



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tat-8 ta' Ottubru, 2014

Appell Civili Numru. 2/2014

**Dr. Pascal Demajo**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Dr. Pascal Demajo tal-5 ta' Frar 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-16 ta' Jannar 2014 in mertu ghall-applikazzjoni PA 427/09 'to replace existing dangerous structure with a new structure';

## Kopja Informali ta' Sentenza

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:

Illi l-appellant applika sabiex jibdel struttura li hija fi stat perikoluz bi struttura gdida. L-istruttura tintuza bhala reception hall, u li taghmel parti minn sit kopert bil-licenzja tal-pulizija ghal-uzu ta' wedding hall maghruf bhala r-Razzett l-Abjad, fi Triq il-Gharghur, fil-limiti u barra z-zona tal-izvilupp ta' l-Iklin. Il-Kummissjoni ta' l-Ambjent u l-Ippjanar rrifjutat l-proposta ghal dawn is-segweni regunijiet:-

1. The site is currently subject to Enforcement Notice ECF 222/11 for unauthorised development. The proposed sanctioning cannot be considered further unless all the illegal development on site is specifically included in the request for sanctioning or else removed, and this in terms of regulation 14 of Legal Notice 514 of 2010. The illegal development, besides the reception hall, includes additional ancillary structures, extension to farmhouse, swimming pool and concrete passages.

2. The development as carried out is in conflict with Structure Plan Policy SET 11 which does not permit urban development outside the development zone.

The development does not fall into a category of non-urban development which may be permitted in rural areas in accordance with Paragraph 7.6 of the Structure Plan.

3. The development as carried out runs counter to Policy 1.3K of the Policy and Design Guidance on Agriculture, and to Structure Plan Policies AHF 4, AHF 5 and RCO 4 in view of the excessive take-up of agricultural land, and since these interventions have significantly altered the rural character of the site.

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4. The existing structures on site run counter to the policy Development Control Guidance-Developments Outside Built up Areas, in particular to paragraphs (iii), (iv), (v) and (vi) of Section 8.2 which only allow for the construction of minor extensions which do not increase the overall floor space area to over 150sq.m. are confined to the area already included within the curtilage of the property; and carefully consider the area in relation to the size and proportions of the original building.;

Ra l-appell tal-Perit Edgar Caruana Montaldo f'isem l-appellant li kull ma jsemmi huwa li "1) The site is covered by a Police Trading Licence to operate as a Wedding hall."

Ra s-sottomissjonijiet tal-Awtorita' dwar l-appell li saru permezz ta' nota li giet ipprezentata lit-Tribunal fis- 27 ta' Gunju 2012 u li jaqraw kif gej:

"5.1 The appellant is mainly justifying this appeal on the grounds that the site in question is covered by a Police Trading License to operate as a wedding hall.

5.2 The Authority has the following comments to make:

### 5.2.1 Preliminary plea

On a preliminary point, the Authority respectfully asserts that this Tribunal cannot hear and decide on the merits of this appeal, as this application does not seek to sanction any of the illegal development on site, and hence the provisions of Article 14 of LN 514/10 are applicable. Article 14 (1) of LN 514/10 clearly states that where illegal development is present on a site, new development on that same site will not be considered unless it is regularized. The illegalities on site include (refer to Document 52 in file PA427/09):

- a 75sqm structure 10 courses high used as an office,
- an approx. 80sqm structure on 2 floors used as a store at the lower floor while the top floor used as toilets,
- a 70sqm small room 7 courses high and roofed with corrugated sheeting,
- a 75sqm swimming pool with ancillary facilities,

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- a 30sqm fish pond,
- a 75sqm room with gazebo,
- an approx. 100sqm one storey structure consisting of several rooms,
- additions to an old building more than approved in PA 3384/70,
- an approx. 500sqm reception hall,
- extensive areas of paving and concrete passages.

The Authority would like to point out that the above-mentioned illegalities have been carried out in relation to the use of this site as a wedding hall. These unauthorized interventions are shown on the submitted drawings but there is no indication of their sanctioning (through the use of conventional colours).

The appellant is justifying the development on site by stating that it is covered by a Police Trading License to function as a wedding hall. The Authority disagrees since the Policy Trading License was not issued for a wedding hall but to hold receptions (including weddings) in the open air.

