



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tad-19 ta' Frar, 2014

Appell Civili Numru. 13/2013

Joe Cutajar

VS

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joe Cutajar tat-2 ta' April 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013 dwar cahda tal-applikazzjoni PA 939/10 'to construct reservoir (part sanctioning), replacement of dangerous slab of rooms and reconstruction of rubble wall in accordance with L.N. 160/07';

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:

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fil-21 t' April 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 939/10 – Site at Triq ta' l-Infetti, Mdina: To construct reservoir (part sanctioning), replacement of dangerous slab of rooms and reconstruction of rubble wall in accordance with L.N. 160/97.

Iz-zewg ragunijiet ghar-rifjut kienu s-segwenti:

"1. The works carried out and the proposed development are not considered aesthetically compatible with the rural environment and thus runs counter to Structure Plan Policies AHF 5 and RCO 4 which state that only structures essential to a agricultural, ecological or scenic interest will be permitted in Rural Conservation Areas.

2. The construction methodology of the proposed rubble wall and boundary wall facing the country lane are note in line with the requirement of LN 160/1997 and as amended in LN 169/2004."

B. In-nota tal-Perit Wilfrid De Battista ghall-Appellant, ipprezentata fil-25 ta' marzu 2011, senjatament il-punti segwenti:

"Illegal procedure

- It should be noted that the application was recommended by the Directorate for approval.
- The refusal was voted for and decided upon by the EPC after the deferral.
- During the deferral period after the submission of the requested information involving a survey of the field, the EPC consulted with the Environment Protection Directorate.
- During the deferred hearing the EPC refused this application basing their decision on this report.

- This EPD report was not presented to the applicant to defend the case and make the necessary relevant submissions.

This procedure has not allowed the applicant to view and assess this EPD report.

- In fact the applicant and I have as yet not been given this EPD report.
- It should be pointed out that during the course of this application, EPD were consulted by the Planning Directorate. Notwithstanding the Planning Directorate recommended on approval.

Hence the illegal procedure in that the applicant was not given the right to defend this application vis-à-vis this last EPD report. Subsequently, may we ask this Tribunal for this report to be handed to the applicant so that the necessary submission may be presented?

Planning Issues:

The following arguments are associated with particular reference to the issued reasons for refusal:

1) Re. Reason for Refusal No. 1.

- As may be noted from the latest submitted drawings, the proposed reservoir is to be covered by 0.75m deep soil, being well below the surface of this field.
- Hence this will not be visible.
- Moreover the boundary wall of the field with the street will be to the same height to that as per 1968 aerial photo, where the shadow of this wall is slightly lower than the shadow of the existing room/s (submitted in PA 1884/07).
- Due to the steep gradient that falls along the length of the street vis-à-vis the field the boundary was always rather high. This is due to the naturally stepped terrain.
- The height of rubble walls along the perimeter of the field are also evident from the submitted copy of the document issued by the Ministry of Agriculture and Fisheries dated 18.02.2003 (submitted in PA 1884/07).
- The construction of reservoir to collect and store runoff water through the existing covered trench and from the upper fields and the street is vital for any agricultural use:

- The size of the reservoir is well below the size permitted by the Agricultural Policy issued in 2007, in particular policies 2.6.1 till 2.6.10.
- The size of the proposed reservoir will have a volume of 816cm while the policies allow a volume of 164cm per 1124 sqm. The applicant tills an area of 4336sm. Hence the allowable volume amounts of 1755cm.

2) Re. Reason for Refusal No. 2

- As may be noted from the title of the application, the proposal includes... "...reconstruction of the rubble wall in accordance with LN 160/97..."
- Hence the same title of this application itself suffices this reason for refusal.
- Moreover if this Legal Notice has been amended, it stands to reason that the works will be undertaken as per these amendments too.
- Furthermore, it should be noted that the submitted drawings also state that the works are to be carried out as per LN 160/97."

C. In-nota responsiva ta' Jonathan Borg għall-Awtorita', ipprezentata waqt is-Seduta 58 mizmuma fis-27 ta' Lulju 2011, inter alia l-hames punti segwenti:

"5.2.1 Preliminary Plea

On a preliminary point, this Tribunal cannot hear and decide on the merits of this appeal on the basis of Article 70 (4) of the Sixth Schedule since the site is scheduled as an Area of High Landscape Value under Government Notice 348 of 2001 which unequivocally states that no development may be regularized in scheduled property. The development is seeking the part sanctioning of the reservoir.

