MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF
MARK CHETCUTI

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 37/2012

Raymond Giordmaina

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Raymond Giordmaina tat-12 ta' April 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 fejn cahdet l-applikazzjoni PA 6667/06;

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 lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B’applikazzjoni tal-24 t’Ottubru 2006 – Full Development Permission – PA/06667/06 l-appellant, f’ St. Georges, Kuncizzjoni, L/O Rabat, Malta talab:

“To regularise the reconstruction of a dwelling.”

Illi l-Awtorita’ cahdet it-talba relattiva permezz ta’ rifjut tat-2 ta’ Lulju 2009 (red 69) ghar-ragunijiet segwenti:

“1 The proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, and in particular to paragraph 8.1(i) since the existing building is not considered as having architectural and/or historic importance, paragraph 8.2 (i) since the need for the new development is not justified from planning point of view, being a development of an urban nature, and thus should be located within the limits of development, paragraph 8.2 (v) the proposed works are not limited to a minor extension. It would lead to the intensification of urbanisation outside those areas specifically designated for urban uses in the Structure Plan.

2 The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

3 There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located in an area designated for development.

4 The site lies outside the limits for development defined in the Rationalised Scheme Boundary for Bahrija and so it

is located in an area which should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside."

Illi l-Perit Musumeci irrileva s-segwenti ghan-nom tal-appellant:

"The following appeal is being made in reaction to DCC's refusal tied to PA6667/06.

The refusal is based on the central pretext that the proposal results in thecreation of a new dwelling. It must be highlighted that evidence to the contrary, showing that the site relates to a previously occupied residence, is being submitted over the signature of Dr Joanne Vella Cuschieri. (Document A)

Further to the aforesaid, it must be stated that the previous building had sustained irreversible structural damage beyond repair, and the only way forward was to replace the previous existing building.

Evidence is also being submitted, demonstrating that the building has been in existence prior to 1968. (Document B)

It follows that it is only reasonable that applicant rebuilds his own home which has sustained irreversible structural repair.
Combined with the aforesaid, the previously derelict structure constituted a visual blemish, calling for immediate demolition. At the same time, our proposal calls for the erection of a replacement dwelling on a much smaller footprint, even though planning decisions are consistent in allowing the rebuilding of dwellings in ODZ on the same footprint.

In parallel, it bears to recall that DCC are consistent in granting reconstruction of dwellings as evidenced below:

Case	Location of	Description	Applican	Recepti

Number	Development	of Works	t Architect	on Date
04226/04	Site at Tal-Marnisi Ghar Dalam B'Bugia	Outline application to demolish existing buildings covered by permits and construct dwelling, retaining same building envelopes (Design to be improved)	Mr Alex Mercieca	Monday July 19 2004

Reconsideration Decision Date	Tuesday, August 09, 2005
Board Comments	DCC 81-01A/05 held on 9th August 2005 Approved in view that existing Building be demolished and replaced by one dwelling unit retaining the same envelope.
Decision posted date	Wednesday, October 05, 2005

It is also worth noting note that the proposal seeks to achieve one of the major Structure Plan goals which militates in favour of THE RADICAL IMPROVEMNET OF THE QUALITY OF ALL ASPECTS OF THE ENVIRONMENT OF BOTH URBAN AND RURAL AREAS - Structure Plan Goals 3. The same Plan further promotes the upgrading of the visual environment which comprises the very frequent occurrence of derelict and neglected sites in rural locations. Only a comprehensive and

determined attack on such conditions will achieve success, and the Structure Plan is a fitting instrument and focus for that attack. In fact, Structure Plan para 7.10 and Policy BEN 11 underline that The Planning Authority will seek to ensure that such environmental blemishes will be removed."

Illi l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:

"5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 The proposed development is objectionable as it is not considered as legitimate development that may be accepted outside the development zone boundary. There appears to be no justification on sound planning grounds for accepting the proposed development, as required by Structure Plan policy SET 12. Accepting the proposed construction of a new residential building without proper justification would only encourage the further dispersal of sporadic development in the countryside, against the aim of policies SET 11 & RCO 2 which seek to safeguard the countryside from urban development.