Reference to the 1967, 1988, 1998, 2004 & 2008 aerial photos (refer to Documents 10 – 10D in file PA427/09), shows that the unauthorized interventions have transformed this rural site, originally characterized by agricultural land and rural farmhouse into a highly developed site. Besides, the considerable large additions the extensive hard landscaping including passages and stairs which cover large areas of the site and the excessive swimming pool (and also through the unauthorized construction of ancillary structures) have led to the eradication of agricultural land (protected by the local plan).

### 5.2.2 The existing illegal complex vis-à-vis current established policies

The illegalities carried out on site cannot be sanctioned on policy grounds even if such a request had been made.

The site is located outside development zone and does not fall within the boundaries of a Category Settlement as identified in the Local Plans; hence development should be restricted to conserve the rural environment and limit intensification of buildings within rural areas as per Structure Plan policy RCO 2. To

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this end, the provisions of PLP 20 - "Development Control Guidance - Developments Outside Built-up Areas" apply.

The original permit PB3384/70 already approved an extension to the existing farmhouse which resulted in a structure having a floorspace of circa 160sq.m. Hence, there is no justification for the proposed replacement of the reception hall, which not only is an illegal structure but will result in an ODZ development in excess of the maximum 150sqm permitted by Section 8.2 (iii) of policy PLP 20. Furthermore this reception hall must be considered in conjunction with the various other structures that cumulatively have a floorspace of 1000sqm.

The development as carried out is therefore in conflict with Structure Plan Policies AHF 4, AHF 5 and RCO 4 in view of the excessive take-up of agricultural land, and since these interventions have significantly altered the rural character of the site. In view that part of the site is located within an Agricultural Area as designated in the Central Malta Local Plan (CMLP), the proposal also runs counter to Policy 1.3K of the Policy and Design Guidance on Agriculture which prohibit development which has an adverse impact on good quality agricultural land.

With respect to the swimming pool, the size of the pool exceeds the maximum allowable 50sqm in terms of Circular 1/00 for Swimming Pools ODZ, while the existing paving clearly exceeds the maximum allowable 25sqm.

### 5.2.3 Other consideration :-

The development on site raises also the following concerns:

Parking issues - The development on site does not incorporate an official parking provision as per Table A2.5 of the Structure Plan Explanatory Memorandum.

Reference is to be made to enforcement notification ECF 00934/97, issued on an adjacent site for the change of use of an approx. 3000sqm site into a parking area (refer to Documents 10B-D in file PA427/09). An application was submitted in PA6793/97 accordingly but was refused on the 26 February 1999.

Accessibility Issues - Following consultation, the National Commission for persons with Disability requested further information, hence issues relating to accessibility

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remain unresolved. The proposal therefore runs counter to Structure Plan policy SOC 24 which requires that buildings used by the general public should be accessible for all, and to MEPA's Circular 3/10 which specifies that such public uses should be fully accessible and in accordance with KNPD's design standards.”;

Ra l-Policies SET 11, AHF 4, AHF 5 u RCO 4 tal-Pjan ta' Struttura;

Ra l-paragrafu 8.2 tad-Development Control Guidance – Development Outside Built-up Areas (PLP 20);.

Ra ukoll il-PA file bin-numru 427/09, u l-PB files bin-numri 3384/70 u 4877/84;

Ra l-atti kollha ta' dan l-appell.

Ikkunsidra ulterjorment:

Illi l-mertu ta' dan l-appell jirrigwardja l-proposta ta' twaqiegh ta' strutturi b'firxa ta' madwar 460 metri kwadri fuq sular wiehed, li tintuza bhala reception hall, fil-konfini tar-Razzett l-Abjad li huwa kopert b'licenzja tal-Pulizija ghal-uzu ta' wedding hall.

Illi fl-ewwel lok, dan it-Tribunal irid jiccara illi filwaqt li fl-appell, l-appellant qed jindika li l-proposta ta' l-izvilupp ghal “to sanction reception hall, various structures, swimming pool, gazebos and landscaping”, dan it-Tribunal seta' jinnota li l-proposta deciza mill-Kummissjoni hija dik indikata fl-applikazzjoni orginali, li titlob it-tibdil ta' struttura li qeghda fi stat perikolanti. Jidher li waqt il-process ta' l-applikazzjoni d-Direttorat ta' l-Ippjanar skont ittra mibghuta fis-6 ta' Dicembru 2011 (a fol 50 fl-inkartament ta' l-applikazzjoni PA 427/09) talab lill-applikant biex jindika b'mod car l-izvilupp propost fil-pjanti godda mibghuta mill-Perit fit-30 ta' Novembru 2011, u biex jibdel id-deskrizzjoni tal-proposta jekk ikun il-kaz, pero l-applikant qatt ma irrisponda lura u ghaldaqstant giet deciza l-proposta hekk kif kienet giet sottomessa originarjament fl-applikazzjoni.

