



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tad-9 ta' Ottubru, 2013

Appell Civili Numru. 81/2012

Mariella Spiteri

VS

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Mariella Spiteri tat-22 ta' Meju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Meju 2012 dwar ir-rifjut tal-applikazzjoni PA 7099/05;

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni għall-Kontroll tal-Iżvilupp irrifjutat l-applikazzjoni, PA 7099/05 f' sit, 85, Triq Hal-Luqa, Paola, "to sanction structures on roof as to be amended in order to create recessed floor unit and alterations to other floors".

L-erba' ragunijiet għar-rifjut kienu s-segwenti:

"1. 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.

2. 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.

3. The proposed development runs counter to Structure Plan Policy BEN 4 since it does not comply with the objectives set out in the draft policies of the South Malta Local Plan.

4. The proposed development does not conform with policy 10.6A (Penthouses) of the Policy and Design Guidance 2005 which does not permit the construction of penthouses on three storey buildings or less within Urban Conservation Areas."

B. L-appell tal-perit Anthony Fenech Vella, inter alia l-punti segwenti:

"Casal Paola jew Rahal Gdid kif inhu magħruf hi belt pjuttost moderna li żviluppat ruhha dawn l-aħhar 5/8 snin [sic.] u il bini li telgha fiha fil bidu ma kellux dawn ir-restrizzjonijiet li għandna llum u allura kull binja tirrefletti ezatt il htiegijiet u/jew limitazzjonijiet ta min żvillupaha. Alura hemm diversita ta' għolijiet li jvarjaw minn 2 sa 4

[sulari] u dawn illum ahna inqiesuhom bhala target li wiehed ghandu juza bhala riega u narawhom jghixu trankwillament flimkien bla ma jikkrejaw daww il problemi ta' estetika urbanistika li r-ragunijiet tar-tifjut jaghtu ad intendere.”

C. Ir-rapport tal-Awtorita prezentat minn Mario Scicluna fl-4 ta' Ottubru 2006, inter alia t-tliet punti segwenti;

“5.2.1 This application was processed as being a site located within the Urban Conservation Area of Paola. Consequently, UCA policies have to be applied to new developments. In this particular case, the height limitations of specific areas should be observed as regulated by Planning Policies related to the area.

5.2.2 Furthermore, the recently approved South Malta Local Plan confirmed the previous designation and designated this area as falling within the Urban Conservation Area of Paola and a height limitation of 2 floors has been imposed for this part of Paola. Map PA 3 – Paola Building Heights refers.

5.2.3 The receded floor being requested to be sanctioned is overlying 3 floors which had been approved in PA 3457/03. This additional receded floor clearly exceeds the permissible height of buildings within this area”

Map PA3 of the SMLP identifies this location as having a height limitation of 2 floors and falls within the UCA boundary of Paola. Relevant policy SMSE 03 includes:

‘Within all Urban Conservation Areas (UCAs), as proposed in this Plan, building heights will generally be retained at 2 floors without semi-basement, unless otherwise indicated in the respective Building Heights Maps. In specific cases, building heights will be limited to 1 floor, if this is necessary to maintain the character of such areas, as indicated in the relevant Building Heights Maps or as may be proposed following the Street Classification exercise.’

D. In-nota ta' sottomissjonijiet tal-Perit Anthony Fenech Vella ghall-appellanti prezentata fit-22 ta' Ottubru 2008 fejn annetta informazzjoni (site plan u ritratti) rigwardanti numru ta' permessi ghal-zvilupp allegatament simili ghal-dak in ezami, u cjoe' ghal strutturi fuq il-bjut ta' bini ta' tlett sulari, uhud minnhom ghal uzu residenzjali u li qeghdin fl-akkwati tas-sit in kwistjoni.

Il-permessi iccitata bhala kazistika huma: PA 6417/03, PA 6730/00, PA 1707/99, PA 613/98 u PA 6915/97;

E. In-nota second statement tal-Awtorita' pprezentata minn Mario Scicluna fil-11 ta' Novembru 2008, senjatament il-punti segwenti;

“PA 6915/97

Proposed second floor and change of apertures at first floor to aluminium white bianco perla. Permit was granted on 4th February 1998 since site was not within the UCA Boundaries.

