MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 72/2013

Emmanuel u Rita Muscat u Pauline Borg u

b'sentenza tal-Qorti tal-Appell tal-31 ta' Mejju 2012

l-atti gew trasfuzi fl-eredi ta' Pauline Borg

vs

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

l-kjamat in kawza Ghaqda Socjali Muzikali Kristu Sultan

Il-Qorti,

Rat ir-rikors tal-appell tal-Ghaqda Socjeta Muzikali Kristu Sultan tas-6 ta’ Dicembru 2013 mid-decizjoni tat-Tribunal ta’ Revizjoni tal-Ambjent u l-Ippjanar tad-19 ta’ Novembru 2013 li biha cahdet l-applikazzjoni PA 2282/99 ghal bdil materjali tal-uzu minn dar residenzjali ghal klabb tal-banda f’10a Triq Guze D’Amato, Paola;

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:-

Dan huwa third party appeal mill-permess PA2282/99, ‘Change of use from residential house to a band club’ tat-2 ta’ Awissu, 2000.

Fl-appell taghhom, l-appellanti, Emmanuel u Rita Muscat u Pauline Borg ilkoll ta’ 12, Guze Damato Street, Paola, permezz tal-Avv. Albert Libreri, l-ewwel jispjegaw li l-fond in kwistjoni dejjem intuza bhala fond residenzjali qabel ma hareg dan il-permess. Huma jkomplu billi jaghtu r-ragunijiet ghal dan l-appell li huma dawn li gejjin:

“(1) Fil-kundizzjoni numru sitta (6) tal-permess in kwistjoni gie stipulate li Sound level is not to exceed 60dB. Before compliance a sound check is to be carried by independent testers that the mitigation measures have achieved that attenuation that is specified in letter by applicant’s architect dated 29th March 2000.

Issa skond in-normi applikabbli u accettabbli internazzjonalment u anke mill-Qrati Maltin f’kaz ta’ lanjanzi ta’ storbju, il-massimu ta’ livell ta’ hoss qatt ma ghandu jeccedi 50dB b’dan pero’ li jekk il-fond in kwistjoni jkun appogg ma kmamar tas-sodda, dan il-massimu ma jistax ikun iktar minn 40dB matul il-gurnata u 35dB fil-hinijiet tal-mistrieh.

Fil-kaz odjern, kif gie indikat fl-ittra tieghi datata 21 ta’ Gunju 1999 mibghuta lill-Awtorita’ tal-Ippjanar:

(a) il-fond tal-klijenti tieghi huwa separate mill-fond in kwistjoni b’hajt singlu biss.

(b) il-fond in kwistjoni jinsab kollu mhux fil-livell tal-pjan terran izda fil-livell ta’ l-ewwel sular.

(c) fil-livelll propju ta’ l-ewwel sular, hemm zewg kmamar tas-sodda appogg mal-fond in kwistjoni wzati mill-konjugi Muscat u minn Pauline Borg, mara anzjana ta’ 66 sena.

Ghalhekk b’konsegwenza tal-fuq espost, il-massimu ta’ livell ta’ hoss li l-Kummissjoni setghet timponi huwa ta’ 35dB fil-hinijiet tal-mistrieh u 40dB fil-hinijiet l-ohra.

(2) Illi tenut kont ta’ dak rilevat fil-paragrafu precedenti, l-utilizzar tal-fond in kwistjoni bhala kazin tal-banda ma jistax jigi milqugh meta tali utilizzar jinnecessita essenzjalment li bandisti jipprattikaw jew wahidhom jew flimkien ma ohrajn strumenti tad-daqq ghall-marci u kuncerti u meta hu mahsub ukoll li jkun hemm bar fil-kazin.

(3) Illi di piu, gialadarba l-izvilupp ezistenti tal-fond in kwistjoni minn dejjem kien dak ta’ fond residenzjali, inkluza l-gallarija li dan il-fond ghandu fuq il-faccata li kwazi tmiss mal-gallarija tal-fond tpal-klijenti tieghi, l-ghoti tal-permess fuq riferit jikkostitwixxi bad neighbourliness mhux biss lill-klijenti tieghi izda anke lil girien l-ohra – liema girien – liema girien, kif jidher mid-dikjarazzjoni datata l-1 ta’ April 1999 mibghuta lill-Awtorita’, jinkludu r-residenti tad-djar numri 6, 8, 14, 16, 18 u 22 Guze Damato Street, u numri 8, 14, 16 u 18 Dockyard Street – specjalment meta wiehed jikkunsidra, apparti l-hsejjes u storbju minn dol-fond:

(a) li l-gallarija u bejt tal-fond ser ikunu accessibli ghal kull min juza l-kazin u allura l-hsejjes u storbju ser ikunu anke fuq barra.

