MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF
MARK CHETCUTI

Seduta ta' l-1 ta' Awwissu, 2013

Appell Civili Numru. 64/2012

Michael Farrugia

vs

L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar u l-kjamat in kawza Charles Camilleri

Il-Qorti,

Rat ir-rikors tal-appell ta' Michael Farrugia tat-18 ta' April 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 dwar il-hrug ta' permess numru PA 1315/10 ghal outline development permission ta' basement garages and overlying dwellings fi Triq Annetto Caruana, Mqabba;

Rat ir-risposta tal-Awtorita u ta' Charles Camilleri bhala kjamat fil-kawza li fil-mertu ssottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

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

B'applikazzjoni pprezentata fil-25 ta' Marzu 2010, Outline Development Permission PA 1315/10, l-applikant Charles Camilleri talab dwar plots 25-29 Triq Annetto Caruana Mqabba, ghall-'basement garages and overlying dwellings". Mill-PA file 1315/10, jirrizulta li l-appellant oggezzjona ghall-izvilupp propost b'ittra tal-konsulent legali tieghu Dottor Tanya Sciberras Camilleri tat-28 ta' April 2010, registrata ghand l-Awtorita' fit-3 ta' Mejju 2010.

L-applikazzjoni giet milqugha, u l-permess igib id-data 21 ta' Ottubru 2010, li nghata bil-kundizzjonijiet segwenti:

"1. a. No works shall commence on site until full development permission has been granted for the development.

b. Detailed layout plans, elevations, and sections should be submitted for the approval of the Malta Environment & Planning Authority within five years of the date of this permission.

c. Unless otherwise specified, the proposal in the Full Developoment application shall be in conformity with the Local Plan provisiions for the sie, and with the Policy & Design Guidance applicable at the time of the submission.

d. It should be noted that a third party may have the right of appeal against this permission. This permission may be revoked by the Planning Appeals Board or quashed by the Court of Appeal.

e. This outline development permission does not remove or replace the need to obtain the consent of the land/building owner to this devleopment. Furthermore, it does not imply that consent will necessarily be forthcomming nor does it bind the land/building owner to

agree to this development. Where the land/buiding is owned or administered by the Government of Malta a specific clearance and agreement must be obtained for this devleopment from the Land and/or Estate Management Departments.

f. In the full development application, the height of the proposed building should not exceed the height of three (3) floors (and basement), with an overall external height of not more than 12.90 metres measured from street level (or as per Local Plan provisions at the time of the application).

g. In the full development application, the balcony projections shall not exceed 0.6m in line with Policy & Design Guidance policy 7.2

h. A block-plan showing the location and species of any existing trees, as well as any rubble walls on site, shall be submitted as part of the Full development application.

i. The full development application shall be subject to clearance from Enemalta.

2. This Development Permission is being granted saving third-party rights and without prejudice to the pending third-party appeal and/or to Development Permission PA 6593/04."

Fl-appell taghhom il-konsulenti ta' l-appellant Mikiel Farrugia ghamlu s-sottomissjonijiet segwenti:

"Nikteb fuq inkarigu ta' Mikiel Farrugia li jirrisjedi 49, Triq San Pietru u San Pawl, Mqabba sabiex nappella mill-permess tal-21 ta' Ottubru 2010 li nghata favur Charles Camilleri ta' 'Juliana', Lapsi Street, San Giljan, fir-rigward tas-sit Plots 25-29, Triq Annetto Caruana, Mqabba ghas-segwenti zvilupp:

Basement garages and overlying dwellings

Il-klijent tieghi huwa parti interessata skond il-ligi, stante illi huwa jgawdi l-art mertu ta’ din l-applikazzjoni b’titolu ta’ qbiela u fuqha jmexxi razzett tal-baqar.

Ir-razzett tal-klijent tieghi ilu ezistenti ghal madwar mitt sena u tinsab rikonoxxuta bhala attivita legittima tant illi ricentement, gie approvat il-permess PA 6593/04 favur il-klijent tieghi sabiex isir zvilupp iehor fuq parti mis-sit in kwistjoni konsistenti minn manure clamp. Tali zvilupp sar fuq insistenza tal-awtoritajiet veterinarji stess bhala accessorju ghall-izvilupp tat-trobbija tal-baqar, u sabiex l-istess razzett ikun konformi mal-Avviz Legali 343/2001 u Avviz Legali 139/2002 li jimplimenta n-Nitrates Directive tal-Unjoni Ewropea.

