



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 173/2012

**Saviour Vella f'isem u in rappresentanza
tal-Ghaqda tar-Residenti Santa Maria Estate**

VS

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamata in kawza Veronique Debono**

Il-Qorti,

Rat ir-rikors tal-appell ta' Veronique Debono tat-23 ta' Novembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 fejn giet michuda l-applikazzjoni PA 959/2010 'to sanction the installation of a telescopic cover to existing approved pool (PA 614/09);

Rat ir-risposta ta' Saviour Vella nomine li ssottometta li d-decizjoni tat-Tribunal ghandha tigi konfermata u l-appell michud;

Rat ir-risposta tal-Awtorita li sostniet l-approvazzjoni li kienet inghatat minnha ghall-applikazzjoni in kwistjoni;

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

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

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fit-28 ta' Settembru 2010, approvat l-applikazzjoni sanatorja ghall-permess tal-izvilupp PA 959/10 "Silverstars 269, Triq iz-Zebbug, Mellieha - To sanction the installation of a telescopic cover to existing approved pool (PA 614/09)."

B. In-nota tal-Avukat Dott. Patrick J. Galea ghall-Appellant nomine, ipprezentata fis-26 t' Ottubru 2010, senjatament it-tlett punti segwenti:

"1. In accordance with the Development Planning Act, Part II, 3 (5) where the Commission votes against the recommendations made by the Director, the Chairma of the Commission is required to register specific reasons adduced by the dissenting members of the Commission, in order to justify the Board's disagreement with the Directors recommendation. The DCC Board minutes make no reference to any such reasons being registered. It is considered that the reason given for overturning the recommendation is totally inadequate and represents no valid reason whatsoever.

2. The reference to the temporary structure referred to in the DCC Board Minutes emanates from the introduction and insistence by the applicants architect that the subject complied with Legal Notice 115/07. DNO. It is considered that:

- The legal Notice is subordinate to the Development Planning Act, Structure plan, Policy BEN 2 and the DCP & DG 2007 Policy 1.1 upon which the Director's

recommendations were based and which were reflected by the recognised objectors at the DCC hearing.

- The Legal Notice was presented and quoted out of context and in an intimidating manner, thus misinforming the members of the Board.
- The subject does not conform to the conditions stipulated within Legal Notice 115/07.

3. In addition, it is possible that 'an error on the face of the record' may also have occurred."

C. In-nota risponsiva tal-Avukat Dott.ssa Tanya Sciberras Camilleri għall-Applikanti, ipprezentata fis-26 ta' Novembru 2010, precizament il-punti segwenti:

"At the outset it must be stated that although the proposal has been approved, no permit has been issued to date and therefore, this appeal can only be termed as premature. Furthermore and without prejudice to the above stated, it must also be established whether the third party objectors had registered their objection within the time limit laid down in terms of Article 32(5) of the Development Planning Act.

It is submitted that, contrary to what is submitted in its appeal, the Għaqda is not an interested third party in terms of law since it has no interest in the proceedings and in the approval or otherwise of the proposal at issue. The sanctioning of the telescopic cover within the boundaries of my client's property is of no interest whatsoever to the Għaqda which has no right to impose any conditions as to what development is made of the said property, so long as it is according to law. Furthermore, should the Għaqda's grievances be of a civil law nature, it is submitted that this Board is not the forum where these are to be entertained.

Turning to the grounds for appeal, it is submitted as follows:

The proposal for sanctioning was recommended for refusal solely on the basis of Structure Plan policy BEN 2 and policy 1.1 of Development Control Policy & Design

Guidance 2007, and this recommendation was overturned by the DCC Board, which voted in favour of the development and justified its decision to overturn the recommendation based on these policies in terms of law. Therefore the allegation being made by the third party, that the reasons given are inadequate, are totally unfounded.

In its appeal the third party makes extensive appeal to Legal Notice 115 of 2007 which, it is claimed, was referred to during submissions. The legal notice was referred to by applicant merely in order to illustrate that the proposal was minor in nature and could have fallen under Class 15 (Tented Structures) in which case, no notification was required in order for the development to be permitted in terms of law. Therefore, the Board members were in no way "misinformed" as is alleged in the third-party appeal.

The third party's claim that there is the possibility of "error on the face of the record" is totally gratuitous and baseless, and the applicant therefore requests the Board to order the third party to withdraw same and reserves all her rights at law in this regard."