A secondary plea is also being made on the basis that other illegal development is present on site which is not being addressed in this application. Article 14 (1) of LN 514/10 clearly states that where illegal development is present on a site, new development on that same site cannot be considered unless it is regularized. The illegal works present on site are identified in EPD Report part B

which identified that inert/construction material has been deposited on site (part of which is currently covered by vegetation). The appellant should rectify this situation prior to further consideration of the proposed development.

5.2.2 Introduction

The Authority is respectfully bringing to attention of the Tribunal that the development proposing the construction (part sanctioning) of a reservoir on the site in concern was already applied by the same appellant in PA 1884/07. This case was refused planning permission although applicant never made an Appeal of this decision.

5.2.3 Counter Arguments to Appellant's Comments

The main argument raised by appellant focuses on the comments made by EPD in consultation made by EPC Board prior to decision. The appellant is arguing that EPD report was significant since it influenced the Board to refuse the proposal, even though the Planning Directorate had already consulted with EPD and recommended the development favorably. Appellant is also criticizing the Authority since a copy of the EPD Report was not given to him to counter-argue.

The appellant's arguments seem to indicate that the EPD only argued against the proposal on the basis of consultation carried out by EPC Board, and therefore favourably recommended the proposal when consulted by Planning Directorate. This could not be farther from the truth since it must also be clarified that even in their first consultation, the EPD objected the proposed development.

The purpose of the consultation by EPC Board with EPD emerged in Board Meeting dated 25th March, 2011; when the case was deferred in view of fresh plans requested from architect/appellant. The requested plans were to indicate:

1. The existing boundary walls to be demolished and those proposed (in conventional colours);
- 1 Reservoir to be totally below soil level;

- 2 Additional transverse sections of the reservoir indicating level of roof of reservoir with respect to existing soil level;
- 3 Indication of water catchment of reservoir;
- 4 Clear indication on drawings that existing wall along the country land is to be replaced by a wall complying with L.N. 160/97
- 5 Revision of proposal to include the reconstruction of rubble walls in accordance to L.N. 160/97.

During the sitting it was also made clear to appellant/architect that once received, these fresh plans would need to be re-sent to EPD for their analysis and updated comments. Hence, appellant's arguments that the Planning Directorate had already commented with EPD and recommended the development favourably is frivolous since it is clear why the EPD were re-consulted by the EPC Board, and how their (EPD) previous comments were to be superseded by those made following second consultation due to fresh plans.

5.2.4 EPD Report

In their report (Doc 46 in PA File), the Environment Planning Directorate re-expressed the importance that any development constructed within the Area of High Landscape Value must not only abide by the regulating planning policies for the proposed development, but also be sensitive to the value of the scheduled site. A photographic inventory from a site inspection was provided and showed a holistic view of the boundary walls/access/pathways around the site in concern whilst noting the boundary wall as proposed.

The report also commented that the construction methodology as outlined in the fresh plans sent by appellant for the re-erection of the boundary wall facing the country lane is not in line with L.N. 160/97 (and amendments in L.N. 169/04) and as established by the Environmental Protection Act of 2001 due to a very rigid profile and formal design.

Furthermore, it is clear that inert/construction material has been deposited on site (currently covered by vegetation)

which has changed the original setting of the topography of the relevant area. Sections Doc 44C & 44D (submitted by appellant after requested by EPC Board) do not correctly reflect the existing situation of the site. As a result, the proposed reservoir as envisaged to be constructed is unacceptable since a substantial part of the surface area of the reservoir is designed to be located above the ground level of the country lane; and it shall result in a further change in the topography and hence disrupt further the scenic value of the area.

5.2.5 Final Comments by Authority

The Authority is acknowledging that the Planning Directorate recommended this application favourably, but this was carried out before the site had been investigated by the EPD (in response to EPC request made in Board Meeting dated 25th March, 2011). From the resulting report, it is clear that the works carried out and those proposed are not considered aesthetically compatible with the rural environment or site sensitivity as an Area of High Landscape Value. The development is not in the best agricultural, ecological or scenic interests of the site, and therefore not permissible in line with Structure Plan policies AHF 5 and RCO 4. In addition, the construction methodology of the boundary wall also run counter to L.N. 160/97 and subsequent additions made in L.N. 169/04."

