



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta ta' l-1 ta' Awwissu, 2013

Appell Civili Numru. 63/2012

**Maria Paris u Antonio Ganado et**

**vs**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u  
l-kjamat in kawza Michael Farrugia**

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Maria Paris, Antonio Ganado u Camcass Limited tat-18 ta' April 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 fejn gie approvat in parte permess ta' zvilupp biex jsir manure clamp PA 6593/04;

Rat ir-risposta ta' Michael Farrugia u tal-Awtorita li sottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal tigi konfermata;

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

Kopja Informali ta' Sentenza

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

B'applikazzjoni pprezentata fis-17 ta' Novembru 2004, full development permission PA 6593/04, l-applikant Michael Farrugia fis-sit 44, St. Peter & St. Paul, Parish Street, Mqabba, ppropona zvilupp ta' "Alterations and extension to existing cow shed, and proposed construction of concrete roof over existing cow shed and proposed manure clamp to comply with LN 343/2001 and 139/2002".

L-applikazzjoni giet parzjalment milqugha bil-permess tat-23 ta' Settembru 2008 – Red 95 fil-file PA 6593/04 bil-kundizzjonijiet segwenti:

"1. This permit is limited solely to the construction of a manure clamp.

2(a) Before the development covered by this permit is brought into operation, applicant shall obtain a waste management permit from the Environment Protection Directorate (EPD) of the Authority. The terms of this development permit are strictly without prejudice to any further measures as may be required by the waste management permit or as part of the waste management permitting process, including waste management plans as may be deemed appropriate by the EPD.

(b) Wherever any such measures would entail any physical changes to approved buildings or structures (including, but not limited to: manure clamps, cesspits, reservoirs, infrastructure/sewerage connections, hard surfacing, access routes, hard or soft landscaping, planting, boundary walls, terracing), these changes shall require a new or amended development permit in line with current policies and regulations.

3a) All works shall be carried out strictly in accordance with the approved plans and the conditions of this permission. Where a matter is not specified on the plans then the conditions of this permission and of Development

Control Policy and Design Guidance shall take precedence and modify the plans accordingly.

b) Before any part of the development hereby permitted commences, the enclosed green copy of the Development Permit shall be displayed on the site. This must be mounted on a notice board, suitably protected from the weather and located not more than 2 metres above ground level at a point on the site boundary where it is clearly visible and can be easily read from the street. The copy of the permit must be maintained in a good condition and it shall remain displayed on the site until the works are complete.

c) No building material, waste material, machinery or plant shall obstruct the pavement or the smooth flow of traffic on the road in the vicinity of the site. The deposit of materials or the placing of equipment in the street must be authorised.

d) Copies of all approved plans and elevations must be available for inspection on site by Malta Environment & Planning Authority staff at all reasonable times.

e) All building works shall be erected in accordance with the official alignment and proposed/existing finished road levels as set out on site by the Malta Environment & Planning Authority's Land Surveyor. The Setting Out Request Notice must be returned to the Land Survey Unit of the Malta Environment & Planning Authority when the setting out of the alignment and levels is required.

f) Where the street bordering the site is unopened or unformed, it shall be opened up and brought up to its proper and approved formation levels prior to the commencement of the building operations hereby permitted.

g) This development permission is valid for a period of FIVE YEARS from the date of this notice but will cease to be valid if the development is not completed by the end of this five year period.

h) The enclosed Commencement Notice shall be returned to the Malta Environment & Planning Authority so that it is received at least five days prior to the commencement of the development hereby permitted.

i) It should be noted that a third party may have the right of appeal against this permission. Any development which is carried out when such an appeal has been made, or until the time limit for the submission of such an appeal has expired, is undertaken at the risk that this permission may be revoked by the Planning Appeals Board or quashed by the Court of Appeal.

j) The permit is issued on condition that, where applicable, any excavation shall be subject to the requirements of the Civil Code regarding neighbouring tenements.

k) Where applicable, the development, hereby permitted, shall be carried out in accordance with the provisions of the Environmental Management Construction Site Regulations, LN 295 of 2007.

l) This permission relates only to the additions and alterations specifically indicated on the approved drawings. This permission does not sanction any illegal development that may exist on the site."

Should the site fall within areas designated as HOS and property originating from the Housing Authority, this permit does not exonerate the applicant from obtaining the necessary clearances from the same Authority.