PA 613/98

Addition of bedroom at second floor. This permit only granted one room at roof level within a relatively small site. Permit was granted on 5th November 1998.

PA 1707/99

To sanction stairwell and operamorta. Permit relates to the same site as the permit quoted above and granted a stairwell at roof level. Permit was issued on the 25th April 2001.

PA 6730/00

To pull down existing dwelling house and erect a dwelling house with garage for owner's use. Permit was issued in view of other existing similar developments within the immediate vicinity to the site of PA 6730/00 and was issued on 18th March 2002.

PA 6417/03

Structural alterations to residence including replacement of dangerous roof at ground floor. Permit did not include

a new 2nd floor but alterations and additions while retaining the existing two storey façade. Permit was issued on 18th December 2003.

In view of the above, the Authority states that none of these cases had similar planning considerations to the case under appeal which inevitably necessitates an assessment in the light of the present approved height limitation as designated by the South Malta Local Plan as issued in August 2006. In this particular case, the official height limitation is 2 floors while the existing building already exceeds this height limitation since it is 3 stories high.

Additionally, Policy SMSE 03 of the CMLP states that in UCA areas, the height limitation of 2 floors should not be exceeded. Furthermore, in view that the requested receded floor (new / independent residential unit) is at roof level over an existing building, Policy 10.6 of PDG 2007 clearly states that in UCAs, penthouses are only permitted above buildings having 4 floors or more and the existing height should not exceed the permissible height of the area."

F. In-nota tal-Perit Anthony Fenech Vella, ipprezentata waqt is-Seduta numru 15 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fl- 20 ta' Mejju 2009.

Din in-nota telenka ben 25 permessi fuq siti allegatament simili ghal-kaz in ezami, u cjoe' PA 1019/08, PA 6210/05, PA 3663/05, PA 6417/04, PA 4058/04, PA 1455/04, PA 6417/03, PA 5205/03 u PA 3883/95, PA 1851/01, PA 6730/00, PA 5805/98, PA 5798/98, PA 5137/98, PA 3392/98, PA 1737/98, PA 613/98, PA 3005/96, PA 3528/95, PA 3392/94, PA 1667/94, PA 2186/93, PA 1052/93, PA 3707/92, u PA 3081/92;

G. In-nota third statement tal-Awtorita prezentat fit-28 ta' Mejju 2009 minn Mario Scicluna, precizament il-punti segwenti;

“In these submissions, appellant has cited other permits which are claimed to have relevance to the case under appeal. The Authority has noted these cases and states that:

PA 3707/92

Construction of a six-storey commercial complex for Centre Point Ltd. Decided: 15.09.93. Location: In the central part of the square which consist of the commercial centre of Paola. Other considerations: The approved building height of this site is however higher than that of the case under appeal. No local plans were issued at the time of this assessment and this particular development was assessed on its own merit due to its particular nature.

PA 5798/98

Demolishing [recte Demolition] of existing premises and construction of shopping arcades. Decided: 20.10.99. Location: Is located opposite Paola Church in an area which contains the commercial centre of Paola. Its approved building height is higher than that of the case under appeal. Other considerations: Condition No. 1 of permit: The development should consist of a basement storage area with an overlying two (2) floors of retail. No parking provision is required.

PA 3883/95

To carry out alteration, extension to existing building and change of use from supermarket to clothing shop and advertisement. Decided: 06.11.95 Location: In Paola square which contains the commercial centre of Paola. Its building height is higher than that of the case under appeal. Other considerations: Condition in permit: Height of the building should not exceed three floors.

PA 5205/03

Alterations to facade. Location: Same site as above. Other considerations: Application withdrawn.

PA 3663/05

To demolish existing building and re-erect basement garages with overlying maisonettes, flats and penthouse. Decided: 23.02.06. Location: Gzira.

PA 1052/93

To erect shop to sell household goods. Decided: 28/07/93. Location: 99 Pjazza Paola Rahal il-Gdid. Other considerations: The approved drawings show 'Change of use to sell household goods'.

