



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 40/2012

Emmanuel Giordmaina

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Emmanuel Giordmaina tat-12 ta' April 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 li cahdet l-applikazzjoni PA 5597/06;

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 tas-6 ta' Settembru 2006 – Full Development Permission – PA/05597/06 l-appellant, f' site at Kuncizzjoni, L/O, Rabat (Malta) talab:

“Sanctioning of the construction of a rural room.”

Illi permezz ta' rifjut tal-15 ta' Lulju 2010 mahrug mid-Development Control Commission it-talba ghall-hrug tal-permess msemmi giet michuda ghar-ragunijiet segwenti:

“1. The proposal is not essential to the needs of agriculture in that the applicant is not a registered full-time arable farmer. The applicant does not therefore satisfy the criteria set out in paragraph 11.4 of the Structure Plan Explanatory Memorandum and so the proposal runs counter to Structure Plan policies AHF 5 and SET 11 and to the Malta Environment & Planning Authority's Policy and Design Guidance - Farmhouses and Agricultural Buildings.

2. The Department of Agriculture has stated that the relevant site is not registered on the applicant. The site is not agricultural and the rural room proposed for sanctioning is used for recreation purposes including an aviary. Therefore the sanctioning of the rural room is not justified and runs counter to Paragraph 11.4 of the Structure Plan Explanatory Memorandum and to Structure Plan policy AHF 5. The development runs counter to Paragraph 1.10 of Policy and Design Guidance 'Farmhouses and Agricultural Buildings'.

3. The construction of rural room has led to damage of existing Carob trees and the development and its ancillary interventions are totally unsympathetic to conservation of the on-site habitats (example maquis). The development therefore runs counter to Structure Plan policy RCO 8 since the proposed sanctioning of rural room and other related developments are not essential to agriculture and impact on the ecology of the area.

4. The rubble walls have been restored. using unacceptable methodology and materials and not constructed using traditional methodology and materials.

The rubble walls therefore run counter to LN 160/97 which states that rubble walls that are not constructed of rubble wall building material are prohibited and that repairs of existing rubble walls should be carried out exclusively using the same type of dry-stone rubble walling (sejjieh) that composes the existing wall.

5. On Site there are structures and uses not legitimately related to agriculture. The proposed sanctioning of rural room therefore runs counter to Structure Plan policy SET 11 which prohibits urban development within rural areas, except for legitimate agricultural, archaeological or ecological purposes, policy RCO 2 which prohibits urban development within Rural Conservation Areas, with the exception to developments that are of agricultural, ecological and scenic interest and policy AHF 5 which accepts the development of structures essential to agriculture outside the development zone.

6. Eucalyptus trees and a Palm tree have been planted on site Eucalyptus trees and Palm trees are not acceptable trees in ODZ as according to Appendix 3 and 6 of the Guidelines for Planting and Landscaping in the Maltese Islands.

Illi l-Perit Philip Grech, ghan-nom tal-appellant ressaq l-aggravji tal-appellant kif gej:

“With reference to the refusal issued on this application dated 15 July 2010, and without prejudice while reserving the right to make further submissions and evidence, the following are the reasons for appeal:

1 DCC Board A who deliberated this application have in the past not hesitated to allocated rural rooms for part time farmers. Reference is to be made to PA 06246/04, which allocated a rural room to a part time farmer after the coming into effect of the cited policies. The applicant of this application is moreover the holder of over 6232 square metres of land, which should reasonably entitle him to a room of area up to 15 square metres.

2 The DCC states that the site is not registered on the applicant. However this is not true, as clearly shown on

my drawing dated July 18, 2006, the land forms part of parcel 679969, registered in his name.

3 The document Farmhouses and Agricultural Buildings para 1.10 states that an area of 15 square metres is allowed for a rural room; the area under consideration for sanctioning is less than 10 square metres in area so it is not understood how it runs counter to this 'Design Guidance'.

4 The site is agricultural indeed it has been used for growing vegetables as shown in the attached photo. The site does not include an aviary; and no sanctioning of any other structure other than the rural room is being requested. No enforcement order of any kind other than that imposed on the rural room under application (ENF37/2006) - 4 years ago - has been issued by MEP A on this site.

5 DCC states that the existing Carob trees are damaged; again this is not true and the trees are in fact flourishing and not damaged - as can be seen from the same attached photo in which the said trees totally hid the room even three years ago; this rural room is totally sympathetic to its surroundings.

6 DCC states that rubble walls have been restored using unacceptable methodology; no rubble walls are part of the development requested for sanctioning. The application is solely for the sanctioning of one rural room. No specific enforcement order has been issued by MEPA to define which rubble walls are being referred to - if MEPA maintains that the site is not registered on the the applicant why does it go on to refuse the permit on the grounds of attributing works on this site to him?

