



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-2 ta' Lulju, 2014

Appell Civili Numru. 53/2011

Mario Gauci

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Mario Gauci tat-2 ta' Novembru 2011 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Ottubru 2011 PA 426/03 'to sanction construction of garages and display of advertising sign';

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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:

B'applikazzjoni pprezentata fid-29 ta' Jannar 2003, full development permission PA 0426/03, l-appellant, f'sit f'Burmarrad Road, Burmarrad ippropona s-segwenti:

“To sanction construction of garages and display of advertising sign.”

L-applikazzjoni giet michuda b'rifjut tas-16 ta' Ottubru 2003 (Red 27 fil-file PA 0426/03) ghar-ragunijiet segwenti:

“1. The site lies outside the limits for development defined in the Temporary Provisions scheme for St. Paul's Bay and so it is located in an area which should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside.

2. The site lies outside the limits for development defined in the Temporary Provisions Schemes and so it is located in an area in which development is permitted only if it is essential to agricultural, ecological, or scenic interests. The proposed development is not considered to be essential to these interests and therefore it would run counter to these schemes as it would represent unacceptable development in the countryside. The Temporary Provisions Schemes are endorsed by Structure Plan Policy SET 8 and therefore the proposed development is in conflict with this policy.

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3. The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

4. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located in an area designated for development or in an existing built up area.

5. The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key Diagram). The proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

6. The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

7. Structure Plan policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan policy RCO 4.

8. The development implies traffic impact due to the new activity being generated. The proposal would thus interfere with the traffic flow and present a hazard to the safe use of the road by vehicles and pedestrians. The proposed change of use would therefore run counter to Structure Plan Policies TEM 4 and TRA 4.

9. Structure Plan policy AHF 1 states that the countryside must be safeguarded for the benefit of future generations. It is therefore imperative that agricultural developments are limited to only those which are required for genuine agricultural needs and that they also accord to the approved development plans to ensure that the intrinsic values of the countryside are safeguarded. The development ruins the

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openness of the countryside and therefore runs counter to the provisions found in Structure Plan policy AHF 1.”

Fl-appell tieghu l-perit Edgar Caurana Montaldo ghall-appellant ssottometta kif gej:

“1. Although the site lies outside the limits for development of the TPS, the site in question is an area where various permits have been issued.

2. The building in question was built over 15 years ago and from a site visit one can see that the area in question is a committed area and that no agricultural land is effected.

3. No new traffic will be generated as the building has been built and used for over 15 years”.

Fis-seduta tas-27 ta' Frar 2004, Martin Saliba ghall-Awtorita' kien iddikjara, li kien hemm pendenti l-appell PAB 160/98 li hu l-appell principali, u ghalhekk dan l-appell, flimkien ma l-appelli 160/98, 328/03 u 330/03 bdew jinstemghu kontestwalment.

Fis-seduta tat-12 ta' Jannar 2005 gie registrat verbal fis-sens li kienet giet ipprezentata applikazzjoni PA 1550/04 intiza bhala outline master plan ghas-sit in kwistjoni, u ghalhekk l-appell baqa' jigi differit pendenti l-ezitu ta' l-applikazzjoni msemmija.

Fis-seduta tas-17 ta' Mejju 2011, l-Avukat Dottor Anthony DeGaetano ghall-Awtorita' talab li dawn l-appelli jigu decizi billi effettivament l-applikazzjoni PA 1550/04 ma tincidix direttament fuq l-ezitu ta' dawn l-appelli.

L-istess appellant ghamel diversi applikazzjoni fuq diversi siti fl-istess lokalita. In fatti, b'ittra tas-7 ta' Mejju 2003, (Red 17) l-perit ta' l-appellant gie mitlub jipprezenta block plan li fiha jindika s-siti differenti b'indikazzjoni ta' l-applikazzjonijiet relattivi. Din giet annessa ma ittra ta' l-istess perit tal-15 ta' Lulju 2003 – Red 20 u 20A.

Mir-ritratti pprezentati mal-applikazzjoni jirrizulta li z-zewg garaxxijiet huma ga mibnija, huma ta' daqs konsiderevoli, u jikkonfermaw li l-attivitá ta' parking ta'

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vetturi kummercjali u t-tiswija taghom qed issir regolarment fuq skala prattikament industrijali – tant li anke fuq is-saqaf tal-garaxxijiet qed iservi ghall-parkegg ta' vetturi u ingenji kummercjali. Il-hitan huma tal-franka, u l-faccata hi mizbugha, l-bibien tal-garaxxijiet huma tal-azzar, u l-bejt miksi bil-water proofing membrane.

Iz-zewg garaxxijiet jokkupaw area ta' 420 sq.m. u jintuzaw ghat-tiswija tal-vetturi, u ghall-pannel beating. L-gholi tal-bini hu ta' 22 filata.