This permit is granted saving third party rights, the applicant is not excused from obtaining any other permission required by law. The applicant should contact the following regarding the location and provision of services prior to commencing development:- Ememalta, Water Services Corporation, Maltacom, Drainage Department and Melita Cable."

Fl-appell tieghu l-Prof. Ian Refalo għall-objectors Maria Paris Antonio Ganado u l-Ko-propjetarji l-oħra ssottometta kif gejj:

“This is the appeal by the objectors Maria Paris, Antonio Ganado and all the other owners of the site in question and any successors in title, from the decision of the Development Control Commission to grant planning permission to Mr. Michael Farrugia to make alteration and extension to existing cow shed, proposed construction of concrete roof over existing cow shed, and proposed manure clamp in the site 44, St. Peter and St. Paul, Triq il-Parrocca, Mqabba. My clients are registered objectors and are appealing from the issue of the said permit which has been notified to them recently. The appellants are the successors in title to the land in question and maintained in front of the DCC the objections initially entered to this development by the owners of the land. They file this appeal both in their own names and in that of the objecting owners of the land.

My clients reason for appealing is that the decision taken is wrong in law and in fact does not respect obtaining policies in relation to the area nor does it respect the general policies applicable to the suggested development. Without prejudice to the generality of this statement it is to be pointed out as follows:

1. The directorate had initially recommended a refusal to permission; this recommendation mysteriously subsequently turned into a recommendation for approval. This is strange as between both dates there was no change either to the condition of the site or to the policies applicable. The proper attitude should have been to continue to maintain the suggested refusal.

2. The area in question is earmarked as residential and it is strange that a cow farm with accompanying smells and risks to health should be allowed to develop in the middle of what is earmarked as a residential area. The residential scope of the area should have militated clearly against any further development of the area for farming and

animal husbandry purposed as these are in direct conflict and would create risks and bad neighbourliness to development in the vicinity.

3. What is perhaps incredible is that the Planning Authority has already issued valid permits for the development of the same area into residential units. If the new permit implicitly revokes the preexisting permit then it is not in accordance with the law because the power to revoke a permit in the planning authority is strictly limited by law. If it does not revoke the previous permit then clearly the two permits cannot stand as valid together as they are allowing different developments on the same land.

4. The applicant is moreover already in breach of planning laws in the sens that the present development is not in line with existing regulations. Moreover the planning policies already referred to in detail in front of the Control Commission should have made it imperative on the Commission to refuse permission and not to grant it.

5. Moreover the owners were objecting at all times to this development and this objection was maintained by the present owners and appellants. The issue of the permit is therefore in breach of the right of the owner to control development on his land and the application is wrong at law.”

Fir-rapport taghha l-Awtorita ikkummentat kif gej:-

“1.0 Introduction – Proposed Development & Site Context

1.1 This is a Third Party Appeal against the approval of works in relation to an existing cow farm. While the description of the proposal indicates that the works shall include alterations and extensions, the approved drawings and conditions in the permit indicate that approved works were limited solely to the construction of a manure clamp (vide approved drawings PA6593/04/41A/72B/72D. A Waste Management Plan was also approved as part of the permit, which included details of waste management

practices and infrastructure that was to be adopted on site.

1.2 The site for development is located within the development zone boundary of Mqabba, and consists of the applicant's residence which fronts Triq il-Parrocca and an existing cow farm within the grounds of the back garden of the residence. The site covers an extension area of land, amounting to approximately 12,800m<sup>2</sup>.

1.3 Part of the site's occupation by the applicant falls under the ownership of third parties, who have obtained permits for the construction of part of this land into residential units. The applications in which permits have been issued for residential development are subject to third party appeals, which appeals were filed by the applicant of this present application\*.

## 2.0 Decision by the Malta Environment & Planning Authority

2.1 The application originally included the construction of a manure clamp, alterations and an extension to the existing cow shed/yard, as well as the roofing over of three open yards. The Planning Directorate had recommended a refusal to this proposal on the grounds that the proposal would entail an intensification of the current animal rearing use, which would go against the provisions of Structure plan policy AHF 9 as the existing farm is located within the development zone boundary. Policy AHF 9 encourages the relocation of animal husbandry farms located within the development zone boundary to other more appropriate sites, so as to ameliorate the conflicts between animal husbandry and residential uses. The DCC agreed with this recommendation in their decision of 3rd May, 2007.