7 DCC states that there are structures and uses not related to agriculture on the site. Again, MEPA has failed to specify where and what these uses are. We reiterate that the sole interest of this application is to sanction that building against which an enforcement order was issued.

8 DCC states that a Palm tree and Eucalyptus tree have been planted on site; this again is not true as there are no eucalyptus or palm trees on the site registered on my client. DCC is invited to examine the holding of the applicant and the relevant planting.

Clearly the guidance given by the Directorate has consistently misled the Commission into several errors of judgement, and thus the decision was made on false premises. We thus appeal for the decision to refuse the sanctioning of this rural room be overturned.”

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

“5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 The appellant is justifying this appeal on the following grounds:

- (a) Permits (e.g. PA6246/04) for agricultural stores have been issued in the past for part-time farmers. The appellant has over 6 tumoli of land;
- (b) The site forms part of parcel 679969 which is registered in the appellant's name;
- (c) The rural room has an area of just 10sq.m and thus complies with the Design Policy Guidelines for Agricultural buildings;
- (d) The site is agricultural and it used for growing vegetables. The site does not include an aviary and no sanctioning of any other structure other than the rural room is being requested. No enforcement order have been issued on these structures;
- (e) No damage to the Carob trees has been affected;
- (f) No rubble walls are part of this application and no specific enforcement order has been issued on the said walls and if MEPA maintains that the site is not registered on the appellant than why does it refuse the permit on the grounds of attracting illegalities works on this site to him;
- (g) MEPA failed to specify where are the alleged illegal structures that are not used for agriculture and what are the uses being carried within;
- (h) It is not true that Palm and Eucalyptus trees have been planted on site.

5.2 The Directorate has the following comments to make:

5.2.1 Agricultural Store

5.2.1.1 In view of the new policy document Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007), the Authority is no longer insisting that the appellant does not qualify for the proposed agricultural store because he is a part-time farmer. Furthermore the Authority recognise that the appellant has enough land holding to qualify for a 15sq.m rural room and has been a bona-fide farmer for at least 2 consecutive years prior to the submission of the application.

5.2.1.2 However Policy 2.4A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) permits only the building of rural rooms on arable land only if they are used for agricultural purposes. The Environment Protection Department stated that during a site inspection they noticed that the room is not used for agricultural related activities but for recreational purposes - see document 12 in PA file. Therefore the principle aim for granting such structures is already not being respected.

5.2.1.3 Policy 2.4A(4) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) requires the agricultural store to be located on arable land registered in the name of the applicant with the Department of Agriculture.

The Department of Agriculture stated this agricultural room is not located on land registered on the appellant. In fact if one had to compare the position of the agricultural room on the site plan submitted with the application form with the plan of agricultural holding 679969 issued by the Department of Agriculture, one would immediately notice that the proposed agricultural store is not located within the said holding. This does not mean that the land onto which the agricultural store is located does not belong to the appellant, but simply it is not registered in his name for agricultural purposes.

5.2.1.4 Policy 2.4A(5) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) requires official statement from the Malta Resources Authority that the agricultural building is not within 5m from the edge of a watercourse and a buffer zone of 30 metres radius from sources used for the abstraction of water. Na such documentation has been submitted.

5.2.1.5 Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) criterion 6 states that no agricultural buildings will be permitted if located in an Area of High Landscaped Value. Therefore the proposal is not acceptable because it is located in such a designated area.

5.2.1.6 Furthermore it is obvious that the room was not constructed in an appropriate manner as required by Policy 2.4A(8) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) and Part 5 of the same policy guidance. In particular the propping up of various poles, the material used for constructing the building and the type of entrance/door are all unacceptable characteristics.

The agricultural structure as constructed does not visually respect the surrounding rural landscape and thus infringes the overall aim of the Structure Plan rural framework which seeks to conserve the rural character and related landscape features by taking a sustainable approach. The related Structure Plan policies are RCO 2 (prohibiting urban development within Rural Conservation Areas), RCO 4 (prohibits developments in rural areas that will adversely affect the scenic value of an area) and RCO 8 (individual cultivators will be required to illustrate to the Planning Authority how any planned agricultural development will not harm the ecological, archaeological, and scenic value of the area).

5.2.2 Illegalities

5.2.2.1 The site onto which the agricultural store has been built and the surrounding holdings were not at the time of construction used for agricultural land. The photos

submitted by the appellant during the course of the application as well as those by the Environment Protection Department show that any agricultural land, if existed, was abandoned was a substantial period of time that it has evolved into a natural habitat. However it now results that the appellant has transformed the area into pockets of agricultural land and formal gardens, including paving and levelling of site into a parking area without permit.

Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) states in the glossary for Abandoned Agricultural Land that agricultural land which has been abandoned for a long period and subsequently, it has become characterised by species of wild flora [...] does not constitute abandoned agricultural land. In such cases the land constitutes a natural site and therefore, any proposal for conversion of such land into agricultural land requires permission for MEPA.

The agricultural store and the appellant's fields are only accessed from the adjacent field in front bordering the street. This has now been enclosed by a gate and subjected to unacceptable interventions including extensive removal of soil and creation of a formal passage way.

5.2.2.2 Impact on existing carob trees and surrounding ecology

The Environment Protection Directorate has confirmed that the construction of the rural room proposed for sanctioning has led to the damage to existing Carob trees. They have also argued that the development and its ancillary interventions are totally unsympathetic to conservation of the on-site habitats (mainly the surrounding maquis).

Various photos show that part of the site has been leveled to accommodate a parking area, which leads to loss of natural habitat and an urban type of development. The development therefore runs counter to Structure Plan policy RCO 8 since the proposed sanctioning of rural

room and other related developments are not essential to agriculture and impact on the ecology of the area.

5.2.2.3 Rubble walls

As indicated in the photos taken by the Environment Protection Directorate during the site visit, the rubble walls have been restored, using unacceptable methodology and materials and not constructed using traditional methodology and materials. The rubble walls therefore run counter to LN 160/97 which states that rubble walls that are not constructed of rubble wall building material are prohibited and that repairs of existing rubble walls should be carried out exclusively using the same type of dry-stone rubble walling (sejjieh) that composes the existing wall.

5.2.2.4 Other Structures

Other structures were noted on site. These structures which are not related to agriculture such as the aviary were constructed after the issue of the enforcement notice. Moreover, Eucalyptus trees and a Palm tree have been planted on site. Eucalyptus trees and Palm trees are not acceptable trees in ODZ as according to Appendix 3 and 6 of the Guidelines for Planting and Landscaping in the Maltese Islands. The aviary together with the Eucalyptus and Palm trees lead more to the formation of an urban type garden rather than agricultural development. Therefore the site in question contains development and characteristics which are more typical of urban areas and is detracting the area from its rural context. On site DC-EPD have also noted oil drums and rubble moulds).

Therefore in terms of Structure Plan policy SET 11 which prohibits urban development within rural areas, except for legitimate agricultural, archaeological or ecological purposes, policy RCO 2 which prohibits urban development within Rural Conservation Areas, with the exception to developments that are of agricultural, ecological and scenic interest and policy AHF 5 which accepts the development of structures essential to

agriculture outside the development zone, the proposed sanctioning of the rural room is unacceptable.

5.2.2.5 Appellant's argument that these illegalities are not on the site of the room which is being requested for sanctioning.

These structures and illegalities are all found in the vicinity of the agricultural room which is being requested to be sanctioned and these illegalities are all located on land belonging to the appellant. Once the enforcement notice has been issued, the appellant was informed not to continue with any other works on his site. Therefore the argument that there is no enforcement on these illegalities is not justified because the appellant knew that he could not continue with such works.

Illi l-Avukat Joanne Vella Cuschieri, ghan-nom tal-appellant, ressqet il-kummenti taghha kif gej:

"1. Fl-ewwel lok jigi nutat illi fin-nota taghha l-Awtorita' qed taqbel ma' l-ewwel aggravju ta' l-appellant u ghalhekk qed tammetti illi stante l-ammont ta' art f'isem l-appellant, huwa jikkwalifika ghal kamra ta' 15 il-metru kwadru ghall-kuntrarju ta' dak li jghidu r-ragunijiet ta' rifjut. Fil-fatt f'punt numru 5.2.1.1 tan-nota responsiva l-istess Awtorita' tammetti kif isegwi:

'The Authority is no longer insisting that the appellant does not qualify for the proposed agricultural store because he is a part-time farmer.'

u in vista tal 'Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007). '

Ghaldaqstant in vista tas-suespost, ghandu jirrizulta lil dan it-Tribunal li l-appellant ghandu d-dritt li jissanzjona l-kamra in kwistjoni stante li sahansitra hija izghar mill-massimu ta' 15 il-metru kwadru;'

2. Illi dwar il-punt jekk l-art in kwistjoni hiex art agrikola jew le jidher li l-Awtorita' fir-risposta taghha qed tikkontradixxi lilha nnifisha stante li f'partijiet mir-risposta taghha tghid illi din l-art hija art agrikola izda mhux registrata f'isem l-

appellant, f'partijiet ohra tghid li l-appellant stess dawwar din l-art f'art agrikola. L-appellant jinsisti illi din l-art minn dejjem kienet wahda agrikola kif ukoll jirrizulta mir-ritratti li prezenta l-Perit. Fil-fatt jekk wiehed jinnota s-sottomissjonijiet ta' l-Awtorita' jidher li l-istess Awtorita' qed tghid li dik il-parti ta' l-art li mihiex agrikola hija fil-fatt art adjacenti ghal dak ta' l-appellant u mihiex fil-parametri ta' l-art involuta f'dan l-appell!

