



**QORTI TA' L-APPELL**

**ONOR. IMHALLEF  
MARK CHETCUTI**

Seduta tad-9 ta' Ottubru, 2013

Appell Civili Numru. 51/2012

**Brian Bajada ghan-nom u in rappreżentanza  
tar-residenti ta' Blocks A, B, C, u D,  
Triq is-Sur Fons, San Giljan**

**VS**

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u  
l-kjamat in kawza Joseph Barbara,  
f'ismu u in rappreżentanza ta' Patricia Anastasi,  
Alma Saddemi, Josephine Azzopardi u Greta Bartolo  
Parnis**

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Brian Barbara u ohrajn tat-18 ta' April 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 wara li t-Tribunal laqa' t-talba ghal hrug tal-permess PA 2078/09 'to

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construct additional floor (penthouse level) above existing residential units' favur Josephine Azzopardi;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konferma;

Rat l-atti kollha, in-nota ta' sottomissjonijiet tal-appellanti u semghet id-difensuri tal-partijiet;

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

A. Il-Kummissjoni ghall-Kontroll ta' l- Izvilupp, fil-5 ta' Novembru 2010, laqghet u approvat l-applikazzjoni ghall-permess tal-izvilupp PA 2078/09 "St Julians Court, Triq is-Sur Fons, San Giljan: Construction of additional floor (penthouse level) above existing residential units."

Fost il-kundizzjonijiet tal-permess hemm is-segwent:

"2c. This outline development permission does not remove or replace the need to obtain the consent of the land/building owner to this development before it is carried out. Furthermore it does not imply that consent will necessarily be forthcoming nor does it bind the land/building owner to agree to this development."

B. In-nota tal-Avukat Dott. Joe Brincat ghall-Appellanti nomine, ipprezentata fil-25 ta' Novembru 2010, senjatament il-punti segwenti:

"1. The proposal runs against the sanitary regulations as all in built natural ventilators will be eliminated. The proposed plans do not show any other alternative solution to the above, it completely ignores and eliminates them from the design.

2. Most of the apartments have a fire place that can be used in the winter months. The proposal do not show any design solution how to include the current chimneys but eliminates them completely.

3. The proposed layout denies access to the use of roof. All present access to the roof that the residents currently enjoy have been blocked with the result that the residents can no longer make use of the roof.

4. The proposal does not include the installation of lifts in the description. There are no lifts at present. A lift will be serving 16 apartments and 4 penthouses.

According to the health and safety standards such lift has to be a 6 passenger and minimum shaft internal dimensions are 1.5m x 1.65m. The proposal does not provide for the latter dimensions. The proposed lift shafts are encroaching on the current staircases, thus reducing the staircase widths. This implies that the staircase is difficult to use in case of fire as a fire escape which requires a minimum of 1.20m width.

5. Further to the above the lift pits cannot be constructed according to the Health and Safety standards as these have to be dug out 'in third party properties that is the underlying garages. Please note that a minimum of 1.20m depth is required.

6. The staircase within Sub Block D is constructed along the centreline of the hall. This implies that the staircase has to be demolished to make way for the lift construction.

One question how residents would be able to reach their apartments during this construction phase.

7. The additional residential units would increase the existing parking problem, and overstretch the existing sanitary facilities.

8. The additional residential units would render the block unsafe to use. Increasing the number of people should imply widening staircases and corridors in common areas and not the other way round.

On legal grounds

MEPA may be justified in proclaiming that a permit is “without prejudice to the rights of third parties” solely when there may be rights which are not apparent on the face of the record. Otherwise, MEPA is bound to observe what the Civil Code and the Code of Police Laws stated on buildings, distances required, and other rights of third parties. One of these rights is that the landlord may not, without the consent of the tenant, make any changes to the thing let. This would eventually mean that the objectors would have to file a judicial action, with relative costs and loss of time, and expenses to all parties concerned.”