2.2 A reconsideration was registered against this refusal decision, which included a revised proposal limiting the proposed works solely to a waste management strategy and the construction of a manure clamp. As the proposal was limited solely to the upgrading of the existing farm,

without any extensions or intensification of the animal count licensed on site, the DCC approved the proposal on 16th June 2008. The approval notice was issued on 23rd September 2008, and included the following conditions:

- a) Limiting the permit solely to the construction of a manure clamp (Condition 1);
- b) Requiring the applicant to obtain a Waste Management Permit from the Environment Protection Directorate (Condition 2); and
- c) Standard Conditions imposed to all similar developments.

The issued permit also included the approval of a Waste Management Plan as approved document PA6593/04/26A.

### 3.0 Comments on Appellant's Arguments

3.1 This appeal is based on a claim that the approval decision taken on this application was wrong in law and in fact, as it does not respect the policies of the area and nor the general policies applicable to such development. The appellant substantiates his claim with five points, which shall be discussed separately, as follows (appellant's statement refer to text in italics):

1. There was no change in policy between the first and second decision, and hence there was no basis for a change in the eventual decision

Between the first refusal decision and the eventual approval of this application at reconsideration stage, there was in fact a change in policy with the adoption of MEPA's revised agricultural policy 'Agriculture, Farm Diversification & Stables' which came into effect in January 2008. The reconsideration of this application was approved on 16th June 2008, after the new agriculture policy came into force, which includes a specific policy addressing farms located within residential areas (Policy 2.3B), and after it was secured that the provisions of this policy were being satisfied.

2. The farm is located within a residential area, and due to the bad neighbourliness created by smells and risks to



health, any further development for farming and animal husbandry should not have been permitted

As outlined in Section 2.0 of this report, MEPA's first refusal was based on this same assertion. At the time of the first decision, the proposal included an extension to the existing animal husbandry farm which would have entailed the intensification of this use. At reconsideration stage, the proposed works were limited solely to the upgrading of the existing farm, which included permission for the construction of a manure clamp and the adoption of waste management infrastructure. Such modifications do not intensify the animal husbandry use of the site, and would only result in the amelioration of the existing bad neighbourliness created by the existing licensed operational farm. Moreover, such an approach follows the provision of Policy 2.3B, in that:

- The proposal is intended to facilitate better management and enable the requirements for waste management, farm hygiene, animal welfare and other similar standards to be met;
- Such improvement and upgrading would not result in an increase in the total site area occupied by the livestock unit; and
- Permission was not granted for the expansion of the existing livestock breeding/production unit.

3. MEPA has already issued valid permits for the development of the same area into residential units, and hence MEPA has allowed permits for different developments on the same land, and hence this new permit may revoke the previous permits issued

On this issue, MEPA contends that the permit issued for this application and those of the other applications concerning residential development, were all issued saving third party rights. In neither case does one permit revoke the other, and any issues related to who has the right to occupy or development the land is not a planning issue, but concerns third party rights which, if need be, are to be contested in the civil courts.

4. The applicant is in breach of planning laws in the sense that the present development is not in line with existing regulations

In this statement, the appellant fails to mention which planning laws are being infringed. Nevertheless, in terms of planning policy, Policy 2.3B requires that clearance is obtained from the Department of Agriculture and the Food and Veterinary Regulation Division in the case of upgrading of operational livestock farms located within residential areas. These two departments are the regulatory bodies responsible for ensuring that animal husbandry farm operations comply with EU regulations. Clearance was provided from both of these bodies, as can be confirmed from the correspondence at red 80 from the Veterinary Division and the clearance provided from the Department of Agriculture in the approved Waste Management Plan PA6593/04/26A.

5. The owners were objecting at all times to this development and this permit is in breach of the right of the owner to control development on his land

As in point 3, this permit was issued saving third party rights, and hence the owner of the land is not prejudiced from initiating any civil proceedings to prohibit or control the use, operations, and extent of development carried out on his land. Moreover, the applicant made the proper declaration in terms of land ownership as he submitted a Certificate of Ownership B application, whereby he notified the owners of the land about his application"

L-Avukat Dottor Tanya Sciberras Camilleri ghall-applikant Michael Farrugia kkummentat kif gej:

"To make alteration and extension to existing cow shed, proposed construction of concrete roof over existing cow shed and proposed manure clamp in the site.

