



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tad-9 ta' Ottubru, 2013

Appell Civili Numru. 38/2012

Joseph Mifsud

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joseph Mifsud tat-12 ta' April 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 ghar-rifjut tal-applikazzjoni PA 3551/02;

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

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

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

A. Il-Kummissjoni ghall-Kontroll ta' l- Izvilupp, fl-4 ta' Mejju 2007, ikkonfermat ir-rifjut ta' l-applikazzjoni ghall-permess tal-izvilupp tat-tip Scheduled Property (LB) Conservation Area Consent PA 3551/02 "Site at, Triq il-Bajja s-Sabiha, Birzebbuga: To construct flats at 1st and 2nd floors overlying existing garage and to sanction garage (height)."

Il-hames ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposed development would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings, spaces and townscapes within Urban Conservation Areas and so does not comply with Structure Plan policy UCO6.

2. The proposed development is incompatible with the urban design and environmental characteristics of the Urban Conservation Area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan policy BEN 2.

3. The proposal does not comply with Structure Plan policy UCO8 which only permits development in Urban Conservation Areas which is compatible with the existing character and urban design of the area. The proposal is not sympathetic with adjoining buildings in terms of its building height and design.

4. The proposal does not comply with Structure Plan policy UCO7 since the proposed development is located adjacent to a Grade 2 Scheduled building. The policy safeguard both the Scheduled property and its setting.

5. The proposed development runs counter to Structure Plan policy UCO10 in that it would adversely affect views of the Urban Conservation Area and detract from the traditional urban skyline."

B. In-nota tal-Perit Anton Zammit ghall-Appellant, ipprezentata fit-8 ta' Gunju 2007, senjatament il-punti segwenti:

“the proposed development will mitigate the existing blank party wall, which wall is very unsightly;

The proposed development blends with the surrounding area as it is compatible with the exiting environment;
The development does not affect the skyline as stated in the reasons [recte reasons] for refusal; and
The development respects the adjacent scheduled building.

It is to be noted that this appeal is being made on the original plans submitted with this application and not on the plans submitted to the DCC (as per instruction by the DCC) to cover areas beyond the original site.”

C. In-nota ta' Mario Scicluna ghall-Awtorita', ipprezentata fl-24 ta' Lulju 2007, inter alia l-erba' punti segwenti:

“5.2.1 When a similar request for development was submitted in PA 4888/93 it was refused by the DCC and an appeal was lodged. The Planning Appeals Board eventually refused the proposal for the building of three new maisonettes which were to be constructed above the garage, one per each floor. The Appeals' Board decided in favour of the construction of only the garage at the ground floor ‘bhalma kien hemm originarjament’.

5.2.2 However a one car garage was constructed even higher (roofed over 14 courses) to that approved in PA1947/93 and which does not correspond to the other two garages that existed on site and to those on the other side of the villa. The symmetrically designed historic building now looks lop sided and has been badly affected by this development. The whole setting of the villa has been disrupted.

5.2.3 The [...] proposed additions overlying the existing garage will continue to disrupt this Grade 2 Scheduled building. Urban conservation policies safeguard not only important buildings which have been scheduled but also their settings. Such policies prohibit alterations not only to

the building but also to anything contained within their curtilage and which contributes to the whole setting. According to SP Policy UCO 6, the main objectives within UCAs is to preserve and enhance all buildings of historic or architectural importance.

5.2.4 The proposal will continue to upset the symmetry of the whole building. Such proposal will also degrade the environmental value of the central building and that of the streetscape. The building proposed is incompatible with the massing, detailing and materials of the central building. Thus it runs counter SP policy BEN 2 where compatibility with the visual integrity of the area is necessary. Moreover the addition of another two floors above the already built garage and two new floors on the other side (according to latest plans in file) will also adversely affect the view of the central building from the street thus it also runs counter SP Policy UCO 10.”

D. In-nota ta' sottomissjonijiet tal-Perit Anton Zammit ghall-Appellant, ipprezentata waqt is-Seduta numru 6 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fl-20 ta' Frar 2008, precizament il-punti segwenti:

“The said ground floor was approved as per PA1947/93, which permit approved the demolition of an existing ground floor and the erection of a ground floor garage with an adjoining stairwell. Although the sentence in the board of Appeal states that the approved garage is to be similar to that existing, the drawings which were approved indicated otherwise. Thus the similarity to the previous structure as well as the previously existing symmetry were subsequently lost.

In addition the adjacent adjoining property was approved for the construction of four floors on either side creating vast empty and extremely ugly side walls. [sic.]