PA 3528/95

Addition of flat at second floor. Decided: 30.08.95. Other considerations: Condition in permit: Height of the building should not exceed two (2) floors.

PA 6730/00

To pull down existing dwelling house and erect a dwelling house with garage for owner's use. Decided: 07.02.02. Other considerations: According to the DPA: The proposal consists of the demolishing existing building and the construction of a ground floor garage and an overlying residence on two floors.

PA 1667/94

To demolish bldg. and re-erect terrace house and u/lying garage. Decided: 27.02.95. Other considerations: Height of the building should not exceed three floors.

PA 3392/98

To demolish an existing block of classes and construct another block consisting of 18 classes on three floors with underlying basement. Location: Site at Hamrun.

PA 1851/01

Demolition and reconstruction of existing garage at ground floor. Application includes extension of dwelling at first floor and another dwelling at second floor. Decided: 29.01.02. Other considerations: According to DPA: The proposal consists of the demolition of the existing building and the construction of a garage at ground floor and a residential unit on each of the first and second floor levels.

PA 6417/03

Structural alterations to residence including replacement of dangerous roof at ground floor. Decided: 15.12.03. Other considerations: According to DPA: This is a request to carry out internal modifications to the existing building including the replacement of dangerous roof.

PA 3392/94

Demolition of existing building and erection of 2 shops at ground floor and 4 flats on first and second floors. Decided: 02.01.95. Other considerations: Condition in permit: Height of the building should not exceed three (3) floors.

PA 6417/04

Extension over existing residence and to sanction as built. Location: Fgura.

PA 5805/98

Internal demolition and reconstruct shop (class 4), erect 2nd floor as stores including illuminated sign. Decided: 30.04.99. Other considerations: Condition in permit: Height of the building should not exceed three (3) floors.

PA 1455/04

Change in use from residential to commercial, extension to an existing dwelling. Decided: 25.05.04. Other considerations: Condition in permit: Height of the building shall not exceed three (3) floors as per approved drawings.

PA 4058/04

Amendments (internal) to PA 1043/03. Demolition of existing garage and construction of semi-basement garage and three flats. Decided: 28.10.04. Other considerations: According to DPA: The proposal request is to amend the internal layout of the approved permit PA 1043/03. The amendments include the construction of an internal yard 3.5m long instead of 3m, the erection of a shaft within the approved bathroom and the construction of a WC in the backyard.

PA 6210/05

To demolish existing three residential units and reconstruct garages and residential units. Decided: 21.05.08. Location: The height limitation of this site is higher than that of the case under appeal. Other considerations: According to DPA: This is a request to demolish the existing buildings to construct a three storey internal residential complex.

PA 1737/98

Decided: 19.08.98. Other considerations: Condition in permit: Height of the building should not exceed three (3) floors plus washroom at roof level.

PA 1019/08

Alterations to existing dwelling and construction of washroom at roof level. Decided: 04.09.08. Other considerations: Condition in permit: n) The height of the building shall not exceed the permitted number of two floors as per approved drawings.

PA 3081/92

Erection of washroom. Decided: 07.04.93. Other considerations: Height limitation of this site is 3 floors plus basement.

PA 5137/98

Conversion of existing residential dwelling into part jewellery, part souvenir shop and cafeteria and part into hall for local use. All three activities are to have separate access. Decided: 07.05.99. Other considerations: Condition in permit: This outline permit covers a local shop (in accordance with the Policy paper for local shops, offices and catering establishments) at ground floor with separate entrance and two residences at first and second floor levels.

PA 2186/93

To carry out alterations and additions to existing building. Decided: 22.11.93. Other considerations: Condition in permit: Height of building should not exceed two floors.

PA 3005/96

To demolish dilapidated building which is in danger of collapsing and erect two showrooms at ground floor and two flats. Decided: 03.03.97. Other considerations: According to DPA: The proposal consists in demolishing a dilapidated building which is in danger of collapsing and erecting two showrooms and two flats on the same site. There is no objection to the proposal.

PA 613/98

Addition of bedroom at second floor. Decided: 21.10.98. Other considerations: Condition in permit: Height of the building should not exceed three (3) floors.

