula l-artikolu 33 tal-Kap. 356 illum 69 tal-Kap. 504 u ghalhekk jikkreja obbligu legali fuq l-enti awtorizzata tapplikah fl-ambitu ta' applikazzjoni ta' zvilupp. Jekk hemm konflitt car u manifest mhux kompitu tal-Bord li jiddeciedih hu. Il-Bord qieghed hemm biex jezamina u japplika l-ligijiet, pjanijiet, u policies fid-dawl tal-kaz partikolari quddiemu u jieqaf hemm. Kwistjonijiet ohra bhal dawn in ezami ghandhom jittiehdu mill-parti interessata quddiem il-forum li ghandu s-setgha jiddeciedihom.

Ghalhekk dawn l-aggravi qed jigu milqugha.

### **Decide**

Ghalhekk il-Qorti qed tilqa' l-aggravju tal-Awtorita illi l-Bord ippekka meta dahal fil-kwistjoni dwar il-validita kostituzzjonali tal-policy in kwistjoni jew jekk din il-policy jew senjatament il-parti dwar ir-restrizzjoni ta' trasferiment hix ultra vires il-poteri tal-Awtorita moghtija bil-Kapitoli 356 u 504 pero tichad l-appell tal-Awtorita in kwantu d-decizjoni tal-Bord ta' Appell fil-mertu fil-fehma ta' din il-Qorti hi gusta u kwindi qed tigi konfermata d-decizjoni tal-Bord tal-Appell dwar l-Ambjent u l-lppjanar tas-16 ta' Marzu 2012 li biha approvat il-hrug tal-permess PA 1221/05 bil-kundizzjonijiet kif imsemmija mill-istess Bord tal-Appell fid-decizjoni tieghu. Spejjez ghall-appellanti.

**< Sentenza Finali >**

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