MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-8 ta' Ottubru, 2014

Appell Civili Numru. 79/2013

George Sultana

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' George Sultana tas-17 ta' Dicembru 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Novembru 2013 fil-PA 2751/08 'to construct agricultural store';

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 appell minn rifjut tal-Awtorita' tal-applikazzjoni PA 2751/08 'To construct agricultural store', b' decizjoni tal-21 ta' Gunju, 2010.

Ir-ragunijiet li ghalihom l-Awtorita' irrifjutat l-applikazzjoni PA 2751/08 kienu s-segwenti:

"1. The proposal conflicts with Policy 2.4A paragraph 2 of Policy and Design Guidance – Agriculture, Farm Diversification and Stables, 2007, in that the proposed storage can be accommodated in a nearby Category 2 ODZ Settlement, within existing disused farm buildings owned by the applicant. There is therefore no justification for the development of the proposed site, in conflict with Structure Plan Policies SET11 and SET12.

2. The proposal conflicts with Policy 2.4A paragraphs 1(b), 1(c), 1(d) and 1(e) of Policy and Design Guidance – Agriculture, Farm Diversification and Stables, 2007, in that the applicant does not have a satisfactory history of producing substantial and genuine crops for human consumption; it is unclear whether the applicant's farm includes a minimum of 5 tumoli used for non-fodder production for the last two consecutive years prior to the application; the proposed storage building is not essential for the continuing satisfactory and effective operation of the applicant's arable farm unit; and it is not essential for the development to be located on the site proposed.

3. The proposal conflicts with Policy 2.4A paragraph 3 of Policy and Design Guidance – Agriculture, Farm Diversification and Stables, 2007, in that the proposed store, measuring 40.5m² together with the two existing agricultural stores within the arable farm amounting to 32.5m², exceeds the maximum permissible 40m² (although the applicant's farm may not even qualify for a 40m² agricultural store).

4. The proposal conflicts with Policy 2.4A paragraph 4 of Policy and Design Guidance – Agriculture, Farm Diversification and Stables, 2007, in that the land on which the store is proposed is not located on arable land registered in the name of the applicant.

5. The proposal conflicts with Policy 2.4A paragraph 5 of Policy and Design Guidance – Agriculture, Farm Diversification and Stables, 2007, in that the applicant did not submit an official statement from the Malta Resources Authority stating that the proposed development is not located within a distance of less than 5 metres from the edge of a watercourse.

6. The proposal conflicts with Policies1.3A, 1.3D and 2.4A paragraph 8 of Policy and Design Guidance – Agriculture, Farm Diversification and Stables, 2007, in that the proposal would detract from the rural character of the area through unnecessary urbanisation, and through its design. The proposal therefore also conflicts with Structure Plan Policies RCO2, RCO4 and RCO8.

7. The proposal conflicts with Policy 2.4A paragraph 9 of Policy and Design Guidance – Agriculture, Farm Diversification and Stables, 2007, in that the proposed building exceeds a height of 3.2 metres externally.

8. Gozo and Comino Local Plan Policy GZ-AGRI-1 sets out that "MEPA will safeguard Areas of Agricultural Value". The proposed development is located within such an area and thus conflicts with the abovementioned policy and Policy 1.3K of Policy and Design Guidance – Agriculture, Farm Diversification and Stables, 2007.

9. The proposal includes minimal provision for soft landscaping on the site. It thus does not comply with Structure Plan Policy BEN17 which requires appropriate landscaping of development.

10. The proposal runs counter to Circular PA 2/96 which states that "when existing building development on a site is wholly or partly illegal the DCC will not consider a development permit application relating to new development on that site, unless the development is regularised". The illegal development includes a number of structures located within the applicant's arable farm subject of ECF1079/99."

Fl-appell tieghu tas-16 ta' Lulju, 2010, l-appellant, permezz tal-Avukat Dr Jean Paul Grech, jaghti r-ragunijiet tieghu ghal dan l-appell billi jghid inter alia:

"(1) Applicant is the Owner of Other Disused Buildings and He Has Other Illegalities on Site

The first reason quoted for refusal refers to the allegation that applicant is the owner of other disused buildings which can be utilized as agricultural stores. This contention is however far from being correct and to confirm this applicant submitted before the DCC his transfers and liabilities searches covering the period between the l " January 1979 and the 23rd September 2009. Conveniently however, the Board chose to ignore the contents of these searches. An examination of these searches should reveal that applicant does not own any property. The two notes listed in the searches referring to a judicial sale by auction do not concern applicant George Sultana since his personal details do not match the details as included in the relative notes. This goes to show that applicant has no real rights over the disused buildings being referred to. Had he some real or even personal rights over these properties, he would not have taken the pains to submit this present application with all the hassle that it entails to have his own agricultural store for the storage of tools and/or machinery. In addition it should be pointed out that applicant has six other siblings. So definitely it cannot be assumed that any property which his parents (who are still alive) might have will automatically devolve upon him. A copy of the searches is once again being annexed as Document A.