In view of the above, the Authority states that none of these cases had similar planning considerations to the case under appeal which inevitably necessitates an assessment in the light of the present approved height limitation as designated by the South Malta Local Plan as issued in August 2006. In this particular case, the official height limitation is 2 floors while the existing building already exceeds this height limitation since it is 3 stories high.

This important issue has already been addressed in the Authority's previous reports and reiterates that none of the cited permit had granted an additional habitable residential floor over a building which at present clearly exceeds the approved height limitation of the area. All of the cited permit had different planning considerations to the case under appeal and this can only be assessed vis-à-vis the relative planning policies as dictated by the South Malta Local Plan which has identified this area as UCA with a height limitation of 2 floors. Additionally, in view that the existing building is already 3 floors, no additional habitable floor could be allowed over the existing 3 floors in such a UCA neighborhood."

H. Il-verbal tas-Seduta numru 10 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fl-14 t' April 2010, senjatament il-punt segwenti:

“[L-Avukat Dott.ssa] Joanna Vella Cuschieri għall-appellanti tirrileva, illi jonqos li jigu esebiti r-ritratti li ssir referenza għalihom fl-ittra tat-18 ta' Mejju 2010, u li wkoll, iridu jsiru xi korrezzjonijiet fin-numri ta' l-applikazzjonijiet indikati u dan wara li rat ir-risposta ta' l-Awtorita.

Il-Bord jordna lill-appellant sabiex sa zmien xahar mil-lum, jipprezenta r-ritratti li jrid jesebixxi flimkien ma' lista ta' l-applikazzjonijiet bin-nurmi korretti.”

Madankollu, jigi rilevat li din in-nota qatt ma giet sottomessa.

J. Il-verbal tas-Seduta numru 10 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fl-14 t' April 2010, precizament il-punt segwenti:

“[L-Avukat Dott.] Anthony DeGaetano, dwar il-commitment, peress illi l-kwistjoni hija fuq l-gholi tal-izvilupp, jagħmel referenza għall-proviso tal-Artikolu 69(2)(i) tal-Att X tal-2010.”

K. Il-verbal tal-access fuq il-post tas-Seduta numru 47, mizmuma fl-24 ta' Gunju 2011, senjatament il-punti segwenti:

“Missier l-Appellanti wera lit-Tribunal l-istruttura già mibnija li tinsab fi Triq Hal-Luqa, Paola. Huwa wera diversi siti oħra fil-vicinanze li huwa fl-istess għoli u ssottometta li hemm commitment u a bazi ta' hekk, il-proposta tiegħu għandha tigi approvata.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex jigi ssanati strutturi fuq il-bejt u jsiru modiki zghar f' binja ezistenti sabiex ikun jista' jinbena appartement fit-tielet sular (receeded floor) u jsiru xi alterazzjonijiet f' is-sulari l-oħra tal-istess binja, nkluz il-bini ta' terazzin fuq wara f' it-tieni sular, f' binja li tinsab fl-urban conservation area ta' r-Rahal il-Gdid.

Kien diga' nhareg permessi fuq is-sit (PA 3457/03) sabiex isiru xi modifiki fil-maisonette presenti, inkluz il-bdil ta' soqfa perikolanti, u sabiex jinbena appartament fit-tieni sular.

Ir-raguni tar-rifjut jistrieħu fuq l-argumenti li l-proposta hi nkompatibbli mat-tessut urban u mal-karatteristiki ambjentali tal-urban conservation area, peress li mhix qed tigi mharsa l-integrita' viziva tal-arja, u għaliex il-proposta m' hix intiza sabiex jigi ameljorat l-ambjent u l-ispazji (pubbliċi) li jinsabu fl-istess zona. In sostenn ta' dan gew citati primarjament il-policies BEN 2, BEN 4 u UCO 6 tal-Pjan ta' Struttura, u addizzjonalment il-policies BEN 1, BEN 4, SET 1, UCO 6, UCO 10, u TRA 4. In oltre, skond l-Awtorita', il-proposta tmur kontra l-policy 10.6A tal-Policy and Design Guidance li ma tippermettix il-bini ta' penthouses bħal din in ezami, f' urban conservation areas.