D. In-nota responsiva ta' Mario Scicluna għall-Awtorita', bid-data tal-1 ta' Dicembru 2010, inter alia l-erba' punti segwenti:

2.5 From the documentation as found in file, it had resulted that the 'proposed' tent was in fact already fixed on site and a photo of the tent was also provided by appellant's letter dated 10th April 2010 which also included a long distance view photo of the existing tent and its surroundings.

2.6 With all of this information in hand, the DCC discussed all issued and eventually voted 4-2 in favour of sanctioning of the existing lightweight and temporary structure. The DCC stated, in their decision minute that:

This is a temporary structure which is retractable when not in use and from photographic proof presented during the hearing the proposal is acceptable. Major fine is recommended.

2.10 Appellant's reference to the cited DNO is not considered as relevant at this stage since the DCC did not issue a DNO clearance but had decided upon a Full Development Application which surely took into consideration the visual aspect of the existing tent and hence, had assessed its visual in relation to the provisions of Structure Plan Policy BEN 2.

2.11 As regards to point 3 of this appeal, such a challenge has to be submitted in front of a different forum and not through an appeal against a decision of the DCC."

E. Il-verbal tas-Seduta numru 21, mizmuma fl-24 ta' Marzu 2011, senjatament il-punt segwenti:

"[L-Avukat Dott. Anthony] Dr. De Gaetano jirrileva illi mir-ricerki li ghamlet l-Awtorita' l-objections dahlu qabel ma giet ippublikata fil-Gazzetta; press date – 29 ta' Mejju 2010 u l-objections dahlu ghand l-Awtorita' fit-13 ta' April 2010; in vista ta' din id-dikjarazzjoni, Dr. Tanya Sciberras Camilleri tirtira l-eccezzjoni preliminari dwar it-terminu."

F. In-nota ta' sottomissjonijiet tal-Avukat Dott. Patrick J. Galea ghall-Appellant nomine, ipprezentata fl-10 ta' Mejju 2011, inter alia l-punti segwenti:

"The justification, given by the DCC board on 27th October 2009, for overriding a Case office recommendation for refusal of 00614/09 was that the same structure had been removed from new drawings, Board Minutes DCC 7601109 refers.

A statement was also made in a letter to MEP A dated 3rd July, 2009 that the structure referred to in ECF 0023109 had been removed and no longer formed part of the application; Auditor's Report 2010/15, page 5, paragraph, 4 refers.

This led to the false premise that the already installed structure did not exist.

ECF 0230109, issued five months previously, in May, 2009, is testament to the fact that this visually intrusive structure had been illegally installed and was subject to Direct Action before October, 2009.

PA 00614/09 was the subject of a previous complaint submitted to the Audit Office. Issued in July, Audit Report sustained the complaint that PA 00614/09 was approved contrary to official policies.

Recommendations were made by the Audit Office and MEP A were advised accordingly in May 2010. There has been no response to date.

The structure was installed in November, 2008 and has remained continuously as a permanent fixture to the present time. P A. 0095911 0, is therefore based upon an approval given and justified in good faith, based on an erroneous decision made as a result of a misunderstanding, misleading or incorrect information.

The Structure

The telescopic cover is of a semi-elliptical rigid structure built in four sections, each retracting inside the other, when fully retracted 25% of the structure remains in the upright position.

The framework is constructed of substantial UPVC coated aluminium with a cross section of approximately 3 to 4 inches, secured by stainless steel/aluminium brackets and bolts.

The transparent panels are of rigid Perspex or Plexiglas, usually of a polycarbonate UV treated nature.

When fully extended a conservative estimate of dimensions is of approximately 19 metres in length and

approximately 10 metres in width, giving a footprint area of approximately 190 square metres.

The semi-elliptical ends are of between 3 & 4 Metres in height at the maximum point and are fitted with doors and windows similar in style to domestic units. The overall effect is one of a visually intrusive structure which is incompatible with good urban design.

Even when it is completely retracted, there still remains a permanent, non-transparent structure, of 5metres length by 10 metres width, by 4 metres height. That is equivalent to a 2-car garage.

In the first instance the Chairperson made it quite clear, on a number of occasions, that there were no justifiable grounds for overturning the recommendation to refuse permission, in view of Policy Ben 2 and DCP & DG 1.1.

However, some members of the Board chose to use the LNI15/07 as a means of avoiding the implications of these two policies despite the efforts of the Chairperson.

The second instance "and justified its decision to overturn the recommendation based on these policies in terms of law" is incorrect. According to the Board Minutes, there was no justification given, as is required in accordance with DPA, Part II,3,13,(5) page 14 of 64.

