



MALTA

**QORTI TA' L-APPELL
ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tad-9 ta' April, 2014

Appell Civili Numru. 73/2013

**John Magro u Ian Zammit f'isem u in rappreżentanza
tas-socjeta J & M Magro Limited**

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' perit Ian Zammit u kif ukoll ta' John Magro f'isem u in rappreżentanza tas-socjeta J & M Magro Limited tad-9 ta' Dicembru 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-19 ta' Novembru 2013 li biha giet michuda l-applikazzjoni PA 1087/07;

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 fuq l-ewwel aggravju tal-appellanti u li dwarha din il-Qorti ser taghti d-decizjoni taghha;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll ta' l- Izvilupp, fis-27 t' Ottubru 2010, ikkonfermat ir-rifjut ghall-applikazzjoni ghall-permess tal-izvilupp PA 1087/07

"7-11 Triq Santu Rokku, Birkirkara: Demolition of existing building and construction of garages and apartments."

It-tlett ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposed development is unacceptable since it does not comply with policy 3.7 - Minimum Dwelling Size of Development Control Policy & Design Guidance 2007.

2. The proposed development would detract from the overall objectives of the Structure Plan for the preservation and enhancement of buildings, spaces and townscapes within Urban Conservation Areas and so does not comply with Structure Plan policy UCO6.

3. The proposal does not comply with Structure Plan policy UCO7 which only permits the demolition of buildings in Urban Conservation Areas where the replacement building will be in harmony with its surroundings. The design of the proposed building is such that it is not considered to be an acceptable replacement."

B. In-nota tal-Perit Ian Zammit ghall-Appellanti nomine, ipprezentata fid-9 ta' Novembru 2010, senjatament is-seba' punti segwenti:

"a. Applicants originally owned Nos. 7 & 8, on which planning permission P.A.286/05 was issued on the 1st September 2006, and the works commenced. The owner of the small adjacent premises Nos. 10 & 11 then offered to sell this disused office and application in caption was lodged. I am enclosing a composite elevation that illustrates the current situation covered by P.A.286/05 as well as the facade resulting from proposal in caption. We consider the current proposal to be an appreciable improvement over the previous because the four storey section on the facade of Nos. 10 & 11 has been removed and a much more harmonious elevation achieved. The first two storeys of the facade of latter building have been retained. It should therefore be clear that this proposal certainly does not infringe Structure Plan policy UC06.

b. Structure Plan policy UC07 is also inapplicable because the rather ugly forty-year-old facade of Nos. 7 & 8 has already been demolished as per permit and the facade of Nos. 10 & 11 is being retained, (barring the removal of the accretions at the second and third floor levels). The proposed replacement building is an improvement over that previously approved. Hence, the third reason for refusal, which states that "the demolition of buildings in Urban Conservation Areas" is only allowed "where the replacement building will be in harmony with the surroundings" is a non-sequitor.

c. The first reason for refusal, which alleges that the proposed one bedroom unit is below the minimum dwelling size, is factually incorrect. A worksheet demonstrating that the area of these premises is 47.7 square metres was attached with my submissions dated 25th October 2007. As it was

considered to be an inconsequential detail, this matter was not entered into by the Commission but applicants repeatedly offered that, should it be established that their arithmetic is incorrect, they were prepared to effect the modifications necessary to ensure that the area of this unit is at least 46 square metres and therefore conforms to paragraph 3.7 of the Development Control Policy and Design Guidance 2007.

d. As it is evident that the official reasons quoted for the refusal are not applicable, why was this application refused? I am of the opinion that this refusal is an unofficial punishment for the fact that the retention of the room at the back at Nos. 7 & 8 turned out to be impossible. It is clear that the retention or otherwise of this room has no bearing at all on the "preservation and enhancement of buildings, spaces and townscapes within Urban Conservation Areas". Furthermore, the retention of this room is in conflict with the sanitary code and, although the Commission was requested to consult the sanitary engineers in order to establish whether they would be prepared to exercise their discretion and endorse the retention of this room, this was not done.

