



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-22 ta' Jannar, 2014

Appell Civili Numru. 58/2013

Hector Borg, Mark Azzopardi u l-perit Patrick Calleja

vs

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza l-applikant Joseph Bezzina**

Il-Qorti,

Rat ir-rikors tal-appell tal-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar tad-19 ta' Awwissu 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Lulju 2013 fejn laqghet l-appell tat-terzi u ddikjarat li l-outline development permit PA 5214/08 favur Joseph Bezzina kien skada u ma jistax jiggdedd billi l-full development application ma saritx fi zmien sena mill-hrug tal-outline permit.

Kopja Informali ta' Sentenza

Rat ir-risposta tal-objectors li sottomettew 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 pprezentata fil-31 ta' Ottubru 2008, Outline Development Permission PA5214/08, l-applikant Joseph Bezzina f'sit fi Sqaq Charlotte, Triq Kromb il-Bahar, Gharghur, ippropona "To construct residential Development.". L-applikazzjoni giet approvata bil-permess datat l-1 ta' April 2011. L-ewwel kundizzjoni fil-permess tghid hekk:

"1a) The full development application shall be submitted for the approval of MEPA within one year from the date of this outline permission. This outline permission shall expire within one year from the date of issue of this permission and it is not renewable."

Fl-appell tieghu, l-perit Patrick Calleja ghall-appellanti ssottometta li l-izvilupp propost hu in kontravenazzjoni tal-Policies fil-Pjan Lokali ghall-Gharghur; li DPA report kien jirrakkomanda rifjut billi l-area in kwistjoni hi art agrikola ta' certu valur; li l-isqaq li jipprovdi l-uniku access ghas-sit hu wiehed dejjaq; li l-izvilupp igib bhala konsegwenza t-twaqqiegh ta' hitan tas-sejjeigh; li d-Direttorat ma interpretax b'mod korrett l-konfini taz-zona tal-izvilupp.

Il-perit Hector Zammit ghall-applikant issottometta li l-permess PA 5214/08 hareg billi s-sit jinsab fiz-zona tal-izvilupp, u fl-Urban Conservation Area tal-Gharghur; li l-izvilupp propost jirrispetta l-alignment ufficjali; li mhi ser tintilef l-ebda hamrija; li (TPS) Temporary Provisions Schemes gew superati mill-Pjan Lokali ppubblikat f'Lulju 2006.

Fir-rapport taghha l-Awtorita' irrilevat li l-izvilupp approvat jinsab fid-Develoment zone tal-Gharghur, u mhux barra z-zona tal-izvilupp tal-Gharghur, l-applikant gie dirett biex

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jillimita l-izvilupp “within the development zone”, u ghalhekk ma gie approvat l-ebda zvilupp li hu fi “Stratigic open gap”; L-izvilupp gie limitat ghall-zewg sulari, l-gholi permissibbli fil-UCA – Urban Conservation Area.

Il-partijiet ghamlu sottomissjonijeit ulterjuri fil-mertu; u fis-sedua tad-29 ta' Novembru 2012, id-difensuri trattaw il-kwistjoni preliminari li l-permess outline kellu jigi segwit b'applikazzjoni fi zmien sena; u nghataw l-fakolta li jipprezentaw nota dwar dan.

L-Avukat Dottor Franco Vassallo ghall-appellanti fin-nota tieghu 'inter alia' issottometta kif gej:

“Appellants are submitting that the permit subject to appeal has expired because no full development application had been submitted within the year.

The outline permit was approved on the 1st April, 2011. Condition I(a) of said permit reads:

1. a) The full development permission application shall be submitted for the approval of MEPA within ONE YEAR from the date of this outline permission. This outline permission shall expire within one year from the date of issue of this permission and it is not renewable.

Condition I(c) further states that:

1.

1. [...] c) The full development application shall be submitted according to the standard requirements of submissions of applications. The Authority may request additional information and studies, as required, so as to carry out a complete assessment of the full development application [...]