2.3 There are two main issues:

The structure was illegally erected in November, 2008 and is under Direct Action, ECF00230/09 [...]. Policy Ben 2 and DCP & DG 07 refer to the visual intrusion and impact of such a structure on the character of the surrounding area. [...] In view of [...] Article 3(5) of L.N. 115/07] it appears that the Structure Plan Policy Ben 2 and DCP & DG2007, Policy 1.1 should have prevailed in this instance.

2.4 The DCC did not observe, or chose to ignore, the several references within the file to the pending enforcement notice and the references and

recommendations made by the Auditor, Audit Report 2010/015 [...].

2.5 The reference to the structure being proposed as 'a tent' was introduced at the hearing by the applicant's architect.

2.6 The Ghaqda question the acceptance and veracity of the description afforded the structure as a 'light weight temporary tent'.

2.8 Taking photographic evidence 'as is' is certainly better than interpreting drawings, but the structure should be seen for what it is. Once a precedent is set the visual impact of such structures will destroy the character of the area, running counter to the intentions of BEN 2 and DCP & DGI 07.

Basically the structure is not a tent, it is not temporary (6 Months.) and it does not conform to the letter or the spirit of L.N. 115/07.

2.9 In overturning the Director of Planning's recommendation, it was the dissenters who provided their reasoning, which did not conform to the legal requirements of the DCC Board.

2.10 The introduction of the relevance of LN 115/07 was made by the applicant's architect and resented in such a manner as to infer that the DCC Board would ignore it at their peril."

G. Il-verbal tas-Seduta numru 67, mizmuma fis-27 ta' Settembru 2011, precizament il-punt segwenti:

"L-Applikanti iddikjara li l-pool tkun mghottija bl-istruttura mertu ta' dan l-appell bejn Novembru u Marzu; [...]"

H. In-nota second statement ta' Mario Scicluna ghall-Awtorita', ipprezentata fis-16 ta' Jannar 2012, inter alia l-punti segwenti:

“Any comments on the voting of the DCC sitting as held on 28th September 2010 is not relevant since a 4-2 approval vote is still fully valid according to law and any comments by any member of the board which may have been in line with appellant’s objections is not relevant. The fact remains that in this sitting (Blue 67 in file) the Board gave adequate planning reasons for its decision and one cannot create doubts on the Board’s intention when the Board reached a decisive vote in the same day.

It is thus not relevant any arguments of appellants whether the Chairman had voted against or in favour since the Chairman’s vote counts as one vote and with the same strength of any of the members of the Board. The cited above Blue 67 in file also contains valid and lawful justifications for the Board’s decision to grant a permit.

As regards to the fact that the structure was in place at the time of the above decision, one has to remind the Tribunal that the official proposal includes “To sanction ...”, hence the Board was fully aware of its existence on site.”

J. Il-verbal tal-access fuq il-post tas-Seduta numru 6, mizmuma fl-20 ta’ Jannar 2012, precizament il-punti segwenti:

“It-Tribunal kellu l-opportunita’ li jara t-tinda ta’ fuq il-pool armata billi hemm dislivell mit-triq principali tal-Mellieha sakemm tasal fuq is-sit u mit-triq din hija prominenti bizejjed biex tidher minn fejn kien gej it-Tribunal.

Meta t-Tribunal wasal fuq is-sit, kien hemm kemm l-appellant u ftit izjed tard wasal l-applikant Silvio Debono u Silvio Debono, oggezzjona illi l-appellant jidhol fir-residneza tieghu. F’dawn ic-cirkostanzi it-Tribunal hass li ma kellux jidhol billi z-zewg partijiet ma kienux se jkunu fizikament prezenti, ghalkemm l-applikant ddikjara li kien dispost illi jhalli jidhol fil-propjeta’ tieghu rappresentat tal-appellant bhal Avukat jew perit imma mhux lill-appellant personalment.”;

K. In-nota ta' sottomissjonijiet tal-Avukat Dott.ssa Tanya Sciberras Camilleri ghall-Applikanti, ipprezentata fil-21 ta' Frar 2012, inter alia l-punti segwenti:

“Our client makes reference to the submissions made by the Authority and concurs fully with them.

Furthermore client reiterates that, at the time of submission of the appeal on 26th October 2010, the proceedings were regulated by Chapter 356 which only granted the right of appeal to those persons who had a legal interest in the proposed development. It is submitted that the Ghaqda tar-Residenti ta' Santa Marija Estate, Mellieha have no such interest and therefore, the Tribunal should not take further cognizance of this appeal.”

L. In-nota ta' sottomissjonijiet tal-Appellant nomine, ipprezentata fit-12 ta' Marzu 2012, inter alia l-punti segwenti:

“Mr Debono informed the Appeals Tribunal that he would not permit appellants to enter his property.