Jigi rilevat li originarjament, il-lista tal-Appellanti nomine kienet taqra' kif gej:

Brian u Cecilia Bajada, Joan Pace Asciak, I-ahwa Marie Chantal u Amanda Aloisio, Margot Debono, Trevor Pace, Rita Caligari, Lilian Farrugia, Robert Farrugia, Anthony u Theresa Mallia, Carmen sive Lina Calleja Gera, John u Jennifer Cassar Aveta, Theresa sive Marthese Caruana, Myriam Vella, Rosaria sive Rose Attard, I-ahwa Carmel, Emanuel u Vincent Bonett, Jane Muscat, James u Giovanna Hamer, John u Doris Fenech, Angelo u Josephine Farrugia, Christopher Pace Asciak, Raymond u Margaret Gerada, Joseph Zammit, Alfred Vella, Emily Zammit, Robert u Maria Dolores sive Sonia Fenech Soler, Mary Schembri, Albert u Vivienne Marie Dimech, Robert Kelly, Anthony u Josephine sive Joyce Cachia, Neville sive Carmel Neville u Rose sive Rosette Abela, Elvira Schembri, Carmelo u Yvonne Ruth Borg, Herbert u Mary sive Maria Camilleri, Ian Scicluna, Philip u Jacqueline Theresa Grima, u Nathalie Scicluna.

C. In-nota risposta tal-Avukat Dott. Philip M. Magri ghall-Applikanti, ipprezentata fl-14 ta' Dicembru 2010, precizament il-punti segwenti:

“We would like to make It clear that all rights pertaining to sanitary issues will not be affected as all existing ventilators will be retained. The extension of existing vents

will be catered for during construction. Likewise for the provision of existing fireplace chimneys.

As for the lifts, the client will be commissioning a specialised lift supplier and the latter will be obliged to desing a custom made structure for each and every core. These structures will obviously have to be designed and built taking into account the existing site constraints. These structures and machinery will eventually have to be certified by a competent body, presumably a mechanical engineer.

During civil and finishing works, the client and all appointed contractors are bound to take all necessary precautions to deem the site safe and free from any hazards to residents and workmen alike. All the common areas including stair hoods and halls will be made safe for passage through same.

With regard to the legal issue raised, it is submitted that the Board does not have the necessary jurisdiction to take cognition of this appeal given that the matter outlined therein is intrinsically of a civil nature. It has in fact been decided that decisions by the Board of Appeal and the Commission 'jirreferu bisxs ghal kwistjonijiet ta' zvilupp u permessi relattivi u mhux fuq drittijiet ta' propjeta' jew lezjoni tal-istess drittijiet' (amongst others, Jane Cini et. vs. Kummissjoni ghall-Kontroll ta' l-Izvilupp et deciza mill-Qorti ta' l-Appell fis-27 ta' Marzu 2003).

In any case appellants can at most refer to a title of lease limitedly to their respective apartments provided they are Maltese citizens and residing therein in terms of art. 12A of Chapter 158 of the Laws of Malta. Moreover the constitutional validity of this article is still 'sub judice'."

E. Ir-rikors ta' Herbert u Maria Camilleri, ipprezentat fil-15 ta' Dicembru 2010, senjatament il-punti segwenti:

"I [recte We] would like to bring to your attention that I [recte we] want to withdraw my [recte our] objection to this development. Please remove my name [recte our names]

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from the list of Appellants as per letter dated 25th November 2010 addressed to the Chairman of the Board of Appeals.”

It-Tribunal laqa' t-talba u astjena milli jiehu konjizzjoni ulterjuri tal-appell taghhom.

F. In-nota ta' Jonathan Borg ghall-Awtorita', ipprezentata waqt is-Seduta numru 48, mizmuma fit-28 ta' Gunju 2011, inter alia l-punti segwenti:

"The Authority notes that the majority of the reasons brought forward by the appellants concern third party rights. Moreover all of these reasons have been forwarded to the Authority during the processing of the application and their contents were taken noted as is evident from the DPA Report.

Sanitary issues:

The SEO determined that the proposal conforms to sanitary regulations. Moreover, the Authority respectfully points out to the Tribunal that sanitary matters fall under the jurisdiction of the General Services Board.

Chimneys, access to the roofs and access to the dwellings during the works:

Issues regarding to the loss of the chimneys, loss of access to the roofs and difficulties in accessing the dwellings during the works are purely third party rights which are safeguarded.

Lifts, lift shaft sizes and safety:

Lifts are not required to be specified in the proposal description. Should lifts be required to be inserted in a proposal description than it would stand to reason that every proposal description has to include references to stairs, stairwells and stairhoods at roof level (tromba) because they provide similar vertical accessibility. Such a suggestion is deemed nonsensical. The approved drawings show perfectly clear the lifts. Moreover issues of health and safety, and standards of lift sizes are not

planning matters. Hence they are not issues that fall under the responsibility of MEPA.