To paraphrase, the conditions laid down by Mepa are the following:

A. A full development application must be filed ;and

B. The full development application must have been filed within one[I] year from the date of the permit.

In its fourth statement, MEPA argues "that contrary to what had been stated by the Appellants, a New Permit Application was submitted to the MEPA within the set time frame [...]. In fact the New Permit Application, Tracking Number 146942, was submitted on the 8th February 2012 [...]".

The Appellants humbly submit that what was filed by the outline permit holder within the 1 year time limit was not a "full development permission application", as was required by Condition 1 of the outline permit, but a screening request [in line with Article 3 of Legal Notice 514 of 2010]. In fact, in its fourth statement MEPA does not quote a "PA" number but a "Tracking Number".

This argument is validated by an assessment of MEP A's map server which reveals that (i) the site has not been plotted, and (ii) only the original outline development permission details are available and plotted. Additionally, and as said, MEPA itself only quotes a "Tracking Number".

The question is therefore, whether a "screening request" may be considered as tantamount to a full development application "submitted according to the standard requirements of submissions of applications"?

In this regard, reference is made to the following articles of Legal Notice 514 of 2010:

Article 3(3)(g)

3. [...] (3) The Authority shall notify the applicant with a screening letter which will include all or any of the following:

[...]

(g) a date within which the development application has to be submitted in accordance with the requirements set out in the screening letter, which date shall not be more than three months in the case of a development which falls under the provisions of Part A of Schedule 2 to these regulations and not more than six months in the case of a

development which does not fall under the provisions of Schedule 1 or Part A of Schedule 2 to these regulations.

Article 4(1)

4. (1) The development application shall be submitted within the terms established by the Authority in the screening letter and shall consist of any updated or new documentation attached to the screening request. It shall include [...]

Article 5(1)(a)

5. (1) Changes in the application, drawings or documents which do not constitute a material change may be made by the applicant:

(a) between the screening letter and the validation date of the application

[...]

What transpires from the above provisions of Legal Notice 514 of 2010 is that there is a net distinction between a screening request and a full development permit application provided that:

(i) The screening process initiated by an applicant is followed by a screening letter sent by MEPA indicating a date within which the development application has to be submitted - the screening request and the application are therefore very clearly separate and distinct;

(ii) The development application shall be submitted within the terms established in the screening letter - the development application follows the screening letter which is sent in reply to the screening request and is compiled in accordance with terms established therein;

(iii) Changes in the application may be made by the applicant between MEPA's screening letter which may indicate shortcomings in the applicant's screening request and the actual application - the screening request may therefore be corrected in line with MEPA's screening letter prior to the filing of a permit application.

It is therefore correct to state that an applicant's screening request is not tantamount to the application for full development permission requested in Condition 1 of the approved outline development permit. Said request is only the first step leading to the submission of a permit application.

Finally reference is made to the Newsletter Outlook 7 and Outlook 9 [attached for ease of reference] published by Mepa just before the publication of Legal Notice 514 of 2010 which seeks to explain the main features of the legal notice. The relevant part relating to the screening process is reproduced hereunder without comment or addition.

Outlook 7 "A new screening process is also to be introduced which, at a fixed rate of €50, will involve a review of the application to be submitted by MEPA before the full fees are paid and the application officially submitted for consideration. The aim of the screening process is to ensure that all required information is presented and all aspects of the proposed development are in line with legal requirements"

Outlook 9 "Key to the process is a mandatory pre-screening stage which can take a maximum of four weeks whereby applicants will be notified what documents and studies were needed to accompany the submission of a formal application. While applications will be classified as being simple, complex or major, each of the classifications would be accompanied by a set time frame within which Mepa will take its decisions".

2.

It is also pertinent to emphasize that the screening process itself should have been completed within the mandatory four week period moreover because an outline development permit is tantamount to a higher extent to a positive screening letter rendering the screening process a mere formality.

Condition 1 has therefore been breached thus resulting in the expiration of the non-renewable 1 year term imposed

by the approved outline development permit for the submission of the full development permit application thus rendering these appeal proceedings as being exhausted in that the permit PA 5214/08 subject to appeal has expired irrevocably.

L-Awtorita' fil-fourth statement taghha kkummentat kif gej, dwar l-ewwel kondizzjoni imposta fil-permess outline:
"Reference is being made to Minutes of Sitting, Number 54, which was held on the 31st July 2012.