Illi fuq dan il-punt l-Awtorita' wkoll tikkontradixxi lilha nnifisha fejn f'partijiet tghid illi l-appellant ghandu bzonn japplika sabiex l-art jaghmilha agrikola minn naha l-ohra tghid illi hija art agrikola meta l-appellant suppost applika.

Dwar dan il-punt l-appellant umilment jissottometti li dak ezistenti fuq is-sit illum il-gurnata jsolvi kwezit kollu kif jidher mir-ritratti esebiti mill-Perit. Huwa car minn dawn ir-ritratti li l-art qed tintuza ghal skop agrikolu u wkoll hija registrata ma' l-Awtoritajiet bhala art agrikola. Dan ghalhekk ma jhalli l-ebda lok ta' interpretazzjoni kif allegat mill-Awtorita'.

3. Illi dwar il-kwistjoni jekk l-art taqa taht parcel 679969 li jappartjeni u huwa mahdum mill-appellant, l-appellant jinsisti fuq il-versjoni tieghu kif ukoll ikkonfermata mill-Perit Grech, cioe' li fil-fatt din l-art taqa f'dan il-parcel. L-istess site plans prezentati mill-Awtorita' juru l-kamra fl-istess parametri ta' dan il-parcel. Jidher li ghal xi raguni l-Awtorita' qed taghmel il-kalkoli taghha hazin. Jekk it-Tribunal ihoss li ghad hemm xi dubju fuq dan il-punt, l-appellant jitlob li l-istess Tribunal jappunta dan l-appell ghall-provi sabiex dan il-punt jigi kjarifikat qabel ma tinghata decizjoni finali;

4. Illi l-appellant jinsisti li din il-kamra huwa juza ghal skop agrikolu mhux kif allegat mill-Awtorita', dan jista' facilment jigi verifikat jekk wiehed imur fuq il-post. Altrimenti kif jista' jkun li l-appellant jakkomoda l-ghodda u appart iehor sabiex jahdem aktar minn sitt tumoli ta' raba'!. Jigi nutat li l-istess Awtorita' fir-risposta taghha taghmel referenza ghal din il-kamra bhala 'agricultural store' u b'hekk ex

admissis taccetta li dan huwa l-uzu li qed isir minn din il-kamra;

5. Illi dwar il-punti mqajjma mill-Awtorita' fil-punti bin-numru 5.2.1.4 sa 5.2.1.6 dawn qatt ma kienu parti mir-ragunijiet ta' rifjut originali. Filwaqt li xorta wahda jigi dikjarat li huma kontestati, l-appellant isostni li l-Awtorita' ma tistax f'dan l-istadju taghti ragunijiet ta' rifjut oltre dawk appellati ab inizio. Altrimenti, dan kollu jkun qed jaghti vantagg mhux gjustifikat u li jilledi d-drittijiet ta' l-appellant f'dawn il-proceduri fejn iz-zewg partijiet ghandhom jigu trattati b'mod ugwali;

6. Illi dwar l-allegati illegalitajiet fuq is-sit, l-Awtorita' ex admissis tghid fin-nota taghha li dawn jinsabu f'sit adjacenti ghal dak ta' l-appellant u mhux f'ta l-appellant. F'paragrafu partikolari fil-fatt tghid 'The agricultural store and the appellant's fields are only accessed from the adjacent field in front bordering the street. This has now been enclosed by a gate and subjected to unacceptable interventions including extensive removal of soil and creation of a formal passage way.'

Illi f'parti ohra ta' l-istess nota responsiva l-Awtorita' tghid illi 'These structures and illegalities are all found in the vicinity of the agricultural room' izda bl-ebda mod ma tressaq il-prova li dawn qieghdin fis-sit involut f'din l-applikazzjoni, Sincerament l-appellant ma jistax jifhem kif kwalunkwe zvilupp allegatament illegali f'sit li mhux tieghu jista b'xi mod u legalment jaffettwa l-applikazzjoni tieghu. Dan zgur ma jaqax fil-parametri la tal-policies applikabbli wisq anqas tal-ligi,

Dan kollu huwa wkoll imsahhah bl-argument illi fil-fatt ma hemm l-ebda 'enforcement' fuq is-sit in kwistjoni. Li kieku kien hemm dawn l-illegalitajiet fuq is-sit l-Awtorita' ma kienet ser tiddejjaq xejn tohrog 'enforcement'.