Jigi sottomess illi, in segwitu ghall-ahhar decizjoni tal-Kummissjoni ghall-Kontroll tal-Izvilupp fejn din tal-ahhar approvat il-permess PA 6593/04, l-Awtorita’ illum tinsab kommessa sabiex tipprotegi l-amenity tal-area illi llum jinsab stabbilit u committed ghal skop agrikolu u ghat-trobbija tal-annimali u mhux ghal skop residenzjali, kif qieghed jintalab in forza ta’ din l-applikazzjoni.

Meta kienet giet ipprocessata PA 6593/04, l-awtoritajiet ikkonsultati u cioe l-Malta Resources Authority, id-Dipartiment tas-Sahha Pubblika u l-Food and Veterinary Regulation Division ma sabu ebda oggezzjoni ghall-izvilupp propost. Oltre dan, Godfrey Camilleri , ufficcjal tad-Dipartiment tal-Agrikoltura, irrakkomanda l-izvilupp tal-manure clamp billi, skond hu, " ... this development will help to move the animal husbandry away from the adjacent dwellings whilst reducing pollution and odours".

Huwa kontrosens illi l-Awtorita tapprova tibdiliet u zidied ghal razzett ghat-trobbija tal- annimali sabiex l-irwejjah u l-inkonvenjent jonqsu u ftit zmien wara, tapprova wkoll zvilupp residenzjali fuq l-istess sit li ovvjament qed tohloq inkonvenjent hi stess! Tali proposta llum tmur kontra kull logika jew regola tal-ippjanar u certament, il-prossimita ta' zvilupp residenzjali ghall-istess razzett ma jistax ma jkunx sors ta' inkonvenjent kbir lill-eventwali residenti.

Ghaldaqstant, u billi r-razzett tratta ta' built environment ezistenti, jigi sottomess illi 1-izvilupp propost ghandu jigi rifjutat billi jmur kontra s-segwenti policies tal-Pjan ta' Struttura u cjoe:

POLICY BEN 1: Development will not normally be permitted if the proposal is likely to have a deleterious impact on existing or planned adjacent uses because of visual intrusion, noise, vibration, atmospheric pollution, unusually high traffic generation, unusual operating times, or any other characteristic which in the opinion of the Planning Authority would constitute bad neighbourliness.

POLICY BEN 2: Development will not normally be permitted if, in the opinion of the Planning Authority, it is incompatible with the good urban design, natural heritage, and environmental characteristics of existing or planned adjacent uses, and is unlikely to maintain the good visual integrity of the area in which it is located. There will be a presumption against development which does not generally observe the design guidelines issued by the Planning Authority for built-up areas.

Fit-tieni lok, l-art in kwistjoni hija art saqwi, u dana kif ikkonfermat mid-Dipartiment tal-Agrikoltura fl-ittra li kopja taghha qed tigi hawn annessa u mmarkata Dokument "A" Ghalhekk, ghandu jkun hemm prezunzjoni kontra l-izvilupp residenzjali propost, peress illi, jekk jinghata, tkun qed tintilef darba ghal dejjem medda art illi hija prezzjuza u utili mil-lat agrikolu u qed tintuza ghal skopijiet agrikoli sal-lum. L-art hija definita bhala Area of Agricultural Value skond il-policy RCO 1 tal-Pian ta' Struttura li tiddefinixxi tali zona bhala "areas comprised of high grade agricultural land including irrigated and partially irrigated land"

L-applikant jissottometti illi l-izvilupp propost imur kontra l-Public Health Act billi 1-izvilupp jista' jkun ta' pregudizzju ghas-sahha fizika u mentali tal-eventwali residenti, u jmur ukoll kontra l-policies tal-ippjanar tal-MEPA li jistipulaw distanza minima bejn razzett u zvilupp residenzjali Ii f'dan il-kaz, certament mhuwiex qieghed rispettat.