(b) l-istess hsejjes u storbju ser jigu kreati fit-triq minn dawk il-membri li jhobbu jitlajjaw barra l-bieb ta’ barra tal-kazin u li kull kazin f’Malta ghandu minnhom.

(c) li z-zona fejn jinsab il-fond hija wahda purament residenzjali.

(d) li Rahal Gdid ga huwa moqdi minn kazin ta’ din il-kwalita (Kazin Fra Antoine de Paule) u ghalhekk ir-rifjut tal-permess mhux biss m’huwiex ser icahhad lir-rahal minn xi bzonn kulturali/socjali izda anzi jevita l-piki, glied u kwistjonijiet li normalment jinqalaw b’zewg kazini fl-istess rahal. Hawn wiehed ikun jonqos jekk ma ssirx referenza ghall-kwistjoni ppublikata fil-gazzetti kollha u mxandra fl-ahbarijiet ricentement minhabba l-oppozizzjoni tal-Kurja Arciveskovili, promulgate b’degriet apposite, li tippermetti jew tirrikonoxxi l-ftuh ta’ kazini f’irhula fejn ga jezisti wiehed, propju biex tevita nkwiet u glied bla bzonn – liema degriet gab b’konsegwenza r-rifjut tal-Kurja li tirrikonoxxi l-Kazin tal-Banda tal-applikant odjern u l-kancellament tal-festa titulari ta’ Rahal Gdid is-sena l-ohra u l-kancellament ta’ l-istess festa din is-sena sa ftit granet qabel ma ntlahaq kompromess li xorta wahda eskluda l-partecipazzjoni tal-Kazin tal-applikant. F’dan il-kuntest jigi wkoll rilevat li anke l-ghaqda nazzjonali tal-kazini tal-banda qeghda tirrifjuta li tirrikonoxxi l-kazin in kwistjoni.”

L-Avv. Ivan Sammut, ghall-applikant f’nota tieghu tas-6 ta’ Ottubru, 2000, jirribatti billi jghid dan li gej:

“1. In condition 6 of the permit the Development Control Commission stipulated that:

“Sound level is not to exceed 60dB. Before compliance a sound check is to be carried by independent testers that the mitigation measures have achieved the attenuation that is specified in letter by applicant’s architect dated 29 March 2000”.

Appellants’ arguments are without basis. The sound level of 60dB will be generated only inside the music room. The room will be protected by sound proofing and other materials as per permit. Thus, the sound level generated outside the room would be much less than the sound level inside the room. The sound level would be diminished by the sound proofing system that will be put in place so that it is in conformity with accepted standards.

The fact that the neighbours’ tenement has a dividing wall ‘tas-singlu’ is irrelevant as the sound proofing system to be put in place will diminish the sound level effectively. Also it is irrelevant that the tenement is at first floor level and that the neighbours have bedrooms at that level.

The balcony is situated in the Boardroom where it is planned that committee meetings are held. The keys to the Boardroom are only accessible to the Secretary and executive officials of the Committee. Also the doors leading to the roof will be locked. The keys to these doors are held by the Secretary. The permit issued by the

Planning Authority catered for reduction of sound level besides various other conditions which applicant binds himself to adhere to.

2. Appellants' second argument is that the tenement was always used for residential purposes and would cause bad neighbourliness.

Applicant submits that the site is ideal for a band club premises. Nowhere in a church square does one find a pure commercial area. Normally one finds a mix of commercial and residential uses. This is the kind of location of most Bandclubs. Photos of existing band clubs, namely: M.M. Gratiae Zabbar, St.Michael Band Club Zabbar, Mount Carmel Band Club Fgura, De Paole Band Club Paola, Lourdes Band Club Paola, St. Joseph Band Club Ghaxaq, St. Mary Band Club Ghaxaq, Zejtun Band Club and Beland Band Club Zejtun, were submitted with letter of 22 December 1999 sent by applicnat's architect.

All of these exist in locations similar to the application site, i.e. close to the vilolage square, in a mixed residential and commercial area, having adjacent residential dwellings.