Kindly note that although the description of the proposed development was made as stated above, the permit was granted after a request for reconsideration and the approved development was limited to the construction of the manure clamp.

My client wishes to raise the following preliminary pleas in reply to the appeal filed by appellants:

From a reading of the appeal, it appears that this is being made by 'Maria Paris, Antonio Ganado and all the other owners of the site in question and any successors in title'.

a) In the first instance, it is submitted that the only persons entitled to appeal are those individuals who had objected when the application was published in terms of Article 32 of the Development Planning act (Act 1 of 1992). Therefore, any of those persons who did not object according to the Act are not entitled to file the appeal.

b) Without prejudice to the above submission and in the second instance, it is submitted that the appeal, as filed by 'all the other owners of the site in question and any successors in title' is invalid in that these individuals have not been identified in the appeal and therefore, they cannot be admitted as appellants in this appeal.

c) Without prejudice to the above submissions and in the third instance, the appeal seems to indicate that the site has been transferred to third parties since the phrase 'successors in title' is being used by appellants in their appeal. It is submitted that the ownership of the site in question is to be verified by the Board and if it results that any of the registered objectors is no longer the owner of the site in question, then his or her appeal is to be declared null and void, since the person no longer has the interest required by law in order to file appeal proceedings in terms of the Development Planning Act. It is also submitted that such an interest cannot be transferred to any 'successors in title' if the latter would not have also objected to the application in terms of Article 32 of the Act. Even so, it must be determined whether any of the objectors were interested third parties in terms of law, in order to qualify as registered objectors in terms of Article 32 of the Act and in order to be in a position to file appeal proceedings.

Turning to the merits of the appeal, my clients reply as follows in the same order as listed by appellants:

1. There is no 'mystery' regarding the turning of the recommendation by the Directorate from a refusal to an approval, as implied by appellants in their appeal. The original recommendation of the Directorate for the DCC to refuse the application was changed to a recommendation to approve the application because, as explained above, the development was restricted to a manure clamp and appellant did not continue to insist at that stage to extending and roofing over the cow shed, as originally applied for. The development of the manure clamp is necessary in order to comply with EU standards.

2. The cow farm has been in existence on the site for a considerable number of years, before the area was ever earmarked for residential development and applicant holds the land in question under a valid title. Therefore, although the area including the site is now designated for residential development, any such designation is without prejudice to pre-existing development and to any vested rights acquired by third parties, including the farming activity undertaken by my client. Moreover, the farm is deemed to be in possession of a permit, as per procedures adopted by MEPA in 2004, since it was operating prior to 1992 and in possession of a valid licence issued by the Agriculture and Veterinary Department.

3. Although the Planning Authority has issued a permit for residential development to cover the site in question, it is pertinent to point out that this permit is subject to an appeal filed by my clients. This is of course in line with the principle that any permit issued by MEPA is subject to any third-party rights, which includes the right of appeal. My client holds the land under a valid title and the farm has been in existence for many years and therefore, any permit issued is without prejudice to any vested interest acquired by him over the land prior to the issue of the permit.

4. My client makes reference to appellants' submission that he is in breach of planning laws and calls on them to withdraw same since such a submission is misleading and

totally untrue. The issue of the permit is in line with planning policy and seeks to upgrade the legally existing farm in order for it to comply with current EU standards.

5. With reference to point five of appellants' appeal, my client reiterates that he is carrying out a legitimate activity on the site in virtue of a valid title and therefore, there is no breach of owners' rights, as submitted by appellants."