The end result was a building which visually does not form part of the adjoining property, and which also encompasses an empty stairwell, and has a huge blank part wall on the other side.

The following arguments have been brought up by MEPA:

a) The existing ground floor is built higher than previously approved. I refer to the general conditions DC1/88, section A9, which specifies a course height of 280mm. Thus development has been approved with 12 courses x 280mm up to the underside of the roof structure, and when this height is actually compared on site, the end result is that the height up to the underside of the precast slabs does not exceed that approved. MEPA inspectors have inspected the site regarding this issue and they have counted the number of courses and not measured the overall height. The number of courses is completely irrelevant as the actual height is not measured by simply counting the number of courses but by measuring the actual height up to the underside of the precast concrete slabs.

Reference is being made to the underside of the precast slabs since the front part of the garage is roofed over with in-situ concrete and the slab thickness is less than that of the precast slab. Such a slab is cast at such a level so as to avoid unnecessary fill, since casting the in-situ slab with an underside similar to that of the precast slabs would result in unnecessary fill. It is normal practice to measure the height of a garage up to the underside the precast slabs.

b) The development does not maintain the visual integrity of the area. As already stated the development has been designed so as to screen off the existing visually offensive party wall, and provides a detailed elevation overlooking the scheduled property. At the same time the scheduled property is being retained and approving this development will ensure that the villa is retained. Extreme care has been adopted in designing the elevations. In addition the proposed building does not affect the scheduled villa in any way (not even sanitary)

c) The development affects views and skyline.

Kopja Informali ta' Sentenza

The proposed development does not ruin any views or skyline since the adjacent buildings on either side consist of high buildings.

d) The development is not permitted in this Urban Conservation Area Reference is made to the approved M'Xlokk Local Plan, which local plan clearly indicates the site as a three floor development area, and hence this development is permitted.”

E. Il-verbal tas-Seduta numru 22 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fit-23 ta' Lulju 2008, senjatament il-punt segwenti:

“L-Awtorita' tivverifika illi kien mar l-enforcement officer Steve Austin biex jivverigika l-oghli ta' l-istess garaxx u irrizulta li minn barra ma jaqbilx mal-pjanti tal-permess precedent tal-Bord, stante illi fuq is-sit jirrizulta li l-oghli hu 3.8 metres meta kellu jkun 3.3 metres u minn gewwa l-oghli jvarja minn bejn 3.8 metres ghal 3.84 metres minhabba li minn gewwa hemm dizlivell fil-hxuna tas-saqaf. Il-livell minn gewwa huwa mill-art sa s-saqaf.”

F. In-nota ta' Mario Scicluna ghall-Awtorita', ipprezentata fil-15 ta' Settembru 2008, fejn gie kkonfermat li l-gholi tal-garaxx minn gewaa jvarja minn 3.56 sa 3.82 metri.

G. Il-verbal tas-Seduta numru 6 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fil-11 ta' Marzu 2009, precizament il-punt segwenti:

“L-appellant qed jitlob li l-appell jigi diferit sabiex jitlob lill-Awtorita' sabiex tbiddel l-iskedar tas-sit in kwistjoni.”

H. Il-verbal tas-Seduta numru 23 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fis-16 ta' Settembru 2009, senjatament il-punt segwenti:

“L-Awtorita' nfurmat lill-Bord illi l-appellant ma ghamel l-ebda talba lill-Awtorita' sabiex ikun hemm tibdil fl-iskedar fuq is-sit in kwistjoni.”

Kopja Informali ta' Sentenza

J. Ix-xhieda ta' Rene' Attard, senior planning officer fi hdan l-Awtorita' prodott mill-Appellanti, moghtija bil-gurament waqt is-Seduta numru 10, mizmuma fil-15 ta' Frar 2011.

Minbarra li kkonferma li l-permess PA 1947/93 hareg qabel ma sar l-iskedar, irrisponda kif gej:

“Is-site li hija scheduled hija Villa Pisani kif kienet fl-1996 ghax is-site giet skedata skond il-Gazzetta tal-Gvern li giet ippublikata fl-24 ta' Mejju 1996, Government Notice No. 334 u qed nikkwota mir-rapport precedenti tieghi stess. Dan li gara huwa illi parti mill-area skedata l-old building tal-villa ghaliex ghandek il-villa propja, il-gnien, u z-zewgt ikmamar fuq in-naha ta' wara, wahda minnhom twaqqghet ...

Mir-ricerki li ghamilt u hemm ukoll case history fl-istess rapport, ma jidhirx li kien hemm permess [qabel ma' sar l-iskedar fl-1996]. L-applikazzjonijiet kienu gew rifjutati u kien hemm kaz minnhom ta' 1993 li gie deciz fi stadju ta' appell.”