Finalment, jigi sottomess ukoll illi, in forza ta' sentenza tal-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) tat-23 ta' Marzu 2010 fl-ismijiet "Carmel u Mary Vella vs Kummissarju tal-Pulizija, l-Avukat Generali, l-Awtorita ta' Malta dwar l-Ambjent u 1-Ippjanar, il-Ministru ta' l-Affarijiet Rurali u l-Ambjent u l-Ministru ghar-Rizorsi u 1-Infrastruttura", gie deciz illi l-bdil ta' policies matul is-snin li wasslu sabiex l-izvilupp residenzjali wasal qrib razzett ezistenti tal-majjali fl-Imqabba (bil-kosegwenza illi l-istess farm spicca sors ta' irwejjah u hsejjes) kien jilledi d-drittijiet fundamentali ta' min kien imexxi l-istess razzett. Fis-sentenza taghha, il-Oorti, li sabet illi l-azzjoni tal-awtoritajiet kienet tilledi d-dritt fundamentali tar-rikorrenti illi jgawdu r-razzett taghhom, qalet hekk:

"Il-Qorti tifhem sewwa I-implikazzjonijiet tad-decizjoni oderjna, anke min-naha tal-lat uman. Tifhem sewwa lin-nies li joqghodu vicin tar-razzett u li jinsabu sewwa mdejqin mill-Irwejjah, hsejjes ecc li razzett jista' jkun konsegwenza tieghu meta jinsab fost l-abitat. Izda kull min jaqra din is-sentenza ghandlu l-obbligu wkoll li japprezza sewwa l-pozizzjoni tar-rikorrenti li kellhom razzett f'idejhom u qed jaghmlu l-mestier taghhom meta razzett kien iI-boghod mill-abitat u meta kawza ta' l-agir ta' terzi huma spiccaw imdawrin b'diversi residenzi li gew warajhom u li issa qed jilmentaw mill-prezenza u x-xoghol taghhom. Hija iebsa li wiehed jasal ghall-konkluzzjoni li ghax jersaq lejk haddiehor ikollok titlaq int u thalli warajk l-possedimenti li kellek anke jekk dawn jikkonsistu fi tmexxija ta' razzett. Certament li ma jaghmilx nozzjoni ta' gustizzja li l-agir to' terzi jwassal ghall-hsara ta' l-individwu li kellu tgawdija precedenti.

Il-Qorti hija tal-fehma li l-awtoritajiet koncernati kellhom l-obbligu li jaraw l-iskop tar-razzett meta taw il-permess f’distanzi verament qosra b'mod li stranament ir-rikorrenti spicca misjub hati meta dan kellu l-permessi ..... (sottolinear tieghi)

Ghaldaqstant u bil-prezenti, l-applikant jissottometti illi l-approvazzjoni tal-applikazzjoni odjerna, jekk tinghata, tista' tilledi d-drittijiet fundamentali tieghu u ghalhekk, u bil-

prezenti, qieghed jirrizerva d-drittijiet kollha tieghu fir-rigward tal-MEPA f'tali eventwalita."

Fir-risposta tieghu l-Avukat Dottor John Refalo ghall-applikant Charles Camilleri ssottometta kif gej:-

"Illi din hija risposta ghal appell ipprezentat minn Michael Farrugia kontra l-hrug tal-permess in-numru ta' liema jinsab hawn fuq riprodott;

Jinghad qabel xejn li l-mertu ta' dan l-appell huwa identiku ghall-mertu ta' diversi appelli gia pendenti quddiem dan l-Onorabbli Bord tal-Appell u kwindi l-appell odjern ghandu jinstema kontestwalment mal-Appelli msemmija. Il-kumpanija attrici ottjeniet permessi mill-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar sabiex jizviluppaw l-istess fi djar residenzjali, liema permessi jgibu n-numru PA 749/03, PA 754/03, PA 758/03, PA 750/03, PA 756/03, PA 760/03, PA 751/03, PA 759/03, PA 755/03, PA 757/03, PA 752/03 u PA 753/03 u bdew ukoll proceduri quddiem il-Bord dwar il-Kontroll tal-Kiri tar-Raba ghar-ripreza tal-istess art (rikors numru 3/2006);

Illi ghall-kjarezza u sabiex ma jinheliex hin f'nota u risposti bla bzonn jigi ndikat li r-ragunijiet kollha migjuba mill-appellanti fil-permessi PA 749/03, PA 754/03, PA 758/03, PA 750/03, PA 756/03, PA 760/03, PA 751/03, PA 759/03, PA 755/03, PA 757/03, PA 752/03 u PA 753/03 ghandhom japplikaw mutatis mutandis wkoll ghal dan l-appell.

