



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tas-27 ta' Gunju, 2013

Appell Civili Numru. 29/2012

Carmelo Camilleri

vs

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

Il-Qorti,

Rat ir-rikors tal-appell tal-Awtorita ta' Malta dwar L-Ambjent u l-Ippjanar tat-30 ta' Marzu 2012 kontra d-decizjoni tal-Bord tal-Appell dwar l-Ippjanar tas-16 ta' Marzu 2012 fejn laqa' l-applikazzjoni PA 8075/94;

Rat ir-risposta ta' Carmelo Camilleri li ssottometta li l-appell ghandu jigi michud u d-decizjoni tal-Bord tigi konfermata;

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

Rat id-decizjoni tal-Bord li tghid hekk:

Illi r-ragunijiet ghar-rifjut tal-permess huma is-segwenti:

"1. The site lies in an outside development zone. 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 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 outside development zone 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

3. The site lies outside the limits for development defined in the Temporary Provisions scheme for Wardija I/o St. Paul's Bay, and so it is located in an area which it is proposed should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside.

4. 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.";

Ra illi l-aggravji tal-appellant fil-qosor hu li is-sit huwa infill site u li jinstab bejn zewg siti li huma zviluppanti;

Illi ghalhekk il-kwistjoni hija jekk f'area li teknikament hija zona barra l-izvilupp jistax jigi permess li jsir l-izvilupp mertu tal-applikazzjoni li jikkonsisti f'bungalow u basement. Prima facie il-policy applikabbli ghal sit li jinsab

f'zona ta' konservazzjoni rurali hija dik RCO 2 li tipprovdi hekk:

"POLICY RCO 2: Within Rural Conservation Areas and in accordance with Policy SET 11 no form of urban development will be allowed. However, in accordance with Policy BEN 5, applications for permission to develop structures or facilities essential to agricultural, ecological, or scenic interests will be favourably considered as long as the proposed development does not infringe the principles set out in Policy RCO 4 as subsequently detailed in the relevant Local Plan (Policy RCO 3). See also Policies RCO 7 and 8. With regard to existing buildings and other structures in Rural Conservation Areas, and other rural areas, the overall aim is to improve the rural environment. To this end the rehabilitation and suitable change of use of some buildings will be permitted, in conjunction with the removal of other buildings and structures which adversely affect the rural environment."

F'dan it-tip ta' zona "the Planning Authority's general strategy is to both protect and enhance areas of scenic value". Ghalhekk il-pjan ta' struttura jipprovdi f'policy RCO 4

"POLICY RCO 4: The Planning Authority will not permit the development of

any structure or activity which in the view of the Authority would adversely affect scenic value because it would:

1. Break a presently undisturbed skyline
2. Visually dominate or disrupt its surroundings because of its mass or location
3. Obstruct a pleasant and particularly a panoramic view
4. Adversely affect any element of the visual composition - for example, cause the destruction or deterioration of traditional random stone walls
5. Adversely affect existing trees or shrubs
6. Introduce alien forms, materials, textures, or colours".

Policy BEN 5 tipprovdi kif gej:-

"POLICY BEN 5: Applications for development permits outside urban areas will be judged against the policies and design guidelines of the Local Plans for Rural Conservation Areas, and in the interim period, to Structure Plan policies and the guidelines contained in the Explanatory Memorandum."

Dan il-Bord jidhirli li f'dan il-kaz ghandha a tenir tal-Artiklu 69 tal-Kap.504 tittiehed in konsiderazzjoni ukoll "kull haga ohra ta' sustanza, komprizi konsiderazzjonijiet ambjentali, estetici" li jkollhom rilevanza.