**Parking:**

Proposal requires the provision of 1 car parking space for one/two-bedroomed units and 2 spaces for three-bedroomed units (medium car parking standards are applicable in St. Julians). Proposal consists of 10 one-bedroomed units and 1 three-bedroomed unit; hence requiring 12 car parking spaces, which cannot be accommodated on site. However, this shortfall is mitigated by a contribution towards the CCPS of the area.

**Legal Grounds:**

Unlike what is stated by appellant, the issuance of the permit without prejudice to the rights of third parties is not solely for those rights which are not apparent but for all third party rights, otherwise it would mean that the permit takes precedence even over apparent third party rights, which is not the case. As regards distances between buildings this is in fact also covered by planning policies and is not the issue in this case. As regards to landlord's consent or otherwise to tenant to make changes, this is not a planning issue which the authority enters into since on planning grounds the changes can be made, whether these are made by a tenant, an owner and for that matter by anyone but since there are or there may be third party issues, the permit is made reserving this clause, so that if it is a tenant who will eventually build, before building, notwithstanding having a permit in hand, he has still to get permission from the landlord, if this is either stipulated by the contract or by law. This would apply similarly to any other applicants who still have to seek third party permission. If on the other hand the tenant has sufficient legal basis when building, not to request permission, this is a civil matter which then has to be resolved between the applicant and the objector or objectors on the various rights which each is claiming, but not on the basis of the permit since the permit is always granted reserving third party rights and leaves the issue between third parties to be resolved between them amicably or through the competent courts."

G. In-nota tal-Avukat Dott. Joseph Brincat għall-Appellanti nomine, ipprezentata fit-2 ta' Settembru 2011, precizament il-punti segwenti:

“The Authority is consistently referring to third party rights which are exercisable before the ordinary Civil Courts while the Authority has only to consider matters on planning grounds.

Certainly this cannot always be the case especially when there are existing buildings which any planning permit would impinge upon.

Even in other cases the Authority is non consistent in its application of this exalted principle. For example, in the case “Johann Buhagiar versus MEPA” decided by the Court of Appeal, rights of third parties were the main defence of MEPA before the Court of Appeal.

Had the application been regarding a ‘virgin’ piece of land, many considerations raised by the objectors would have fallen by the wayside. But this is not the situation.

Can the Authority approve the elimination of chimneys existing in the building and at roof level? Can the Authority disregard the ventilation vents which exist on the roof?

Regarding lifts and safety, the Authority submits that health and safety are not matters falling within the remit of MEPA. On the contrary it is a concern of MEPA.

It is submitted, on the personal knowledge of the undersigned, that, for example, when the guidelines for old people’s homes were being drawn up, the width of corridors and other matters strictly based on safety and health considerations ruled the day.

Regarding car parking space, the conclusion of the Authority is that “this shortfall is mitigated by a contribution towards the CPPS of the area”. Even the wording shows that this is mitigated but not eliminated. It has to be shown



that the CPPS in the area is actually functioning. There can be no contributions to CPPS which does not exist or at least is not projected within the same area.

Legal Grounds. It is one of the canons of MEPA that development shall not be permitted when it goes against good neighbourly relations. It is submitted as a legal point that good neighbourly relations are regulated by the Civil Code and consequently MEPA cannot ignore its own law which imposes on it the duty not to create friction between the developers and existing tenants or owners.”

H. In-nota tal-Avukat Dott. Philip M. Magri għall-Applikanti, ipprezentata fid-9 ta' Novembru 2011, senjatament il-punti segwenti:

“The primary issue raised by the appellant is the consideration of third party rights, particularly in relation to sanitary issues. I avail myself of this opportunity to state, in clear and unequivocal terms, that all rights pertaining to sanitary issues will be respected and will remain unaffected since all existing ventilators shall be retained. The extension of existing vents will be catered for during construction, as will the provision of existing fireplace chimneys.

During civil and finishing works, the client and all appointed contractors are bound to take all necessary precautions to deem the site safe and free from any hazards to residents and workmen alike. All health and safety considerations will be observed and all structures will eventually be certified by a competent body.

With regards to parking, the MEPA has accepted a contribution to the CPPS of the area as an adequate means of mitigation the shortfall of car parking provision. This is a standard procedure employed by the Authority and funds are utilised when appropriate at the relevant body's discretion.

As also noted by the Authority in its own reply all the above reasons concern third party rights. Moreover the

same had already been forwarded to the Authority during the processing of the application and their contents were noted as is evident from the DPA Report.