K. In-nota ta' sottomissjonijiet tal-Perit Anton Zammit ghall-Appellant, ipprezentata waqt is-Seduta numru 53 tal-Bord ta' l-Appell dwar l-lppjanar, mizmuma fit-12 ta' Lulju 2011, inter alia l-punti segwenti:

“It is prudent to respectfully point out to the Tribunal the existing site situation, and which situation consists of the garage in question, which flanks a Grade 2 building, and which building also has a small garage on the opposite end. A permit was issued to demolish the garage in question and re-erect as per permit number PA1947/93 [...]

MEPA is making reference to the appeal sentence issued by the Boards of Appeal in file PA4888/93. [...] The approved drawings PA1947/93/14a indicated [...] a different elevation, and the question arises as to which is the valid approved document. Is it the wording of the appeal sentence or the approved drawings itself? The

documentation of the permit clearly refers to the drawing as the approved document for this permit and hence approved drawing number PA1947/93/14a supersedes any other documentation. ... Thus the argument put forward by MEPA [...] that the garage had to be identical to the other existing garage is not justified since the approved drawing indicates otherwise. In fact we agree to the conclusions derived by MEPA that 'the symmetrically designed historic building now looks lop sided and has been badly affected by this development. The whole villa setting has been disrupted.'

The second point raised by MEPA is the height of the ground floor garage as built. This argument has been extensively dealt with. Primarily we were objecting to the principle that MEPA was basing its argument on the number of courses and not on the internal height of the garage. Using the number of courses as a marker to judge whether the garage is legally roofed over or not is unjustified since the MEPA polices themselves use measured heights to define the floor height and not the number of courses. Needless to say, course height may vary and might yield dubious results, and hence the need to measure.

Following an onsite meeting with MEPA representatives, the dimensions taken indicate an internal height of 3.44m [...] and which height falls within the internal height limit as defined by MEPA in policy 2.1 of the Policy and Design guidance 2007. The argument raised by MEPA that the building height is to be measured (14 courses ...) to the underside of the reinforced concrete balcony cantilever is not justified since the height of the garage is always measured up to the underside of the structural member (pre cast prestressed slab), and which principle has also been adopted by the EPC as per recent case PA 4976/10.

MEPA is basing the argument regarding the proposed overlying floors on the following policies:

Policy UCO 6: This policy aims to avoid the demolition of buildings of architectural or historic interest as well as to

and I quote "improve areas of low quality". So whilst we agree that this policy is relevant, we also agree to its contents since we intend to safeguard and conserve the existing Grade 2 building, but we also intend to improve the area, since we strongly believe that the existing adjacent four storey development is an eyesore. The same can be said to the existing stairwell approved in PA 1947/93, and which stairwell leads to nowhere. These eyesores are tremendously disrupting the existing environment, and we propose to restore the visual eyesore with this proposal.

Policy UC010: This policy aims to avoid developments which adversely affect views or UCS skyline. In this case, the proposal will not affect any views, and secondly will also not affect any UCA skyline. The existing adjacent legal commitment is that of four floors, and in no way will this proposal be in conflict to this policy as the proposal is lower in height to the adjacent buildings. It is also pointed out that the proposal is in line with the building heights as established in the approved B'Bugia Local Plan 1995 (three floors), drawing number 7).

Report presented by the HPU [...] is slightly misleading since it never tackles the argument in question (the existing adjacent four floors are unsightly) and aims to misguide the Tribunal into thinking that the proposed development [...] 'will irretrievably disrupt the views towards the villa', and which argument is not true and not justified. Rather the development aims to screen off an unsightly side elevation which severely distorts the visual environment.

The cases mentioned in the conclusion part, namely

- PAB107/93E was an appeal against enforcement
- PAB107/94 was an appeal against non determination withdrawn by the appellant PAB34/94 was in part approved."

L. In-nota ta' Mario Scicluna ghall-Awtorita', bid-data tat-23 t' Awissu 2011, precizament il-punti segwenti:

“as regards to the actual garage as built, its actual height differs from that approved by the Planning Appeals Board as per permit dated 5th January 1995 Plan Red 14A since the approved elevation has a height as measured from pavement level up to underneath the balcony of 3.3m (no balcony was approved by the PAB) whilst the plans as submitted in this application under appeal Red 119E show that at the same point (ie at the highest point - the RHS of the facade) the building was constructed with a height of 3.9m. Such a discrepancy shows that the existing elevation still needs sanctioning.