e. When the demolition works covered by P.A. 286/05 were complete, the room that the Development Control Commission had required be integrated with the new development was in a good condition. Deconstruction had taken place by hand under my direction and supervision. Pending the determination of application in caption, a temporary boundary wall was constructed rendering the site inaccessible. In anticipation of the arrival of members of the Cultural Heritage Advisory Commission or the Development Control Commission to assess whether this room had any particular cultural significance, in October 2007 an access gate was installed and I noted that the room was a very poor state. Movement in part the room had occurred because of inadequate bonding between two perpendicular walls. I immediately informed the Commission that "in my professional opinion, the room structure could only be rendered safe if an appreciable part of it is dismantled and reassembled". Following several reminders, its representatives inspected the site on the 6th May 2008, and ascertained that the room was beyond repair. About a month ago, the Commission's conservation architect also ruled that the room could not be repaired and stated that dismantling and rebuilding it would not have any cultural value. Although there were photos of the room in its original state in M.E.P.A.'s previous file, the conservation architect refrained from pronouncing himself as to whether the room would have had cultural significance if it had not turned out to have been so badly-built.

f. During the course of this application, applicants repeatedly offered the Commission that if it took the position that the room had be integrated in the development they were prepared to dismantle and rebuild it with the same stones (but with better bonding!). On the other hand, it was pointed out that this would render the development an awkward hybrid and that, if this were necessary in order to preserve an interesting streetscape, one would understand that the needs of the individual may at times have to be sublimated for the good of the community. However as this room is situated

at the back of this site, it would not be visible to the general public. Incidentally, the third party development situated immediately behind the room is of very recent construction.

g. The proposal has a number of merits that deserve to be acknowledged by the Planning Appeals Board. Not only does the reuniting of these two sites result in an improvement in the streetscape, but it also permits the accommodation of unobtrusive underground car-parking facilities. From a perusal of the attached site plan, it will be noted that there is hardly any parking availability at all. What seems to be a wide street to the south-east of the site is actually a well-known dangerous watercourse. The lack of practically any car-parking availability has resulted in a population drain and the degentrification of this once sought-after area. The acceptance of this proposal will lead to the replacement of this abandoned site with six two-bedroom units with parking facilities and use of roof which perfectly cater for the needs of the smaller families of today and will assist in the reversal of the trend for those who can afford it to leave the area."

C. In-nota ta' Mario Scicluna għall-Awtorita', ipprezentata fl-14 ta' Mejju 2010, inter alia tissolleva l-punti segwenti:

"Site History

Works on site, as shown on photos submitted by the architect (Red 1B) are currently covered by previous permit PA 0286/05 as noted above. Proposal was for the demolition of the building and the construction of three (3) separate residential units at ground, first and second floor levels.

Second floor level was not proposed to be wholly built, whilst condition one (1) in the permit requested a Bank Guarantee of Lm 1000 to ensure that no damage would be caused to an existing mill room at ground floor level, in accordance with plan PA 0286/05/38A.

New proposal

Site layout has now been increased from this previous application, with an adjacent property previously noted as 'third party' now added to the development. This consists of two rooms at ground at first floor level, with two (2) very small additional rooms at second and third floor levels.

Application now is for the development of the whole building, including mill room, consisting of the excavation of six (6) basement garages and the construction of seven overlying units including a studio flat with access to a separate roof level. Each other dwelling unit consists of a two-bedroom apartment measuring approximately 90m² in gross floor area.

With regards to the façade, modifications have been made to the previous proposal to accommodate the inclusion of the additional area and the proposed garage access to the basement level. The additional area adjacent to the previous development would be three-storey high, with an open balcony and adjacent window proposed as features.

Consultation and correspondence

Proposal was initially referred to CHAC for consultation, without the previous file 0286/05 as attachment, since this could not be traced. CHAC found no objection to the development from a heritage point of view (CHAC Mtg 181).

Architect had in the meantime been contacted and requested to submit fresh drawings with various changes, including the retention of the existing mill room as per previous application PA 286/05, with no excavation works below the mill room (Letter dated 02.04.2007). In his reply, architect submitted fresh drawings where changes had been made, however the mill room was still proposed for demolition, since CHAC had found no objection to the proposal (Red 21)

Missing file was found and CHAC was again consulted, and advised the proposal was objectionable in view of the proposed demolition of the existing mill room (CHAC mtg 190). Architect was contacted and requested to submit fresh drawings accordingly (Letter dated 24.05.2007). In his reply, architect protested at this request, since CHAC had initially approved the proposal, and that the committee did not inspect the site, therefore could not possibly be in a position to adequately advise regarding the presumed architectural merit (or otherwise) of this room. Architect added that the room, whilst not being consonant with the rest of the proposal, is located in the part of the site where a backyard is required and its retention will render the proposal in conflict with the sanitary code. Architect concluded by noting that the proposal includes the incorporation of the original façade on Nos 10 and 11, and the provision of off-street parking, which would help prevent the continued degentrification of this area (Red 23).