Fin-nota tieghu l-Prof. Ian Refalo għall-appellanti irrisponda bis-segwenti:

"1. As regards the appealed's contention that the appeal in question is invalid because not all appellants had objected to the development when the application was published in terms of Article 32 of the Development Planning Act, my clients contend that in this case the new owners, who now have every interest to pursue the appeal, at the time the application was published had no interest whatsoever in the site in question and therefore had no reason to object to the development since at the time they were not owners. It would be wrong however, as well as blatantly unjust, to deny these new owners all possibility of appealing from a decision which prejudices their interests as owners simply because they were not the owners of the site from the start. This is even more so when one considers that the original owners as interested persons had duly filed their objections and that therefore the present owners have succeeded to this right to oppose the application, even by filing an appeal;

2. It is equally legally unsound to state that interest to object to and appeal from the granting of a development permission may not be transferred to one's successors in title. This is indeed obvious. If the interest of the original owners to object to the development was intrinsically linked to the site in question than any subsequent holder of that property will have an interest and a right, by virtue of his legal entitlement, to pursue the objection initially made by the previous owner. This is precisely the reason why no fresh objection on the part of the new owners is necessary or even possible. Moreover, it is a well established point at Maltese law that interest is inherited

by successors in title (see, for instance, Anthony Abdillanoe vs Salvina Spiteri et, decided by the First Hall of the Civil Court on the 21<sup>st</sup> of February 2001);

3. Were it not so, the requirement in Article 15(1)(d)(i) of the Development Planning Act would be both meaningless and futile since it is impossible to qualify as an interested third party in order to file an objection at a stage when one has no interest whatsoever in the outcome of the application (as is blatantly the case when one does not as yet have ownership or other legal title) and it would be prejudicial to and in violation of the new owner's fundamental right to property to deprive him of the possibility of contesting the approval of a development permission when he could not personally have objected to the development when the application was published. It is for this reason that the interest of the original and the new owner must be taken together and that together these have the requisite legal interest and juridical standing to file the present appeal, for the only way to comply with the requirements of Article 15(1)(d)(i) without violating the fundamental rights of the owner and without landing in sheer contradiction is for the original and the new owners to file the appeal together. Thus the condition that the appellant must have filed his objections at the outset remains fulfilled since the original owner will have filed the objection and the interest to object will continue to subsist in the new owner. In this way the interest of the third party subsists both at the moment when the objections were made (through the original owners) and at the moment the appeal was filed (through the new owners);

4. As regards the precise indication of 'all other owners' the appellants point out that nowhere in Article 15 of the Development Planning Act and nowhere in the Third Schedule of the same Act is there any binding requisite to include the full particulars of the appellant. So long, therefore, as each of the appellants is sufficiently defined in virtue of his interest, there is no need to list each appellant by name. In this case, in fact, the appellants were mentioned by name in the case of the objectors and, in order to ensure that no interested third party failed to be

represented in the appeal, all owners and successors in title were included as appellants; these have been properly designated in virtue of their interest and this should suffice to meet the criteria of the Development Planning Act. In any case, and without prejudice to the foregoing, nowhere does the law impose nullity for the reasons put forward by the appealed:

5. The appealed's arguments on the merits also do not hold water. In the first place it is beside the point to argue that the cow farm owned by Mr. Farrugia existed prior to the residential development because the fact that a farm exists does; not automatically grant the owner the right to extend and develop it further to the detriment of other lawful development which would have intervened in the meantime. The construction of a manure clamp certainly adds to the burden and health hazard which will have to be borne by the objectors as neighbouring residents. Neither can it be ignored that if the area has been earmarked for residential purposes then the residents too have a vested right to enjoy unpolluted air and a healthy environment;

6. The issue of the permit for residential development being subject to appeal is again irrelevant because the site in question, independently of the approval of a particular permit or otherwise, has been earmarked for residential development, which in itself means that the site cannot be exposed to increased health hazards by the extension of farming activities in the area;

7. In any case, and without prejudice to the above, both the present appeal and the appeal regarding my clients' permit for residential development are at the same stage of proceedings and it does not make sense to privilege the present application over the other one, especially when one considers that the permit granted to appellants preceded the permit granted to the appealed. In point of time, therefore, the permit granted to the appealed to develop their land should take precedence over the present permit;

8. With regards to the fourth point of the appealed's reply the appellants reserve their position and reserve the right for their architect to file further submissions on this specific issue;

9. With regards to the fifth point of the appealed's reply, the appellants reiterate that the granting of the permit is in breach of their rights as owners of land in an area earmarked for residential development and is contrary to law insofar as it results in the sanctioning of farming activities within distances which the law considers insufficient.”