As regards to the issue that the PAB have already decided on additional floors over the previously approved ground floor garage (as also decided and approved by the PAB), reference is made to application PA 4888/95 which had requested through plan Red 1 B to construct the 1st floor (only) and washroom above. The photos in this file shows that the ground floor garage was already constructed, hence the PAB had actually decided whether the new garage on site (as per present actual situation) could merit further development through additional residential units above. In that case, the PAB in sentence as per PAB420/96/KA refused any additional floors above the ground floor garage in its sentence dated 31st October 1997.

The Authority thus requests the Tribunal to analyse the contents of PA 4888/95 so as to be aware of the refusal arguments by the Authority as well as by the PAB and so, understands better the Authority's consistent objection to additional floors, which, in this case under appeal is not limited to the construction of the first floor (as per PAB decision above) but, now, the case under appeal, as per elevation plan Red 119E, is now requesting 2 new floors over and above the existing ground floor garage. The bigger development in this appeal is thus not justified in this particular circumstance in view of the constant objections by the Authority and by the PAB and the Authority sees no reason why two new floors should be accepted by the Tribunal when a request for one new floor

was rejected by the PAB in decision delivered on 31st October 1997 (Red 17 in PA 4888/95).”

Ma n-nota gie anness rapport ta' Joseph Magro Conti u Rene' Attard, rispettivament manager u environment protection officer fil-Heritage Advisory Unit fi hdan l-Awtorita', bid-data tad-19 t' Awissu 2011.

M. In-nota ulterjuri tal-Avukat Dott. Joanne Vella Cuschieri ghall-Appellant, ipprezentata fil-31 ta' Jannar 2012, inter alia l-punti segwenti:

“(i) Hareg car mis-sottomissjonijiet ta' l-Awtorita' li kien qed jigi injorat ghal kollox il-punt illi fuq is-sit gia inhareg permess ta' zvilupp precedenti sabiex jinbena garaxx b' tarag li jaghti ghas-sular ta' fuq. Jekk wiehed jara s-sottomissjonijiet jinduna li l-Awtorita' baqghet tista tghid sa l-ahhar tinsisti li l-appellant ma mexiex ma dak approvat originarjament u dan ghaliex skond l-istess Awtorita' wiehed kellu jimxi mal-kliem uzat mill-Bord tal-Appell fid-decizjoni tieghu u mhux mal-pjanti kif approvat. Jirrizulta izda li fir-rapport tal-Heritage Planning Unit datat 19 ta' Awissu, 2011 l-istes HPU accetta li l-garaxx huwa fil-fatt mibni skond il-permessi kif approvati u ma baqghetx tinsisti li l-garaxx in kwistjoni kellu jerga jigi mibni kif kien originarjarment.

Fuq dan il-punt issir ukoll referenza ghax-xhieda tal-Perit Rene Attard fl-atti ta' l- appell fejn hareg car li ghal xi raguni meta sar l-iskedar tal-Villa ma kienx ittiehed in konsiderazzjoni il-permess ta' zvilupp li kien hareg precedentement ghall-iskedar u li jirrigwarda s-sit ta' l-appellant. Dan il-fattur ghandu jinghata l-mportanza li jisthoqqlu fl-analizi ta' din l-applikazzjoni b'ghan li l-appellant ma ghandux ibaghti konsegwenza ta' dan l-izball. Ukoll dan l-element ta' 'commitment' fuq is-sit ghandu jservi bhala fattur iehor ta' sustanza li jimmilita favur illi dan it-Tribunal jikkunsidra favorevolment din l-applikazzjoni ghaz-zieda ta' zewg sulari ohra;

(ii) Illi ragunament iehor bla bazi da parti ta' l-Awtorita' huwa li originarjament ma giex approvat access ghal fuq

il-bejt tal-garaxx izda dan assolutament mhux minnu. Jekk wiehed jaghti harsa lejn il-pjanti approvati fil-fatt jidher li hemm tarag li jaghti ghas-sular ta' fuq il-garaxx li huwa gia approvat;

(iii) Illi l-appellant jibqa jinsisti li l-Awtorita' hija wkoll zbaljata dwar l-gholi tal-garaxx in kwistjoni u dan kif abbilment spjega l-Perit ta' l-appellant fl-ittra tieghu tas-7 ta' Lulju, 2011 fejn hemm annessa ukoll 'section' tal-garaxx li tindika l-gholi ta' 3440mm li taqa fil-mimiti tal-ligi. In oltre jigi sottomess li din il-kwistjoni dwar l-gholi tal-garaxx kienet qed tigi emfasizzata da parti tal-Awtorita' ghaliex kienet qed timxi mad-decizjoni kif miktuba tal-Bord tal-Appell u mhux mal-pjanti kif fil-fatt approvati. La darba issa gie rikonoxxut kemm mill HPU kif ukoll mill-Awtorita' fl-ahhar nota taghha li l-pjanti approvati huma daww li japplikaw, jirrizulta li anki dan l-ilment ilium huwa sorvolat;