D. In-nota ta' sottomissjonijiet tal-Perit Wilfrid De Battista ghall-Appellant, ipprezentata waqt is-Seduta numru 96, mizmuma fl-14 ta' Dicembru 2011, precizament il-punti segwenti:

"1. Re paragraph 5.2.1

- As may be noted from the presented drawings as requested by the EPC, the existing structure is marked in yellow. This means that the existing structure is to be demolished completely, and the proposed reservoir as marked in red shows that it will be a completely new structure. Hence there will be no illegal structure to sanction when the permit is issued. This type of colouring

was suggested by the EPC during the same meeting. This is also mentioned in the MEPA report paragraph 5.2.3.

- It should be noted that the mentioned inert/construction material is nothing more than the soil and the inert material that was removed during the excavation of the present structure that is to be completely demolished. This soil and material will be used to back fill over and around the reservoir so that the same reservoir will be completely below soil level as required by policies.

2. Re paragraph 5.2.2

- The mentioned refusal PA 1884/07 is not the same application. The proposed reservoir is to be positioned to a lower datum so as to keep the original height of the rubble wall along the lane. PA 1884/07 proposed additional height to wall along the lane. This application will retain the same height of the wall along the lane as per aerial photo os 1967 (vide pa 1884/07).

3. Re paragraph 5.2.3

- At this stage, the right to have access and time to reply to the EPD report will not be discussed further, especially when this report has been obtained from MEPA official as stated in the last hearing.
- It should be noted that the EPC never stated the fresh drawing were to be sent again to EPD for their comment. This is completely untrue. Notwithstanding as per the present policies the EPC may consult with any authority within the stipulated time and the applicant can do nothing about this. The present procedure does not allow the applicant any other way other than to Appeal in front of this Tribunal.

4. Re paragraph 5.2.4 – EPD report (DOC 46 in PA file).

- As mentioned in the first Appeal report, the aerial photo of the 1967 (vide pa 1884/07) shows a shadow of the wall along the lane that is twice the depth of the shadow of the

wall along the lane for the field adjacent and positioned lower than this site. This suggests a height well in excess than the normal height of 1.2m. This may be confirmed further from the submitted copy of the document issued by the Ministry of Agriculture and Fisheries dated 18.02.2003 (again vide pa 1884/07).

- Referring the note re Figure 3, it is evident that the mentioned gutter is not visible, but with minor cleaning this may be reopened in order to direct the water were needed, that this into the proposed reservoir. This redirection of such water will prevent soil surface erosion and damage to surrounding lower levelled rubble walls especially during heavy rains. As mentioned earlier the soil and inert material will be used to backfill over and around the proposed reservoir.

- Referring to paragraph 3.1.A of this report, as may be noted from the submitted drawing the proposed rubble wall will be constructed as per LN 160/97 and any of its amendments. The shown rubble wall drawing is only indicative and should not be taken that the wall is to be built as shown. As stated the wall will have to be demolished and reconstructed as per mentioned legal notice. The height of the rubble wall will be as per 1967 aerial photo and if it had to be constructed as per figure 4, that is at a height of 1.2m, it will render a drastic change in level of the field and to the adjacent topography of the area. Moreover it will render this field more susceptible to soil erosion by the waters.

- Referring to paragraph 3.1B of this report, as may be noted from the submitted drawing and to repeat, the inert material and soil pile is to be used for backfilling so that as shown on the drawings, the reservoir will be covered by a depth of soil/inert material of 0.75m. Obviously the remaining material will be carter away, away after the works have been completed.

- Referring to paragraph 3.1.C of this report

1. Fragmentation of the field will not take place. Do the EPD expect that since 1967, no trees will be planted on such a field? The mentioned and referred trees marked near arrow in blue are almond trees that are indigenous and permitted in our landscape. As may be noted from their size, these slow growing trees have been planted quite a while along, and surely prior to the coming of MEPA.

5. Referring to paragraph 5.2.5

- Whether EPD visited the site during the process of the application or during the deferral, it should be noted that the Planning Directorate officer visited the site and found that the remarks of the EPD then, did not hold enough ground to issue a refusal. Hence the recommendation to grant.”