Further correspondence was again received from the architect, where fresh drawings were submitted and which included the mill room (Letter dated 21.06.2007). Architect was again contacted by the Directorate, with fresh drawings requested which included various changes as per letter dated 25.07.2007.

In his reply, received on 17.09.2007, architect states that the Directorate reversed its position taken in letter dated 02.04.2007, when it was requested that the area above the garage be built up. Architect added that this request was made so that 'the height of the façade will be similar to the other buildings in the area (i.e three floors). Directorate however did not mention this last part, and only requested the building up of this area, since 'leaving it vacant would negatively effect the visual of the area'. This was to be done according to the height limitation as per existing local plan (of which the architect was reminded in the Directorate's subsequent letter dated 25.07.2007). Drawings submitted show the height of this area was reduced to two (2) floors, but the mill room was again proposed for demolition and re-development, the reasons outlined in the Planning Statement submitted (refer to Red 1M)

Demolition

Like CHAC, the Directorate is of the opinion the proposed demolition of the existing mill room is unacceptable, in view of its historical value. This is further confirmed by a Bank Guarantee for Lm 1000, imposed under the previous application PA 0286/05 to ensure its retention and no damages cased to it.

Proposed demolition goes against Structure Plan policies mentioned above and therefore cannot be favourably considered.

Building height

Approved height for the development under the previous application was for part three floors and part two-floors (Ref to approved drawing PA 0286/05/38D). Final drawings submitted by the architect show a proposed building height of two-floors where the garage entrance is involved, with the adjacent area being three-floors as previously approved.

A three-floor height is proposed for the new additional property. Whilst this would exceed the approved height limitation of two-floors for the area, the Directorate is of the opinion the proposal may be considered as acceptable, since the proposed addition would be an in-fill between two (2) properties with a building height of three floors. This is also in line with DC2007 policy for building height relaxation in such cases.

Parking

Proposed six (6) basement garages would be used as parking provision for the six (6) overlying dwelling units.

The studio flat is not favourably considered by the Directorate, since this would conflict with DC2007 policy 3.7 Minimum Dwelling Size, and no excavation would be allowed underneath the mill room, the proposal would be left with five (5) garages for six (6) units.

With one parking space for the dwelling unit removed for the development, parking provision would be in line with policies noted above."

D. In-nota ulterjuri tal-Perit Ian Zammit ghall-appellanti nomine, ipprezentata waqt is-seduta numru 9, mizmuma fit-8 ta' Frar 2011, inter alia fiha l-punti segwenti:

"c. From my examination of the relative file, it resulted that in minute 15, the Cultural Heritage Advisory Committee declared "Il-Kumitat flimkien mal-IHM ma sabux oggezzjonii ghat-talba bil-kundizzjoni li l-bibienb ta' barra ma jkunux irtirati...". I understand that following remonstrations by the case officer, the CHAC revoked its previous decision without inspecting the site. Following my complaint that it was inappropriate to require the preservation of the mill room without even bothering to inspect it, in its meeting No. 207 (816/07) the CHAC declared 'Il-Kumitat hu tal-fehma li billi hemm bzonn ta' aktar informazzjoni ghandha ssir inspezzjoni fuq il-post iktar tard". Oddly enough, the CHAC in its meeting No. 216 admitted that "Il-kumitat ma ghamilx l-ispezzjoni fuq il-post', but regardless proceeded to reconsider the

matter and order that the mill room be incorporated in the new building. It is therefore clear that the requirement to retain this room stems from a site inspection by one member of the HAC made when PA 286/05 (covering part of this site), was being processed and applicants not contested it because that site did not have sufficient frontage to accommodate underlying garages.

d. The incorporation of an old room in a new building is generally called showcase conservation and is only appropriate when the significance and historical and cultural importance of the artefact is of exceptional merit.