5.2 The arguments presented by the appellant in support of this appeal are
mainly that:

• Proof is being presented that the building that previously existed on site was an occupied residence;
• The building was in existence in 1968;
• The previous building sustained irreversible structural damage which was beyond repair, and hence necessitated its complete demolition;
• The replacement building is on a much smaller footprint; and
• Planning decisions have consistently allowed for the rebuilding of dwellings ODZ on the same footprint, as in the case of PA 4226/04.

On the appellant's arguments, the Authority re-iterates that the proposal is not acceptable on sound planning grounds. To begin with, and contrary to that stated by the

appellant, the proposed residential building is of a much larger scale than the structure that was formerly present on site. As indicated in paragraph 2.2 of this report, the previous structure on site consisted of a room with a footprint of approximately 16m2, whereas that proposed covers a footprint area of 128m2. The extended footprint results in an 87% increase to the previous footprint, which is almost 8 times larger than the existing structure. Section 8 of the Policy & Design guidance 'Development Outside Built-up Areas' clearly indicate that new dwellings odz would need the integration of existing structures that are worthy of retention, while extensions to the existing footprint would only be permitted where these are of a minor scale and proportional to that existing. The proposed dwelling for sanctioning does not qualify as such, as it consists of a much larger extension to that formerly present on site.

5.4 Moreover, even if it is proved that the previously existing structure was used for habitation purposes, the extent of the new construction is still not justified on sound planning grounds. This has been confirmed by the Planning Appeals Board on several occasions, whereby residential development in the countryside is only considered as justified for fulltime farmers who qualify under the genuine eligibility criteria for such development. In the case of development or redevelopment to existing small rural building/s, and where proof of habitation has been presented, the Board decided that:

"Il-Bord ikkunsidra il-mertu ta' dan il-kas. Huwa fatt illi I-appellant ma jissodisfax ir-rekwisiti ta' full-time farmer sabiex tigi kkunsidrata t-talba ghal estensjoni ta' binja bhal residenza .... Mil-access irrizulta li I-binja originali tikkonsisti minn zewg kmamar antiki fkuntest rurali. Ghalkemm l-appellant issottometta kuntratt antik u affidavit rigward iI-bini in kwistjoni, ma ngiebet l-ebda prova definittiva li dan ii-fond kien ricentement utilizzat bhala residenza. Il-Bord huwa tal-fehma illi jinholoq precedent perikoluz. jekk kull zewgt ikmamar rurali jistghu jigu kkonsidrati bhala residenza permanenti u biex issir talba ghul estenzjoni tal-istess ... Il-wirt rurali ghandu jigi

kkonservat u policies tal-Local Plans u pjan ta' struttura huma cari fdan ir-rigward tat-twaqqief tar-residenzi f'siti 'il barra miz-zoni tali zvilupp. Dan id-dritt ta' residenzi godda f'ODZ huwa limitat biss ghal fulltime farmers b'certu ammont ta' raba u anke f'dan il-kas, diversi kundizzjonijiet ohra. Il-Bord huwa tal-fehma li z-zewgt ikmamar antiki f'raba ma jikkostitwux residenza." (emphasis added)

[Alfred Scicluna VS. MEPA, 7th March 2007, PA 2975/99, PAB 156/03]"

Illi in vista tad-digriet moghti minn dan it-Tribunal fit-28 ta' Gunju 2011 l- Avukat Vella Cuschieri ghall-appellant irrilevat inter alia kif gej:

"1. Illi dwar il-kwistjoni jekk il-fond koncernat kienx jintuza bhala residenza, jigi ghal darbohra dikjarat li fil-fatt dan kien jintuza bhala residenza separate mill-bqija talbinja minn nannu ta' l-appellant Ambrogio Giordmaina u dan wara li nbdew il-proceduri ta' separazzjoni bejnu u bejn martu Maddalena Giordmaina. Qed jigu annessi flimkien ma' din l-ittra bosta dokumenti li juru li sa' mis-sena 1986 in-nanniet tal-appellant kellhom bejniethom proceduri ta' separazzjoni liema proceduri effettivament baqghu ghaddejjin sal-gurnata li z-zewg partijiet mietu. Ghalhekk ma ghandu jkun hemm l-ebda dubju li l-fond ta' l-appellant kien jintuza bhala residenza separata minn Ambrogio Giordmaina. Ssir referenza partikolari ghall-mandat bin-numru 251/86 anness dokument RG 1 fejn specikatament jigi dikjarat li Ambrogio Giordmaina mar joqghod f'ambjent iehor ftit il-boghod. Fil-fatt bosta mir-rikors juru li r-rikorrenti kellha l-istess indirizz bhall-intimat u dan specifikatament ghaliex ir-razzett kien gie maqsum f'zewg residenzi separati. Ara d-dokumenti l-ohra annessi. Apparti minn hekk terga ssir referenza ghall-affidavits gia prezentati fl-atti ta' l-applikazzjoni fejn familjari ta' l-appellant ikkonfermaw li effettivament Ambrogio u Maddalena Giordmaina kienu ilhom jghixu b'mod separat sa mis-snin 60. Sahansitra gie esebit ritratt ma' l-atti tal-appell mmarkat bhala numru 1 li juri iskrizzjoni fil-gebel maghmula min-nannu ta' l-appellant u li turi d-data ta' Settembru, 1962 cioe' z-zmien meta l-istess Ambrogio