7. Illi dwar l-allegat hsara lis-Sigar (Carob tree) l-appellant jerga jinsisti li dan mhux minnu stante li s-sigra in kwistjoni tinsab fuq is-sit u hija sigra b'sahhitha u ma fiha l-ebda hsara. Dan facilment jista jigi vverifikat fuq is-sit;

8. Illi ironikament minn naha l-oħra l-Awtorita' qed tallega li hemm xi sigar oħra li bhal 'palm tree' u 'eucalyptus' li jinsabu fuq is-sit izda l-appellant jinsisti li fuq is-sit tieghu mhux minnu li hemm dawn it-tip ta' sigar. Li kieku kienu hemm l-appellant ma kien ser jiddejjaq xejn inehhihom biex ma jipregudikawx din l-applikazzjoni izda la darba mhumiex hemm ma jistax joffri l-ebda rimedju!

9. Finalment dwar l-allegazzjoni li hemm xi hitan tas-sejjieh mhu skond il-metodologija ta' LN 160/97, l-appellant jinsisti li huwa ma ghamel l-ebda minn dawn ix-xogholijiet tant illi kif ġia inghad ma ncharge l-ebda 'enforcement' fuq is-sit f'dan ir-rigward.

Illi finalment jigi ernfasizzat dak li sostna l-Perit ta' l-appellant fl-appell inizjali, cioe' illi bosta applikazzjonijiet oħra identici ghal dik odjema inghataw mill-Awtorita' minghajr ebda ezitazzjoni u ghalhekk l-appellant ma jistax jifhem kif f dan il-kaz l- Awtorita' qed tiddistingwi b'tali mod li qed tigi kkommessa diskriminazzjoni u ingustizzja manifesta fil-konfront ta' dan l-applikant partikolari.

Ghaldaqstant in vista tas-suespost u b'referenza ghall-sottomissjonijiet precedenti u b'riserva ghal provi oħra jekk ikun il-kaz, l-appellant jitlob li dan it-Tribunal jilqa l-appell tieghu.”

Illi permezz tas-Second Statement taghha l-Awtorita' ressqet il-kummenti taghha inter alia kif ġej:

“• The appellant is complaining that the issues outlined in paragraphs 5.2.1.4 to 5.2.1.6 are not valid since these did not constitute reasons for refusal in the original Authority's refusal.

The Authority did not include these reasons because these emanate from the new policy document regulating agricultural related development - Policy and Design Guidance: Agriculture, Farm Diversification and Stables (2008) which came into force after the first decision. However the Authority is obliged to point out that a re-assessment of this application against the new policy

document is appropriate and legally applicable in view that all decisions for development permission applications are to be based on plans and policies in force at the time of decision.

This principle has been confirmed on several occasions by both the Planning Appeals Board and the Court of Appeal. A case in point is the Court of Appeal decision of 24th April 1996 for Angelo Farrugia vs. Planning Authority, whereby the Court of Appeal stated that all applications are to be considered according to present plans and policies, irrespective of the date of submission of the application. This was also supported in several other subsequent decisions including those of: Pater Holding Company Ltd. vs. DCC (11th September 1998), John Scerri vs. Planning Authority (28th May 1997), Emmanuel Mifsud vs. DCC (31st May 1996), and Michael Axisa vs. MEPA (20th August 2003).

This reasoning was clearly articulated by the Planning Appeals Board in PAB 77/07 (PA1597/05) when it stated:

Il-Bord ikkunsidra l-argumenti kollha mqajjma miz-zewg partijiet u jinnota illi hemm numru ta' decizjonijiet tal-Qorti ta' l-Appell li jstabilixu illi, decizjonijiet fuq applikazzjonijiet ghal permessi tal-bini, ghandhom jittiehdu mhux fuq il-policies fiz-zmien meta tkun saret l-applikazzjoni izda fuq il-policies in vigore meta tkun qed tittiehed id-decizjoni.

The Authority notes that the first reason for refusal that was based on the fact that the appellant is not a full-time farmer was discarded during appeals because this was a requirement of the old policy document but not in the new. The Authority does not recall that the appellant objected in this instance.

- The appellant claims (Point 2) that the Authority contradicted itself when the Authority first stated that the agricultural store is located on agricultural land that is simply not registered with the Department of Agriculture and then subsequently stating that this land was turned into agriculture plot recently by the appellant.