E. In-nota second statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fit-8 ta' Mejju 2012, inter alia l-punti segwenti:

"1.2.1 Article 14 of L.N. 514/10

At second statement the appellant is arguing that Article 14 of L.N. 514 of 2010 does not apply for the proposed development since the proposed illegal development is being completely demolished. Notwithstanding this and as mentioned in the second part of previous comments made in para. 5.2.1 of the initial report, the illegal works present on site are evident from 2008 Aerial Photos (Doc 46 in PA File) where two heaps of inert material covered by thick vegetation are present on site. The applicant must rectify the existing situation prior to further consideration of the proposed development.

1.2.2 Previous Application

The appellant is arguing that the previous application (PA 1884/07) was presented to and refused by the Authority for the part-sanctioning of a constructed reservoir, and that the development at hand is not the same since the proposed reservoir is to be position to a lower datum so as to keep the original height of the rubble wall along the

lane. Nonetheless, the Authority wishes to clarify that the previous application was refused in principle since the site is situated within an Area of High Landscape Value (G.N. 348/01), and hence in an area where no development of any kind should be permitted to safeguard the settling of Mdina. Although the proposal description is therefore slightly different from that in previous application PA 1884/07, the refusal in principle remain.

1.2.3 Final Comments

In submission, the appellant is once again illustrating that the EPC Board never stated that fresh drawings were to be sent again to the EPC for their comment; as well as arguing that the comments made in the EPD Report do not correctly reflect the existing situation at hand. In spite of these arguments, the Authority retains the comments made in para. 5.2.3-5.2.5 of the initial report."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex f' ghalqa li tinsab taht l-iMdina, l-barra miz-zona tal-izvilupp (ODZ); jigu ssanati partijiet minn giebjha li nbriet bla permess, tinbena giebjha gdida, kif ukoll sabiex parti minn saqaf perikolanti ta' karma li tinsab fuq l-istess font, mibni bix-xorok tigi sostitwita.

Precedentement kienet giet intavolata applikazzjoni (PA 1884/07) sabiex tinbena giebjha u jigu ssanati xi partijiet li kienu diga' nbnew, izda din kienet giet rifjutata u kkonfermata fil-fazi ta' rikonsiderazzjoni. Din giet segwita b' avviz biex tieqaf u ta' twettieq (ECF 26/07) li hu mertu tal-appell odjern. L-istess avviz jaqra kif gejj:

"Ghandek zvilupp minghajr permess li jikkonsisti minn tnehhija ta' hamrija, iffurmar ta' pjattaforma tal-konkos, bini ta' hitan bil-bricks li jvarja bejn 4 u 10 filati ma dawra tas-sit, pilastri u twahhil ta' grada tal-hadid."

Kif gja' rilevat supra, is-sit jinsab fl-ODZ gewwa zona li skond il-policies NWAG 01 u NWLA 02 tal-Pjan Lokali (NWLP) kif ukoll l-Avviz tal-Gvern 346/01, hi definite bhala

area of agricultural value kif ukoll ta' high landscape value.

Ir-raguni ghar-rifjut huma bbazat fuq il-fatt li kemm ix-xoghlijiet li saru minghajr permess kif ukoll dawk proposti li jsiru, huma oggezzjonabbli minn aspett estetiku ghax ma jmorru mal-ambjent agrikolu, ekologiku u xenografiku tar-rural conservation area, kif definit permezz tal-policies AHF 5 u RCO 4 tal-Pjan ta' Struttura. In oltre, il-metodologija ta' kif ser jinbena l-hajt tas-sejjieh u r-recinzjoni ma tirrispekkjax ir-rekwiziti tal-Avviz Legali 160 tal-1997 kif emendat permezz tal-Avviz Legali 169 tal-2004.

L-aggravji ta'-Appellant huma bbazati fuq il-premessa li d-Direttorat kien irrikmanda l-hrug tal-permess, izda anke jekk il-Kummissjoni ddecidiet il-kuntrarju, madankollu r-rapport tad-Direttorat qatt ma gie pprezentat sabiex ikun jista' jikkumenta fuqu. Din hi procedura illegali u sa llum, l-istess rapport ghadu qatt ma wasal f' idejh.