Giordmaina ghamel xi tibdil fl-istruttura ta' din il-parti tar-razzett sabiex jibda jghix fih separatament mill-mara;

Illi la darba jirrizulta li l-fond ta' l-appellant kien jintuza bhala residenza u ghalhekk l-appellant ghandu dritt kwezit fil-ligi ghal din ir-residenza, allura dawk ir-ragunijiet ta' rifjut, fosthom it-tieni raguni ta' rifjut, li jaghmlu referenza ghas-sit daqs li kieku qatt ma kien hemm 'commitment' ghal residenza fuqu ma ghandhomx japplikaw f dan il-kaz;

Illi minghajr pregudizzju ghas-suespost, b'referenza ghal dak sottomess mill-Awtorita' illi l-fond originali kien jikkonsisti biss 'footprint' ta' 16 il-metru kwadru ~ huwa kontestat b'mod assolut u ghandu jirrizulta li fil-fatt l-Awtorita' ghandha zball f’dan ir-rigward. Ghal dan il-ghan qed tigi annessa block plan mehuda minn fuq il-pjanti tas-sena 1968 minn fejn jirrizulta li l-bini ezistenti fis-sena 1968 kien jammonta ghal footprint ta' 56 metri kwadri u ghalhekk l-estensjoni hija ferm anqas minn dak li qed tesponi l-Awtorita' fejn iddikjarat illi l-istruttura proposta hija tmien darbiet aktar. Fil-fatt dak propost jikkonsisti fi ftit anqas mid-doppju ta' dak li kien hemm ezistenti (ara pjanta dokument RG A);

Illi minn dak suespost jirrizulta illi l-proposta tal-appellant tissodisfa l-policy PLP 20 li din ta' l-ahhar tippermetti estensjonijiet ta' residenzi barra z-zona ta' zvilupp basta dawn ma jkunux akbar minn 150 metru kwadru;

Illi in sostenn ta' dan issir ukoll referenza ghal-zewg permessi ta' zvilupp mahruga mill-Awtorita' fejn il-binja ezistenti kienet ferm izghar minn dak tal-appellant izda xorta wahda nhareg permess ta' zvilupp ghall-estensjonijiet ferm akbar minn dawk ta' l-appellant cioe' l-permess ta' zvilupp bin-numri PA 3492/01, PA 1976/03 u PA 3457/08 li jikkonsistu f’permessi ta' zvilupp ghal residenza barra z-zona ta' zvilupp fis-Siggiewi u l-permess ta' zvilupp bin-numru 6312/02 f’isem Marthese Said li wkoll tikkonsisti f’permess ta' zvilupp ghal residenza barra z-zona ta' zvilupp. La darba nhargu dawn il-permessi ta' zvilupp jirrizulta li jekk dan it-Tribunal jirrifjuta dan l-appell jkun qed jikkometti diskriminazzjoni u ingustizzja

manifesta fil-konfront ta' l-appellant stante li dan l-appell jinkwadra ruhu fl-istess kriterji tal-permessi ta' zvilupp imsemmijja

3. Illi minghajr pregudizzju ghas-suespost, dwar l-allegazzjoni illi l-appellant iddemolixxa l-istruttura kollha ezistenti, l-appellant ukoll jerga jikkontesta dan kollu stante li huwa zamm bosta partijiet mill-istrutturi li kienu ezistenti u bidel biss dak li kien perikoluz u dan jidher ukoll mir-ritratti li gew prezentati annesi ma' l-appell u ndikati bhala ritratti 2 sa 7. L-appellant ma jistax jifhem kif l-Awtorita' ghadha qed tinsisti li s-sit gie kompletament demolit meta mir-ritratti jidher evidenti li dan mhux minnu.