Illi ghandu jirrizulta minn dawn il-proceduri li l-allegazzjonijiet tar-rikorrenti huma manifestament zbaljati. Fl-ewwel lok jirrizulta li l-appellant innifsu ghandu strutturi li ma humiex koperti bil-permess u fil-fatt estenda razzett illegalment. Il-fatti minnu dikjarati in konnessjoni mal-pretiza okkupazzjoni tal-art in kwistjoni huma qarrieqa u dan kif ser jigi ppruvat waqt is-smiegh tal-kawza. Accertat dan l-appellant ma jista' jkollu ebda dritt jew aspettattiva legittima li ghandha tigi mharsa mill-Bord ta' l-Appell bil-mod li gie minnu indikat. Fi kwalsiasi kaz ic-cirkostanzi tal-kawza Vella vs. Kummissarju tal-Pulizija huma

kompletament differenti minn dawk li ghandu quddiemu l-Bord illum u ma jistghux joholqu precedent f'dan is-sens.

Jirrizulta li z-zona in kwistjoni hi indikata fuq il-pjanti kollha tal-izvilupp bhala zona residenzjali u ghalhekk il-permessi hargu konformament maz-zoning rilevanti. L-appellanta ghandha dritt tizviluppa l-propjeta taghha skond iz-zoning applikabbli."

L-Awtorita fir-rapport taghha ipprezentat fit-28 ta' Gunju 2011 ikkummentat kif gej:

""1.0 Introduction

1.1 This is a Third Party Appeal against the approval of a renewal of various development permissions issued for the construction of residential development and ancillary garages. The appeal refers to permission issued on 12 separate sites, however which are located adjacent and within close vicinity to each other. Permission issued for these applications all consist of outline development consent, with the exception of PA 0753/03 and PA 0758/03 for which full development permission has been issued.

1.2 The following is a list of the permits issued and their relative renewals (in italics):

PA 0749/03 (PAB 65/05) ; PA 1321/10 (PAB 322/10)	– Mr. Antonio Ganado; Garages & overlying dwellings (23 garages & 15 residential units)
PA 0750/03 (PAB 62/05); PA 1315/10 (PAB 314/10)	– Mr. Antonio Ganado; Garages & overlying dwellings (18 garages & 18 residential units)
PA 0751/03 (PAB 84/05); PA 1136/10 (PAB 310/10)	– Mr. Antonio Ganado; Garages & overlying dwellings (8 garages & 6 residential units)
PA 0752/03 (PAB 71/08); PA 1324/10 (permit not yet issued; hence no appeal yet)	- Ms. Maria Paris; 1 Terraced House plus garage
PA 0753/03(PAB70/08);	– Ms. Maria Paris; Two

PA 1320/10 (PAB 304/10)	Maisonettes (2 residential units)
PA 0754/03 (PAB 63/05); PA 1316/10 (PAB 316/10)	– Mr. Antonio Ganado; Garages & overlying dwellings (18 garages & 15 residential units)
PA 755/03 (PAB 68/08); PA 1317/10 (PAB 318/10)	- Ms. Maria Paris; Garages and overlying dwellings (5 garages and 5 dwellings)
PA 0756/03 (PAB 64/05); PA 1318/10 (PAB 320/10)	– Ms. Maria Paris; Garages & overlying dwellings (10 garages & 9 residential units)
PA 0757/03 (PAB 69/08); PA 1323/10 (PAB 306/10)	- Ms. Maria Paris; Ground floor garage and overlying dwelling (1 garage and 1 terraced house).
PA 0758/03(PAB385/05); PA 1323/10 (PAB 308/10)	– Mr. Antonio Ganado; Two Maisonettes (2 residential units)
PA 0759/03 (PAB 61/05); PA 1314/10 (PAB 312/10)	– Ms. Maria Paris; Garages & overlying dwellings (25 garages & 15 residential units)
PA 0760/03 (PAB 66/05); PA 1325/10 (PAB 102/11)	– Mr. Antonio Ganado; Garages & overlying dwellings (17 garages & 15 residential units)

1.3 The sites subject to appeal forms part of a larger stretch of arable land fronting on Triq L-Ahwa Ghigo, which land is located within the limits of development boundary at Mqabba. According to the South Malta Local Plan the site is located within a Residential Area and with height limitation set to 3 floors plus semi-basement.

2.0 Comments on Appellant's Arguments

2.1 The applications subject to this appeal have been issued development consent as the sites for development are located within the Temporary Provision Scheme boundary identified for Mqabba, and the nature of the proposed developments comply with the zoning designations for these sites, i.e. terraced house development. Notwithstanding this, an objector to the issuance of permission has filed an appeal for these applications, with the main grounds for appeal consisting of the following:

a) The sites are used for agricultural purposes, which include irrigated agricultural land and an animal farm;
b) A total of 12 separate applications have been submitted, and this has not enabled a comprehensive assessment of the developments and their impact on the surrounding streetscape;
c) The development of these sites should have been subject to an EIA.