The Appellant had made reference to Condition 1 of the Approved Outline Permit, which is currently under appeal. This condition states the following:

a) The full development permission application shall be submitted for the approval of MEPA within ONE YEAR from the date of this outline permission. This outline permission shall expire within one year from the date of issue of this permission and it is not renewable.

b) No work shall commence on site until full development permission has been granted for the development. The following reserved matters still require approval by MEPA as part of a full development application:

- . the internal layout;
- . design;
- . external appearance of the proposed building;
- . car parking provision; and
- . landscaping of the site, where applicable.

c) The full development application shall be submitted according to the standard requirements of submissions of applications. The Authority may request additional information and studies, as required, so as to carry out a complete assessment of the full development application. The Authority may impose additional conditions and obligations on eventual full development permission.

d) Unless otherwise specified, the proposal in the full development application shall be in conformity with the provisions of the Structure Plan, the Local Plan, and any

other policy documents applicable at the time of submission and determination of the application.

e) With the full development application, car parking details are to be submitted. However, any shortfall in on-site parking provision shall be made up for through the applicant's contribution in the Commuted Parking Payment Scheme or the Urban Improvements Fund for the locality.

The Authority would like to inform the Tribunal that contrary to what had been stated by the Appellants, a New Permit Application was submitted to the MEPA within the set time frame, that is, prior to the 6th of April 2012. In fact the new Permit Application, Tracking Number 146942, was submitted on the 8th February 2012. This submission was confirmed by the vetting Officer on the 8th March 2012 and plotted on the 22nd March 2012. The description of the proposed development reads: To construct 4 residential units with underlying garages.

The Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning policies and states that the EPC's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal."

Ikkunsidra ulterjorment:

L-appellanti jissottomettu li l-permess outline kkontestat, PA 5214/08, skada billi ma gietx ipprezentata "full development application" fi zmien sena. Il-permess jgib id-data 1 ta' April 2011 u ghalhekk din l-applikazzjoni kellha tigi pprezentata qabel l-1 ta' April 2012.

Skond l-Awtorita' l-kundizzjoni giet osservata u sodisfatta billi fit-8 ta' Frar 2012 giet ipprezentata applikazzjoni Tracking Number 146942.

Id-domandi principali li jinhtieg li jigu indirizzati ghalhekk huma s-segwenti:

Kopja Informali ta' Sentenza

1. X'inhom d-definizzjoni ta' "Full Development Application" partikolarment wara l-promulazzjoni tal-Att X ta' l-2010, Kap. 504, u l-Avviz Legali 514 ta' l-2010?

2. Billi kull applikazzjoni ghandha tkun preceduta bi screening request tal-applikant, segwita bi screening letter ta' l-Awtorita', l-fatt li jinghata l-bidu ghall-process, entro t-terminu impost, iffisser li giet sodisfatta l-kondizzjoni li kellha tigi ipprezentata 'full development application' fi zmien sena?

3. Xi tfisser ezattament l-kondizzjoni 1(a) tal-permess kontestat, permess li jgib id-data 1 ta' April 2011, cjoe wara li dahal fis-sehhl-Kap. 504 li bih giet eliminata l-applikazzjoni outline?

Il-kondizzjoni 1(a) riportata supra hi maghmula minn zewg sentenzi distinti u separati. L-ewwel sentenza timponi l-obbligu fuq l-applikant li fi zmien sena mid-data tal-permess tigi pprezentata l-'full development application'; it-tieni sentenza hi dikjarazzjoni li l-permess jiskadi fi zmien sena u ma jistax jiggedded.

Jigi notat li effettivament, stante t-text u l-punteggjatura utilizzati, z-zewg sentenzi ma gewx relatati ma xulxin b'mod li f'kaz ta' inadempjenza ta' dak mitlub fl-ewwel sentenza, jiskatta awtomatikament dak dikjarat fit-tieni sentenza. F'dak il-kaz l-ewwel sentenza ma kienitx tispiccca bil-kelma 'permission' izda kienet tkompli bil-kliem 'in default' jew 'failing which' segwenti bil-kontenut tas-sentenza.