Members of the Tribunal, at this stage suggested that perhaps it was not necessary to actually accede to the premises since the pool-cover could be viewed from vantage points further up the hill. [...] When it became abundantly clear that Mr. Silvio Debono was adamant about disallowing Mr. Saviour Vella from entering his property, the Tribunal Chairman asked Mr. Vella whether he had any objections to the Tribunal members making a site visit on their own. Mr. Vella replied that he had no objection but that he would still submit a protest with regard to how the whole procedure had developed.”

Ma l-istess nota giet annessa kopja tal-Audit Report 2010/015 datat 12 ta' Lulju 2010, fejn ghar-rigward tal-applikazzjoni in ezami, gew inter alia dikjarati l-punti segwenti:

“Facts:

The architect submitted amended drawings. However he insisted that the proposed building at the back of the site had already been approved in PA 6575/05. He also stated that the proposed canopy mentioned in ECF 23/09 had been removed and no longer forms part of the site coverage.

The claim of the architect that the canopy had been removed was never checked. Indeed all indications are that it was never removed (it is still there at present and the applicant is trying to sanction it).

The DCC approved the application on 27 October 2009 with the following justification:

Justification in relation to the recommended refusals:

1. The proposed drawing is reducing the area from what was permitted. More than 30% had already been approved and committed
2. The proposed development lies within the basement below street level. Policy 5.3 – the levels of the front garden are not altered.
3. The telescopic cover has been removed in the fresh plans.

PA 959/10: Installation of a telescopic cover to existing approved pool. The application is still pending and will not be considered further in this report. (The telescopic cover has already been installed and is the one which in the case of application PA 061/09 the architect claimed that it had been removed).

An enforcement order has also been issued on the site, ECF 230/09, on 7 May 2009 for 'alterations and additions to villa not according to permit and erection of a retractable canopy over pool.

Comments:

Of particular concern is the approval of PA 0614/09. The applicant was trying to sanction the construction of a canopy over the pool area. The structure had already been constructed and was subject to an enforcement order. In a letter to the MEPA dated 3 July 2009, the

architect on behalf of his client stated (red 15 in PA 0614/09):

The retractable canopy, mentioned in ECF 230/09 has been removed as per evidence in Document B, and thus no longer forms part of this application

It is not clear what Document B is. If the reference is to a document listed as red 15b in the file, this consists of four photographs of the street adjacent to the building and in no way related to the pool area. Consequently there are two possible scenarios:

1. The applicant removed the structure prior to the consideration of the application by the DCC and promptly re-erected it once the permit was approved. It is to be noted that the DCC never bothered to check the claims of the architect that the canopy had been removed. Indeed they approved the application with the excuse that the canopy does not form part of the plans submitted for approval.

2. The canopy was never removed and the declaration of the architect is not correct. If this would be the case, this should be considered as a very serious matter by the MEPA. In this case the DCC had to refuse the application as there was an illegal development on the site which the application did not seek to sanction. In addition the architect submitted an incorrect declaration intended to mislead the MEPA to issue a permit which otherwise would not have been issued."

M. In-nota ta' sottomissjonijiet ulterjuri tal-Avukat Dott.ssa Tanya Sciberras Camilleri għall-Applikanti, ipprezentati fid-29 ta' Mejju u fl-4 ta' Ottubru 2012; kif ukoll dik tal-Avukat Dott. Patrick J. Galea għall-Appellant nomine, ipprezentata fl-10 ta' Settembru 2011.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell minn terzi jirrigwarda l-hrug ta' permess sabiex f' residenza f' Santa Marija Estate, il-

Mellieha tigi ssanata kopertura, konsistenti minn tinda teleskopika li tghatti pixxina approvata bil-permess PA 614/09.

Precedentement kienu gew intavolati zewg permessi li huma rilevanti ghal-kaz in ezami: L-ewwel wahda, PA 6575/05 “Rationalisation of foundation space – removal of fill and assign use of this space as garage, other miscellaneous alterations shown in drawings” kienet giet sottomessa fl-20 t' Ottubru 2005 u approvata f' Dicembru tal-istess sena.

Inbaghad is-sit gie kolpit b' avviz biex tieqaf u ta' twettieq ECF 230/09; “Alterations and additions to villa not according to permit and erection of a retractable canopy over pool; Ghandek varjazzjonijiet mill-permess originali PA 6575/05 datat 12 ta' Dicembru 2005, billi ghamilt zidiet u alterazzjonijiet [mhux] skond kif indikat fl' applikazzjoni PA 614/09 datata 18 ta' Frar 2009, kif wkoll ghandek struttura (retractable canopy) fuq il-pool, minghajr permess.