In oltre, ghar-rigward it-talba per se, l-Appellant jirrileva li l-giebja hi proposta li tkun tesa' madwar 816 metri kubi ilma u li ser tindifen madwar 0.75 metri taht il-wicc tal-hamrija. Ghalhekk, mhix ser tkun tidher u anke minn aspett ta' volum effettiv, ser tkun in regola mal-policy 2.6 tal-Policy and Design Guidance – Agriculture, Farm Diversification & Stables. Di piu', il-hitan tas-sejjieh ser jinbnew bl-istess gholi ta' kif jidhru fir-ritratti mill-ajru tas-sena 1968 u skond dokument tas-sena 2003 tal-Ministeru tal-Agricoltura u Sajd. Jirrileva li jista' jkun hemm l-impressjoni li l-hitan ser jinbnew ghola - minhabba l-impdenzi li hemm bejn il-font u t-triq – izda dan mhux minnu u l-hitan huma proposti li jinbnew imtarrga.

L-Awtorita' zammet ferm l-oggezzjoni taghha u qabel xejn tirrileva li mhux minnu li t-talba odjerna kienet giet rakkomandata mid-Direttorat. Is-sostenn ta' din id-dikjarazzjoni taghmel riferenza ghall-minuti tal-Kummissjoni fejn l-Appellant kien intalab sabiex jikkjarifika l-proposta tieghu permezz ta' pjanti riveduti – altro che rakkomandazzjoni favorevoli.

In oltre, l-Awtorita' tispjega li ghalkemm il-giebja l-gdida hi proposta li titghatta bil-hamrija, madankollu ser jinbiddel il-profil originali tal-ghalqa bir-rizultat li l-wicc tal-hamrija ser ikun oghla mit-trejqa li tghaddi minn quddiem is-sit.

Ghar-rigward tal-oggezzjoni tal-irregolaritajiet li hemm fuq is-sit, l-Appellant jirrileva li l-proposta hi ntiza sabiex l-istrutturi li nbnew minghajr permess jigi sostitwiti b'giebja kompletament gdida. In oltre, it-tfiegħ ta' materjal rilevati mill-Awtorita' mhu xejn hlief il-hamrija u l-materjal li tnehha meta sar it-thammil precedenti (ghall-istruttura illegali), u li ghalhekk ser jitnehha galadarba tinbena l-giebja l-gdida, ghax ser jintuza bhala rdim.

F' ic-cirkostanzi pero' minhabba dan l-istess materjal, l-Awtorita' invokat ir-regolament 14 tal-Avviz Legali 514 tal-2010, u cjoe' li l-materjal kellu jitnehha qabel ma giet intavolata l-applikazzjoni odjerna. In oltre, ghar-rigward tal-parti tal-proposta li tirrigwarda l-giebja, l-Awtorita' tirrileva li l-applikazzjoni precedenti (kif indikata supra), giet rifjutata propju abbazi tal-principju li skond l-Avviz tal-Gvern 348/01, hawn si tratta minn area of high landscape value, u ghalkemm il-proposta odjerna hi kemm xejn differenti, il-principju ghar-rifjut jibqa' l-istess.

Jidher car li fid-dawl tar-regolament 14 tal-Avviz Legali 514 tal-2010, il-parti tal-proposta li tirrigwarda l-uzu mill-gdid tal-materjal li tpogga illegalment bhala riempiment (back fill) hi wahda li ma' d-daqqa t-ghajn ghandha timmerita kunsiderazzjoni favorevoli. Madankollu, ezaminati fid-dettal is-sottomissjonijiet kollha tal-partijiet, jigi rilevati li dakinhar li ntefghet il-hamrija u l-materjal inert, inbiddlet ghal kollox it-topografija tas-sit. Ghalhekk, prevja li jsir studju serju u akkurat (li jkun jinkludi wkoll comparative surveys ta' kif originarjament seta' kien il-profil tal-wicc tal-ghalqa u l-livelli tal-hamrija), proposta bhal din ser tibqa' grossolana. Bl-istess mod ser jibqa id-dubbru fir-rigward tal-gholi u l-profil tal-hitan tas-sejjieh.

Irid jinghad ukoll li t-talba precedentement rifjutata (PA 1884/07) kienet taqra hekk:

“Farm House Hemsija off, Triq Ta' l-Infetti, Mdina: To construct reservoir (part sanctioning)”

Illum pero' bhal donnu qed jinghata x' jinftiehem li s-sit hi sempli ghalqa u li parti mit-talba tirrigwarda bdil ta' soqfa ta' kamra. Terga tghid, mhux car jekk din il-kamra hi l-istess farmhouse li ssir riferenza ghalha fit-talba PA 1884/07. Din l-ambigwita' tizdied meta per ezempju illum, lanqas ma nghatat prova tar-raguni ghalfejn l-Appellant ghandu bzonn giebja ta' din il-kobor, u kemm – jekk huwa minnu – fil-fatt jahdem ghelieqi.