Also the so-called 'legal' ground indicated in the submissions filed by Brian Bajada and Cecilia Bajada does not involve a planning consideration and should therefore be entirely discarded. Without prejudice to the above, one can hardly expect the processing of a MEPA application to be hindered by the generic possibility of 'good neighbourly relations' not being maintained. As to the rights regulated by the Civil Code, it is a well-known fact that permits are, in any case, issued saving third party rights. One should also consider that in this particular case the appellants are merely temporary occupants of apartments owned by the applicants. The schedules of deposit filed by appellants in front of this Tribunal are themselves proof of this. Interestingly enough, most of the appellants did not even attend for the sittings held in front of this Tribunal and failed to show their interest in the outcome of this case. Submissions were only filed by Brian Bajada and Cecilia Bajada."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda appell minn terzi kontra l-hrug ta' permess sabiex jinbena sular iehor (penthouse level) fuq blokkja appartamenti f' San Giljan.

L-aggravji tal-Appellanti nomine jistrieħu fuq punti ta' sanita' (ventilazzjoni, cmieni, distanzi, etc.), ta' health and safety (lift sizes, trombi tat-tararg, access fuq is-sit meta jibdew ix-xoghlijiet, etc.), drittijiet civili (ownership, airspace, access għal-bejt, etc.), riassunti kif geħ:

i. Li l-proposta hi in kontravvenzjoni tal-ligijiet sanitarji għax ser tneħhi l-ventilaturi kollħa ta' terzi, li hemm fuq il-bejt;

ii. Li permezz tal-proposta', ic-cmieni tal-hafna fireplaces li jappartjenu lid-diversi sidien tal-appartamenti sottostanti ser jigu eliminati.

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iii. Li l-proposta ser iccahhad lill-istess sidien l-access ghall-bejt li hu dritt taghhom;

iv. Illi ghalkemm l-applikazzjoni ma kienitx issemmi lifts u lanqas ma jirrizulta li hemm xi lifts on site, tali servizzi gew indikati fil-pjanti tal-proposta u di konsegwenza ser ikunu ta' perikolu f' kaz ta' nirien;

v. Li l-qisien tal-lifts proposti huma zghar wisq u ghalhekk huma in kontravenzjoni tas-safety standards vigenti;

vi. Li meta jinbnew dawn l-istess lift shafts il-lift pits ser jinsterqu mill-garaxxijiet sottostanti l-blokka appartamenti, cjoe' mill-propjeta' ta' terzi';

vii. Li galadarba jibdew ix-xoghlijiet, per eżempju meta tigi demolita' t-tromba tat-tarag minnhom, is-sidien mhux ser ikollhom access liberu ghal-darhom; u li viii. Biz-zieda fl-izvilupp, ser jizdied ukoll il-bzonn ghal-parkegg.

Skond l-Artikolu 41(1) tal-Att X ta' l-2010 - Kap.504, it-Tribunal ghandu gurdizzjoni jisma' u jiddeciedi appelli magħmula mill-applikant jew minn min ihossu aggravat fuq kull decizjoni (tal-Awtorita') dwar il-kontroll tal-izvilupp u l-protezzjoni ambjentali, inkluz it-twettiq ta' kontrolli fuq l-istess.

Ghar-rigward ta' kwistjonijiet ta' sanita', gie konsistentement ritenut li tali kwistjonijiet ma jaqghux fil-kompetenza tat-Tribunal: huma ta' esklussivita' tal-GSB u finalment tal-Qorti; u ghalhekk dan l-istess Tribunal m'ghandux gurdizzjoni biex jiddeciedi fuq dawn l-aggravji.

Fl-appell numru 282/1997 - 'Pater Holding Co. Ltd. vs Development Control Commission', deciz fil-11 ta' Settembru 1998, il-Bord ta' l-Appell dwar l-Ippjanar gie mitlub minn terza persuna (f' dan il-kaz socjeta' kummercjali), li jirrevoka l-permess moghti lill-Applikant billi fil-permess ma gewx osservati l-ligijiet u r-regolamenti sanitarji. L-istess Bord kien ddecieda li ma kellux gurdizzjoni li jirrevedi d-decizjonijiet tas-Sanitary

Engineering Officer. Tali gurisdizzjoni kienet vestita fil-General Services Board, bi dritt ta' appell fuq punt tal-ligi quddiem il-Qorti ta' l-Appell.