The Authority did not contradict itself because it did not state that the agriculture store is located arable land that is not registered with the Department of Agriculture. The Authority only said see para. 5.2.1.3) that the policy requires the agricultural store to be located on arable land that s registered with the Department of Agriculture.

The fact is that the site of the agricultural store is not registered with the Department of Agriculture as required by policy. It was also not used for agriculture at the time of application but turned for agriculture at a later time as is evident from the photographs in the PA file.

It is also a fact that the site of the agricultural store is not on the parcel of land registered with the Department of Agriculture as claimed by the appellant in Point 3. This is again evident by comparing the location of the agricultural store on the site plan submitted by the appellant and the agricultural parcel 679969 as registered with the Department of Agriculture.

- The appellant also claims (Point 2) the Authority contradicted itself when it first stated that the appellant requires a permit to turn abandoned land into agriculture and then states that the land must be arable before the appellant applies for an agricultural room.

There is no contradiction here. The appellant first needs a permit to turn abandoned land into arable land and then, subsequently another permit is required for the agricultural store. The fact remains that the appellant first built the room without permit and then applied for sanctioning; and during the processing of the application affected other changes to the area surrounding the store including turning it partially for agriculture/formal garden and another part as car park without permit.

- The appellant is also claiming that all the illegalities mentioned by the Authority do not fall within his site and no enforcement was issued. The appellant is also substantiating his argument by stating that even the

Authority stated that these are located adjacent to his site and not on the site.

The appellant is wrong on all counts. A number of illegalities such as the aviaries and formal gardens are located on the parcels of land at the back of the agricultural room (seen in the aerial photos) which are registered with the Department of Agriculture on the appellant's name. However the other illegalities pointed out by the Authority are indeed adjacent to the site of the agricultural store but still on land belonging to the appellant for the simple reason that the access for the agricultural store and land parcels at the back is from this specific site.

Contrary to what the appellant has stated, an enforcement notice (ECF 37/06) has been issued following the illegal construction of the agricultural store. The Authority was not obliged to issue new enforcement for the new illegalities as it informed the appellant with the first enforcement notice that no further works are to continue anywhere on his site.”

Ikkunsidra ulterjorment:

Bl-applikazzjoni prezenti l-appellant qed jittenta jissanzjona karma li nbriet fir-raba' bla permess. L-istruttura ghandha footprint ta' 12 sq.m. circa, u mibnija fuq disa' filati.

Iz-zona hi fil-Kuncizzjoni, limiti tar-Rabat (Malta), barra z-zona ta' l-Izvilupp – identifikata fin-North West Local Plan bhala Area of High Landscape Value (Victoria Lines).

Fis-16 ta' Jannar 2006 harget enforcement notice ECF 37/06 dwar l-kostruzzjoni ta' kamra rurali illegali.

Hemm diversi Policies fil-Pjan ta' Struttura li jiprotegu dawn l-areas minn zvilupp urbanistiku fosthom l-Policies AHF 5, AHF 7, RCO 2, RCO 4, RCO 8, SET 11, u SET 12.

Partikolarment l-Policy SET 11, tipprojbixxi kull forma ta' zvilupp urbanizzanti, barra z-zona ta' l-izvilupp b'eccezzjoni (para 7.6) ghal 'normal and legitimate inclusions – u dawn huma relatati ma uzu agrikolu genwin.

Fil-kaz ta' smiegh ta' dan l-appell kien hemm divergenzi bejn il-partijiet, partikolarment dik tal-eligibilita' o meno tal-appellant biex ikollu agricultural store. Dan principalment peress dak li gie dikjarat mill-perit ta' l-appellant dwar ir-raba li jinhadem mill-appellant – ma giex kkonfermat mid-Dipartiment ta' l-Agricoltura. L-ittra tad-Dipartiment tat-8 ta' Jannar 2007 – Red 10 fil-file PA 5597/06, tikkonferma li l-appellant hu part-time farmer; ilu hekk registrat mis-17 ta' Lulju 1998, b'tomnejn (2T) raba registrati f'ismu in parti 1.3.6 tumoli baghli, u in parti 0.2.4 tumoli blat.

Skond il-perit ta' l-appellant – Red 1F fil-file tal-applikazzjoni l-appellant ghandu circa 5.3 tumoli registrati f'ismu.

Din id-divergenza illum giet iccarata billi skond l-Policy & Design Guidance on Agricultural, Farm Diversification and Stables (2007), l-appellant jikkwalifika ghall-kamra rurali ta' 15m² billi ilu jahdem bhala bona-fide farmer ghall-sentejn qabel l-applikazzjoni.