Dan kien ikun iffisser li jekk l-applikazzjoni full ma tigix ipprezentata fi zmien sena, l-permess outline kien jiskadi fl-istess terminu ta' sena.

Billi z-zewg sentenzi ma gewx hekk relatati, l-interpretazzjoni korretta hi li huma zewg dikjarazzjonijiet separati u distinti minn xulxin. Dan iffisser li anke jekk ikun sodisfatt dak mitlub fl-ewwel sentenza; xorta wahda l-validita' tal-permess skond t-tieni sentenza hi ta' sena li ma tiggeditx.

Ghalhekk wiehed jikkonkludi li bl-imsemmija kondizzjoni l-applikant gie ordnat japplika ghall-full development fi zmien sena; una volta dan jsir il-kwistjoni tkun regolata bl-applikazzjoni l-gdida, u l-permess outline jiskadi wara sena mid-data tieghu u ma jiggedditx; u dan anke ghar-raguni li bil-promulgazzjoni tal-Att X ta' l-2010, Kap 504 applikazzjonijiet outline ma baqghux aktar possibbli.

Dan kollu premess, jidher li l-partijiet qablu, fil-principju fuq l-interpretazzjoni tal-kondizzjoni, cjoé li l-applikazzjoni kellha tigi pprezentata fi zmien sena, fin-nuqqas l-permess (outline) jiskadi u ma jiggedditx. Il-kontestazzjoni bejn il-partijiet hi in fatti; x'jikkostitwixxi applikazzjoni. Skond l-appellant din jinhtieg li tkun a 'full development application' u mhux semplicement a 'screening request'; mentri skond l-Awtorita' billi l-process beda fi zmien sena mid-data tal-permess, dik l-kundizzjoni giet soddisfatta u osservata.

Kif gie korrettament rilevat mill-Konsulent Legali tal-appellanti, Ezami tal-Avviz Legali 514 ta' l-2010, cjoé regolamenti ta' l-2010 dwar l-ippjanar u l-izvilupp (Procedura ta' Applikazzjonijiet u d-Decizjoni Relattiva), li dahlu fis-sehh fl-1 ta' Jannar 2011 (il-permess kontestat jgib id-data 1 ta' April 2011) juri li lis-screening request, mhux l-applikazzjoni vera u propja, izda tghati l-bidu tal-process biex wara li jsir skambju bejn l-applikant u l-Awtorita' jigi determinat x'ghandu jigi specificat fl-applikazzjoni biex din tkun tissodisfa r-rekwiziti tal-ligi, u tkun tista' tigi determinata mill-Awtorita'.

Jirrizulta in fatti, Regolament 4(1) li l-applikazzjoni propja ghandha tigi pprezenta fit-termini stabbiliti mill-Awtorita' fl-"iscreening letter".

Billi dan l-istadju ta' screening jiehu massimu ta' erba' gimghat l-applikant kellu l-obbligu li ragjonevolment qabel gheluq s-sena jibda l-process, b'mod li qabel ma tghalaq s-sena jkun f'pozizzjoni li jipprezenta l-full development application.

Kopja Informali ta' Sentenza

F'dan il-kaz irrizulta li l-iscreening request saret fit-8 ta' Fra 2012, pero l-validation date tal-applikazzjoni PA 0481/13 jgib id-data 8 ta' Frar 2013, cjoe' wara l-1 ta' April 2012.

L-Avviz Legali 158 ta' l-2013, Artikolu 15 introduca t-tigdid awtomatiku tal-permessi, approvati fil jew wara t-3 ta' Awwissu 2006, li skadew jew jiskadu qabel il-31 ta' Marzu 2014 sal-31 ta' Marzu 2014; pero' dan ma japplikax ghal permessi outline.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell bili jilqa' l-istess u jiddikjara li l-permess outline PA 5214/08 favur Joseph Bezzina tal-1 ta' April 2011 skada u ma jistax jiggadedd; din id-decizjoni pero' b'ebda mod ma tincidi fuq l-applikazzjoni PA 0481/13 applikazzjoni ta' l-istess applikant fuq l-istess sit, applikazzjoni li ma kienitx parti mill-mertu ta' dan l-appell.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwenti:

1. It-Tribunal ezamina hazin il-kondizzjoni li tat lok ghal dan l-appell billi ma hax in konsiderazzjoni l-kuntest li fih jigu prezentati applikazzjonijiet ta' zvilupp wara l-introduzzjoni mandatorja ta' screening process skond Avviz Legali 514/2010 artikolu 3(1).