Illi l-appellant kull ma qieghed jikkontenda huwa li s-sit hu kopert bil-licenzja tal-puluzija ghal-uzu ta' wedding hall (liema prova qatt ma tresqet f'dan l-appell, ghalkemm tinsab fl-inkartament tal-applikazzjoni PA 427/09, a fol 1J), u ma ressaq l-ebda raguni ohra biex jirribatti d-diversi ragunijiet tar-rifjut, fosthom li l-applikazzjoni mhiex intiza biex tissana l-izvilupp kollu li hemm fuq is-sit, skont kif

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indikar fl-avviz biex Tiegaf u ta' Twettiq bin-numru ECF 222/11, li jinkludi s-segwenti:

“Ghandek zvilupp minghajr permess li jikkonsisti f'bini ta' diversi strutturi, alterazzjonijiet u addizzjonijiet fl-artijiet li jaqghu fil-boundaries tar-Razzett l-Abjad, li jinkludu : struttura tal-gebel imsaqqfa b'materjal tad-drapp u li tintuza bhala 'Reception Hall' struttura b' diversi kmamar imsaqqfa fuq sular wiehed. struttura tal-gebel imsaqqfa fuq zewg sulari. struttura ohra tal-gebel imsaqqfa fuq sular wiehed li qed tintuza bhala ufficcju.

swimming pool u strutturi ohra adjacent maghha fosthom gazebos, kamra u bar tal-gebel, u kamra ohra elevata. addizzjonijiet ta' kmamar mal-binja antika u dan mhux kif approvat fil-permess PB3384/70 datat 20/03/71, kif ukoll f'furmar ta' passaggi u landscaping.”

Filwaqt li mhux kontestat l-uzu li huwa kopert bil-licenzja tal-pulizija bhala wedding hall, kull struttura u zvilupp fuq is-sit, inkluz l-istruttura mertu ta' dan l-appell, li ma jidhrux fil-permess PB 1044/713384/70 datat 20 ta' Marzu 1971, jirrikjedi permess ta' l-izvilupp. Fin-nuqqas ta' prova ta' permessi minn naha ta' l-appellant, huwa evidenti ghal dan it-Tribunal li din l-applikazzjoni mertu ta' dan l-appell mhix intiza biex tissana l-allegat zvilupp illegali imsemmi f'dan l-Avviz biex Tiegaf u Twettiq, u ghaldaqstant il-Kummissjoni kienet korretta li ma tikkunsidrax zvilupp gdid qabel ma' din l-illegalita' fuq is-sit tigi sanata jew mnehhija minn fuq is-sit, u dan skont l-Avviz Legali 514 tal-2010, regolament 14. Ghaldaqstant dan it-Tribunal qed jikkonferma l-ewwel raguni tar-rifjut, u ma jara l-ebda lok li ghandu jidhol aktar fil-mertu tal-proposta, iktar u iktar, meta l-istess struttura mhix koperta b'permess ta' l-izvilupp.

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

### Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkonsidra li dan kien zvilupp ezistenti mhux zvilupp gdid kif qal it-Tribunal u kien obbligu ta' sid il-proprjeta li jiehu passi immedjati sabiex binja perikolanti tigi sanata. Ir-regolament 14 tal-Avviz Legali 514 tal-2010 imkien ma jghid li ma ghandux

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jinghata permess biex titnehha struttura perikoluza qabel ma tigi sanata, u ghalhekk mhix applikabbli ghal kaz in ezami;

2. Talba biex struttura tigi sanata u l-perikolu jitnehha jikkomtemplata fih talba ghal sanzjonar ta' dik l-istruttura u darba li l-Awtorita tipprova t-tnehhija ta' struttura perikoluza biex tigi mibdula ma' struttura gdida kull illegalita tkun tnehhiet.