4. Illi minghajr pregudizzju ghas-suespost, f'dan l-istadju ssir ukoll referenza ghad-decizjoni fl-ismijiet Joseph Falzon vs. Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar deciza nhar il-25 ta' April, 2008 f'liema decizjoni gew elenkati l-kriterji sabiex applikazzjoni bhal dik ta' l-appellant tigi milqugha cioe:

Illi l-estensjoni hija zghira;
Illi l-bzonn ta' l-izvilupp hu spjegat u gustifikat; Illi l-uzu propost hu diga stabbilit;
Illi l-floorspace totali propost mhux hajeccedi 150 metri kwadri; Illi lestensjoni proposta hi gewwa l-konfini tal-proprjeta',
Illi l-impatt vizwali hu minimu;
Illi mhux qeghda tinholoq residenza gdid

u l-appellant jinsiti li l-applikazzjoni tieghu tissodisfa l-kriterji kollha hawn fuq elenkati u ghalhekk ma tezisti l-ebda raguni valida abbazi ta' ligi u policies ghalfejn l-applikazzjoni tieghu kellha tigi rifjutata mill-Awtorita.

Ghaldaqstant in vista tas-suespost, b'referenza wkoll ghas-sottomissjonijiet u ddokumenti li tressqu flimkien ma' l-appell, l-appellant jitlob li dan it-Tribunal joghgbu jirrevoka r-rifjut tal-permess ta' zvilupp bin-numru 6667/06 u jordna l-hrug ta' l-istess permess. L-appellant jitlob sabiex it-Tribunal jassigura li jkollu l-process tal-Awtorita' f'idejh qabel ma tinghata d-decizjoni u dan stante li bosta

provi jinsabu fl-istess process inkluz l-affidavits imsemmija aktar il-fuq."

Illi permezz ta' digriet ta' dana l-istess Tribunal tal-21 ta' Frar 2012, u fuq talba tal-appellant, gie ordnat l-isfilz tat-Tieni Statement tal-Awtorita'.

Ikkunsidra ulterjorment:

Il-proposta tal-appellant hi biex fil-Kuncizzjoni, limiti tar-Rabat, Malta, "jirregolarizza r-rikostruzzjoni ta' residenza.

L-appellant biex jikkonferma li s-sit 'de quo' kien f'xi zmien residenza, ipprezenta diversi kopji ta' atti gudizzjarji, estratti mill-proceduri ta' separazzjoni personali bejn Maddalene Giordmaina u Ambrogio Giordmaina, proceduri li bdew fl-24 ta' Settembru 1985, bejn in-nanniet ta' l-appellant.

Ir-rikors tal-Kunsulent Legali ta' Maddalena Giordmaina ipprezentat fit-8 ta' Settembru 1986 – mandat ta' Inibizzjoni fl-ewwel paragrafu jghid hekk:

"L-intimat zewgha kien abbanduna r-razzett fejn kienu joqghodu flimkien u mar joqghod f'ambjenti ohra ftit l-boghod."

Jigi rilevat li l-premess ma jikkostitiwixxi l-ebda prova li s-sit mertu ta' dan l-appell kien f'xi zmien r-residenza ta' xi antenat tal-appellant. Il-fatt li n-nanniet ta' l-appellant ma baqghux jikkoabitaw ma jfissirx necessarjament li s-sit mertu ta' dan l-appell kien jintuza ghar-residenza. Mill-istess pjanta pprezentata mill-appellant – Dok RGA – Block Plan pre 1998 jirrizulta li kienu jezistu zewgt' ikmamar, wahda ta' $38m^2$, u l-ohra ta' $18m^2$. Il-kmamar huma indipendenti u distakkati minn xulxin, bejniethom hemm distanza ta' 5 metri cirka.

Il-proposta prezenti tinkorpora l-area precedentement okkupata minn dawn iz-zewgt ikmamar, fi zvilupp ta' $128m^2$ u washroom fuq il-bejt b'area ta' $21m^2$.