Din il-Qorti tista' lanqas tikkunsidra dan l-appell billi lanqas hu fondat fuq punt ta' ligi kif jaghti x'jifhem l-appell izda fuq interpretazzjoni u apprezzament ta' kundizzjoni ta' outline development permit, liema interpretazzjoni u apprezzament mhix sindakabbli mill-Qorti hlief meta t-Tribunal ikun zbalja l-fatt li ta' lok ghall-interpretazzjoni jew tali fatt zbaljatament ikkunsidrat mit-Tribunal kien il-fattur ewlieni ghad-decizjoni. Zgur li dan ma kienx il-kaz.

Hu pacifiku illi d-decizjoni tat-Tribunal kienet ibbazata fuq dak li jipprovdi l-outline permit f'kundizzjoni 1(a) tal-permess outline PA 5214/08 mahrug fl-1 ta' April 2011 li jghid hekk:

a) The full development permission application shall be submitted for the approval of MEPA within ONE YEAR from the date of this outline permission. This outline permission shall expire within one year from the date of issue of this permission and it is not renewable.

Dan il-permess harez wara l-introduzzjoni tal-Avviz Legali 514/2010 (1 ta' Jannar 2011) fejn jaghmilha mandatorja li kull applikazzjoni trid tigi preceduta minn talba ta' screening lil Awtorita li jvarja pero ma ghandux itul aktar minn erba' gimghat. Kwindi l-kundizzjoni fl-outline permit harget bi piena konsapevolezza tal-ligijiet ta' ppjanar vigenti.

Meta nhareg il-permess outline d-dicitura adottata fil-permess kienet cara u cioe illi l-full development application kellha ssir fi zmien sena u mhux il-process ta' screening kellu jinbeda fi zmien sena. Fejn id-dicitura hi cara ma hemmx lok ghal interpretazzjoni u t-Tribunal addotta din it-triq u zied li b'dan il-parametru ta' zmien l-applikant messu ha hsieb li jibda l-process fi zmien utili biex jkun f'pozizzjoni li jressaq full development application fi zmien sena mill-hrug tal-outline permit. Invece irrizulta illi t-talba ghal screening saret fit-8 ta' Frar 2012 pero sakemm skada l-outline permit f'April 2012 ma kienet ghadha saret ebda applikazzjoni ghal full development kif irid il-permess 5214/08. Mhux kompitu ta' din il-Qorti li tinvestiga x'wassal biex l-iscreening process ma nghalaqx qabel l-iskadenza tal-outline permit. Il-kompitu ta' din il-Qorti hu li tara li t-Tribunal kien konxju tal-fatti ppruvati u minn ezami tal-fatti wasal ghal interpretazzjoni u applikazzjoni taghhom ghal kaz skond il-ligi kif vigenti. Dan hu dak li ghamel it-Tribunal u l-apprezzament tal-fatti li fuqhom ma hemmx kontestazzjoni u l-interpretazzjoni tal-kondizzjoni rilevanti tal-permess mit-Tribunal abbinat mal-fatti, ma jaghtux lok lil din il-Qorti tissindaka d-decizjoni raggunta mit-Tribunal dwar l-effetti tal-kondizzjoni dibattuta f'dan l-appell in linea mal-Avviz Legali 514/2010.

Kopja Informali ta' Sentenza

Kwindi l-appell tal-Awtorita mhux fondat fuq ebda bazi legali soda li jimmerita li d-decizjoni tat-Tribunal tigi disturbata.

Decide

Ghalhekk il-Qorti qed tichad l-appell tal-Awtorita u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Lulju 2013.

Bl-ispejjez kontra l-Awtorita.

< Sentenza Finali >

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