Sussegwentement giet intavolata applikazzjoni PA 614/09 “Amendments to PA 6575/05. (Rationalisation of foundation space - Removal of fill and assign use of this space as garage. Other miscellaneous alterations as shown)”, sottomessa fit-18 ta' Frar 2009 u approvata fis-27 t' Ottubru tal-istess sena.

Tajjeb li jigi rilevat li fil-pjanti tal-applikazzjoni PA 614/09, ir-retractable canopy kolpita bl-enforcement notice ma kienet tidher, u l-Aplikanti kienet ghamlet dikjarazzjoni li kienet nehhietha. Fil-fatt, inhareg kemm il-permess rikjest minnu kif ukoll inghalaq l-avviz biex tieqaf u ta' twettieq.

L-aggravji tal-Appellant nomine jistrieħu fuq il-premessa li d-dikjarazzjoni li kienet saret fil-konfront tal-applikazzjoni PA 614/09 - cjoe' li t-tinda tnehhiet - kient wahda qarrieqa; u li dan l-abbuz gara' ghax l-Awtorita' qatt ma ndenjat ruhha tivverifika fuq il-post jekk tali illegalita' verament kienitx tnehhietx jew le, izda strahet biss fuq dikjarazzjoni tal-Aplikanti li tirrizulta falza. Jargumenta li l-Bord (recte

Kummissjoni) ma' ggustifikax id-decizjoni tieghu li jiddeciedi kontra r-rikmandazzjoni tad-Direttorat, u li semplicement approva l-applikazzjoni in ezami prevja l-hlas ta' multa (major fine). Jissokta l-argument tieghu billi jispjega li tali proposta hi fil-fatt f' kunflitt Avviz Legali 115 tal-2007.

L-Applikanti irribadiet li l-proposta giet approvata biss abbazi tal-policies BEN 2 u 1.1 tal-Pjan ta' Struttura u tal-Policies and Design Guidance, rispettivamente; u li l-Avviz Legali 115 tal-2007 ma japplikax fil-kaz in ezami ghax semmaj, tinda taqa' taht class 15 – tented structure li ghalha m' hemx bzonn permess.

L-Awtorita limitata ruhha sabiex tispjega kif ipprocediet bl-applikazzjoni – li f' kwalsiasi fazi tal-ipprocessar, kemm l-Awtorita' kif ukoll id-Direttorat imxew skond il-Ligi; u li wara kollox, l-istruttura hi wahda temporanja u ghalhekk m' ghandiex tkun ta' mpatt visiv fuq l-ambjent tal-madwar. In oltre, bhal taghti x' tifhem li l-proposta kienet tiftihem ahjar mir-ritratti li gew sottomessi mal-applikazzjoni milli mill-pjanti sottomessi, u li dawn setghu kienu kawza ta' 'misinterpretation and disagreements'.

Ezaminati s-sottomissjonijiet tal-partijiet fil-konfront tal-files ECF 230/09 u PA 614/09, jigi konfermat li tali struttura ma kienitx indikati fil-pjanti approvati fil-permess. Fil-fatt il-perit konsulenti stess tal-Applikanti kien iddikjara (permezz ta' red 15 fil-file PA 614/09) li t-tinda kienet tnehhiet. Ghalhekk, kif tajjeb irrileva l-Awditur tal-Awtorita' kienet; jew saret dikjarazzjoni falza, jew inkella jekk it-tinda verament tnehhiet, regghet tpoggiet wara li nhareg il-permess. In ogni caso l-Awtorita' qatt ma accediet fuq il-post u ghalhekk illum ma jistax jigi kkonfermat precizament x' gara'.

Madankollu, li hu zgur hu li l-istruttura milquta b' avviz biex tieqaf u ta' twettieq giet 'eliminata' sabiex ikun jista' jinghalaq l-istess enforcement notice, biex b' hekk ikunu jistghu jigu ssanati l-illegalitajiet l-ohra indikati fl-applikazzjoni PA 614/09. Imbaghad regghet giet 'inkluza' ghas-sanar. Dan hu agir oggezzjonabbli ferm – li wiehed

jittenta jissana l-illegalitajiet bicca-bicca; u anke jekk għall-grazzja tal-argument, fil-frattemp it-tinda tnehhiet tassew, l-Applikanti kienet ben konsapevoli li tali struttura kienet illegali, u f' ic-cirkostanzi jidher li ma kellha l-ebda intenzjoni li tirregola l-izvilupp. Anzi, galadarba inhargilha permess, regghet impunement issoktat bl-illegalita'.