Is-sit jinsab barra z-zona tal-izvilupp, fil-Kuncizzjoni limiti tar-Rabat, fejn ghalkemm hemm xi bini ezistenti, dan ma giex klassifikat bhala Rural Settlement.

Billi x-xogholjiet saru bla permess harget enforcement notice ECF 797/06.

Il-perit ta’ l-appellant iddikjara fl-appell li l-bini ezistenti garrab hsara strutturali irriversibbli, u ghalhekk l-unika soluzzjoni, kienet li dan l-bini jigi demolit u sostitwit.

Skond l-Artikolu 67 tal-Att X ta’ l-2010, Kap. 504, l-ebda zvilupp ma jista’ jsir, barra milli bil-permess ghall-izvilupp.

Fil-kaz in ezami, l-appellant unilateralemnt iddecieda li jwaqqa l-bini ezistenti, u jibni dak li deherlu li kellu d-dritt li jibni.

Skond is-subincis (2) tal-imsemmi artikolu, zvilupp iffisser, bini, skavar, kostruzzjoni, demolizzjoni u/jew alterazzjonijiet.

Eskluzi mill-obbligu ta’ permess ghall-izvilupp huma (sub incis 2(a)) xogholijiet ta’ manutenzjoni, li jirreferu ghall-xogholijiet interni fil-bini, u ma jirreferux ghad-dehra esterna tal-izvilupp.

Il-proviso tal-istess artikolu jaghmilha cara li x-xogholijiet ta’ manutenzjoni li ma jirrikjedux permess, m’ghandhomx jinkludu demolizzjoni u rikostruzzjoni.

Fil-kaz in ezami, l-appellant kien legalment awtorizzat li jaghmel xogholijiet ta’ manutenzjoni, jekk kien hemm hsara interna fil-propjeta’; pero ma setghax unilateralment u minghajr l-ebda awtorizzazzjoni jwaqqa l-bini ezistenti fuq l-pretest li kellu hsara irreparabbli; u jibni dak li deherlu bla permess.

Il-proposta hi, in oltre in kontravenzjoni tal-paragrafu 8.1 u 8.2 tad-Development Control Guidance, Development Outside Built-Up Areas billi l-bini ezistenti ma kellu l-ebda importanza arkitettonika jew storika; l-htiega ta’ dan l-

izvilupp m'hijiex gustifikata mill-aspett ta' ippjanar, billi tikkostitwixxi zvilupp urbanizzanti, li jista' jsir fl-areas indikati bhala areas ta' zivlupp; u billi l-proposta m'hijiex limitata ghall-estenzjoni marginali.

L-appellant ma illimitax ruhhu biex jirranga dak li kien jezisti fuq is-sit, izda ghazel li minghajr l-ebda awtorizzazzjoni, jaghmel zvilupp kumpletament urbanizzanti, f'area li hi barra z-zona ta' l-izvilupp.

Anke l-materjali uzati, bricks, flok gebel, huma oggezzjonabbli, u ma jistghux jigu awtorizzati f'area li hi barra z-zona tal-izvilupp.

Finalment, jigi rilevat li l-pjanbti fil-file tal-applikazzjoni PA 6667/06 jistghu jghatu lok ghall-ambigwita', billi dak li hu indikat bl-ahmar fuq parti mill-proposta, ma giex indikat fuq partijiet ohra tal-istess applikazzjoni.

Ezaminata fid-dettal l-proposta prezenti, fil-kuntest tal-Policies rilevanti, l-applikazzjoni ma timmeritax kunsiderazzjoni favorevoli, u r-ragunijet tar-rifjut huma korretti u jimmeritaw konferma.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma r-rifjut tat-2 ta' Lulju 2009, ghall-Applikazzjoni PA 6667/06.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:
1. It-Tribunal agixxa ultra jew extra petita meta cahad l-appell a bazi tal-ambigwita fil-pjanti meta din il-kwistjoni qatt ma tqajmet quddiem l-Awtorita u t-Tribunal u qatt ma kien hemm kontestazzjoni dwar dan. In oltre t-Tribunal ma tax opportunita lill-appellant li jaghmel sottomissjonijiet fuq din il-kwistjoni;
2. Ghalkemm it-Tribunal ordna l-isfilz tat-tieni statement tal-Awtorita xorta gie influenzat minnha fid-decizjoni u fil-fatt baqghet fl-atti. Jirrizulta li t-Tribunal semma' s-sitwazzjoni ezistenti qabel l-1998 u d-daqs tal-kmamar, id-distanza bejn iz-zewgt ikmamar, u r-riferenza ghall-uzu ta'