(iv) Illi l-Awtorita' fl-argumenti taghha tinjora wkoll dik il-parti tal-ligi fejn hija obligata fid-decizjonijiet taghha, u l-istess dan it-Tribunal, sabiex jaghtu importanza wkoll fid-decizjoni li kull haga ta' sustanza applikabbli ghall-applikazzjoni in kwistjoni. L-appellant isostni li ghalhekk l-Awtorita' fir-rifjut taghha u wkoll fl-argument konsegwenti taghha naqset milli taghti l-importanza mehtiega l-fatti segwenti:

- illi l-izvilupp propost huwa adjacenti 'blank party wall' ta' erba' sulari u li ghalhekk anki ai termini ta' 'policies' dan jimmilita favur l-applikazzjoni;
- illi l-garaxx kif mibni u approvat ma jinsabx fil-limiti tal-binja skedata izda jinsab adjacenti;
- illi ghir ghall-bini skedat adjacenti ghas-sit in kwistjoni, skond il-'policies' is-sit jinsab f zona fejn huwa permissibbli sahansitra bini aktar gholi minn dak propost mill-appellant;
- illi ghandu jkun hemm bilanc bejn il-protezzjoni tal-binja skedata kif ukoll id-drittijiet kweziti tal-appellant fuq is-sit kwistjoni. L-appellant jemmen li dak propost jipprovdi bilanc ekwu bejn iz-zewg siti anki ghaliex huwa kompatibbli mal-bqija tal-bini fil-madwar;

Illi jigi sottorness li l-intenzjoni tal-ligi fl-iskedar ta' proprjeta' certament ma kinitx intiza u m' ghandhiex tigi miftiehma illi l-binjiet adjacenti jitflu kull dritt li jizviluppaw il-proprjetajiet taghhom b'mod assolut kif qed tiprova taghti x' tifhem l- Awtorita'. Ghalhekk jerga jigi emfasizzat li huwa obbligu tat-Tribunal li fid-decizjoni tieghu gbal din l-applikazzjoni jsib bilanc fejn id-drittijiet anki ta' l-appellant jigu salvagwardjati;

(v) Illi jidher ukollii r-risposti tal-Awtorita' jinjoraw ghal kollox il-fatt li l-izvilupp kif propost ser iservi sabiex jimla spazju vojta bejn binja u ohra, b'rispett ukoll lejn il-binja skedata, izda zgur li ma hu ser jaffettwa l-ebda 'skyline' kif allegat mill-Awtorita' stante li l-bini propost ma jmurx oltre l-gholi tal-bini adjacenti."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex jigi sanat l-gholi ta' garaxx ezistenti kif ukoll sabiex jinbnew zewg sulari residenzjali sovrastanti, f' sit li jinsab biswit il-binja maghrufa bhala 'Villa Pisani' f' Birzebbuga.

L-oggezzjoni tal-Awtorita' ghall-izvilupp hi li ma jirrispekkjax il-bini, spazji, il-veduti urbani u l-iskyline kif indikati permezz tal-policies UCO 6, UCO 8, UCO 10 u BEN 2 tal-Pjan ta' Struttura; u ghalhekk hu ukoll inkompatibbli mal-karatteristici tal-urban conservation area. In oltre, peress li l-izvilupp jinsab f' parti ta' sit ta' bini skedat (Grade 2), il-proposta hi ukoll in kontravvenzjoni tal-policy UCO 7 li tissalvagwardja kemm il-bini kif ukoll il-partijiet cirkostanti tas-sit.

L-Awtorita' targument wkoll li il-garaxx li qed jigi ttentat is-sanar tieghu, jirrizulta mibni differenti kif ukoll oghla minn kif kien approvat permezz ta' sentenza tal-Bord ta' l-Appell dwar l-ippjanar.

Jigi rilevat li fil-fatt, originarjament kienet saret applikazzjoni sabiex jinbena garaxx, inkluzi tlett maisonettes, izda s-sit kien gie milqut b' enforcement notice ghax ix-xoghlijiet kienu kwazi tlestew fil-fazi tal-

applikazzjoni. Sussegwentement sar appell li gie milqugh limitatament b' dan li gie permess biss li s-sit jigi ripristinat billi jerga' jithalla jinbena garaxx wiehed biss – kif speci ta' kien originarjament (u cjoe' li ma jinbnewx il-maisonettes). Imbaghad giet intavolata applikazzjoni gdida sabiex jinbena appartement (wiehed) fl-ewwel sular, li giet ukoll irrifjutata u kkonfermat fil-fazi tal-appell. Fl-ahharnett, giet intavolata l-applikazzjoni mertu tal-appell odjern.