B'nota tas-27 ta' Mejju 2010, l-Prof. Ian Refalo esebixxa kopja tal-kuntratt tal-11 ta' marzu 2005 ppubblikat minn Nutar Carmelo Mangion li permezz tieghu l-art in kwistjoni giet akkwistata minn Camcass Limited (C11943) minghand il-familja Randon. Mill-file PA 6593/04 jirrizulta (Red 1A) li l-Perit Tancred Mifsud ghall-applikant Michael Farrugia fis-16 ta' Ottubru 2004 kiteb lill-propjetarju tal-art biex jinformatom bl-applikazzjoni.

L-Avukat Dottor Francis Lanfranco ghall-propjetarju (Red 1L) b'ittra tat-22 ta' Novembru 2004 – registrata mill-Awtorita' fil-25 ta' Novembru 2005 oggezzjoni ghall-izvilupp propost.

Ikkunsidra dwar l-eccezzjoni preliminari

Dan hu appell maghmul minn terzi.

L-Artikolu 15(1)(d)(i) u (iv) tal-Kap. 356, jghati d-dritt tal-appell lit-terz kemm il-darba dan ikun oggezzjona ghall-applikazzjoni bil-miktub fuq ragunijiet ta' ippjanar skond l-Artikolu 32(5).

Skond l-imsemmi artikolu r-rapprezentazzjonijiet bil-miktub iridu jaslu ghand l-Awtorita' fi zmien hmistax (15) il-gurnata mill-pubblikazzjoni tal-Avviz tal-applikazzjoni fil-gazzetta lokali skond subincis (4) tal-istess Artikolu.



Kopja Informali ta' Sentenza

Barra mill-Pubblikazzjoni, l-Awtorita' ghandha r-responsabilita' li twahhal site notice fuq is-sit de quo.

Is-site notice -Red 8 tal-file PA 6593/04; iggib id-data 7 ta' Jannar 2005 u tistieden lil kull min irid jaghmel rapprezentazzjonijiet dwar l-applikazzjoni ghandu jaghmel dan mhux aktar tard mit-30 ta' Jannar 2005;

Fil-kaz in ezami billi l-applikant mhux il-propjetarja tal-art – u ghalhekk kellha tigi annessa Certificate of Ownership B – l-propjetarji gew infurmati bl-applikazzjoni qabel ma din giet ippubblikata fil-gazzetta lokali u qabel ma twahhlet is-site notice.

L-ittra tal-Konsulent Legali tal-propjetarji appellati, ibbazata fuq ragunijiet ta' ppjanar giet registrata ghand l-Awtorita' fil-25 ta' Novembru 2004. Fic-cirkostanzi ghalhekk gew ampjament soddisfatti r-rekwiziti tal-ligi ghal dak li jirrigwarda l-appell mit-terz.

Jekk l-propjeta sussegwentement tinbiegh, l-fatt li l-akkwistant ma kienx oggezzjoni meta giet ippubblikata l-applikazzjoni, ma ghandu l-ebda relevanza – billi l-oggezzjoni saret tempestivament minn min f'dak iz-zmien kellu l-interess u d-dritt li jaghmilha.

Ikunsidra dwar il-mertu

Jinhtieg li ssir distinzjoni bejn proposta ghall-zvilupp gdid – u proposta ghall-zidiet u/jew alterazzjonijiet fuq zvilupp ezistenti.

Is-sit in kwistjoni jinsab f'area indikata ghall-zvilupp. Skond it-Temporary Provisions Scheme ta' l-1998, l-area hi disinjata ghall-'Terraced house development'. L-istess zoning gie indikat fid-Draft South Malta Local Plan suggett ghall-konsultazzjoni pubblika, u gie konfermat bil-Pjan Lokali approvat f'Lulju 2006.

Applikazzjoni li tipproponi razzett ghat-trobbija tal-animali f'zona indikata ghall-uzu residenzjali mhix accettabbli – pero' l-applikazzjoni kontestata mhux qed tipproponi

Kopja Informali ta' Sentenza

razzett gdid – fil-file PA 6593/04 hemm ircevuta ta' qbiela li jmorru lura ghal-1954 – il-proposta hi ghal ziediet u alterazzjonijiet f'razzett gia ezistenti, kfi konfermat mill-Korrispondenza mad-Dipartiment ta' l-Agricoltura u l-Veterinary Regulation Division.