bricks, kollox rizultanti mit-tieni statement tal-Awtorita. Dan illuda d-dritt tal-appellant li jirrispondi ghal dawn l-argumenti;
3. Id-decizjoni mhix motivata u tonqos milli tidhol fl-aggravji kollha tal-appellant, senjatament l-uzu tas-sit anki mill-antenati tal-appellant, l-istat hazin tal-binja, l-ezistenza taghha qabel l-1968 u l-konsegwenti drittijiet akkwiziti, l-element ta’ commitment fir-rigward ta’ zviluppi ohra, id-diversi policies li messhom gew applikati;
4. It-Tribunal applika erronjament il-policy li tirrikjedi li l-applikant ikun full time farmer ghax ghal kaz japplika l-argument li hu kellu dritt kwezit ghax is-sit kien jintuza bhala residenza qabel l-1967, u ghalhekk tikkwalifika bhala struttura antika u ma hemmx bzonn ta’ permess ulterjuri ghal uzu ta’ residenza. Kull ma kien mehtieg hu sanzjoni tax-xogholijiet.

L-ewwel aggravju

Ghalkemm hu minnu bhala fatt illi lkwistjoni tal-pjanti ma tqajmet fl-ebda hin quddiem it-Tribunal pero jirrizulta illi din ma kinitx kwistjoni li fuqha giet deciza l-vertenza. It-Tribunal ghamel biss osservazzjoni li l-pjanti setghu taw lok ghal ambigwita pero ma marx oltre u d-decide kien jirrigwarda l-policies mhux il-pjanti. Il-Qorti tirrimarka illi t-Tribunal seta’ evita li jikkumenta fuq kwistjonijiet mhux imqajma u fejn jidhirlu li hemm kwistjoni relevanti igibha l-ewwel a konjizzjoni tal-partijiet biex ikollhom opportunita jaghmlu s-sottomissjonijiet taghhom, pero f’dan il-kaz il-kumment dwar il-pjanti da parti tat-Tribunal kien aktar osservazzjoni gratwita li mod jew iehor ma irrafigurat bl-ebda mod fis-sustanza tad-decizjoni tat-Tribunal.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

L-appellant qed jilmenta li t-Tribunal ha konjizzjoni fid-decizjoni teighu ghal fatti allegati mill-Awtorita li kienu jinsabu f’nota li giet sfilzata mill-atti. Din in-nota giet sfilzata fil-21 ta’ Frar 2012. L-appelant isemmi tlett fatti fid-decizjoni li ma jirrizultawx mill-atti. L-ewwel wahda tirreferi

ghal sitwazzjoni pre-ezistenti s-sena 1998 fejn jissemmew il-kobor tal-kmamar u d-distanza bejniethom. Qed jigi allegat li dawn kienu osservazzjonijiet fin-nota tal-Awtorita. Fil-fatt pero t-Tribunal in konnessjoni ma' dan il-kejl, jirreferi ghal block plan pre 1998 Dok. RGA esebita mill-appellant f'nota datata 27 ta' Settembru 2011 (fit-tieni pagna tal-istess nota) fejn tra l-altro jissema' l-kobor komplessiv tal-kmamar. In kwantu ghall-uzu tal-bricks fil-binja, dan jirrizulta mir-rapport tar-rifjut tad-DCC punt 1.2 tal-istess rapport. Kwindi hi l-fehma tal-Qorti illi t-Tribunal ma ppekkax billi ha konjizzjoni ta' fatti jew provi mhux in atti.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet u r-raba aggravji