The proposed band club premises are situated in the village core in an urban conservation area and does not infringe the Structure Plan Built Environment Policies. The premises are situated in core commercial, civic and cultural area. In Guze D'Amato Street to the right there is a Computer's shop (No. 20) and London Butcher at corner with Dockyard Street. In the same block at Dockyard Street No. 20, There is David Backery and on the opposite side at No. 3, there is a Baby shop. The premises are situated over Nouvole Boutique at No. 10. To the left there is the Bank of Valletta Paola Bank and corner with Paola Road there is Moyga. As you turn round to Paola Road there are various shops and pharmacies. On the opposite side of the premises there is the side of Paola Church and there are adequate parking facilities on both sides of the road.

It is clear that the area where the premises is situated is predominantly commercial and not residential. In terms of Policy BEN 2, development is not incompatible with the good urban design, natural heritage and environmental characteristic of existing or planned adjacent uses and development will enhance the good visual integrity of the area in which it is located."

Fix-xhieda tieghu waqt is-seduta tat-3 ta' Dicembru, 2003, l-Engineer Cuschieri, mqabbad bi qbil tal-partijiet biex jirrapporta fuq il-hsejjes li jiggenera l-kazin tal-banda mertu ta' dan l-appell, qal hekk:

"Jiena kont ircevejt ittra minghand l-avukat ta' l-appellanti datata 11 ta' Gunju 2002 fejn gejt infurmat li gejt nominat bi qbil bejn il-partijiet biex naccedi fil-fond 10A, Guze D'Amato Street, Paola kif ukoll fil-fond adjacenti sabiex naghmel kejl ta' hsejjes generate fil-kazin tal-banda u nhejji rapport dwar in-normi tal-livelli ta' hsejjes permessibli u accettabli. Ghal dan il-ghan, jiena zammejt access fit-8 ta' Awissu 2002. Sussegwentement ghamilt accessi ohra fil-15 ta' Lulju 2003, u fis-6 ta' Ottubru 2003. Qed nesebixxi kopji tar-rapport tat-tlett accessi bhala Dok Ec sa Dok EC2. Kien sar ftehim bejn il-partijiet li jiena stajt naghmel surprise inspection u dan ghamiltu darba u cjoe fis-6 ta' Ottubru 2003. Jiena gejt ikkuntatjat ukoll biex inzomm acces fit-23 ta' Novembru 2003 fit-8.30 p.m., izda minhabba npenji ohra jiena ma stajtx nattendi. Il-ftehim kien biex isir surprise inspection meta l-appellanti jisimghu l-istorbju. Waqt l-access tas-6 ta' Ottubru 2003 ingibditli l-attenzjoni dwar il-hsejjes tal-juke box u kien jidher illi l-potenzjalita' tal-hoss tla-joke box kien iktar minn dak li fil-fatt kien qed jinstema'. Meta staqstejt kif jigi varjat il-hoss, il-membri tas-socjeta qaluli li dan kien isir permezz ta' remote control li ma kienx ghandhom izda biss ghand il-persuna li minn ghandu kienu krew il-juke box. Meta ssejjaht fuq il-post, l-appellanti ndikawli li l-istorbju kein wiehed ta' muzika tghajjat u dan qabel ma wasalt fuq is-sit. Ghar-rigward il-livelli ta' hsejjes jiena mxejt mas-Swiss Militing Value for Noise Emission in Residential Areas. Jiena niddeskrivi l-livell tal-hsejjes tal-juke box dakinhar bhala stazzjon tar-radju fejn qed jindaqq muzika f'livell baxx. Jiena ikkonstatajt li mal-hajt tal-bar li jifred minn mar-residenti ta' l-appellanti kien sar xi sound proofing izda dan ma ezaminajtux. Is-sinjuri Muscat indikawli li l-ikbar inkonvenjent kien mill-muzika tal-bar u mill-hsejjes in generali tal-bar u mhux mid-daqq tal-banda. Nirreferi ghall-access tal-15 ta' Lulju 2003 u partikolarment mar-readings bil-banda ddoqq u l-banda wieqfa li dawn ir-readings hadthom mir-residenza tas-Sinjuri Muscat. Ma kien hemm hadd jivverifika l-forza tal-hsejjes tal-banda."