### **L-ewwel aggravju**

Jibda biex jinghad illi t-Tribunal bhal Awtorita huma marbuta mal-applikazzjoni fit-termini precizi taghha u fil-fazi tal-proceduri quddiem it-Tribunal u anki l-Qorti, huma l-aggravji imressqa quddiem it-Tribunal li ghandhom jiggwidaw ghad-decizjoni u xejn aktar. F'dan il-kaz l-applikazzjoni hi cara cioe tibdil ta' struttura perikolanti ma' ohra gdida u l-aggravju tal-appellant wara d-decizjoni tal-Awtorita kien biss li s-sit hu munit b'licenzja tal-pulizija biex jopera bhala wedding hall.

Dak li qed jigi attakkat f'dan l-appell quddiem il-Qorti hi l-eccezzjoni preliminari moghtija mill-Awtorita fil-kors tal-appell quddiem it-Tribunal illi din l-applikazzjoni ma tistax tintlaqa ghax tmur kontra l-artikolu 14 tal-Avviz Legali 514/2010. It-Tribunal laqa' din l-eccezzjoni. Il-Qorti taqbel mal-gudikat tat-Tribunal.

L-appellant isostni li dan mhux zvilupp gidd kif qed ighid it-Tribunal. Il-fatti juru mod iehor. Jibda biex jinghad illi l-istruttura ezistenti hi illegali u fuq dan l-appellant ma jaghmel ebda kontestazzjoni. Perikolanti u mhux, dak li qed jitlob hu li jnehi parti mill-illegalita ezistenti fuq is-sit u jirrimpjazzaha bi struttura gdida. L-Avviz Legali 514/2010 senjatament fir-regolament 14(5) jaghmilha cara illi ebda talba ta' zvilupp gdid ma tista' ssir, ghax dak li in effetti qed jitlob l-applikant, jekk l-istrutturi illegali kollha fuq is-sit ma jiddahhlux ghas-sanzjonar jew jitnehhew qabel l-applikazzjoni tigi deciza. Qari tal-artikolu 14 fl-assiem tieghu ma jhalli ebda dubju dwar dan. L-appellant ma jirribattix l-illegalitajiet kollha msemmija mill-Awtorita oltre din in kwistjoni fir-risposta tal-appell skond l-enforcement notice 222/11 quddiem it-Tribunal u ghalhekk din il-Qorti ma ssib xejn x'ticcensura mill-gudikat tat-Tribunal.



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Hu minnu illi sid ghandu obbligu li jnehhi struttura perikolanti pero ma ghandux il-jedd li juza din it-talba biex jdur madwar u kontra l-ligi.

Ghalhekk dan l-aggravju qed jigi michud.

### **It-tieni aggravju**

Dan l-aggravju ma hu xejn hlief loghob bil-kliem. It-Tribunal ma seta' qatt japprova t-tnehhija tal-istruttura, perikoluza jew le, billi l-artikolu 14 ma jaghmilx distinzjoni bejn wahda jew ohra, qabel ma jigi accertat illi qed jiddahhlu l-illegalitajiet kollha fuq is-sit fit-talba ta' sanzjonar. Dan hu l-kliem u l-ispirtu tal-Avviz Legali. Kien ikun f'dak l-istadju li l-Awtorita u t-Tribunal setghu jkunu f'pozizzjoni jaraw tistax tigi sanzjonata l-istruttura illegali u f'kaz li tintalab it-tibdil taghha ghax perikolanti jekk it-tibdil propost qua zvilupp gdid hux konformi mal-policies vigenti. L-appellant seta' ma ghamel xejn minn dan kollu u qabad u nehha l-istruttura illegali qabel applika ghal struttura gdida flokha. Pero dan ma ghamlux. In ogni kaz dak li jonqos ighid l-appellant hu illi r-rifjut tal-applikazzjoni sar fuq diversi binarji ta' ippjanar li ebda wahda minnhom ma giet attakkata bhala aggravju quddiem it-Tribunal hlief taht l-aggravju generiku li s-sit hu munit mill-pulizija b'permess ta' uzu bhala wedding hall.

Ghalhekk anki dan l-aggravju qed jigi michud.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Dr. Pascal Demajo u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-16 ta' Jannar 2014. Bl-ispejjez kontra l-appellant.

**< Sentenza Finali >**

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