Similarly the application of Circular PA 2/1996 to this present application is also incorrect. There is no proof showing that the existing illegalities are situated in an arable farm owned by applicant and that they can be traced to applicant. Rather as already highlighted proof has been brought confirming that applicant does not own any farm. Nor can it be claimed that the present application refers to the same site as the arable farm where the illegalities have been noted. Consequently, applicant cannot be held legally responsible for these illegalities and more importantly his rights cannot be prejudiced in view of the illegalities committed by others.

(2) Applicant is not Cultivating Crops for Human Consumption

The second ground for refusal refers to the fact that no proof was brought that applicant is cultivating crops for human consumption. Applicant cannot bring forward such proof since his agricultural activity is solely geared at ultivating fodder which is then sold to local farmers who raise cattle. Ultimately consumers are still benefiting from his services since cattle are normally used for the supply of fresh milk and meat. Applicant is submitting a series of V AT receipts issued to a certain

Mr Parnis who is a cattle breeder. These are being marked as Documents BI to B 4. From the price quoted on the receipts, it is quite clear that applicant produces a substantial amount of fodder. Suffice it to say that one tumolo of land will yield 3 packs of fodder having a diameter of four feet and a height of four feet. Each pack would normally be sold for the average price of € 35. With all due respect, it does not make sense to argue that applicant does not require an agricultural store simply because he does not cultivate crops directly for human consumption.

(3) Proposed Store Exceed the 40sq.m. limit

This contention is also incorrect since in arriving to this conclusion MEPA took into consideration two rooms which cannot be possibly classified as stores and cannot be used as such. The first room to which reference was made is built on a portion of land which is not owned by applicant. The land was originally subject to a temporary emphyteusis in favour of applicant, which emphyteusis has now expired. Hence, technically applicant does not have any legal rights over this property. The room is in a dilapidated state as evidenced by the photo attached and marked as Document Cl and it cannot possibly be made use of. This not to mention that it is completely inappropriate to store the tractors utilized for applicant's hard work in this room since it is not adequate. Without prejudice to the above and bearing in mind that applicant technically has no legal title over this property, he is precluded from undertaking any works to re-instate this structure in its former state.

The second room MEPA is referring to is a pump room, which was built following MEPA approval. The room is clearly visible in the photo attached as Document C2. This cannot by any stretch of imagination be classified as an agricultural store since it is being used for a completely different purpose, so much so that it has an independent electricity supply.

(4) Land is not Registered in Applicant’s Name

It is also alleged that the site relative to this planning application is not registered in applicant’s name. Applicant can never have the land registered in his name since he is not the owner of the land. The land is owned by the Joint Office so much so that on filing this development application, a certificate of ownership B was duly compiled and transmitted to the Joint Office (copy attached as Document D). Applicant is only registered with ETC and the Agriculture Department as the person who is tilling various portions of land including this site. This has even been confirmed by the Agricultural Deparment itself, though it must be said that the size of the land being tilled by applicant has been erroneously indicated by the Agricultural Department. Applicant is submitting as Document E which is a copy of

the ETC records showing that he is registered as a full-time farmer and is working in all a total of 101T.2S 4K. The extent of the land currently being tilled by applicant justifies that the application be favourably considered. Sufficient proof has also been brought in this respect since applicant had submitted before the DCC Board documentary proof giving information as to the total surface area tilled by applicant during the years 2006, 2007 and 2008 as well as site plans identifying this portions of land.

(5) MRA confirmation that the development is located less than 5 metres from the edge of a watercourse

Confirmation that the proposed development is at least five metres away from the edge of the watercourse was never requested from applicant. However, applicant even at DCC level guaranteed that the proposed development was meters away from the edge of the watercourse. In fact the only watercourse situated in the area is that further to the north of the proposed site. This was clearly indicated in the site plan presented, a copy of which is being annexed and marked as Document F. This is even confirmed by the fact that when the Malta Resources Authority vetted the application and the proposed site, it gave thumbs up for this application. Had there been a problem as regards any existing water courses, one would have presumed that the MRA would have blocked this application straight away.