L-aggravji tal-Appellanti huma bbazati fuq il-fatt li r-Rahal il-Gdid kiber f' dawn l-ahhar ftit snin u gie zviluppat kif nafuh illum f' dan l-ahhar decennu, tant li n-natura tal-post hi relattivament kontemporanja u għalhekk ir-realta' tal-izvilupp tikkonsisti f' varjeta ta' bini li jvarja minn zewg sulari sa erba'. Targumenta wkoll li l-Awtorita' kien imissha hadet konjizzjoni ta' din ir-realta' meta kkunsidrat l-applikazzjoni in ezami.

L-Awtorita pero tirribatti l-argumenti tal-Appellanti u ssostni li illum hemm Pjan Lokali approvat; u li dan kien diga' ha kunsiderazzjoni tal-istess realtaziet indikati mill-Appellanti. Tissokta wkoll tghid li kien propju għalhekk li z-zona in ezami giet iddesinjata bħala urban conservation area, u li fil-fatt kienu gew irregistrati sensiela ta' oggezzjonijiet mill-girien għall-zvilupp in ezami.

Kuntrarju għall-argumenti tal-Appellanti, jigi rilevat mill-Mappa PA 3 u l-policy SMSE 03 tal-Pjan Lokali, li mhux talli li l-Pjan Lokali jispecifika b' precizjoni in-numru ta' sulari li jistghu jinbnew fiz-zona, talli jillimita l-izvilupp għal-zewg sulari mingħajr semi-basement, u saħansitra jagħti ad intendere li fejn hemm bzonn, u sabiex jigi ppreservat

il-karattru ta' din iz-zona (jew prevja Street Classification Exercise), jistghu f' certi cirkostanzi jigu permessi biss binjiet li ma jaqbzux l-gholi ta' sular (wiehed).

L-Appellanti ssottomettiet kazistika ta' binjiet fiz-zona li joghlew daqs il-proposta in ezami, pero' jigi rilevat li dawn il-permessi kollha nhargu qabel ma dahal fis-sehh il-Pjan Lokali u ghalhekk dan zvilupp gie permess taht regime t' ippjanar differenti minn dak odjern.

Hawnhekk tajjeb li jigi nutat ukoll li fir-rigward ta' commitments f' dak li hu gholi (building heights), is-subinciz 2 tal-Artikolu 69 tal-Att X tal-2010 jipprovdi s-sewgewenti:

“2. Fid-determinazzjoni taghha fuq applikazzjoni l-Awtorita ghandha ukoll tqis:

(a) kull haga ohra ta' sustanza, komprizi konsiderazzjonijiet ambjentali, estetici u sanitarji li l-Awtorita tista' tikkunsidra rilevanti:

Izda ebda konsiderazzjoni materjali inkluza konsiderazzjoni bbazata fuq l-ezistenza ta' binjiet fil madwar ma tista' tigi interpretata jew tintuza sabiex izzid l-limitazzjoni tal-gholi stabbilita fil-pjan;”

Kif diga gie rilevat supra, is-sit prezentement diga jaqbez il-limitu ghas-sulari kif permessi bil-Pjan Lokali in vigore (illum hemm tlett sulari mibnija minflok tnejn), u di konsegwenza, dan l-appell ma jimmeritax konsiderazzjoni favorevoli.

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 7099/05 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fis-7 ta' Awwissu 2006.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenenti:

1. It-Tribunal naqas li jidhol fil-kwistjoni tal-commitment u injora din il-kwistjoni u strah biss fuq il-pjan lokali;
2. It-Tribunal applika l-artikolu 69(2) tal-Att X tal-2010 għall-applikazzjoni li giet intavolata fl-2005 u b'hekk illeda d-drittijiet vestit tagħha billi l-applikazzjoni kellha tigi milqugha u mhux michuda skond dak li kienet tipprovdi l-ligi f'dak iz-zmien. L-appellant jilmenta specifikament mill-parti dwar l-gholi tal-bini bhala mhux trattabli mill-punto di vista ta' commitment. Din ma kienitx parti mill-ligi qabel iddahhal fis-sehh dan l-artikolu u a bazi tal-ligi ezistenti fil-mument li saret l-applikazzjoni u anki l-appell quddiem il-Bord, kien hemm divrsi binjiet ohra b'gholi bhal dak mitlub li sir fl-applikazzjoni de quo. L-appellant jilmenta li ligi ma tistax tigi applikata b'mod retroattiv.