2.2 Present Use of the Site for Agricultural Purposes

The area of land applied for development through these applications include the appellant's animal husbandry farm, and agricultural land cultivated by the appellant for several years. Notwithstanding this, this area of land has been schemed for terraced house development since 1988 in accordance with TPS 68, while the South Local Plan issued for public consultation retains this area with such zoning conditions. In view of this, the issuing of development permission for the construction of residential development is justified as the developments comply with the zoning conditions for each site, and as permitted by the provisions of Structure Plan policy SET 8.

Furthermore, although the Department of Agriculture have indicated that the area of land is intensively used for agricultural purposes and the land is registered as irrigated, this same Department has also indicated that the land has been recently registered as irrigated land with the use of an unregistered borehole. Moreover, the retention of an animal husbandry farm on this land is not justified, as Structure Plan policy AHF 9 encourages the relocation of livestock units from existing and committed urban areas to more suitable sites where the impacts generated by such activities may be minimised. In fact, paragraph 1.9.1(c) requires that animal husbandry farms are distant by at least 200m from urban areas.

2.3 Comprehensive Assessment of Applications

The appellant is also stating that MEPA has not adequately assessed the proposed development in terms

of the impact that may be created on the streetscape of the area. The appellant further states that these applications should have been assessed in a holistic and comprehensive manner, rather than each of the 12 applications being assessed on its own merits. Notwithstanding this, the appellant has only appealed against 8 of the submitted applications, whereas a total of 12 development permission applications were submitted in the area. This does not offer a comprehensive assessment of the developments proposed in the area for the Planning Appeals Board.

However, it is also to be pointed out that when a decision was issued for these applications, the DCC was aware that several development permission applications were submitted in the area, as highlighted by the Planning Directorate in the DPA Report. Hence, a comprehensive assessment was enabled, notwithstanding the fact that 12 separate applications were submitted instead of a single application. Furthermore, the consequence of these 12 separate applications would result in the same impact on the streetscape if the land was sold to third parties, parcelled into plots, and each individual plot owner applied for their own development permission. Such practices are common forms of development in the Maltese Islands, and there appears to be no form of evidence that indicate that the development of parcels of land has resulted in negative visual impacts on a particular streetscape.

2.4 Requirement of an EIA

The appellant is also claiming that an EIA should have been requested for these applications prior to issuing an approval. L.N. 204 of 2001 ‘Environment Impact Assessment Regulations, 2001’ list the procedures and categories of development that require the preparation of an Environment Impact Statement (EIS) or an Environment Planning Statement (EPS). According to Schedule 1, Section 3 – Land Use & Built Development Projects, none of the applications subject to this appeal qualify for the preparation of either an EIS or and EPS.

Even if all the 12 applications submitted in the area were considered as a single development, an EIS or an EPS would not be required according to the provisions of Schedule 1, Section 3. Therefore, the appellant's argument that and EIA should have been requested is unfounded.

Ikkunsidra ulterjorment:

Irrizulta mill-provi li l-appellant Mikiel Farrugia ghandu razzett propju fl-istess sit fejn inghata l-permess ghall-zvilupp residenzjali, li fih irabbli l-annimali u jahdem ir-raba. Dan ilu jsir minnu stess ghal cirka 45 sena, u qablu minn antenati fil-familja tieghu. L-attivita tar-razzett hi rikonoxxjuta mid-Dipartiment ta' l-Agrikoltura, u dipartimenti ohra fosthom l-Food and Veterinary Regulation Division.

L-appellant applika biex jaghmel addizzjonijiet u estensjonijiet fir-razzett tieghu, PA 6593/04, pero' din l-applikazzjoni giet milqugha limitatament ghall-kostruzzjoni ta' 'Manure clamp'. Dan iffisser li filwaqt li l-Awtorita' tirrikonoxxi l-ezistenza legittima tar-razzett, ma gietx milqugha t-talba biex din l-attivita' tizdied, izda giet milqugha biss, biex tigi assikurata izjed igene, u kontroll ahjar ta' dawk l-elementi li jikkostitwixxu inkonvenjent f'area residenzjali.

Dan il-permess limitat favur l-appellant, ma jfissirx li z-zona hi wahda rurali u agrikola. Iz-zoning tal-area gie stabbilit mit-Temporary Provisions Schemes tal-1988; gie hekk indikat fis-South Malta Local Plan meta hareg ghall-konsultazzjoni pubblika, u definitivament ikkonfermat bil-pubblikazzjoni tal-Pjani Lokali f'Lulju 2006.