Ra wkoll id-decizjoni ta' dan it-Tribunal diverzament ippresedut tas-26 ta' April 2011;

Ra wkoll is-sentenza tal-Qorti ta' l-Appell tal-31 ta' Mejju 2012 li hassret id-decizjoni tat-Tribunal tas-26 ta' April 2011 u rremettiet l-atti lura li dan it-Tribunal sabiex l-appell jerga' jinstema' mill-gdid; u biex jittiehed in kunsiderazzjoni l-commitment;

Ra l-verbal li gie registrat fis-seduta tal-25 ta' Jannar 2013 li minnu jirrizulta illi l-Kazin appellat issottometta applikazzjoni PA 6731/12 fuq fond iehor fil-Pjazza ta'

Rahal Gdid biex jezercita l-istess attivita' li bhalissa hi koperta bil-permess PA 2282/99 mertu ta' dan l-appell;

Ra l-verbal li gie registrat fis-seduta tas-17 ta' Gunju 2013 fejn Dr Tony De Gaetano ghall-Awtorita' informa lit-Tribunal li nhareg il-permess PA 673/12 lill-Kazin Ghaqda Socjali Muzikali Kristu Sultan;

Ikkunsidra ulterjorment:

Illi dan l-appell jitratta dwar full development permission li nhareg fit-2 ta' Awissu 2000 lil Anthony Gatt obo Ghaqda Socjali Muzikali Kristu Sultan ghal 'change of use from residential house to a band club' fi 10a Triq Guze' D'Amato, Paola (Rahal Gdid). Fost kundizzjonijiet ohra, kien hemm dik li tipprovdi li 'sound level is not to exceed 60db. Before compliance a sound check is to be carried out by independent testers that the mitigation measures have achieved that attenuation that is specified in letter by applicant's architect dated 29 March 2000;

Illi mill-provi prodotti quddiem dan it-Tribunal jirrizulta li l-Kazin mhux se jkompli juza dan il-post peress li nghata permess band'ohra;

Illi konformament mal-policies tal-ippjanar, kemm meta nhareg il-permess u kemm illum il-gurnata, il-policies applikabbli fil-Pjan ta' Struttura – fosthom BEN 1 – ma jippermettux illi l-girien jigu soggetti ghall-hsejjes kontinwi tant hu hekk illi l-kundizzjoni sitta ppruvat ittaffi dan l-impatt. Madankollu, dan it-Tribunal aktar jara li taghmel sens dak li kien qed jipproponi d-Direttorat tal-Ippjanar fid-DPAR tieghu lill-Kummissjoni ghall-Kontroll tal-Izvilupp meta fit-13 ta' April 2000 korrettement u konformament mal-Pjan ta' Struttura Policy BEN 1 irrakomanda r-rifjut tal-permess gie rakkomandat dan li gej:

'After taking into consideration the facts that the activity will be creating a nuisance to neighbours due to the noises created during the training needed by the entire band within the premises, a refusal is recommended according to Structure Plan Policy BEN 1 which states that development will not normally be permitted if proposal is likely to have a deleterious impact on existing or planned adjacent uses because of visual intrusion, noise, vibration, unusual operating times, or any other characteristics which in the opinion of the Planning Authority would constitute bad neighbourliness.';

Fis-seduta tal-14 ta’ Mejju 2000, il-Kummissjoni ghall-Kontroll tal-Izvilupp kienet irrovexxat ir-rakkomandazzjoni tad-Direttorat tal-Ippjanar b’erba’ voti kontra wiehed u zidet il-kundizzjoni numru 6 li giet inserita fil-permess ghall-izvilupp. Jirrizulta a sodisfazzjon ta’ dan it-Tribunal li l-kundizzjoni ma kinitx bizzejjed tul l-operat ta’ dan il-permess biex timmitiga l-hsejjes u d-disturb lill-girien. It-Tribunal lanqas ma jista’ jifhem kif il-Kummissjoni irrovexxat ir-rakkomandazzjoni tad-Direttorat tal-Ippjanar minghajr ma tat ragunijiet ghalfejn kienet qed taghmel dan;

In vista ta’ dan kollu, it-Tribunal huwa tal-fehma li din l-applikazzjoni kellha tigi rifjutata originarjament u mhux li jinhareg il-permess skond kundizzjoni 6 u dan peress li l-izvilupp propost – min-natura tieghu stess – imur kontra dak li titlob Policy BEN 1 tal-Pjan ta’ Struttura li bla ebda dubju ta’ xejn ghandha applikazzjoni shiha f’dawn ic-cirkustanzi;