Fil-fatt, din id-decizjoni giet ikkonfermata mill-Onorabli Qorti ta' l-Appell, b'decizjoni tal-5 ta' Ottubru 2001. Partikolarment rilevanti ghall-kwistjoni odjerna huma l-paragrafi 12 u 17 li qed jigu riprodotti kif gej:

"12. Fil-fehma konsiderata tal-Qorti, l-Bord wasal ghall-konkluzjoni korretta meta ddecieda li l-Kodici tal-Ligijiet tal-Pulizija jipprovdu l-istrutturi u l-mod kif wiehed jista' jikkontesta d-decizjoni ta' l-awtorita' sanitarja. Tali kontestazzjoni ghandha necessarjament issir fil-konfront ta' l-Awtorita' li tkun emanat l-istess decizjoni. Il-Bord sab li l-kwistjoni kienet giet deciza mill-awtorita' sanitarja ... Isegwi li min ikun irid jikkontesta dik id-decizjoni ghandu jindirizza l-kontestazzjoni tieghu lill-istess awtorita' sanitarja li kienet dahlet w iddecidiet il-kwistjoni billi hija din l-awtorita' li verament hija l-legittima kontradittur.

17. Din il-Qorti tifehm li l-Bord kien korrett fil-konstatazzjoni li ghamel li, bhala fatt, l-Awtorita' ta' l-Ippjanar u l-awtorita' sanitarja jagixxu indipendentement minn xulxin u li l-Awtorita' ta' l-Ippjanar ma tindahalx u ma tissindakax decizjonijiet li jiehu s-'Sanitary Engineering Officer'. Allura jsegwi li l-kontestazzjonijiet li jsiru dwar dispozizzjonijiet fil-Kodici tal-Ligijiet tal-Pulizija, li jirregolaw aspetti purament sanitarji, ghandhom isiru fil-konfront tal-legittimu kontradittur li jkun ha d-decizjoni impunjata cjo' l-awtorita' sanitarja stess. Dan huwa akar u aktar korrett meta wiehed iqis li l-legislatur stess ipprovda proceduri ad hoc bl-artikolu 102 ta' l-imsemmi Kodici ta' kif wiehed ghandu jikkontesta decizjonijiet ta' l-awtorita' sanitarja."

Fir-rigward ta' drittijiet civili; l-Awtorita' ma tidholx f'kwistjonijiet bejn il-partijiet interessati, li jigu decizji mill-Qrati; u hu propju ghalhekk li permess jinghata minghajr pregudizzju ghad-drittijiet civili ta' terzi (saving third party rights). Ezaminati fid-dettal l-ilment tal-Appellanti nomine, ma jirrizultawx ragunijiet sufficjenti li jiggustifikaw r-revoka

tal-permess; anzi jidher car li l-kwistjonijiet ta' bejn il-partijiet m'humiex tant relatati ma konsiderazzjonijiet ta' ippjanar, izda huma ta' natura civili li jibqghu impregudikati bl-ghoti tal-permess kif indikat.

In konkluzjoni, jigi nutat ukoll, li dan it-Tribunal m' ghandux kompetenza f'kwistjonijiet bejn terzi, u li di konsegwenza, terzi persuni jistghu jappellaw biss fuq ragunijiet t' ippjanar. Il-partijiet rilevanti tal-Att X tal-2010, Kap. 504 tal-Ligijiet ta' Malta li japplikaw ghal-kaz in ezami, huma s-segwenti:

“41. (1) Bla hsara għall dawk l-artikoli li specifikament jeskludu d-dritt ta' appell ... it-Tribunal ikollu gurdizzjoni li:

(a) jisma' u jiddeciedi appelli li jitressqu minn terzi persuni interessati minn decizjoni tal-Awtorità dwar kull haga ta' kontroll tal-izvilupp,

68. (4) Kull persuna tista' tiddikjara interess f'xi zvilupp u, abbazi ta' ragunijiet li jkunu rilevanti għall-ippjanar, tagħmel ilmenti dwar dak l-izvilupp. [...]"

Anke, minn verifika superficjali tal-file tal-applikazzjoni, johrog car li l-Awtorita' imxiet tajjeb meta' harget il-permess bil-kundizzjoni specifika li jigu salvagwardati d-drittijiet civili ta' terzi. Wara kollox, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, jirrizulta li l-permess inhareg strettament in konformita' tal-Pjan Strutturali, tal-Pjan Lokali ghaz-zona, kif ukoll tal-policies vigenti, u ghalhekk l-appell in ezami ma jimmeritax kunsiderazzjoni favorevoli.