Ma irrizultax li l-appellant oggezzjona ghaz-zoning propost, la fil-1988, meta saru t-Temporary Provisions Schemes, u l-anqas meta hareg ghall-konsultazzjoni pubblika s-South Malta Local Plan eventwalment finalizzat u ppubblikat f'Lulju 2006.

L-appellant naturalment jhossu gustifikat jopponi ghall-izvilupp residenzjali propost; billi zvilupp residenzjali hu irrikonciljabbli mal-attivita’ rurali tar-razzett; li kien legittimament jopera qabel ma gie stabbilit z-zoning residenzjali.

Mill-banda l-ohra l-Awtorita’ u l-applikant jikkontendu li l-permess kontestat, u ohrajn fl-istess lokalita’ inghataw billi huma konformi maz-zoning residenzjali tal-area.

L-applikazzjonijiet ghall-izvilupp jigu kkunsidrati u determinati skond dak elenkat fl-Artikolu 33 tal-Kap. 356, illum l-Artikolu 69 tal-Kap 504; cjoe l-Pjan ta’ Struttura, pjanti, policies, konsiderazzjonijiet materjali fosthom dawk ambjentali, estetici u sanitarji; l-permess infatti, inghata billi z-zoning hu wiehed residenzjali.

Il-permessi jinghataw fuq konsiderazzjonijiet ta’ ippjanar, u minghajr pregudizzju ghad-drittijiet civili ta’ terzi. Indubbjament bejn il-partijiet, l-applikant u l-appellant hemm kwistjonijiet li huma prettament legali, u ghalhekk m’humiex fil-kompetenza ta’ dan it-Tribunal izda tal-Qrati.

Fir-risposta tal-applikant, in fatti gie ddikjarat li ttiehdu proceduri fil-Bord dwar l-Kontroll tal-Kiri tar-Raba ghar-ripresa tal-istess art mill-poter tal-appellant Rikors Numru 3/06GG.

Hemm kontestazzjoni bejn il-partijiet jekk r-raba hux baghli jew saqwi; l-propjetarji jallegaw li jekk ir-raba sar saqwi dan sar illegalment, u mhux bil-permess taghhom. Kwistjonijiet ohra, fosthom jekk l-appellant kisirx xi kondizzjoni tal-kirja originali, billi skond l-propjetarji l-kirja kienet biex tinhadem r-raba u mhux biex isir razzett ghat-trobbija tal-annimali, huma wkoll fil-kompetenza esklussiva tal-Qrati, u baqghu impregudikati billi l-permessi jinghataw minghajr pregudizzju ghad-drittijiet civili ta’ terzi.

Kif intqal f’kazijiet ohra appell minn terz ghall-permess moghti skond iz-zoning ufficjali ma jistax jservi u mhux l-istrument adattat biex jinbiddel iz-zoning stabbilit.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma l-permess tal-21 ta' Ottubru 2010 tal-applikazzjoni PA 1315/10 mahrug favur l-applikant Charles Camilleri, salvi u impregudikati d-drittijiet civili tal-appellant.

Ikkunsidrat

L-aggravji tal-appellant fil-mertu huma s-segwenti:

1. Id-decizjoni tat-Tribunal mhix soddisfacentement motivata billi illimita ruhu ghaz-zoning taz-zona in kwistjoni u ma qies l-aggravji tal-appellant;
2. It-Tribunal naqas li japplika l-policies relevanti ghal kaz, liema policies gew indikati mill-istess appellant;
3. L-applikazzjoni kellha tigi michuda ghax intavola diversi applikazzjonijiet fuq l-istess art biex jiskapula obbligazzjonijiet li kienu jkunu inkombenti fuqu ta' Environment Impact Assessemnt skond Avviz Legali 114/2007 li kieku tressqet applikazzjoni wahda dwar l-izvilupp shih.

Qabel xejn il-Qorti tirreleva illi l-atti tal-appelli kollha tal-appellant Michael Farrugia fuq l-art mertu ta' dawn l-appelli huma applikabbli mutatis mutandis.