It-Tribunal, wara li ezamina l-inkartament, il-permess moghti lill-Kazin, il-policies relattivi u l-provi kollha prodotti mill-partijiet, huwa tal-fehma li l-Kummissjoni ghall-Kontroll tal-Izvilupp ma applikatx sew il-Policy BEN 1 tal-Pjan ta’ Struttura, kif del resto kien ben tajjeb irrakkomanda d-Direttorat tal-Ippjanar, u ghaldaqstant it-Tribunal qed jirtira l-permess numru 2282/99 mahrug mill-Awtorita’ fit-2 ta’ Awissu 2000 lis-Sur Anthony Gatt obo Ghaqda Socjali Muzikali Kristu Sultan ghal bdil materjali tal-uzu minn dar residenzjali ghal klabb tal-banda fi 10a Triq Guze’ D’Amato, Paola (Rahal Gdid).

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Id-decizjoni hi ultra vires peress li t-Tribunal ibbaza d-decizjoni tieghu fuq il-konsiderazzjoni tal-fatt illi fil-mori tal-proceduri, il-kazin akkwista permess fuq sit divers minn dak soggett ghal din l-applikazzjoni meta c-cirkostanzi tal-permess l-iehor qatt ma kienu parti minn dawn il-proceduri;

2. It-Tribunal naqas li jidhol f’analizi tal-kundizzjoni 6 imposta originarjament fil-permess ta’ zvilupp intiza biex jigi eliminat l-inkonvenjent ta’ storbju msemmi mill-appellati, objectors f’din l-applikazzjoni u ma tax motivazzjoni ghala kienet qed tigi skartata, meta saru diversi provi quddiem il-Bord tal-Appell;

3. It-Tribunal naqas li jqis il-commitment fiz-zona li hu wiehed kummercjali u li dan l-izvilupp ma kien ser ibiddel xejn minn natura taz-zona;

4. It-Tribunal naqas li jimxi mad-decizjoni moghtija mill-Qorti tal-Appell fil-31 ta' Mejju 2012 li rrevokat il-permess mill-Bord u ma ta ebda kaz ghaliex id-decizjoni tat-Tribunal kienet giet revokata;

5. It-Tribunal naqas li jiddistingwi l-uzu ta' kazin tal-banda bhala wiehed sui generis u differenti minn zvilupp kummercjali. Naqas li jqis il-bzonn li kazin ikun fic-centru tar-rahal u ghalhekk apparti l-policy BEN 1 it-Tribunal kellu jqis jekk il-fond kienx idoneju ghall-uzu in vista tal-pozizzjoni tieghu, u l-fatt li kien f'zona kummercjali u dominata minn kazini ohra fil-vicin. In oltre naqas li jikkonsidra li kazin jiggenera anqas inkonvenjent minn fondi kummercjali ohra u ftit huma l-granet li ssir attivita barra minn normal.

L-ewwel aggravju

Dan l-aggravju hu bla bazi billi l-konsiderazzjoni principali u kwazi esklussiva li fuqha t-Tribunal ibbaza d-decizjoni tieghu hu l-policy BEN 1 tal-pjan ta' struttura dwar bad neighbourliness li kien ser jigi kagunat bl-uzu ta' fond li qabel kien jintuza bhala residenza u issa kien qed jigi prospettat li jintuza bhala kazin tal-banda biswit residenza ohra. Hu minnu li t-Tribunal accenna ghal fatt illi l-appellant fil-fratemp akkwista permess ghal kazin f'sit iehor pero din ma kinitx il-konsiderazzjoni li waslitu ghad-decizjoni.

Ghalhekk l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju wkoll mhux gustifikat. It-Tribunal dahal espressament fil-punt krucjali ta' din l-applikazzjoni cioe l-hsejjes ordinarjament emanenti mill-uzu ta' kazin ta' banda u wasal ghal konkluzzjoni illi l-kundizzjoni 6 kif impostata fil-permess originarjament mahrug ma kinitx bizzejjed biex tipprotegi lil residenti fil-vicin milli jigu protetti kontra l-inkonvenjent tad-disturb minn hsejjes protetti mill-policy BEN 1 sa minn zmien qabel li hareg il-permess originali. It-Tribunal ikkonkluda li minn natura tieghu kazin tal-banda imur kontra dak li titlob il-policy BEN 1 cioe li ma jkunx hemm 'deleterious effect becasue of noise, vibration, unusual

opening times or other characteristics which in the opinion of the Planning Authority would constitute bad neighbourliness'.