L-ewwel haga li dan il-Bord seta' jikkonstata kien illi is-sit fejn qed jigi propost l-izvilupp, ghalkemm teknikament fzona ta' barra l-izvilupp, fir-realta' hija plot ta' art li hija mdawra bi plots zviluppati. Dan il-Bord ikkonstatah personalment meta sar l-access, kif ukoll mir-ritratti esibiti fosthom dawk mmarkati CC1, CC2 u CC3. L-istess jidher car rnir-ritratti li jinsabu fl-inkartament tal-applikazzjoni (a folio Red 2F). Wahda minn dawn il-plots zviluppati hija dik meritu tal-permess PAPB 3114/85, li tappartjeni lill-oggezzjonant Joseph Zammit. Din il-plot zviluppata ghandha hajt twil tulha kollu mikxuf. Il-plot l-ohra hija dik li kienet meritu tal-permess mahrug fil-11 ta' Gunju, 2008 lil Sammy Cremona wara applikazzjoni bin-numru PA 6982/06. Dan il-permess kien ghal sanzjonar ta' swimming pool, u biex dan jidher gustifikat l-applikazzjoni talbet ukoll illi taht is-"swimming pool deck" jintuza bhala store agrikolu. Intalbu wkoll li tinbena kamra ghall-ghasir taz-zebbug. Meta inhareg il-permess dan gie mmotivat mill-Kummissjoni li approvat il-permess a bazi li l-izvilupp kien "cottage industry", u dan peress illi tali industrija tehtieg swimming pool, li bil-fors ikollha swimming pool deck. Oltre dawn iz-zewg zviluppi li jmissu fuq naha u fuq ohra is-sit in kwistjoni l-area hija ukoll karatterizza sta minn bini iehor ta' natura residenzjali, jew kummercjali.

Ghalhekk dan il-Bord meta jqis ic-cirkostanzi kollha, jara li fir-rejalta' s-sit jinsab f'post li ghandu minn kollox hlief karatteristici tipici ta' zona ta' konservazzjoni rurali, u dana l-fatt il-Bord ma jistax jinjarah jekk irid jiehu in

konsiderazzjoni kull haga materjali jew ta' sustanza. Ghalhekk ladarba l-area hija compromessa dan il-Bord iqis illi l-izvilupp propost mill-appellant huwa tabilhaqq metodu ta' kif jintela sit li tassew huwa "infill site", kif qed isostni l-appellant u tali konsiderazzjoni ghalhekk tiggustifika dipartizzjoni mill-policy BEN 05 li hija biss teknikament applikabbli, imma li tenut in konsiderazzjoni ic-cirkostanzi kollha mhux ragjonevoli li tkun applikabbli u li tigi applikata. Inoltre bl-izvilupp propost mill-appellant, l-area u l-ambjenti jigu meljorati estetikament.

Il-Bord innota ukoll illi is-sit ma ghandu ebda valur xeniku li ghandu jigi protett, haga li l-policy RC04 hija intiza li tipprotegi. Ghalhekk lanqas ma hemm raguni l-ghaliex din il-policy ghandha tigi applikata.

Ghal dawn ir-ragunji il-Bord jilqa' l-appell tal-appellant, jirrevoka r-rifjut ghall-hrug tal-permess mitlub mill-appellant liema rifjut gie notifikat lill-appellant b'ittra datata 26 ta' Settembru, 1995, u jordna lis-Segretarja tal-Kummissjoni tal-Ambjent u l-Ippjanar tohrog il-permess ta' zvilupp kif mitlub mill-appellant fl-applikazzjoni tieghu.

Ikkunsidrat

L-aggravju tal-Awtorita hu illi l-Bord tal-Appell laqa' l-appell ta' Carmelo Camilleri u bbaza d-decizjoni tieghu fuq pjanta differenti minn dik sottomessa u giet kunsidrata mid-DCC meta ghamlet id-decizjoni taghha. Kwindi s-sit li fuqu ddecieda l-Bord hu differenti minn dak li ddecieda d-DCC bi ksur tad-dritt tal-Awtorita li taghmel ebda prova jew sottomissjoni fuq is-sit li fuqu ddecieda l-Bord.

Jirrizulta mill-atti u senjatament mill-verbal quddiem il-Bord tat-28 ta' Novembru 2007 (fol. 66 tal-process) illi l-appellant stess ikkonferma quddiem il-Bord illi "in vista tal-fatt li gie rilevati li bi zvista s-sit indikat fl-applikazzjoni originali kien zbaljat u s-sit rilevanti ghal din l-applikazzjoni kellu jkun dak muri fil-pjanta li ghamel referenza ghaliha Red 17 fil-file PA 8075/94, l-applikant jitlob li l-applikazzjoni tittiehed li tirrigwarda dan l-ahhar sit ..."