L-ewwel aggravju

Dan l-aggravju jimmerita konsiderazzjoni peress illi t-Tribunal ghandu mhux biss jiddeciedi l-vertenza pero irid jaghti ragunijiet ghaliex qed jiddeciedi bil-mod kif issostni u wkoll billi jezmina u jevalwa l-ilmenti tal-appellant fil-kuntest ta' dak deciz. Tajjeb kemm hu tajjeb ir-ragunament tat-Tribunal irid jaghti aditu ghal lanjanzi sostantivi tal-appellant u jaghti ragunijiet ghalfejn dawn ma jisthoqqilhomx jigu milqugha fid-dawl ta' dak deciz. Mhux necessarju li t-Tribunal jinvestiga kull sottomissjoni li ssir min appellant izda aggravji, li jekk fondati, jistghu ibiddlu d-direzzjoni ta' vertenza, iridu jigi konsidrati u tinghata raguni ghaliex qed jigu skartati.

Hu lampanti minn ezami ta’ din id-decizjoni illi t-Tribunal strah esklussivament fuq iz-zoning tas-sit mertu tal-applikazzjoni. Bla dubbju t-Tribunal kien legalment korrett illi z-zona kienet intiza ghal bini skond l-outline application li saret pero dan ma kienx l-ispirtu tal-appell tal-appellant. Hu ma hux jikkontesta z-zoning, haga li difficilment jaghmel meta dan hu l-istat fattwali u legali pertinenti tas-sit in kwistjoni. Pero l-appellant talab lil Bord li jqis jekk l-ghoti tal-permess hux gustifikat jew gustifikabbli in vista ta’ policies ohra, fl-opinjoni tieghu, daqstant rilevanti ghal protezzjoni tal-appellant fuq art li fiha ilu jrabbi l-annimali, cioe art agrikola, ghal ghexiren ta’ snin u l-impatt u konsegwenzi li jistghu jinsorgu mill-hrug tal-permess minghajr ma jigu konsidrati jekk l-aggravji tal-appellant ghandhomx fundament fil-ligi li jistghu irazznu l-hrug tal-permess tal-bini. Dak li l-appellant kien qed itlob effettivament hu li t-Tribunal jaghmel ezami komparattiv ta’ policies applikabbli u jiddeciedi x’japplika ghal kaz jew x’ghandu jipprevali fic-cirkostanzi.

B’dankollu irid jirrizulta illi l-appellant kien irrefera ghal policies li dehrlu li kienu applikabbli ghal kaz u mhux jistenna lit-Tribunal li jiddezumihom hu jew li aggravju maghmul b’mod generiku dwar policies applikabbli jigu imlahhma mit-Tribunal.

F’dan il-kaz l-appell innifsu kien wiehed generiku u l-aggravju kien fis-sen li l-applikazzjoni ma tikkonformax ruhha mal-ligi u li l-kundiserazzjonijiet tad-Dipartiment tal-Agrikoltura ma nghatawx debita importanza; u wkoll illi ma ttiehidx kont tal-effett tal-izvilupp fuq l-istreetscape, u l-krejazzjoni ta’ toroq fuq art agrikola saqwi u rilokazzjoni ta’ razzett minhabba t-toroq krejati.

Pero harsa lejn in-noti ta’ sottomissjonijiet tal-appellant senjatament dik prezentata fis-16 ta’ Ottubru 2006 juri illi l-appellant semma diversi policies u argumenti relatati senjatament policy BEN 1 u BEN 2, RLO 1 u l-konformita mal-policy AHF 9 dwar ir-rilokazzjoni ta’ rziezet gia ezistenti fejn art issir zviluppabbli u hi anqas minn mitejn metru mill-irziezet u r-Rural Strategy Topic Paper – Policy 7.6.1. rigward art ta’ valur agrikolu.

L-appellanti talbu li t-Tribunal jikkonsidra dawn il-policies ghal fatti quddiemu, fost affarijiet ohra u kien il-kompitu tat-Tribunal li rinfaccjat b'dawn il-kwistjonijiet li jaqghu pjanament fil-kompitu tieghu kien obbligat taht l-artikolu 69(1) u 69(2) tal-Kap. 504 li jikkunsidrahom u b'mod dettaljat u studjat jilqa' jew jiskarta argument minn iehor u jispjega ghaliex policy ghandha tipprevali fuq ohra jew wahda tigi skartata favur ohra.

Dan mhux kaz fejn policy hi kjarament inapplikabbli jew bla ebda relevanza avolja anki hawn, la darba tigi mressqa mill-appellant bhala sottomissjoni favur it-tezi tieghu, it-Tribunal obbligat jaghti sodisfazzjon ghaliex mhix applikabbli.