L-aggravji tal-Appellant jistrieħu inter alia fuq il-fatt i l-izvilupp sejjer jammeljora l-vista tal-blank party wall kif jidher bhalissa, u di konsegwenza ser jirrispetta kemm il-bini skedat ezistenti, l-iskyline prezenti, kif ukoll sejjer jintegra sew mal-ambjent urban cirkostanti.

Gie anke argumentat, li wara kollox il-font per se mhux skedat izda l-binja tal-villa ta' ma' genbu hi skedata.

Saru diversi sottomissjonijiet miz-zewg partijiet li jirrigwardaw id-dettal tal-bini tal-garaxx: cjoe' jekk dan segwiex jew addirittura kellux isegwi d-decizjoni tal-Bord jew il-pjanti kif ulterjorment approvati mill-Awtorita' (u wara kollox mill-istess Bord); u jekk (peress li l-gholi tal-filati jista jvarja), l-gholi ntern tal-garaxx kellux jitkejjel in kwantu b' rutella jew fl-ghadd ta' numru ta' filati.

Ghar-rigward tal-garaxx li hemm illum, jigi rilevat li originarjament - cjoe' qabel ma twaqqa bla permess u rega nbena permezz tad-decizjoni tal-Bord – kien perfettament simetriku u mirror image ma iehor li jinsab precizament fuq in-nahha l-ohra tal-villa, b'hekk iz-zewg garaxxijiet kienu jiffurmaw bhal extended wings fuq kull nahha tal-parti residenzjali ta' 'Villa Pisani' stess. Jirrizulta ghalhekk, li meta l-garaxx in ezami kien rega nbena, peress li ttella diversament minn kif kien precedentement, minbarra li jispikka u hu differenti ferm mill-iehor fuq in-nahha l-ohra, hassar u tilef ghal-kollox is-simetrija li l-villa kellha faccata tat-triq.

Fir-rigward tal-aggravji tal-Appellant, jigi rilevat li huwa minnhu li l-iskyline ma jistax jigi kompromess b' din il-proposta, u huwa veru li kieku ser jitghatta blank party

wall. Madankollu, t-Tribunal hu tal-fehma kkunsidrata li fic-cirkostanzi jkun aktar opportun li jithalla zvilupp oghla fuq kull nahha tas-sit kif hemm bhalissa milli tkompli tinhonoq il-prospettiva mill-faccata b' massing addizzjonali li jkompli jzid fil-konfuzjoni viziva li diga' tezisti fl-arja.

Irid jigi rilevat ukoll, li jekk jigu sorvolati l-argumenti kollha ta' kif suppost kellu jinbena l-garaxx, (cjoe', metri vs filati, li ghandhom jitkejlu minn fuq jew minn taht is-saqaf, etc.) id-dicitura tal-istess applikazzjoni – to sanction garage height – hi asserzjoni cara bizzzejjed li tikkonferma li l-gholi tal-garaxx fil-fatt, mhux konformi (ma' ebda' permess).

Jirrizulta wkoll li fuq il-faccata li nbriet, hemm bhal sporgenza jew cantilever ghall-bazi ta' gallarija. Jekk fir-rigward tal-gholi jew numru ta' filati etc., jista' jkun hemm xi dubju, zgur li mhux ikkontestat li dan l-ispeci ta' pizz, ma jidhirx fil-pjanti approvati u ghalhekk inbena addirittura illegalment.

Meta dan il-fatt jigi mwiezen fid-dawl tac-cirkostanzi in ezami, u cjoe':

- Li kienet saret applikazzjoni ghal-permess meta x-xoghol kien fil-maggor parti diga' sar, u ghalhekk l-applikazzjoni giet rifjutata in kwantu kienet saret l-ekwivalenti ta' dikjarazzjoni falza;
- Li din id-decizjoni giet appellata u r-rifjut gie ikkonfermata mill-Bord ta' l-Appell dwar l-Ippjanar, izda;
- Li l-Appellant thalla jirripristina s-sit ghal-li kien qabel ma giet intavolata dik l-applikazzjoni u cjoe' li jibni garaxx, izda;
- Anke meta sar dan, l-Appellant ostinatament ippersista li jwettaq zvilupp kif jidhiru hu u bena garaxx differenti minn kif kien approvat kemm mill-Bord kif ukoll mill-Awtorita';
- U issa permezz ta' dan l-Appell qed jerga jittenta jissan zvilupp illegali fuq l-istess garaxx, anke bil-pretest li jibni zewg apartmenti, (meta precedentement, u propju

minhabba c-cirkostanzi li kkaratterizzaw dan is-sit, kienu diga' gew rifjutati applikazzjonijiet separati ghal tlett maisonsettes u appartament rispettivament u ghall-istess raguni);