Ikun inutli li wiehed joqod jargumenta jekk din it-tinda fil-verita' tidhirx jew le; li tinheba sew fl-ambjent tal-madawar; jew li hi struttura temporanja li tintuza biss fix-xitwa - ghax in principju, meta nhareg il-permess PA 614/09 u sahansitra inghalaq l-enforcement notice ECF 230/09 rilattiv, l-intiza bejn l-Awtorita' u l-Applikanti kienet li t-tinda tnehhiet (fizikament) minn fuq is-sit. Tenut kont ta' dan, l-Applikanti kien imissha 'eskludiet' it-tinda u galadarba nhargilha permess li jirregola l-izvilupp fuq il-font, intavolat applikazzjoni gdid (li tipproponi tinda mill-gdid), u mhux tippersisti b' illegalita' ohra biex imbaghad tintavola applikazzjoni sanatorja.

F' dan is-sens, it-tinda in kwistjoni trid titnehha minnufieh minn postha (u minn fuq is-sit); u semmaj l-Applikanti tixtieq tistalla tinda mill-gdid fuq il-pixxina, ghandha minghjr l-ebda pregiudizzju tintavola applikazzjoni għall-permess tal-izvilupp opportuna.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa l-istess u jhassar il-permess għall-PA 959/10 kif mahrug mill-Kummissjoni għall-Kontroll ta' l-izvilupp, fit-28 ta' Settembru 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. L-Ghaqda trid iggib il-prova li Saviour Vella ghandu r-rapprezentanza guridika biex jintavola l-oggezzjoni u l-appell;
2. It-Tribunal naqas li jikkonsidra l-aggravju li l-appell hu intempestiv billi sar qabel ma hareg il-permess stante li l-permess hu datat 18 ta' Novembru 2010 u l-appell gie intavolat fis-26 ta' Ottubru 2010;

3. It-Tribunal naqas li jikkonsidra jekk l-Ghaqda appellata kellhiex l-interess rikjest mill-ligi biex tintavola l-appell ai termini tal-artikolu 15(1) tal-kap. 356 bhala terzi persuni interessati in kwantu l-izvilupp hu fil-propjeta tal-appellant u t-terzi ma ghandhom ebda interess fih;
4. It-Tribunal naqas li jikkonsidra jekk l-aggravji tal-Ghaqda kienux imsejsa fuq kwistjonijiet ta' ippjanar kif jitlob l-artikolu 15(1)(d)(iv) stante li gie sottomess li ma kienux;
5. It-Tribunal ikkonsidra aggravju li lanqas issemma mill-Ghaqda rigward dikjarazzjoni allegatament qarrieqa mill-applikant li t-tinda tnehhiet u dan fil-konfront ta' applikazzjoni 614/09, u din il-motivazzjoni tat-Tribunal hi illecita. In oltre r-referenza ghar-rappport tal-awditur mit-Tribunal tikser id-dritt tal-audi alteram partem ghax ma nstemghux il-partijiet kollha izda jirrapprezenta verzjoni wahda biss apparti li zbalja fattwalment meta kkonkluda li l-fatt li l-Awtorita ma rrispondietx ghal rapport preliminari tieghu kien ifisser li taqbel mal-kontenut tar-rappport;
6. It-Tribunal naqas li jiddeciedi l-applikazzjoni fuq dak li jipprovdi l-artikolu 69 u minflok iddecieda fuq dak li sejjah 'agir oggezzjonabbli'. Motiv qatt ma jista' jikkostitwixxi kwistjoni ta' sustanza li twassal ghal revoka ta' permess, u minflok skarta l-kwistjonijiet verament ta' sustanza cioe ta' ippjanar dwar in-natura u skop tal-istruttura proposta;
7. Saru allegazzjonijiet inveritieri u ingurjuzi kontra l-applikant mit-terzi li ghalkemm intalab l-isfilz taghhom it-Tribunal naqas li jiehu konjizzjoni taghhom u b'hekk l-applikant gie pregudikat, fis-sens li d-decizjoni tat-Tribunal naqset li tkun ben motivata.