The case involves a room with a roof supported by two arches and no particular features or any historical significance. With the benefit of hindsight, it is now clear that this mill room was built after the rest of the building, (that was demolished about fifty years ago). ... The room is likely to be more than a hundred years old but the lack of quality of construction or any significant cultural features do not in my opinion automatically single it out for preservation. .l..

e. With regard to the allegation that the studio maisonette on the left of the proposed development is in conflict with DC2007 Policy and Design Guidance policy 3.7, the Directorate never bothered to rebut my arithmetical calculation illustrating that the property has an area of 47.7 square metres, which is attached to the submissions dated 25th October 2007, (and illustrates that this proposed dwelling is larger than the minimum of 45 square metres). I was recently advised that, despite the fact this policy clearly refers to 'gross floor area', the particular case officer involved considered that the area occupied by the staircase should be excluded but suggested that, with the addition of a washroom at roof level, the building would conform to his interpretation of this regulation."

Ma' l-istess nota gew sottomessi sensiela ta' ritratti in sostenn tal-argumenti mressqa permezz ta' din in-nota tal-perit difensur tal-appellanti nomine.

Ra wkoll id-decizjoni ta' dan it-Tribunal diverzament ippresedut tad-29 ta' Marzu 2012;

Ra wkoll is-sentenza tal-Qorti ta' l-Appell li hassret id-decizjoni tat-Tribunal u rremettiet l-atti lura li dan it-Tribunal sabiex l-appell jerga' jinstema' mill-gdid;

Ra l-verbal tal-20 ta' Settembru 2013 fejn it-Tribunal zamm access fis-sit mertu mertu ta' dan l-appell. Waqt l-access t-Tribunal seta' jikkonstata illi fuq il-parti ta' wara tas-sit hemm fdalijiet ta' kamra mgarrfa li prezentement tikkonsisti f'zewg hitan laterali bil-gebel doppju u l-mazkan bejniethom u arkata wahda b'indana tax-xriek. Fl-istat li tinsab il-kamra hija strutturalment perikoluza. Fuq in-naha ta' wara tas-sit hemm btiehi ta' terzi ta' binjiet li nbnew ricentement;

Ikkunsidra ulterjorment:

Kopja Informali ta' Sentenza

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex jiwaqqa bini ezistenti u jinbnew sensiela t' appartamenti u garaxxijiet sottostanti, f'sit li jinsab fl-urban conservation area taz-zona residenzjali ta' Birkirkara.

Ir-ragunijiet ghar-rifjut huma bbazati fuq il-fatt li parti mill-proposta (cjoe' studio flat) mhix konformi mal-minimum dwelling size (policy 3.7 - Design and Control Guidance), kif ukoll li l-izvilupp propost mhux idoneju mal-principji ta' urban conservation area (policies UCO 6, UCO 7 et seq. tal-Pjan ta' Struttura).

Kienet diga' giet sottomessa applikazzjoni (PA 0286/05) ghal-skopijiet simili; li jitwaqqa bini ezistenti u jinbnew tlett residential units, izda l-Awtorita' mponiet garanzija bankarja sabiex mill room ezistenti tigi ntegrata mal-proposta li ghalha kien intalab permess.

Il-proposta odjerna hi simili ghal dik f' PA 286/05, bid-differenza li bini biswit is-sit u li dakinhar kien jappartjeni lill-terzi, illum gie integrat ma' proposta gdida u li tinkorpora; seba' appartamenti inkluz is-studio flat indikat supra, kif ukoll sitt garaxxijiet sottostanti.

L-aggravji tal-appellant jistrieu inter alia fuq il-fatti li:- ghar-rigward tal-qisien tal-istudio flat, hawnhekk si tratta ta' lapsus zghir, facilment rizolvibbli; u li l-mill room tnehhiet mill-proposta l-gdida peress li l-Cultural Heritage Advisory Committee (CHAC) – kuntrarju ghal dak li kienet ghamlet fl-applikazzjoni precedenti (PA 286/05), illum ma kienitx issib aktar oggezzjoni li titnehha mill-proposta l-gdida. Dan hu punt li l-Awtorita' zammet ferm kontrieh.

Jekk jigi sorvolat l-argument tad-daqs tal-istudio flat (ghax kwistjoni ta' sanita'), jibqa dak tal-mill room. Dan it-Tribunal ghalhekk sejjer jaqta' w jiddecidi abbazi ta' dak li gie sottomess mill-partijiet fil-konfront tal-istruttura storika; kemm fil-mori tal-appell kif ukoll waqt l-iprocessar tal-applikazzjoni.