L-istess Policy pero' (Policy 2.4A) tippermetti dawn il-kmamar jekk jintuzaw ghall-skopijiet ta' agrikoltura biss; in oltre skond l-Policy 2.4A(4) l-kamra rurali, uzata bhala agricultural store trid tkun fuq l-istess art li hi registrata f'isem l-applikant mad-Dipartiment ta' l-Agricoltura; ma jirrizultax li din l-art hi hekk registrata.

Id-diffikolta' principali f'dan il-kaz hi li effettivament fuq is-sit 'de quo' l-izvilupp mhux limitat ghall-kamra rurali li qed jintalab li tigi sanzjonata.

Minn ezami tal-file PA 5597/06 irrizulta li fis-6 ta' Frar 2007, sar access fuq is-sit (Blue 12) u ingiebdu diversi ritratti li jikkonfermaw li saru interventi fuq is-sit li ma jirrispettawx il-lokalita' li hi wahda sensittiva u rurali.

Kopja Informali ta' Sentenza

Ir-ritratti numru 1 juri numru ta' tankiojiet taz-zejt vojta fuq is-sit; ir-ritratt numru 2 juri li thawlu sigar b'mod li l-art agrikola giet konvertita fi gnien; ir-ritratt numru 3 juri kostruzzjoni ta' hitan mibnija b'gebel tal-franka cladded b'gagazza jew sejjieh, u mghotti b'fencing – zvilupp urbanizanti speci ta' recint ghall-annimali partikolarment tjur; ir-ritratt numru 4 juri li r-raba gie livellat u mnaddaf biex iservi ta' parking area; r-ritratt numru 5 juri kumulu ta' gebel.

Mill-ortho-photo (blue 43a) fil-file, jirrizulta li fil-fatt hemm erba' (4) strutturi fuq is-sit, mhux biss l-wahda li l-appellant qed jitlob li tigi sanzjonata.

Ir-ritratt photo 2 – Blue 43(b) juri zvilupp urbanizzanti konsistenti f'hitan tas-sejjieh, hajt tal-bricks gholi tlett filati, mghotti bil-wire netting ghall-uzu ta' gallinar kbir.

L-appellant mhux qed jitlob b'din l-applikazzjoni li jissanzjona l-izvilupp kollu li jezisti fuq is-sit in kwistjoni – l-applikazzjoni hi limitata ghas-sanzjonar ta' kamra wahda, meta' rrizulta li fil-fatt fuq is-sit hemm erba' strutturi mhux wahda.

Fic-cirkostanzi ghalhekk billi l-appellant mhux qed jipproponi li jissanzjona l-izvilupp kollu li hemm fuq is-sit de quo, it-talba tieghu biex jissanzjona kamra wahda biss, ma timmeritax konsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma r-rifjut tal-15 ta' Lulju 2010, moghti ghall-applikazzjoni PA 5597/06.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal agixxa ultra vires meta rrifjuta l-permess abbazi li seta' kien hemm dubju li l-appellant ser jaghmel uzu ulterjuri apparti l-iskop agrikolu;
2. It-Tribunal ha konjizzjoni ta' sottomissjonijiet u provi tal-Awtorita bla ma gew awtorizzati billi gew prezentati fuori

termine u saret referenza ghal policies li ma ssemwewx qabel liema referenza giet kunsidrata mit-Tribunal;

3. It-Tribunal naqas li jikkonsidra l-ilmenti tal-appellant meta l-Awtorita qajmet punti godda ta' rifjut fir-risposta taghha tas-16 ta' Frar 2011 mhux imsemmija fid-decizjoni tar-rifjut u nonostante l-oggezzjoni tal-appellant li l-Awtorita qed tinghata vantagg sleali t-Tribunal ma ta ebda relevanza ghal oggezzjoni u kkwota dawn il-policies fil-konsiderazzjonijiet.

L-ewwel aggravju

Dan l-aggravju mhux gustifikat. It-Tribunal ma ddecidiex l-appell ghax l-appellant mhux juza s-sit ghal skop agrikolu izda ghal skopijiet ulterjuri izda qal illi l-appellant ma ssodisfax il-kriterju tal-policy 2.4A(4) tal-Policy and Deisgn Guidance on Agriculture, Farm Diversification and Stables 2007 billi ma rrizultax li l-agricultural store hi fuq l-istess art registrata f'isem l-appellant mad-Dipartiment tal-Agricoltura. Zied in oltre li l-izvilupp fuq l-art mhux limitat ghal din il-kamra izda strutturi ohra bhal parking area, sigar li juru li l-art gie konvertit fi gnien, hitan u fencing u struttura ghal gallinar kbir li jaghtu xejra urbanizzanti tas-sit. Dan kollu irrizulta mill-provi u anki mir-ragunijiet 2 sa 6 tar-rifjut tal-Awtorita, kollha bbazati fuq policies specifici mhux attackkati f'dan l-appell. It-Tribunal ma agixxiex ultra vires izda rabat is-sanzjoni mitluba ma' dik ezistenti fuq is-sit biex isir apprezzament fattwali ta' dak realment mitlub mill-applikant fil-kuntest ta' dak permissibbli.