Kopja Informali ta' Sentenza

Il-Qorti tqis li rinfaccjata b'dan it-talba dak li kellu jaghmel il-Bord hu illi jivverifika l-validita tad-decizjoni tad-DCC billi l-atti ma jurux fuq liema pjanta ddecieda d-DCC, kienet x'kienet id-decizjoni u l-motivazzjoni billi kull dikjarazzjoni tad-DCC kienet bilfors tirreferi ghal sit partikolari ghax hu fuq siti specifici li jinhargu jew jigu rifjutati applikazzjoni ta' zvilupp.

Il-Qorti tara ferm stramb kif il-Bord tal-Appell seta' jisma' u jiddeciedi fuq kwistjoni dwar sit-specificu meta d-DCC ma jirrizultax, almenu mill-atti quddiem din il-Qorti, li tat decizjoni fuq dak is-sit.

Zbalji ta' din il-portata ma jistghux jigu sanati, kif ipprova jaghmel il-Bord ghal speditezza u konvenjenza billi jiehu fuqu l-vessti tad-DCC u l-appell fl-istess hin ghax dak li fil-fatt ghamel. In fatti l-atti juru illi l-pjanta korretta giet ripublikata mal-applikazzjoni qisha xi applikazzjoni gdida u l-process baqa' ghaddej quddiem il-Bord tal-Appell.

Hu minnu li l-Awtorita wkoll baqghet ghaddejja bil-proceduri quddiem il-Bord minghajr ma jirrizulta xi lment formali dwar il-mod ta' kondotta tal-proceduri quddiem il-Bord pero ghalkemm dan kollu seta' jigi evitat li kieku l-Awtorita agixxiet tempestivament, il-kwistjoni quddiem il-Qorti hi wahda li ma tistax tigi injorata jew sorvolata.

Il-konsegwenzi li din il-Qorti tinjora dan in-nuqqas serju procedurali jista' jaghti lok ghal abbuz. Il-fatt li applikazzjoni tista' tghaddi minn tlett stadji, cioe mill-Awtorita jew DCC ghal rifjut jew konferma, rikonsiderazzjoni, u finalment appell mid-decizjoni quddiem il-Bord jew it-Tribunal huma intizi biex jigi salvagwardati d-drittijiet tal-partijiet u terzi billi jkun hemm l-opportunita ta' indirizz tal-lanjanzi f'diversi stadji. Din mhix xi procedura rinunzjabbli jew addattabli skond ic-cirkostanzi izda mandatarja bil-ligi.

Hu minnu illi l-partijiet kellhom dritt jaghmlu l-argumenti taghhom quddiem il-Bord rigward is-sotituzzjoni tal-pjanta tas-sit u kif din setghet taffettwa l-hrug jew cahda tal-permess izda ma jbidel xejn mill-fatti illi d-decizjoni tal-

Kopja Informali ta' Sentenza

Bord ma kellha ebda rimedju kif kien ikollha li kieku d-decizjoni ttiehdet mill-Awtorita jew DCC skond il-kaz fejn hemm id-dritt tad-doppio esame. Id-dritt ta' appell ristrett quddiem din il-Qorti mhix sostitut ghas-salvagwardja li trid il-ligi.

Il-Qorti mhix qed tidhol fid-drittijiet ta' terzi lil jistghu jigu pregudikati serjament bl-atteggjament legger tal-Bord f'din ic-cirkostanza.

L-obbligu tal-Bord tal-Appell rinfaccjat b'sitwazzjoni simili kien li jirrimetti l-atti lid-DCC biex il-proceduri jibdew mill-gdid u mhux jibqa' ghaddej bil-proceduri ta' appell rigwardanti sit dikjaratament differenti minn dik li dwaru saret l-applikazzjoni, kienu x'kienu s-similitaritajiet taz-zewg siti u l-genwinita o meno tal-izball.

Decide

Ghalhekk il-Qorti qed tilqa' l-appell, tannulla d-decizjoni tal-Bord tal-Appell dwar l-Ippjanar tas-16 ta' Marzu 2012 u tirrinvoja l-atti lura quddiem it-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar biex jidderigi ruhu in linea ma' din id-decizjoni. Spejjez jibqghu bla taxxa fic-cirkostanzi.

< Sentenza Finali >

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