Kif jirrizulta wkoll mill-Artikoli tal-ligi citati supra, l-applikazzjonijiet għall-izvilupp jigu mwiezna fil-kuntest ta' policies ta' ippjanar u ghalkemm t-terz inghata d-dritt ta' l-appell, l-aggravju tal-appell ma jirrizultax ibbazat fuq ragunijiet t' ippjanar.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-ligijiet

tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma l-permess ghal PA 2078/09 kif mahrug mill-Kummissjoni ghall-Kontroll ta' l- Izvilupp, fil-5 ta' Novembru 2010.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. Il-permess tal-bejt li fuqu inhareg il-permess hu tal-appellanti u l-fatt li ma hemmx 'clearance' ghall-izvilupp ifisser li jkunu qed jigu spussessati minn dak li hu taghhom, ghax il-proceduri li jridu jittiehdu sussegwentement minnhom biex jitwaqqaf l-izvilupp huma ta' pregudizzju ghalihom fil-tgawdija tad-drittijiet;
2. Hemm ragunijiet validi skond il-ligijiet tal-MEPA ghaliex il-permess ma kellux jinhareg. L-appellanti jirreferu ghal rapport tal-perit Sant li dahlet fi kwistjonijiet teknici li jmorru kontra r-regolamenti tal-MEPA, fosthom il-lift u ventilaturi u cmieni.

Qabel xejn jigi rilevat illi l-appellanti fil-bidu tal-appell ghamlu referenza ghall-okkju tal-kawza cioe li ma kienx isemmi l-appellanti kollha ghalkemm l-appell gie intavolat mill-persuni kollha interessati kif jirrizulta mir-rikors tal-appell. B'danakollu ma sar ebda aggravju ta' nullita fuq din il-kwistjoni izda biss precizazzjoni u ghalhekk il-Qorti mhix ser tiehu konjizzjoni ta' din is-sottomissjoni billi ma ntab xejn a rigward.

### **L-ewwel aggravju**

L-ewwel aggravju ma fihx mertu. Kull permess johrog fuq bazi ta' dak li hu permissibbli mill-lat ta' ligi dwar l-ippjanar u kull permess jinhareg soggett ghad-drittijiet ta' terzi li ghandhom id-dritt jiehd u l-mizuri li jidhrilhom xierqa quddiem il-Qrati ordinarji ghal protezzjoni tad-drittijiet taghhom, ighid x'ighid il-permess tal-bini. L-appellanti jissottomettu fl-appell li huma pussessuri tal-bejt u kwindi mhux jivantaw titolu ta' proprjeta fejn allura jista' jaghti l-kaz li l-applikant ikun qed iqarraq bl-Awtorita dwar id-drittijiet tieghu fuq il-bejt in kwistjoni u fejn il-ligi stess taghti drittijiet lill-Awtorita ghar-revoka tal-permess anki

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fuq talba ta' terzi. Ma jistghux pero l-appellanti fuq kwistjoni purament ta' natura legali civili jippretendu li l-Awtorita jew it-Tribunal jikkunsidraw drittijiet ta' titolu u jew servitujiet bejn partijiet peress li din mhix il-mansjoni tal-Awtorita jew it-Tribunal.

Ghalhekk dan l-aggravju ma ghandux jigi milqugh.

### **It-tieni aggravju**

Ghalkemm dan l-aggravju hu maghmul b'mod generiku hafna, l-appellanti jirreferu ghal rapport tal-perit Sant fosthom il-kwistjoni tal-lift, ventilaturi u cmieni. Jibda biex jinghad illi dawn huma kollha aspetti teknici tal-vertenza u dwar liema ma hemmx appell billi ma jirrigwardax punt ta' ligi izda aspetti fattwali konnessi ma' issues ta' planning. In oltre, it-Tribunal dahal fil-kwistjoni ta' dak li l-Awtorita u t-Tribunal ghandhom dritt li jikkunsidraw u ikkonkludew illi mill-lat ta' ippjanar ma kien hemm xejn kontra l-ligi anzi l-permess inhareg in konformita mal-pjan strutturali, il-pjan lokali u l-policies vigenti u illi l-ilmenti tal-appellanti kienu kollha centrati mad-drittijiet u obbligi ta' sidien jew okkupanti ta' blokk ta' appartamenti, liema kwistjonijiet kienu ta' natura civili mhux ta' planning.

Ghalhekk dan l-aggravju wkoll qed jigi michud.

### **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-Ippjanar tad-29 ta' Marzu 2012. Bl-ispejjez kontra l-appellanti.

**< Sentenza Finali >**

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