Fir-rigward tar-rakkomandazzjoni jew meno tas-CHAC fil-konfront tal-valur kulturali tal-mill room; cjoe' jekk ghandix titwaqqa jew le, kif ukoll l-allegat ripensament tal-istess kumitat (fil-konfront tal-insistenza taghhom li l-istess struttura tinzamm abbazi tal-permess precedent PA 286/200), jigi rilevat mill-korrispondenza fil-file PA 1087/07 (red 21 u blue 24 rispettivament) li l-perit difensur issottometta proposta gdida ghat-twaqieh ta' din il-kamra fuq l-allegat premess lis-CHAC (permezz tal-minuta 15 fil-file PA 1087/07) naqas illi jinsisti fuq il-preservazzjoni tal-mill room. Il-minuti rilevanti ghal-kaz in ezami huma s-segwenti:

“Minuta 15 tas-27 ta' Marzu 2007 - (CHAC meeting 181) Il-Kumitat flimkien ma' l-IHM ma' sabux oggezzjoni ghat-talba bil-kundizzjoni li l-bibien ta' barra ma jkunux irtirati. L-aperturi esterni kollha, anke dawk ezistenti, ghandhom ikunu ta' l-injam mizbugh (mhux vernic), u x-xoghol tal-metall, anke dak ezistenti, tal-hadid mahdum u ta' disinn tradizzjonali.

Minuta 18 ta' 2 t' April 2007 - CHAC is kindly requested to re-assess the application in view of the proposed demolition of an existing mill room within

Kopja Informali ta' Sentenza

site. For further reference kindly check HAC recommendation in previous application PA 286/05 (file could not be traced).”

Jigi osservat li fil-fatt, peress li l-proposta in ezami originarjament ma kienitx tikkondendi it-twaqqieh tal-mill room, is-CHAC, permezz tal-minuta 15, kienu korretti meta ma nsistewx li l-kamra trid (terga) tinzamm – ghax il-proposta li kienu qed jezaminaw ma kienitx qed tikkontempla tali zvilupp. Meta pero' il-perit difensur issottometta pjanti godda ghat-tnehhija tal-mill room, allura is-CHAC, zamm ferm l-opposizzjoni tieghu ghad-demolizzjoni tal-mill room, f' konsistenza ma' dak li kien gie approvat fil-permess PA 286/05 u l-proposta mertu tal-appell odjern kif originarjament intavolata.

Fic-cirkostanzi tajjeb li jigi nutat ukoll li permezz ta' korrisondenza elettronika (red 19 fil-file PA 1087/07), l-organizzazzjoni volontarja 'Din l-Art Helwa', kienet ukoll esprimiet l-oggezzjoni taghha ghad-demolizzjoni tal-istess mill room.

Permezz ta' ittra tal-perit difensur ipprezentata fid-9 ta' Mejju (red 23 fl-istess file) jigi nutat lis-CHAC ma (regghux) marru fuq is-sit sabiex (jergħu) jikkonfermaw il-“presumed architectural merit (or otherwise) of this room”.

Din hi asserzjoni kemm xejn frivola ghaliex galadarba s-CHAC (skond il-permess originali PA 286/05) ikkonfermaw li din l-istruttura għanda tinzamm, anke jekk il-file tal-applikazzjoni innifshu (ghal xi zmien) ma' nstabx fl-arkivji tal-Awtorita', ikun inutili li l-Kumitat jergħu jagħmlu access fuq il-post sabiex jergħu jikkonfermaw id-decizzjoni tagħhom. Se mai u fil-kuntest in ezami, struttura li diga' kellha assenjati sensiela ta' valuri kulturali, bit-trapass taz-zmien kienu ser jigi kkonsolidati u kkonfermati l-istess valuri – u mhux bil-maqlub. Għalhekk l-allegazzjoni tal-perit difensur, li s-CHAC 'reversed its decision' (red 33 et seq.) mhix korretta u hi manifestament infondata.

Jigi rilevat ukoll li permess ta' ittra tal-perit difensur ipprezentata fit-23 ta' Jannar 2008, il-kundizzjoni tal-kamra baqghet tiddeterjora, tant li kien imminenti li kien ser jissfronda s-saqaf. Mal-ittra gew ipprezentati ben hmistax ir-ritratt in sostenn ta' dan. Tajjeb li jigi osservat pero', li apparti xi travetti biex izommu hdana xriek, ma jidhirx li sar xi tentattiv serju sabiex il-kamra tintriefed, u dan sabiex ma ggarra b'x hsarat ulterjuri.