Dawn l-aggravji fil-maggor parti tieghu jidhol fi kwistjonijiet ta' fatti, hafna minnhom ta' ppjanar li din il-Qorti ma tistax tissindaka peress illi l-kompitu ta' din il-Qorti hu biss wiehed ta' revizjoni ta' punti ta' ligi. Madankollu l-Qorti hi konvinta illi l-aggravji tal-appellant gew indirizzati. Kollox kien jistrieh fuq il-fatt ippruvat jew le dwar l-ezistenza tas-sit qabel l-1968 qua fond residenzjali. It-Tribunal, fuq il-provi li kellu quddiemu, senjatament dawk relevanti ghas-separazzjoni bejn il-nanniet tal-applikant li jirresalu ghas-snin 1986 il-quddiem, iddecieda li tali provi ma kienux prova li kien hemm binja residenjali pre 1968. Din il-Qorti mhix ser issir Qorti ta' tieni grad biex tissindaka apprezzament ta' fatti u t-Tribunal uza d-diskrezzjoni tieghu biex jara jekk l-appellant gabx prova konvincenti li jistabilixxi dan il-fatt u kkonkluda li din ma ngibitx. It-Tribunal agixxa fil-parametri ta' dak li titlob il-ligi dwar il-grad tal-prova u ma hemm xejn fl-atti li jindika mod iehor. Dan li jsegwi minn din il-konsiderazzjoni tat-Tribunal huma l-applikazzjoni tal-policies relevanti ghal strutturi rurali, f'dan il-kaz zewg strutturi ta' 56 metri kwadru komplessivament li zdiedu ghal 128 metri u washroom ta' 21 metru kwadri b'binja mhix awtorizzata, f'zona barra fejn hu permess zvilupp u li mhux klassifikat bhala rural settleemnt. B'dawn il-fatti t-Tribunal applika l-policies li dehrlu kienu jeffettwaw tali zvilupp cioe fost l-ohrajn

paragrafi 8.1 u 8.2 tad-Development Control Guidance fuq Developments Outside Built Up Areas u billi l-bini ma kellu ebda importanza arkitettonika u storika, il-htiega tal-izvilupp urbanizzanti li jista' jsir biss f'areas ghal dan l-iskop u inoltre l-izvilupp mhux estensjoni marginali intiz biex jitranga dak ezistenti izda zvilupp kompletament urbnizzanti, kontra l-policies relevanti. Kwindi l-aggravji tlieta u erbgha tal-appellant gew indirizzati fis-sens li fl-isfond tal-fatti ppruvati mhux applikabbli l-policies u argumenti mressqa mill-appellant in sostenn tat-tezi tieghu.

Id-decizjoni biex tkun motivata trid tindirizza l-izvilupp mitlub u jekk dan l-izvilupp jinkwadrax ruhu fil-pjanijiet u policies. F'dan l-aspett id-decizjoni tat-Tribunal hi ben motivata u sostanzjata. Jista' jkun li l-appellant ma qabilx mal-konsiderazzjonijiet ta' ppjanar li ffoka fuqhom it-Tribunal pero ma jfissirx illi l-aggravji tieghu ma gewx trattati. Lanqas ma hu mehtieg illi kull punt imqajjem mill-appellant jigi trattat jekk mill-assiem tad-decizjoni hemm ragunijiet indikati ghaliex l-aggravji huma inapplikabbli ghal kaz minghajr ma t-Tribunal jindika wiehed wiehed kull aggravju fid-dettal tieghu. Mhux lecitu ghall-appellant li jiddezumi illi l-policies relevanti li jissemmew fl-ahhar parti tad-decizjoni huma dawk li semma' l-Awtorita fl-intier taghhom. It-Tribunal kien car fejn mexa fuq il-fatt illi s-sit hu barra z-zona ta' zvilupp u hu residenza gdida billi ma tikkwalifikax bhala residenza pre-ezistenti minhabba nuqqas ta' prova, u ghal ragunijiet ta' ppjanar skond il-Policy and Design Guidance Development Outside Built Up Areas u fejn l-appellant qed jittenta jaghmel zvilupp urbanizzanti fejn mhux permess jew mehtieg u hu ta' natura mhux marginali, fejn japplika Policy SET 11 u lanqas hu wiehed mill-eccezzjonijiet kontra din ir-regola skond paragrafu 7.6 tal-Istructure Plan ghal-Gzejjer ta' Malta (Dicembru 1990).

Ghalhekk dawn z-zewg aggravji tal-appellant huma wkoll ingustifikati.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Raymond Giordmaina u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012. L-ispejjez ghall-appellant.

< Sentenza Finali >

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