L-ewwel aggravju

L-ewwel aggravju ma jimmeritax konsiderazzjoni favorevoli. It-Tribunal ibbaza d-decizjoni tieghu fuq dak li kienu jipprovdu l-policies u l-pjan lokali fiz-zmien tad-decizjoni. It-Tribunal fil-fatt iccita dak li sabet l-Awtorita bhala vjolazzjonijiet ta' policies jekk l-applikazzjoni tigi milqugha cioe BEN 2, BEN 4, UCO 6, tal-Pjan ta' Struttura, il-policies BEN 1 u BEN 4, SET 1, UCO 6 u TRA 4. In oltre issemmiet ukoll il-policy 10.6 tal-Policy and Design Guidance li ma tippermettix bini ta' penthouses f'urban conservation areas.

It-Tribunal ikkunsidra l-permessi mahruga kkwotati mill-appellant pero wasal ghal konkluzjoni li dawn il-permessi ma setghux ikollhom relevanza fid-determinazzjoni ta' din l-applikazzjoni billi nhargu meta kienu japplikaw policies differenti.

Dak li ghamel it-Tribunal hu illi applika l-pjanijiet u policies kif inhu obligat li jagħmel fi zmien li tkun qed tigi deciza t-talba. Aara f'dan is-sens **Philip Micallef v L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar**, App Inf 26/04/2007). L-applikazzjoni stretta tal-pjanijiet u policies ma tistax tigi assoggettata għal ebda diskrezzjoni jekk din ma tirrizultax mill-pjan jew policy stess jew fejn din id-diskrezzjoni hi dezumibbli mill-applikazzjoni ta' diversi policies li jistghu

jkunu applikabbli ghal kaz. F'dan il-kaz it-Tribunal gustament applika l-policies specifikament applikabbli u avolja ma kienx marbut li jikkonsidra permessi ohra, xorta kkonsidrahom u kkumenta dwarhom fil-kuntest tal-applikazzjoni sotto ezami.

Din il-Qorti ma ghandhiex x'tilmenta mid-decizjoni tat-Tribunal a bazi tal-ilment maghmul kontriha fl-ewwel aggravju.

It-tieni aggravju

Dan l-aggravju fih diversi punti ta' konsiderazzjoni. L-appellant jibda biex jilmenta illi essendo l-pjan lokali dahal fis-sehh wara li giet intavolata l-applikazzjoni kellu jigi applikat ir-regim ezistenti f'dak iz-zmien. Hi gurisprudenza kostanti illi huma applikabbli l-pjanijiet u policies in vigore fil-mument tad-decizjoni. Dan hu fil-fehma tal-Qorti korrett billi hu fil-mument tad-decizjoni illi l-applikazzjoni tigi dikjarata gustifikata jew le u hu f'dan il-mument illi applikant jakkwista dritt. Kull ma jigri sa dan il-mument hu konsiderazzjoni ta' talba biex wiehed jizviluppa proprjeta skond ma jixtieq u dan jista' jigi attwat biss jekk ikun kompatibbli mal-pjanijiet u policies ezistenti fil-mument ta' tali determinazzjoni. Hu importanti illi l-pjanijiet u policies ikollhom applikazzjoni uniformi fil-mument tad-determinazzjoni ta' applikazzjoni ghax l-iskop wara ligi dwar zvilupp hu s-sostenibilita, il-harsien u l-izvilupp tal-gzejjer Maltin fl-interess tas-socjeta in generali f'mument specifiku kif jigi determinat minn zmien ghal zmien mill-Awtorita vestita b'tali poter.