F'dan il-kaz taqra kemm taqra d-decizjoni tat-Tribunal ma nghatat ebda gustifikazzjoni sodisfacenti fil-ligi ghaliex s-sottomissjonijiet tal-appellant ibbazati fuq policies specifici kienu qed jigu rigettati a favur tal-argument uniku tat-Tribunal li z-zoning tal-art jippermetti l-permess tal-bini minghajr ma kkonsidra ebda kwistjoni ohra mqajma. Il-fatt li semmihom, u mbaghad u jiddeciedi minghajr ma kkummenta dwar il-validita o meno taghhom fil-kuntest tal-applikazzjoni ma jekwivalix ghal gustifikazzjoni ragonevoli ghad-decizjoni. Id-diskrezzjoni tat-Tribunal hi ampja pero mhix arbitrarja u trid tissodisfa l-elementi bazilari tac-certezza legali tal-gudikat ghal partijiet.

Ghalhekk dan l-aggravju qed jigi milqugh.

It-tieni aggravju

Dan l-aggravju hu subordinat ghall-ewwel aggravju pero ma fihx mertu per se billi kieku t-Tribunal ikkonsidra l-policies li rrefera ghalihom l-appellant u skartahom ghar-ragunijiet konsidrati tieghu, ma kienx ikun hemm lok ta' appell billi hawn si tratta ta' evalwazzjoni u apprezzament ta' fatti, u l-applikazzjoni tal-policies li fil-fehma tat-Tribunal kellhom jipprovdu tenut kont tal-fattispecie tal-kaz. Dan hu kompitu li jaqa' fid-diskrezzjoni tat-Tribunal munit bl-esperjenza teknika li jevalwa u jiddeciedi dawn il-

kwistjonijiet ta' planning u li dwarhom din il-Qorti ma ghandhiex tinterferixxi. Fi kliem iehor dan l-aggravju mehud fl-isfond ta' dak li qed jinghad lanqas kien jikkwalifika bhala punt ta' ligi appellabbli. Kif intqal f-ewwel aggravju l-Qorti taqbel mal-appellant li t-Tribunal naqas li jikkonsidra l-policies msemmija mill-appellant u jasal ghal konkluzzjonijiet tiehu pero l-Qorti ma tistax taqbel mal-appellant la darba konsidrati kienu bil-fors iwasslu ghal-konkluzjoni li t-Tribunal naqas li japplikahom. Jekk humiex applikabbli jew le jaqa' fil-mansjoni tat-Tribunal li din il-Qorti ma tistax tissostitwixxi ruhha floku f'dak li hu applikabbli o meno qua policies.

Ghalhekk kif impostat dan l-aggravju ma jistax jigi milqugh peress li t-Tribunal naqas li jikkonsidrahom u wara dan l-ezami jara hux applikabbli o meno.

It-tielet aggravju

Dan l-aggravju msemmi fl-appell tal-appellanti, u dibattut mill-partijiet hu punt legali li kellu jigi investigat mit-Tribunal u jekk jikkunsidrah bla mertu, jichdu. Izda ma kellux id-dritt li jinjorah ghax jekk l-appellant kellu raguni legalment fondata fuq din il-kwistjoni, cioe li ma kellhomx isiru diversi applikazzjonijiet fuq l-istess mertu ta' zvilupp izda wahda holistika u kwindi per necessita kien ikun obbligatorju Environment Impact Assessement, allura l-fondament tad-decizjoni tal-Bord kienet tkun zbaljata u t-Tribunal kien ikun obbligat jannula d-decizjoni ta' approvazzjoni ghax nieqsa minn rekwizit essenzjali ghal valutazzjoni kompleta tal-applikazzjoni ta' zvilupp. Dan pero gie totalment injorat mit-Tribunal u ghalhekk tonqos ic-certezza tal-gudizzju necessarja fil-konfront tal-partijiet. It-Tribunal lanqas jaccenna ghal dan l-aggravju u jonjorah kompletament li essendo aggravju sostanzjalment rilevanti ghall-ezitu tal-kaz kollu kellu jigi trattat u jekk jinsab mhux floku, jigi michud izda mhux skartat bla ebda raguni.

Ghalhekk dan l-aggravju qed jigi milqugh.

Decide

Ghalhekk il-Qorti taqta’ u tiddeciedi billi tilqa’ l-appell ta’ Michael Farrugia, u tirrevoka decizjoni tat-Tribunal ta’ Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta’ Marzu 2012 u tirrinvija l-atti lura lit-Tribunal biex jerga’ jisma’ l-kaz skond il-ligi. Bl-ispejjez kontra l-appellati.

< Sentenza Finali >

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