It-Tribunal wara li kkonsidra l-provi kollha prodotti kien tal-fehma li n-natura tal-izvilupp kien imur kontra dawn il-principji. Ghalhekk apparti illi t-Tribunal iggustifika d-decizjoni, din il-Qorti ma ghandhiex il-jedd li fuq bazi li fatt terga' tinvestiga l-kwistjoni hi.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Hu minnu illi wiehed mill-punti li l-Qorti tal-Appell kienet ddecidiet dwaru hu illi l-ewwel Bord ma kienx ikkonsidra l-commitment taz-zona. Ma jistax jinghad pero li dan it-Tribunal naqas f'dan l-obbligu. It-Tribunal ikkonsidra l-uzu rikjest minn dik residenzjali ghal wiehed bhala kazin tal-banda mequs fl-isfond li l-bini adjacent okkupat mill-objectors hu wiehed ukoll residenzjali. It-Tribunal qies din il-kwistjoni u aktar minn hekk qies illi policy fi pjan ta' struttura kellu jigi applikat b'rigorozita f'dan il-kaz fejn l-objectors kienu residenti biswit binja li qed tigi proposta li jkun fiha elementi, li fl-opinjoni tat-Tribunal, in principju kienet tmur kontra l-policy BEN 1 tal-pjan ta' struttura. L-istess Tribunal in fatti qabel mar-rapport tad-Direttorat li kien rrakomanda r-rifjut tal-izvilupp qabel ma din id-decizjoni giet mibdula mill-Bord tal-Appell, li fil-fehma tat-Tribunal kienet nieqsa minn gustifikazzjoni bl-inkluzjoni biss tal-kundizzjoni 6 fl-ghoti tal-permess.

Ghalhekk dan l-aggravju qed jigi michud.

Ir-raba aggravju

Dan l-aggravju hu fattwalment inkorrett ghaliex l-ispirtu tas-sentenza tal-Qorti tal-Appell tal-31 ta' Mejju 2012 kien li l-Bord kellu jiddeciedi l-appell a bazi tal-aggravji li kienu,

principalment dwar in-nuqqas tal-kundizzjoni 6 imposta mill-Bord fl-ghoti tal-permess li tindirizza l-lanjanza tal-objectors dwar l-istorbju u d-disturb krejat mill-uzu tas-sit adjacent bhala kazin tal-banda. Dan kien il-mertu tal-appell li kellu jigi indirizzat u dan hu précis il-mertu li gie indirizzat mit-Tribunal fid-decizjoni tal-Qorti.

Ghalhekk l-aggravju hu ingustifikat u qed jigi michud.

Il-hames aggravju

L-appellant jilmeta li t-Tribunal naqas li jiddistingwi bejn uzu ta' band club minn zvilupp kummercjali u l-bzonn li band club ikun fic-centru u l-fatt li z-zona hi minnha nfisha kummercjali. Naqas ukoll li jikkonsidra li kazin jaghti inqas inkonvenjenti minn fond kummercjali. L-appellant qed jistieden lil Qorti taghmel evalwazzjoni fattwali u taghti opinjoni teknika soggettiva dwar l-impatt ta' uzu ta' kazin minn fond adebit ghal uzu kummercjali. Qed jistieden lil Qorti ukoll taghmel evalwazzjoni taz-zona li fih jinsab il-fond. Dan mhux il-kompitu tal-Qorti ghax tkun qed tiehu fuqha mansjonijiet teknici u fattwali fdati f'idejn l-Awtorita u t-Tribunal.

Ma jistax lanqas jinghad li t-Tribunal naqas fid-dover tieghu pero fil-fehma tat-Tribunal, kull konsiderazzjoni ohra kienet subordinaria ghal fatt illi kazin tal-banda di natura ma kellhux jigi sitwat biswit residenza ghax imur kontra l-principju tal-policy BEN 1. Din il-kunsiderazzjoni fil-fehma tat-Tribunal kienet teghleb kull kunsiderazzjoni ohra dwar iz-zona, u stabbilimenti ohra fl-akkwata. Taqbel jew ma taqbilx ma' din il-konkluzjoni, tali decizjoni hi wahda ibbazata fuq principju ta' planning li din il-Qorti ma tistax u ma ghandhiex tissindaka.

Ghalhekk dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta’ u tiddeciedi billi tichad l-appell tal-Ghaqda Socjeta Muzikali Kristu Sultan u tikkonferma d-decizjoni tat-Tribunal ta’ Revizjoni tal-Ambjent u l-Ippjanar tad-19 ta’ Novembru 2013. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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