L-appellant pero izid ma' din is-sottomissjoni u jestendu l-aggravju teighu ghall-applikabilita ta' artikolu ta' ligi cioe l-artikolu 69(2) li dahal fis-sehh fl-2011, qabel inghatat id-decizjoni ghal applikazzjoni li kienet ilha pendent mill-2005 meta tali subartikolu ma kienx ezistenti. L-appellant jirreferi in partikolari ghal parti fejn jinghad li ebda konsiderazzjoni materjali inkluz konsiderazzjoni bazata fuq l-ezistenza ta' binjiet fil-madwar ma tista' tigi interpretata jew tintuza sabiex izzid il-limitazzjoni tal-gholi stabbilit fil-pjan. L-appellant isostni illi z-zona in kwistjoni

hi mimlija b'binjiet ta' diversi gholi u n-nuqqas ta' konsiderazzjoni mit-Tribunal ta' din il-konsiderazzjoni materjali minhabba l-artikolu 69(2) illedulu dritt vestit.

Ghalkemm din il-Qorti kienet tkun ippreparata li tidhol fil-kwistjoni jekk dan l-artikolu kellux effetti decisivi fuq l-applikazzjoni tal-applikant, il-fatti juru illi t-Tribunal ma ddeterminax l-applikazzjoni tieghu fuq dan is-subartikolu izda kif inghad esplicitament, l-applikazzjoni ma sabitx ezitu favorevoli ghax tmur kontra l-pjan lokali u l-policies vigenti fi zmien d-decizjoni u li l-permessi msemija mill-applikant kienu nghataw qabel id-dhul fis-sehh ta' dan il-pjan u policies. Fil-fatt din tikkostitwixxi l-parti dispositiva tad-decizjoni.

Hu minnu illi t-Tribunal semma' bhala argument illi l-artikolu 69(2) kienet tiprojbih milli jikkonsidra bhala element ta' sustanza, l-gholi ta' bini fiz-zona pero din il-parti ma kienetx decisiva u anqas tikkostitwixxi s-sustanza tad-decizjoni tat-Tribunal. Ghalhekk fic-cirkostanzi l-Qorti tqis li ma ghandhiex tidhol fl-aspett purament legali mill-lat akkademiku dwar il-portata retrospettiva tal-artikolu 69(2) ghal aplikazzjonijiet li pprecedew id-dhul fis-sehh ta' dan l-artikolu.

Il-Qorti ma tistax ma tikkummentax fuq l-ilment tal-appellant li t-Tribunal injora kwistjonijiet ta' commitment ghax applika l-artikolu 69(2) tal-Kap. 504 billi dam snin biex gie deciz l-appell quddiem it-Tribunal u b'hekk ir-regim legali gdid ma ffavorhix. Apparti li kif inghad ma kinitx l-applikazzjoni ta' artikolu 69(2) li fuqu ddecieda l-applikazzjoni t-Tribunal, dan ma jikkostitwix nuqqas tali li jitqies idoneju ghal finijiet ta' appell fuq punti ta' dritt quddiem din il-Qorti. F'dan is-sens il-Qorti tqis ir-referenza tal-appellant ghal kawza **Garden of Eden Garage Control vs Awtorita dwar it-Trasport ta' Malta**, deciz fid-29 ta' Settembru 2011 bhala mhux idoneju ghall-aggravju mressaq peress illi l-proceduri msemija ittiehdu wara decizjoni amministrattiva a bazi tal-artikolu 469A tal-Kap. 12 b'fattispecie li huma kompletament differenti minn dawk sotto ezami, fejn il-konsiderazzjonijiet tal-Qorti kienu bbazati fuq abbuz tas-setgha ta' Awtorita pubblika u tnikkir

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fil-qadi ta' dmirijiet u funzjonijiet tal-Awtorita wara decizjoni tal-Ufficju tal-Kompetizzjoni Gusta kif konfermat mill-Kummissjoni ghal Kummerc Gust u meta kien gia hemm qafas legali fuq hiex timxi l-istess Awtorita u naqset li timxi fuqha.

Decide

Ghal dawn ir-ragunijiet, il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Mariella Spiteri u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tal-10 ta' Mejju 2012. Bl-ispejjez kontra l-appellanta.

< Sentenza Finali >

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