L-ewwel aggravju

Dan l-aggravju ma kellux jitqajjem f'dan l-istadju meta l-istess appellant ma qajmux fl-istadju li kellu jitqajjem cioe quddiem it-Tribunal bhala risposta ghall-appell interpost mill-istess Saviour Vella nomine. Din hi eccezzjoni ta' natura preliminari li ma ghandhiex titqies rinunzjata jekk l-appellant halla l-proceduri jimxu minghajr oggezzjoni.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju ghandu jigi milqugh peress illi l-eccezzjoni tal-intempestivita tal-appell kienet wahda preliminari li t-Tribunal kien obligat jikkonsidra u jiddeciedi dwarha qabel jidhol fil-mertu. Il-Qorti tqis li t-Tribunal gie indott fi zball meta kkonfonda din l-eccezzjoni ma' ohra li saret fl-istess parti ta' din l-eccezzjoni dwar jekk it-terz oggezzjonant kienx ipprezenta l-oggezzjoni tieghu fiz-zmien utili skond l-artikolu 32(5) tal-Kap. 356. Din l-ahhar parti tal-istess eccezzjoni giet superata fis-seduta quddiem it-Tribunal tal-24 ta' Marzu 2011 fejn gie dikjarat li d-difensur tal-applikant kien qed jirtira l-eccezzjoni preliminari dwar it-terminu. Qari tal-verbal pero juri car illi t-terminu li ghalih kienet issir referenza kien ghal prezentata tal-oggezzjonijiet mhux tal-appell mid-decizjoni tal-Awtorita. It-Tribunal ghalhekk naqas li jitratta din l-ewwel parti tal-eccezzjoni mqajma mill-applikant ghall-appell interpost mit-terz u ghal din ir-raguni biss id-decizjoni tat-Tribunal hi monka u ghandha tigi annullata.

It-tielet aggravju

Din l-eccezzjoni li tikkolpaxxi l-locus standi fl-appell tat-terz billi qed jigi allegat li l-interess necessarju biex isir appell hu mankanti lanqas sar accenn ghaliha mit-Tribunal ghalkemm kienet eccezzjoni cara li kellha tigi kunsidrata bid-debita serjeta skond il-ligi mit-Tribunal, ghaliex ic-certezza tal-gudikat jirrikjedi li l-partijiet ikunu inghataw raguni spjegata ghaliex l-ilment qed jigi milqugh jew michud, jaqblu jew ma jaqblux mieghu. Pero n-nuqqas ta' konsiderazzjoni tal-ilment li fih innifsu hu sinifikanti ghall-kontinwazzjoni jew l-ezitu tal-appell hu mankanza li jwassal ghal zball fil-ligi li ma jistax jigi sanat billi din il-Qorti tiddetermina hi ghax altrimenti tkun l-istess Qorti li tikser id-dritt tad-doppio esame li l-ligi taghti ghal appelli fuq punti ta' ligi.

Ghalhekk dan l-aggravju qed jigi milqugh u wkoll jimmerita li d-decizjoni tigi annullata ghal dan l-iskop.

Ir-raba aggravju

Dan l-aggravju hu wiehed frivolu peress illi l-appellant fir-risposta għall-appell quddiem it-Tribunal irrisponda għall-aggravju tal-appell magħmula minn Saviour Vella nomine b'risposta għal ligijiet ta' ippjanar msemija mill-istess Saviour Vella nomine fl-appell quddiem it-Tribunal. Fl-ebda hin l-appellant odjern ma qal li l-aggravji ma humiex imsejsa fuq kwistjonijiet ta' ippjanar hlief forsi r-risposta għall-aggravju dwar 'error on the face of the record'.

Għalhekk dan l-aggravju qed jigi michud.

Il-hames u s-sitt aggravju

Il-Qorti tagħmilha cara kif ġia għamlet f'decizjonijiet oħra illi l-operat tat-Tribunal hu cirkoskritt għal dak li hi tigi mitluba tirrevedi minn parti jew persuna interessata li għandha dritt ta' appell u dan peress illi t-Tribunal hu organu revizur mhux organu li jiddeciedi ab initio jekk għandux jew le jinhareg permess. L-estensjoni tal-poteri tiegħu bl-artikolu 41 tal-Kap. 504 illum u tal-Hames Skeda huma, kif kienu fil-Kap. 356 intizi biex jigu applikati f'dan l-isfond u f'dawn il-parametri. Ma għandux imur oltre għax ikun qed jiddeciedi fuq dak li mhux mitlub u b'hekk jivjola d-drittijiet tal-partijiet għal smigh xieraq fejn il-limiti tal-kontestazzjoni huma magħrufa. L-appellant hu korrett illi t-Tribunal dahal fi kwistjonijiet tad-dikjarazzjonijiet li saru f-applikazzjoni oħra 614/09 u rapport tal-awditur dwar nuqqasijiet kommessi mill-applikant meta l-aggravji tat-terz quddiem it-Tribunal kienu jirreferu biss għal kwistjonijiet ta' ippjanar u dan biss kellu jindirizza t-Tribunal. Il-Qorti tirreleva illi t-tielet aggravju tal-appell tat-terz quddiem it-Tribunal kien fis-sens li 'hu possibli li jezisti error on the face of the record' pero tali aggravju jekk jista' jissejjah hekk kellu jigi investigat mit-Tribunal billi jara jekk tali aggravju kienx jew setax isir quddiemu jew kellux jitqajjem f'forum iehor jew intbagħtu mit-Tribunal f'forum iehor.