Tenut kont ta' dan jibqa l-punt li l-mertu ta' din il-proposta gja' gie ezawrit fl-applikazzjoni PA 1884/07; sebbene il-proposta odjerna tinvolvi certu modifiki. Tibqa' pero' il-kwistjoni li din hi zona skedata u li timmerita interventi sensitivi. Dan ifisser li peress li t-talba in ezami (fil-konfront ta' zvilupp) hi wahda massicca, ma tistax tigi milqugha.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-ligijiet tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 939/10 kif mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-ippjanar, fil-21 t' April 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jiddeciedi dwar il-fatti quddiemu u kellu l-mezzi biex jaghmel dan billi jitlob informazzjoni jew jaghmel access u minflok ikkonkluda li ma kienx jaf x'effett l-izvilupp kien ser ikollu fuq is-sit. Kwindi tonqos ic-certezza jekk fil-fatt il-policies rilevanti gewx applikati, jew gewx applikati korrettement. Dan jinghad b'referenza partikolari ghal gholi u profil tal-hitan tas-sejjiegh kif kien qabel l-applikazzjoni;
2. Il-fatti kienu cari bizzzejjed billi l-giebja kienet ser tkun taht il-livell tat-triq u l-hitan tas-sejjiegh kienu ser jittellghu kif kienu qabel u ghalhekk fil-parametri tal-policies. L-

appellant kellu dritt vestit bil-pre-ezistenza tal-hitan u li jerghu jittellghu sal-livell li kienu. Dawn il-fatturi gew injorati mit-Tribunal;

3. It-Tribunal zbalja fil-ligi meta dahhal kriterji tal-bzonn tal-giebja ta' dik il-kobor komparat ma kemm ghelieqi jahdem. Il-giebja hi relatata mal-art u mhux jekk ser isservi l-okkupazzjoni jew professjoni tas-sid, peress li tista' tintuza min terzi mqabbda mill-istess sid.

L-ewwel aggravju

L-appellant jilmenta illi t-Tribunal abdika mill-obbligi li jezamina l-fatti u f'kaz li l-fatti mhux cari jew informattivi bizzejjed jitlob aktar informazzjoni biex japplika l-policies rilevanti ghal kaz tenut kont tal-fatti. Dan in-nuqqas irrenda l-gudikat incert.

Harsa dettaljata lejn id-decizjoni juri pero li t-Tribunal ma ddecidiex a bazi ta' incertezzi li l-istess Tribunal irreleva u li wasluh ghar-rifjut tal-applikazzjoni. L-aggravju tal-appellant kien ikun gustifikat kieku t-Tribunal ibbaza r-rifjut tal-applikazzjoni fuq il-premessa li l-fatti ghalih ma kienux cari ghax l-iskop tat-Tribunal hu li jezamina l-fatti u jiddeciedi dwarhom in linea mal-policies applikabbli. Pero t-Tribunal ddecieda li l-applikazzjoni ma kienx jimmeritaha ezitu favorevoli ghax l-izvilupp cioe l-bini ta' gieba u tnehhija ta' wahda illegali u l-bini tal-hitan kif mitlub kienu jikkostitwixxu zvilupp massicc f'zona skedata li timmerita intervent sensittiv. Hu zied li din il-proposta b'certi modifiki kienet saret fl-applikazzjoni 1884/07 u giet michuda ghall-istess raguni. It-Tribunal semma' l-fatti dwar il-bdil fit-topografija tal-art meta l-appellant sposta l-hamrija meta saret giebja bla permess u l-effett fuq l-gholi u l-profil tal-hitan biex juri illi tali zviluppi kienu jirrikjedu studju approfondit u ghalhekk gustifikazzjoni li trid issir mal-istess applikant biex isiru xogholijiet f'sit ta' high landscape value bhal din taht is-swar tal-Mdina. It-Tribunal qies illi l-bzonn li l-applikant juri n-necessita tal-giebja ta' dan il-kobor u l-uzu relatat mieghu mill-istess applikant kienu fatturi li l-applikant naqas li jiggustifika tenut kont tan-natura ta' zvilupp fis-sit ta' daqshekk sensittivita.