Dan il-fatt hu kkonfermat min ittra tat-18 t' Awissu 2010 tal-Perit Ruben Abela, nkarigat mill-Awtorita' bhala conservation architect sabiex jezamina l-kaz tal-kamra, meta jghid is-segweni:

“No photographic documentation of the condition of this room was submitted as part of this application until the room started collapsing sequentially during the assessment of this application [sic].

[It appears] that the room was distabilised [recte destabilised] through the 'removal of two outer buttressing walls supporting one of the mill room walls on to which the main arches were spanning.' Thus the collapse seems to have been instigated through improper site management.

It is also true that that the current condition of the room, through the documentation submitted, appears to be quite unstable and requires almost complete reconstruction and thus the real historical and architectural value of the original structure has been lost. It is also unfortunate that the MEPA failed to schedule the structure if it was considered so important for it to be retained and incorporated in the new construction.”

Dan it-Tribunal hu tal-fehma kkunsidrata li l-appellanti nomine naqsu li jiggarrantixxu li l-mill room in ezami ma ggarabx hsarat ulterjuri; cjoe' minn wara li-nhareg il-permess originali PA 286/05. Lanqas ma gie ppruvat li l-hsarat rappurtati kienu naturali, u ghalhekk, fic-cirkostanzi dan l-appell ma jimmeritax kunsiderazzjoni favorevoli.

Fuq kollox, permezz tal-PA 286/05, l-appellanti nomine kellhom kull obbligu u (galadarba m' appellawx minn dak il-permess), sahansitra ntrabtu li jharsu din l-istruttura; tant li kienet anke giet anke mpostata garanzija bankarja (ta' somma irrizorja fil-konfront tal-valur fiziku w inrinsiku tal-mill room).

It-Tribunal huwa tal-fehma li l-appell ghandu jigi rifjutat ghar-ragunijiet moghtija fir-rifjut Dan peress li l-izvilupp propost imur kontra policies UCO 6 u UCO 7 tal-Pjan ta' Struttura u Policy 3.7 tal-Minimum Dwelling Size of Development Control Policy & Design Guidance 2007. Sfortunatament, l-appellant ma hax dawk il-mizuri necessarji minn naha tieghu biex jizgura li l-mill room ta' taqax u li t-Tribunal ma jistax jakkorada permess f'dan il-kaz ghax ikun qed jaghti wiehed x'jifhem illi wiehed jista' jhalli l-potrimonju nazzjonali jaqa' bicciet minghajr ma jiehu l-mizura ta' restawr necessarji biex b'hekk ikollu kull skuza biex iwaqqa' kollox b'detriment ghal wirt kulturali Malti;

Hija l-fehma ta' dan it-Tribunal li r-replacement building mhux se jkun tali li d-disinn tieghu jkun wiehed li jintegra f'Urban Conservation Area. Dan il-fattur huwa ta' rilevanza ghax inkella l-izvilupp propost jigi jistona mal-Urban Conservation Area li fih huwa sitwat is-sit mertu ta' dan l-appell u li ghalhekk irid jinghata il-piz li jixraqqu dan il-fattur ta' ppjanar. L-istess jghodd ghal Policy UCO 6 tal-Pjan ta' Struttura peress li l-effett li se jhalli l-izvilupp propost huwa wiehed li se jnaqqas il-karattru tal-urban conservation area.

Ghal dawn il-motivi, t-Tribunal jichad l-appell u jikkonferma r-rifjut tal-permess ghall-izvilupp.

Ikkunsidrat

L-ewwel aggravju tal-appellant li qed jigi deciz b'din is-sentenza skond il-verbal tal-Qorti tas-26 ta' Marzu 2013 hu illi s-sentenza hi nulla billi l-okkju ma jirrispekkjjax J & M Magro Limited kif rapprezentat minn John Magro izda d-decizjoni nghatat biss fil-konfront tas-socjeta billi Ian Zammit hu indikat bhala rapprezentant tas-socjeta u mhux f'ismu proprju.

L-Awtorita issostni li dan hu zball tal-pinna facilment korrett u illi l-fatt stess li lan Zammit appella mid-decizjoni ifisser li hu car li dan kien zball tal-pinna li jista' jigi korrett billi l-atti jigu korretti mit-Tribunal.

L-appellanti zamm u ferm mal-aggravju u sostnew illi l-ligi ma tipprospettax korrezzjoni f'dan l-istadju tal-proceduri.