Invece t-Tribunal ha linja differenti minn dawk li kienu l-aggravji tal-appell tenut kont tal-applikazzjoni specifika li kellu quddiemu cioe 'sanzjonar ta' canopy'. Jista' jkun li t-

Tribunal hass li l-applikant kien qed jabbuza mill-process tal-ippjanar pero dan wahdu ma setax jiggustifika r-rifjut tal-permess minghajr ma jallacja dan mal-aggravji mressqa b'decizjoni motivata kemm fuq bazi legali u dik ta' ippjanar. Kwindi l-osservazzjoni tat-Tribunal li l-aggravju tal-appellant jistrieħ fuq il-premessa li d-dikjarazzjoni li saret fl-applikazzjoni 614/09 kienet qarrieqa la hi sorretta mill-aggravji tal-appell u anqas tikkoncerna din l-applikazzjoni ghalkemm titratta l-istess sit. In oltre l-agir oggezzjonabbli tal-applikant li juza stratagemmi biex jilħaq l-iskop tieghu u jehles mill-effetti ta' enforcement notice wkoll mhux idoneju għall-iskop tal-aggravju fl-appell sakemm it-Tribunal ma jiggustifikax li dan jista' jagħmlu għax johrog minn xi aggravju tal-appell u jirrigwarda l-applikazzjoni in kwistjoni.

F'din ic-cirkostanza t-Tribunal għazel li jagħmel analizi investigativa li ma kinitx tiffirma parti mill-aggravji tal-appell u ma tiggustifikax ir-rifjut peress li ma hiex marbuta ma' xi kontravvenzjoni partikolari ta' ligi ta' ppjanar, anzi addirittura eskluda konsiderazzjonijiet ta' ppjanar bbazati fuq l-aggravji li kellu quddiemu u għamel decizjoni hu ta' dak li deherlu messha kienet il-pozizzjoni tal-Awtorita rinfaccjata bis-sitwazzjoni li kellha quddiemha u l-prezunt motivi tal-applikant. Dan hu perikoluz u ma jistax jigi tollerat minn din il-Qorti. Li donnu ma rrealizzax it-Tribunal hu li l-applikazzjoni kienet għal sanzjonar li timplika nuqqas ta' ottemperament ma ligi ta' ppjanar u li l-istess Awtorita fil-hrug tal-permess irrakomandat 'hefty fine' li juru li l-Awtorita fehmet is-sitwazzjoni pero approvat il-permess fuq konsiderazzjonijiet ta' ppjanar. Li kellu jagħmel it-Tribunal hu li jara jekk ir-ragunijiet għall-approvazzjoni kienux gustifikati mill-lenti ta' planning issues meħudin fl-isfond tal-aggravji kontra l-approvazzjoni. Li t-Tribunal imur oltre u lil hinn mill-kontestazzjoni mhux gustifikabbli.

Għalhekk dawn l-aggravji qed jigu milqghua fis-sens hawn deciz.

Is-seba aggravju

Ghalkemm dan l-aggravju jirrigwarda materja aktar ta' pika milli ta' indoli legali u f'cirkostanzi ohra anqas serji l-gudikat ma kienx jintmess pero la darba t-Tribunal gie mitlub jaghti decizjoni fuq dak li seta' jigi mdahhal fl-atti o meno, dan kellu jaghmlu u mhux jinjorah u billi l-appell qed jigi milqugh fuq kwistjonijiet aktar serji, jisthoqq li t-Tribunal ukoll jaghti d-debita attenzjoni ghal-talbiet tal-appellant dwar l-isfilz.

Ghalhekk dan l-aggravju wkoll qed jigi milqugh.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Veronique Debono in linea ma' dak hawn fuq deciz, u tannulla d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012, u tibghat lura l-atti tat-Tribunal biex l-appell jerga' jigi trattat mill-gdid a bazi tal-atti quddiemu. Bl-ispejjez jibqghu bla taxxa.

< Sentenza Finali >

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