Is-sit jinsab f'Rural Conservation Area skond il-Pjan ta' Struttura u barra miz-zona ta' l-izvilupp u hemm access ghat-triq ta' Burmarrad.

Hu relevanti li jigi notat li fuq l-istess sit, l-istess appellant kien applika PA 4316/91, biex jibni garaxx. L-applikazzjoni giet michuda fit-3 ta' Dicembru 1991 ghar-ragunijiet segwenti:

- No justification for the issuing of a permission in spite of request for reconsideration.
- Site has already been excavated
- There have been verbal requests for additional development on land adjacent to the site in question. If this process is allowed to go on, the rationale behind the Structure Plan Policies would be lost. Land to be returned to its original state.

F'2001 hareg enforcement notice 1219/01 – erection of 2 commercial garages without permit

Sar appell minn dan l-Avviz - PAB 422/01E KA, li gie deciz mill-Bord ta' l-Appell dwar l-Ippjanar fis-26 ta' Settembru 2003. Il-Bord cahad l-appell billi irrizulta li l-garaxxijiet nbnew minghajr permess.

Ikkunsidra ulterjorment:

L-applikazzjoni prezenti trid tigi ezaminata fil-kuntest tas-site history partikolari ghaliha. L-applikazzjoni mhux qed tipproponi zvilupp gdid; izda qed titlob li jigi sanzjonat zvilupp li 'ex admissis' fl-10 ta' Novembru 2003, data tal-appell prezenti,

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kien għa ilu 15-il sena mibni u kompletament funzjonali, cjoe' la kien awtorizzat il-bini taz-zewg garaxxijiet, u wisq anqas l-uzu tagħhom.

Din l-applikazzjoni, li giet ipprezentata fid-29 ta' Jannar 2003 – kienet preceduta minn applikazzjoni oħra tal-1991 - PA 4316/91, fejn l-istess appellant kien ippropona li jibni garaxx fuq l-istess sit – l-applikazzjoni kienet giet michuda billi degħja kien sar xogħol ta' skavar (ovvjament bla permess) u li l-uzu ta' art agrikola f'zona sensittiva hu in kontravvenzjoni tal-Policies fil-Pjan ta' Struttura.

Il-garaxxijiet inbnew xorta wahda, harget enforcement notice dwarhom ECF 1219/01 – sar appell, li gie michud billi rrizulta li l-garaxxijiet nbnew bla permess.

L-applikazzjoni prezenti qed tittanta tissana illegalita', perpetrata impunement għal xejn inqas minn 20 sena, s'issa (minn 1991 sa 2011); f'area originarjament agrikola, barra z-zona tal-izvilupp, area partikolari li skond il-Pjan ta' Struttura kellha tibqa mhux zviluppata.

L-oggezzjoni principali għall-izvilupp mertu ta' dan l-appell kienet f'dik il-lokalita' partikolari, tali zvilupp mhux permissibbli. F'areas li huma barra z-zona tal-izvilupp, u rural conservation areas bhala regola ma jista' jigi awtorizzat l-ebda zvilupp; eccezzjonalment, pero' barra z-zona ta' l-izvilupp jista' jingħata permess paragrafu 7.6 tal-Pjan ta' Struttura għal "farmhouses, genuine agriculture buildings, reservoirs, picnic area toilets etc. Skond l-Policy SET 11 ebda forma ta' zvilupp urban m'hi permessa barra z-zona tal-izvilupp.

L-izvilupp mertu ta' dan l-appell mhux relatat ma agrikoltura, jikkostitwixxi zvilupp urban, barra z-zona ta' l-izvilupp li mhux permissibbli – u qed issir attivita fuq skala prattikament industrijali f'zona rurali.

Originarjament, fuq is-sit kien isir x-xogħol fir-raba', perfettament attinenti mal-lokalita'. Dan ix-xogħol jirrikjedi l-ingenji tar-raba', biz-zmien bdiet tizdied din l-attivita' għalhekk kien hemm il-htiegha ta' aktar ingenji li okkazjonalment issirilhom l-hsara u t-tiswija tal-istess li verosimilment kienet issir fuq il-post. Biz-zmien l-attivita' komplet tikber – bdiet issir importazzjoni ta' vetturi kummercjali, u mhux biss ingenji tar-raba' u eventwalment f'lokalita originarjament rurali u agrikola, bdiet u qegħda issir attivita' kummercjali estensiva li idejalment postha għandu jkun f'zona industrijali, u mhux wahda rurali u sensittiva.

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Fl-appell tieghu l-perit ta' l-appellant issottometta li ghalkemm s-sit hu barra z-zona ta' l-izvilupp – nghataw diversi permessi fl-istess lokalita':

Dwar dan jirrizulta, partikolarment mill-block plan, Red 20A, li l-maggjor parti ta' l-applikazzjonijiet huma 'to sanction' u ghadhom pendenti.