Din il-Qorti tirreferi ghas-sentenza ta' din il-Qorti diversament preseduta fl-istess vertenza tal-15 ta' Novembru 2012 fejn il-Qorti annullat id-decizjoni ghax l-okkju wkoll ma kienx jirrispekkja l-partijiet u kkwotat diversi sentenzi in materja.

Il-Qorti tirreferi ghas-sentenza taghha fl-ismijiet **Alexander Vella et vs L-Awtorita ta' Malta Dwar l-Ambjent u l-Ippjanar** deciza fit-2 ta' Mejju 2013 fejn qalet hekk:

Ghalkemm hu minnu kif qalet il-Qorti fil-kawza fl-ismijiet **Catherine Ripard vs l-Awtorita' ta' Malta dwar l-Ambjent u Paul Baldacchino** (A.I.C. (RCP) - 18 ta' Novembru 2004) fejn saret referenza ghall-artikolu 175 (2) tal-Kap. 12 li jghid hekk:-

"(2) Kull Qorti fi grad ta' appell tista' wkoll tordna jew tippermetti, f'kull zmien sas-sentenza, li jissewwa kull zball fir-rikors li bihom tkun tressaq l-appell jew fit-twegiba, kif ukoll zball fl-isem tal-Qorti li tkun tat is-sentenza appellata, jew f'dak tal-partijiet, jew fil-kwalita' li fiha huma jidhru, jew fid-data tas-sentenza appellata.

(3) Il-Qorti tista' sa dakinhar li taghti s-sentenza u taqta' l-kawza, tordna minn jeddha li tisewwa kull ommissjoni jew zball gudizzjarju jew amministrattiv f'att gudizzjarju.

Pero fil-kawza **Joseph Zammit vs L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar** (A.I.C. (RCP) - 26 ta' Ottubru 2004) inghad li dan ma jistax isir ghaliex "l-izball ... sar fid-decizjoni tal- Bord ta' l-Appell dwar l-Ippjanar (u din) tbiddel ghal kollox wiehed mill-partijiet li huma soggetti ghall-istess decizjoni, u tali zball jafettwa s-sustanza tad-decizjoni nnifisha u jista' jigi korrett mill-istess Tribunal jew Qorti li taw id-decizjoni originali."

Li jfisser li ma jistax jigi korrett f'dan l-istadju ulterjuri quddiem din il-Qorti. Ara wkoll **Joseph Busuttil vs Dr. John Mamo noe** (App Civ 28/02/1997).

Il-Qorti hi konxja ta' decizjonijiet fejn il-Qorti tal-Appell accettat li ssir korrezzjoni fejn l-izball hu biss zball ta' forma jew dattelografu li ma jbidilix is-sustanza tad-decizjoni moghtija mill-Prim Awla, pero f'dan il-kaz l-izball cioe n-nuqqas ta' inkluzjoni tal-persuni kollha li appellaw quddiem il-Bord mhux zball dattilografu jew ta' forma ghax tolqot il-mertu tal-appell odjern billi

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d-decizjoni originali tal-Bord tal-Appell ma taghmilx stat fil-konfront ta' dawk li isimhom ma jidhirx fl-okkju tad-decizjoni

Dan hu l-istat fattwali f'din il-vertenza. Id-decizjoni tat-Tribunal hi ghal darba ohra nieqsa ghax il-partijiet kollha mhux imnizzla fl-okkju u kwindi ma tistax taghmel stat fil-konfront ta' min ma nghatatx, f'dan il-kaz, il-perit Ian Zammit. Ghalkemm dan il-process ser jikkostitwixxi dewmien zejjed li seta' jigi evitat tenut kont tat-tul li ilhom ghaddejjin il-proceduri ta' din l-applikazzjoni, pero din il-Qorti ghandha idejha marbuta bi stat legali li ma fih ebda rimedju hlief in-nullita tad-decizjoni ghal dan in-nuqqas.

Ghalhekk il-Qorti issib l-aggravji tal-appellant gustifikat

Decide

Il-Qorti ghalhekk qed tilqa' dan l-aggravju tal-appellanti senjatament il-perit Ian Zammit personalment u tiddikjara d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tad-19 ta' Novembru 2013 hi nulla billi l-okkju ma jirriflettix il-partijiet kollha fil-vertenza u tirrimetti l-atti lura quddiem it-Tribunal sabiex jiddeciedi l-appell skond il-ligi. Spejjez ghall-appellati.

< Sentenza Finali >

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