Johrog car li l-Appellant inghata bizzzejjed opportunitajiet sabiex jirregola l-izvilupp tieghu, izda anke meta inghata decizjoni favorevoli mill-Bord ta' l-Appell dwar l-ippjanar, naqas li jottempera ruhhu mal-permess li nghatalu. Dan hu agir oggezzjonabbli ferm, sahsitra vessatorju u ghalhekk ghandha tapplika l-imposizzjoni tas-sanzjoni fit-termini tal-Artikolu 14 tat-tieni skeda tal-Att X ta' l-2010, Kap. 504.

In oltre, permezz tas-skeda Planning Services Division (Protective Inventory of the Maltese Cultural Heritage - Data Capture Sheet) BIR 220, il-parti skedata tal 'Villa Pisani' tinkludi wkoll zewg outbuildings - bhal speci ta' estensjonijiet fuq kull nahha tal-villa stess – u li wahda minnhom propju tahbat is-sit mertu tal-appell odjern. Jidher li s-sit in ezami xi darba kien jiffirma parti minn kumpless aktar kbir ta' 'Villa Pisani', izda li maz-zmien il-propjeta' tal-istess villa nqasamet.

Fic-cirkostanzi, ghalkemm il-font jappartjeni lill propjetarju differenti, irid jinqara fil-kuntest tal-villa kollha - originali, bhallikieku l-villa ghada propjeta' wahda u shiha.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 3551/02 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fl-4 ta' Mejju 2007.

Fl-ahharnett, fit-termini tal-Artikolu 14 tat-tieni skeda tal-Att X ta' l-2010, Kap. 504, dan l-istess Tribunal jimponi l-multa ta' elfejn u hames mitt Euro (€2,500) li ghandha tithallas fi' zmien tletin (30) gurnata mill-lum.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ma jistax jimponi multa ghal appell li gie dikjarat frivolu u vessatorju meta l-artikolu rilevanti cioe artikolu 14 tal-Tieni Skeda tal-Kap. 504 dahal in vigore wara lil kien sar l-appell;
2. It-Tribunal iddkjara hazin li l-izvilupp jinsab f'parti ta' sit ta' bini skedat u applika ghalih il-policy UCO 7 u dan peress li l-binja tal-garage gie approvat fit-8 ta' Lulju 1994 mentri kien biss fl-24 ta' Mejju 1996 li Villa Pisani giet skedata liema skedar kien jinkludi biss l-old building, li zgur ma kienx jinkludi l-garage mibni relattivament gdid. It-Tribunal asserixxa illi qabel twaqqa' l-garage in kwistjoni bla permess kien simetriku ma' iehor li jinsab fuq in-naha l-oħra tal-villa u b'hekk kienu extended wings tal-villa, u la darba kien jikkonsisti parti minn kumpless akbar ta' Villa Pisani ghandu jigi kunsidrat parti mill-iskedar;
3. It-Tribunal injora l-aggravju tal-commitment imqajjem mill-appellant bl-ezistenza ta' bini aktar gholi faccata, il-fatt li gia hemm permess ghal binja gdida li bhalissa ghandu l-appellant (il-garage) u l-pjan lokali jippermetti s-sit propost mill-appellant.

L-ewwel aggravju

Dan l-aggravju jisthoqqlu jigi milqugh u dan peress illi l-multa cioe sanzjoni ta' natura penali ghal appell frivolu u vessatorju gie promulgat fl-2010 u fejn ma semma xejn dwar jekk l-artikolu in kwistjoni cioe artikolu 14 tal-Tieni Skeda tal-Kap. 504 kienx applikabbli ghal dawk l-appelli li dahlu qabel ma dahlet fis-sehh il-ligi. Dan mhux kaz fejn azzjoni jew att ghadu miexi u ma hemm xejn kompjuż fejn allura tapplika l-ligi vigenti fil-mument tad-decizjoni. Hawn si tratta ta' prezentata ta' document ta' appell quddiem it-Tribunal (gia l-Bord) ta' Revizjoni fejn darba pprezentat l-appell fil-formalita tieghu l-att hu kompjuż u japplikaw ghalih in-normi ezistenti fiz-zmien li sar l-appell. Jekk fiz-zmien li sar l-appell il-Bord, illum it-Tribunal ta' Revizjoni, ma kellux il-fakolta moghtija bil-ligi li jippunixxi tali appell ghax frivolu u vessatorju, ma jistax, sakemm il-ligi ma tghidx mod iehor jimponi sanzjoni li ma kinitx applikabbli