Il-permess moghti hu limitat ghall-kostruzzjoni ta' manure clamp; permess li hu ferm anqas mill-proposta originali li kienet tirrikjedi zidiet u estenzjonijiet fir-razzett – saqaf tal-'concrete' bhala zieda fil-cow shed ezistenti.

Il-permess jinkludi 'Waste Management Plan' biex jassikura aktar indafa u igene ta' attivita' agrikola vicin siti residenzjali.

Il-kuntrast bejn il-partijiet, l-appellanti propjretarji tal-art, u l-applikant li jokkupa bi qbiela hu konsegwenza tal-fatt li s-sit li kien qed jintuza, legittimament bhala razzett ghat-trobbija ta' l-animali gie zoned ghall-terraced house development.

Skond l-applikant, billi kien ga jopera l-attivita' tieghu qabel gie determinat z-zoning ghall-uzu residenzjali, ghandu d-dritt li jibqa' jopera.

Skond l-appellanti din l-attivita' m'ghandhiex tigi permessa f'zona illum desinjata bhala residenzjali;

Tant li anke hargu permessi ghall-izvilupp li minnhom appella bhala terz, l-applikant Mikiel Farrugia.

L-Awtorita hadet il-linja li approvat permessi ghall-izvilupp billi kienu konformi maz-zoning tal-lokalita', mill-banda l-ohra billi l-attivita' tal-applikant kienet wahda legittima, filwaqt li laqghet l-applikazzjoni limitatament ghall-Manure Clamp u Waste Management cahditha dwar iz-ziediet u l-estenzjonijiet fir-razzett, in vista taz-zoning residenzjali.

Fi kwalunkwe kaz, l-permessi jinghataw fuq konsiderazzjonijiet ta' ppjanar, minghajr pregudizzju ghad-drittijiet civili ta' terzi.

Dan iffisser li jekk l-inkwilin applikant ikkontravjena xi kondizzjoni tal-kirja, kif ddikjaraw l-propjetarji appellanti fl-oggezzjoni taghom; jew jekk dawn ghandhomx dritt jirriprendu l-pussess tar-raba' lilu mikri, billi ghandhom l-permessi ghall-bini; jew jekk r-raba hux bgħali jew saqwi, dawn huma kwistjonijiet li huma fil-kompetenza esklussiva tal-Qrati.

It-Tribunal għalhekk qed jiddisponi minn dan l-appell billi jichad l-istess, jikkonferma l-permess PA 6593/04 favur Mikiel Farrugia tat-23 ta' Settembru 2008, salvi u impregudikati d-drittijiet civili tal-appellanti.

### **Ikkunsidrat**

L-aggravji tal-appellanti huma s-segwenti:

1. L-applikazzjoni kienet zbaljata billi saret fuq formula li solitament issir min sid mentri l-applikant mhux sid izda inkwlin, li ma jistax jagħmel zvilupp mingħajr il-kunsens tas-sid;
2. Id-decizjoni hi kontradittorja għax tmur kontra l-policies tal-ippjanar billi s-sit hu adibit għal skopijiet residenzjali, u t-Tribunal ma setghax jiskarta dan il-permess, u jagħti permess konness ma trobbija ta' annimali;
3. La darba inhareg permezz għal zvilupp ta' bini residenzjali, it-Tribunal ma setghax japprova permezz għal zvilupp konness mit-trobbija tal-annimali fuq l-istess sit, f'zona residenzjali.

### **L-ewwel aggravju**

Dan l-aggravju hu inammissibbli f'dan l-istadju billi ma kienx ilment mqajjem bhala aggravju quddiem it-Tribunal u billi l-Qorti tal-Appell hi wahda ta' revizjoni ta' punti ta' ligi sollevati quddiem it-Tribunal, u dan lilment ma tqajjimx f'dak l-istadju, mhux lecit u għall-appellant li jqajjem aggravju gdid quddiem din il-Qorti. In oltre kif jidher mid-decizjoni tat-Tribunal, l-applikazzjoni f'dak iz-zmien setgħet issir kif saret u billi ma kienx sid kellha tigi

annessa certificate of ownership 'B' fejn jigu infurmati s-sidien qabel il-publikazzjoni fil-Gazzetta tal-Gvern u titwahhal is-site notice. Hekk jidher li sar f'dan il-kaz.