Kwindi dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan ukoll hu aggravju li ma jithoqqlux jigi milqugh. Jibda biex jinghad illi l-appellant ma oggezzjonax fl-ebda stadju ghal prezentata mill-Awtorita tan-nota msemija mill-appellant bhala wahda fuori termine li kien jisthoqqilha tigi sfilzata u t-Tribunal fl-ebda hin ma ghamel xi kumment simili. In oltre l-appellant oggezzjona biss ghat-tlett paragrafi li fil-fehma tieghu ma kienux jiformaw parti mir-rifjut cioe paragrafi 5.2.1.4. sa 5.2.1.6. li pero irrisponda

ghalihom xorta wahda u kwindi ma saret ebda diskriminazzjoni jew lezjoni fil-konfront tieghu.

In oltre l-fatt li t-Tribunal semmihom ma jfissirx li ddelibera fuqhom tant li elenkahom bhala punti mqajma mill-Awtorita fl-ewwel parti tad-decizjoni kif ukoll elenka r-risposta u l-oggezzjoni tal-appellant. Fid-decizjoni tieghu mbaghad it-Tribunal ma semma' xejn dwar paragrafu 5.2.1.4. Il-fatt li qal li s-sit jinsab f'high landscape area kif hemm imnizzel f'paragrafu 5.2.1.5. hi konotazzjoni ta' fatt li seta' jasal ghalha t-Tribunal u lanqas hi kwistjoni li fuqha ngiebet mit-Tribunal bhala raguni ta' rifjut. It-Tribunal semma' diversi policies li jiprotegu siti in kwistjoni fosthom AHF5, RCO 2, RCO 4, RCO 8, SET 11 li kollha ssemmev fir-ragunijiet originali ta' rifjut mill-Awtorita u fejn it-Tribunal enfasizza illi partikolarment policy SET 11 tipprojbixxi kull forma ta' zvilupp urbanizzanti b'eccezzjoni ghal normal and legitimize inclusions, u dawn relatati ma uzu agrikolu genwin. In oltre l-paragrafu 5.2.1.6. lanqas jissema' fil-parti decisiva tat-Tribunal. Kwindi hi l-fehma tal-Qorti li l-appellant ma soffra ebda lezjoni ta' dritt u d-decizjoni hi mibnija fuq dak li jirrizulta mill-fatti u r-ragunijiet ta' rifjut tal-Awtorita.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju isegwi dak li ntqal fit-tieni aggravju. It-Tribunal ghamel apprezzament tal-fatti quddiemu fl-atti kontestati jew le u applika ghal fatti li dehrlu l-aktar attendibbli l-policies rilevanti, policies li gew imsemmija fir-ragunijiet ta' rifjut tal-Awtorita. Kif gia intqal ma saret ebda lezjoni tad-drittijiet tal-appellant billi l-paragrafi msemmija minnu fejn l-Awtorita semmiet kwistjonijiet ta' fatt jew ligi li ma rrizultawx mir-rifjut originali, ma gewx kunsidrati mit-Tribunal bhala ragunijiet ohra ta' konferma ta' rifjut ma' dawk li ddecieda dwarhom hu. Ghalhekk ma k ienx hemm lok li jitratta r-risposta tal-appellant fuq dawn l-aggravji ulterjuri meta t-Tribunal lanqas ikkonsidra dak li qalet l-Awtorita u b'hekk il-partijiet gew trattati bl-istess mod.

Kopja Informali ta' Sentenza

Kwistjonijiet ta' fatt bhal ma huma dawk li kkonstata t-Tribunal mill-atti pprezentati mhux sindakabbli mill-Qorti u l-Qorti tqis illi l-appellant b'dan l-aggravju qed jipprova jimbotta lil Qorti biex tissindaka hi u tapprezza hi l-fatti u tara jekk id-decizjoni tat-Tribunal ibbazata fuq dawn il-fatti hiex gustifikata. Pero din il-Qorti tqis illi l-apprezzament tal-fatti taqa' fil-mansjoni esklussiva tat-Tribunal u l-Qorti ma ghandhiex jedd li tissindakahom.

Ghalhekk dan l-aggravju qed jigi michud ukoll.

Decide

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

< Sentenza Finali >

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