fiz-zmien li sar l-appell. Hu minnu illi l-impozizzjoni tal-multa tindika nuqqas ta' serjeta fis-sustanza tal-appell innifsu pero jinsorgi mill-fatt uniku u kompjut fil-formalita tieghu meta gie prezentat. Dan apparti li l-multa amministrattiva hi forma ta' piena li minghajr ligi cara ma tistax tapplika ghal fatti kompjuti taht regim ta' ligi differenti.

Ghalhekk dan l-aggravju qed jigi milqugh.

It-tieni aggravju

Dan l-aggravju ma fih ebda konsistenza legali. Ma kienx minnu li t-Tribunal iddecieda li s-sit tal-appellant kien bini skedat izda li s-sit jisthoqqlu trattament singolari ghax darba kien jiforma parti minn bini adjacenti u llum kien skedat u japplikaw ghalih diversi policies oltre policy UCO 7 liema policy tissalvagwardja mhux biss il-bini skedat izda wkoll il-partijiet cirkostanti tas-sit cioe s-salvagwardja tas-setting fejn hemm bini skedat. Peress illi l-garage jinsab adjacenti ghal bini skedat, it-Tribunal ghamel apprezzament tal-fatti, mhux sindakabbli min din il-Qorti, ghal fattispecie tal-kaz. It-Tribunal wizen diversi aspetti favur u kontra tali izvilupp propost ma' dak ezistenti fejn hemm il-bini skedat u wasal ghal konkluzjoni illi l-proposta kienet aktar pregudizjevola milli meritevoli ghall-ambjent li hemm fil-vicinanze. Dawn huma kwistjonijiet ta' natura teknika u ta' planning li din il-Qorti ma ghandhiex, bla raguni mill-aktar soda, tinterferixxi fihom. It-Tribunal qatt ma kkonkluda li s-sit tal-appellant kien skedat izda biss li l-fond irid jinqara fil-kuntest tal-villa originali bl-annexes li kellha bhala wahda shiha. Fuq din il-bazi t-Tribunal ikkonkluda li policy UCO 7 tapplika. It-Tribunal ikkonstata li l-binja ezistenti llum hu garage mibni gdid u mhux konformi mal-permess ezistenti u ghalhekk ha in konsiderazzjoni dan il-fattur ukoll fil-konsiderazzjonijiet tieghu. Pero apparti dan, l-istess Tribunal ukoll ikkonferma lli hemm diversi policies ohra applikabbli kontra l-approvazzjoni tal-applikazzjoni fosthom UCO 6, UCO 8, BEN 2 u UCO 10 dwar liema ma sar ebda appell minnhom.

Kopja Informali ta' Sentenza

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju wkoll ma fihx mertu billi f'dan il-kaz l-indoli legali applikabbli ma ghandhom ebda tqabbil ma' kwistjonijiet ta' commitment billi l-kaz in kwistjoni hu sui generis fejn gie trattat kwistjoni dwar sit adjacenti ghal sit skedat u l-effett li zvilupp jista' jhalli fuq is-sit skedat. Il-fatt wahdu li l-appellant gia ghandu permess ghal garage li nbena mhux daqstant snin ilu, li hu differenti minn dak li jinsab fuq in-naha l-oħra tal-villa gie kostatat mit-Tribunal u kkunsidrat li oltre li mhix mibni skond il-permess, zvilupp ulterjuri ser jagħmel impatt negattiv akbar fuq il-bini skedat.

Ghalhekk dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti tiddeciedi billi tichad l-aggravji kollha tal-appellant hlief għall dak rigwardanti l-impozizzjoni tal-multa imposta li qed tintlaqa' u ghalhekk qed tilqa' dan l-appell limitament għal dan l-aggravju u kwindi tirrevoka biss dik il-parti tad-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tad-29 ta' Marzu 2012 billi tiddikjara bla effett l-impozizzjoni tal-multa ta' €2,500 fl-imsemmija decizjoni u tikkonfermaha għal bqija. L-ispejjez jithallsu terz mill-Awtorita u zewg terzi mill-appellant.

< Sentenza Finali >

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