F'dan il-kaz ma kienx hemm ebda abdikazzjoni ta' accertazzjoni ta' fatti izda ta' nuqqas ta' gustifikazzjoni cara u soda li tiggustifika intervent f'zona protetta kif inhi din in kwistjoni. Tali apprezzament hu wiehed ta' natura ta' planning li din il-Qorti ma ghandhiex tissindaka.

Ghalhekk ma jirrizultax illi t-Tribuna abdika minn xi dover dwar accertament ta' fatti u applika b'mod rigoruz il-policies NWAG 01 u NWLA 02 tal-pjan lokali (NWLP) kif ukoll l-Avviz Legali 346/01 cioe dwar siti ODZ, definita bhala 'area of agricultural value' u 'high landscape value'.

Dan l-aggravju ghalhekk qed jigi michud.

It-tieni aggravju

Dan l-aggravju hu aktar dwar apprezzament ta' fatti milli punt ta' ligi. It-Tribunal ikkunsidra l-fatti u sottomissjonijiet li saru u wasal ghal konkluzjoni li ma ngibitx gustifikazzjoni ghall-izvilupp fiz-zona. Ma jfissirx b'daqshekk li ma kkunsidrax il-fatti jew li l-fatti ma jaqghux fl-ambitu ta' policies rilevanti, ghalkemm l-istess appellant fl-aggravju ma jsemmi ebda policy jew parametru li tahtom it-Tribunal esprima dubju li nonostante dak dikjarat mill-appellant ma ngibitx prova cara u teknikament soda bizzzejjed biex tiggustifika l-izvilupp. Mhux komputu tat-Tribunal li jsib hu fatti biex japprova zvilupp. Sta ghall-applikant li jressaq dawk il-provi teknici u fattwali li jqis bhala validi ghall-approvazzjoni ta' zvilupp. Sta mbaghad ghall-Awtorita u finalment it-Tribunal biex jiddeciedi jekk il-fatti jaghtux raguni lil aplikant biex jigu applikati policies appoziti biex l-izvilupp jigi approvat. F'dan il-kaz din il-prova ma saritx jew ma saritx b'mod konvincenti. Din il-fehma tat-Tribunal mhix sindakabbli ghax ibbazata biss fuq fatti u kif dawn il-fatti jinfluxxu fuq policies partikolari. L-allegazzjoni dwar id-dritt kwezit gie mqieghed barra mill-kuntest tieghu billi t-Tribunal ma qalx li ma ghandux ikun hemm hajt izda li l-proposta tal-hajt trid tkun aktar spjegata fis-sens ta' profil tal-hitan skond il-policy partikolari li tirregola l-hitan u l-gholi taghhom li fil-fehma tat-Tribunal ma giex ppruvat mill-appellant kemm effettivament kien inizjalment gholi l-istess hajt. Dawn

Kopja Informali ta' Sentenza

huma konisderazzjonijiet li l-Qorti ma tistax tissindaka peress li huma ta' natura fattwali u teknici.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju ma fihx mis-sewwa. Kif gia rilevati l-kwistjoni tal-kobor u bzonn tal-giebjia relatata mal-applikant ma kinitx fattur ta' cahda tal-applikazzjoni izda element ta' prova li t-Tribunal hass li l-applikant kellu jgib biex isostni l-eligibilita tal-applikazzjoni fl-isfond tas-sit fejn kien qed jintalab l-izvilupp cioe wiehed ODZ skedat u ta' high landscape u agricultural value. Ma kinitx xi kundizzjoni imposta mit-Tribunal izda fil-fehma tieghu raguni ghaliex l-applikant seta' sostna li l-applikazzjoni kien jimmeritaha tigi processata favorevolment. Ebda gustifikazzjoni ma ngiebet mill-appellant li dan l-aggravju b'xi mod kien jinfluixxi fuq xi applikazzjoni hazina ta' policy jew tmur kontra d-diskrezzjoni afdana f'idejn it-Tribunal biex japprezza l-fatti u jikkunsidrahom fid-dawk tal-ispirtu tal-policies relatati ma' sit partikolari.

Ghalhekk dan l-aggravju qed jigi michud.

Decide

Il-Qorti ghalhekk taqta' u tiddeciedi billi tichad l-appell ta' Joe Cutajar u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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