Il-kontenzjoni ulterjuri tal-appellanti illi ma jistax isir zvilupp min inkwilin minghajr il-permess tas-sid mhix materja li fiha jidhol it-Tribunal billi l-obbligu tat-Tribunal hu biss li jara jekk mill-lenti tal-ligijiet ta' ippjanar, zvilupp hux permisibbli u drittijiet civili bejn il-partijiet jaqghu fil-mansjoni tal-Qorti Civili. Il-hrug tal-permess ma jaghtix drittijiet oltre jew in sostituzzjoni dawk li jaghtu l-ligijiet civili.

Ghalhekk dan l-aggravju ghandu jigi michud.

### **It-tieni u t-tielet aggravju**

It-Tribunal ezamina din il-kwistjoni u kkonkluda li ma hemm ebda kontradizzjoni bejn iz-zoning tas-sit u l-uzu legittimu li kien qed isir mill-appellat qabel sar iz-zoning. Fil-fatt it-Tribunal ghamel distinzjoni bejn talba gdida ghal zvilupp konness mat-trobbija ta' annimali f'zona adibita ghal zvilupp residenzjali li allura mhux permess u talba limitata ghal kostruzzjoni ta' manure clamp li bil-waste management plan impost ser tassikura aktar indafa u igjene ta' attivita agrikola vicin siti residenzjali. In oltre t-talbiet ghal zvilupp jew tkabbir tal-istrutturi agrikoli ezistenti gie michud ghax jekk jigu accettati jmorru kontra z-zoning.

It-Tribunal ikkonsidra l-policies applikabbli, kemm dawk dwar iz-zoning kif inhu illum u l-attivita legittima ezistenti tal-applikant u uzat id-diskrezzjoni moghtija lilha bil-ligi li tinterpreta kif ghandhom japplikaw u jikkoezistu d-drittijiet tal-partijiet fit-termini ta' policies ta' zvilupp biss bla ebda pregudizzju ghad-drittijiet civili tal-partijiet li ghandhom jittiehdu f'sede ohra.

Il-Qorti tqis li t-Tribunal ma applikax hazin il-policies ezistenti u lanqas kien kontradittorju fid-determinazzjoni tal-vertenza billi qies kemm id-dritt tal-appellanti li

## Kopja Informali ta' Sentenza

ghandhom jedd li jibnu skond il-policies ezistenti u d-dritt tal-applikant li jkompli fit-tgawdija tal-uzu legittimu li ghandu fuq is-sit bl-ghoti ta' permess li jaghmel kostruzzjoni limitata u intiza biss ghal skopijiet aktar igenici u sikuri u biex tipprotegi l-aspett sanitarju tal-izvilupp residenzjali fil-vicin minghajr pero ma jaghti permess ta' zvilupp li jmur kontra z-zoning ta' sit.

Wara kollox it-Tribunal ghamel apprezzament tal-fatti, mhux sindakabbli mill-Qorti, u qaghad attent li ma jiksirx il-policies applikabbli billi ma ppermetta ebda zvilupp ulterjuri konness mal-biedja li titqies bhala zieda fl-uzu agrikolu f'zona residenzjali, liema kwistjoni wkoll strettament hi wahda ta' interpretazzjoni tal-policies ghal fatti u taqa' fid-diskrezzjoni tat-Tribunal.

Ghalhekk il-Qorti tqis illi dan l-aggravju mhux gustifikat la fil-ligi u anqas fil-fatt u qed jigi michud.

It-Tribunal ikkonsidra jekk jirrizultax kontradizzjoni mill-permess tal-bini mahruqa fuq l-istess sit u wasal ghal konkluzzjoni illi t-Tribunal jikkonsidra l-kwistjoni mill-ottika ta' ppjanar u bl-ghoti tal-permess limitat lill-applikant, id-dritt ta' zvilupp ottenut mill-appellanti jew uhud minnhom ma giex mittiefes. Id-drittijiet tas-sidien fil-konfront tal-kerrej kienu kwistjonijiet li ghandhom jigu trattati fil-Qorti u mhux parti mill-kompetenza tat-Tribunal.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell tal-appellanti u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ppjanar tad-29 ta' Marzu 2012.

Bl-ispejjez kontra l-appellanti.

### **< Sentenza Finali >**

-----TMIEM-----