Red 20F hu permess ta' garaxx tal-PAPB tas-27 ta' Jannar 1992 – 4243/90 – garage next to house. Dan il-garaxx, l-appellant ghamlu ufficju – u dwar dan hemm applikazzjoni PA 6437/01 "to sanction change of use from garage into office". Din giet michuda; giet appellata – Appell Numru 328/03 – appell li ghadu pendenti. In generali jidher li l-permessi nghataw ghar-residenzi, bil-garaxx magghom li ghandhom faccata ghal fuq it-triq.

Il-perit ta' l-appellant issottometta in oltre li l-bini ilu mibni s-snin u li l-area in kwistjoni hi 'committed', u li mhux ser jigi generat aktar traffiku billi kemm il-bini u kemm l-uzu ilu jsir aktar minn 15-il sena.

Dwar dan jixraq li jinghad li l-argument li l-area hi committed mhux validu meta wiehed jikkunsidra c-cirkostanza partikolari, li irrizultat f'dan il-kaz, li l-izvilupp li l-perit jirreferi ghalih u li jikkostitwixxi committal hu fil-fatt zvilupp mhux awtorizzat, li l-appellant talab li jigi sanzjonat. L-anqas l-fatt li l-illegalita ilha hemm is-snin ma tiggjova lill-appellant billi kif gie konsistentement ritenut mill-Qrati, s-semplici trapas taz-zmien ma jirrendix legali, dak li hu illegali.

Il-kumment dwar in-nuqqas ta' zieda fit-traffiku, billi l-izvilupp ga jezisti l-anqas ma hu argument li jiggustifika, billi ma jbidel xejn mill-fatt, del resto l-anqas kontestat, li l-izvilupp fuq is-sit sar minghajr id-debita awtorizzazzjoni.

F'dawn ic-cirkostanzi, l-motivazzjoni tar-rifjut huma perfettament applikabbli ghal kaz u jixraq li jigu kkonfermati.

It-Tribunal, ghalhekk qed jiddisponi minn dan l-appell, billi jichad l-istess u jikkonferma r-rifjut ta' l-Awtorita' tas-16 ta' Ottubru 2003 ghall-applikazzjoni PA 426/03, pero, in vista ta' dak li gie deciz illum stess fl-Appelli 328/03 u 330/03 billi l-Pjan Lokali ppublikat fl-20 ta' Lulju 2006 stabilixxa l-Area bhala "Area of Containment", "Area of Mixed uses" jidderiegi lill-appellant li japplika mill-gdid, b'mod li jikkonforma mar-rekwiziti tal-Policy NWSP26 ta' North West Local Plan tal-20 ta' Lulju 2006.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkonsidra l-commitment li hemm fiz-zona u dan irendi l-gudikat monk;
2. La draba t-Tribunal sostna li skond il-policies vigenti l-izvilupp kien permissibbli messu applika l-policies l-istess Tribunal u akkorda l-permess u mhux stieden lil appellant jerga' jintavola applikazzjoni mill-gdid.

L-ewwel aggravju

Dan l-aggravju ma jimmeritatx konsiderazzjoni ghas-semplici raguni li ebda commitment fiz-zona ma tista' qatt teghleb il-pjanijiet u policies li kienu applikabbli ghas-sit in ezami. Kif gustament qal it-Tribunal, il-garages in kwistjoni inbnew bla permess circa 15-il sena ilu u izjed u kienu illegali u enforcement notice fuqhom gie konfermat anki wara appell biex jitnehha. It-Tribunal ikkonsidra li l-area hi barra z-zona ta' zvilupp u f'rural conservation area li ma kellhiex tigi zviluppata.

In oltre ghalkemm l-appellant jishaq fuq il-commitment, harsa lejn l-atti tat-Tribunal juri illi l-appellant ma gabx provi li jsostnu dan il-punt bhala kwistjoni ta' sustanza, li kif pero gia qalet il-Qorti, ebda kwistjoni ta' sustanza ma tista' ixxejjen pjan ta' zvilupp jew policy.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju wkoll qed jigi michud ghaliex it-Tribunal ma qalx illi l-izvilupp kien permissibbli bil-policies vigenti. Li kieku qal hekk is-sanzjoni kien ikun permess. It-Tribunal irrefera ghal

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appelli ohra decizi konnessi mal-istess zvilupp u qal li wara l-pjan lokali tal-2006 li stabilixxa z-zona bhala area of containment, u area of mixed uses, l-applikant seta' japplika mill-gdid qua permess gdid basta jottepera ruhu mal-rekwiziti tal-policy NWSP 26 tan-North West Local Plan tal-2006. Dan hu ferm differenti minn dak allegat mill-appellant u l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti qed tichad l-appell ta' Mario Gauci u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-13 ta' Ottubru 2011. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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