(6) The Height of the Proposed Store

Another bone of contention refers to the height of the proposed store. The proposed height is practically equivalent to that of a normal twelve-course high room, including the roof and opra morta. The 3.2metre limit which MEPA is insisted that it be imposed means that the room would have to be only nine courses high. This runs contrary to the established policies regarding the internal height of rooms and it could pose a problem for storage purposes. In particular this limit could pose a problem in the sense that applicant would not be in a position to house certain machinery within the storage space he wants to build. To justify the need for the agricultural store as proposed, applicant submitted to the DCC a copy of log book of tractor bearing registration number BAG 807 as well as photos of the same tractor, together with photos of other tractors which he intends to house within the same store. Once again this need was not duly considered by MEP A when deliberating on this application.

(7) The Character of the Area and the Landscaping Issue

Since the request is referring to an agricultural store, the development necessarily needs to be situated within an area designated for agricultural activity. The development cannot possibly be shifted to another area and indeed it would not make sense to do so. In his proposal applicant made sure to carry out proper landscaping to minimize any negative aesthetic impact on the surrounding area. If MEPA did not deem the landscaping as sufficient, it could very well have given further instructions to ensure that the landscaping is in line with its requirements. This however was never requested. Hence this ground of refusal in particular comes as a surprise. Moreover, it is humbly submitted that this is not an insurmountable issue justifying a refusal and a permit could very well have been granted subject to certain landscaping conditions deemed necessary to safeguard the general ambience of the area."

Fir-risposta tieghu tat-13 ta' Awwissu, 2010, Mario Scicluna ghall-Awtorita' jaghti r-ragunijiet ghaliex fl-opinjoni ta' l-Awtorita dan l-appell ghandu jigi michud. Is-segwenti huma siltiet minn dan ir-rapport li t-Tribunal jhoss ghandhom jigu ssottolineati:

"2.0 SITE DESCRIPTION & SITE HISTORY

The site is located outside the limits to development – see site plan 1B. The site consists of an open field adjacent to a blank party wall – see photos on document 1A."

"5.0 COMMENTS ON APPELLANT'S ARGUMENTS

5.1.3 Re Reason for refusal No. 1: Policy 2.4A para 2 a & b states that prior to any new stores, it must be ascertained that there are no existing buildings which could be used as stores and such stores should preferably be located in nearby rural settlements. Re the former, it had transpired that at least two structures already exists on land tilled by applicant and hence, before one considers further construction, the existing buildings (with appropriate alterations and maintenance) should be first rendered suitable for storage and not left abandoned and then, at a later stage (after the construction of the new store) request their reconstruction with the result of having more rooms than permissible. Furthermore, appellant as not yet brought forward any planning justifications why the new store cannot be located in the nearby Category 2 Rural Settlement and not construct a new store (which actually abuts the main road – ie. is served through the Gozo road network which could easily cater for the big tractor which appellant uses) on uncommitted land (ODZ). Furthermore, since appellant's holdings are scattered in many pieces of land, it is obvious that the tractor has to travel through the main roads of Gozo so as

to reach all of appellant's fields, hence, there is no justification why such a store/garage could not be located circa 125m away.

5.1.4 Re Reason for refusal No. 2: Policy 2.4A para 1 c clearly states that such agricultural stores are intended for intense agricultural activity and that land used for fodder does not qualify as relevant to justify the construction of new stores in ODZ. However, all the evidence as produced by appellant (receipts) are only related to fodder (Tiben) and hence, appellant has yet failed to justify and produce appropriate evidence of intense agriculture activity as requested by this policy.

5.1.5 Re Reason for refusal No. 3: From the evidence found in file, there are two existing rooms with a combined floorspace of 32.5sq.m. which could easily be transformed into storage areas. Hence, the requested new construction for an additional 40 sq.m. storage space is well above the maximum permissible according to policy. In this appeal, appellant is stating that one of the room is actually a pump room but the photo still shows that its height still permit its use as a store (No PA numbers have been quoted to justify its existence). The other room is now shown in these photos as having one of its corners demolished and in dire need of maintenance. Hence, in such a case, this room cannot be ignored as non existent but the necessary maintenance should be implemented without further delay and its interior used as storage (as was its original use) for the surrounding agricultural activity.

5.1.6 Re Reason for refusal No. 4: From the photos as found in file it is evident that the store is not located on arable land which is registered with the Agriculture Dept. The same policy states that fodder production does not justify the construction of a store room in ODZ, hence, since this particular field has not been used for intensive agriculture, this particular site does not qualify for the building of a new store.

5.1.7 Re Reason for refusal No. 5: Para 5 of Policy 2.4A states that applicants are required to produce a clearance from MRA clearly stating that the proposed site of the new store is not located within a distance of less than 5m from the edge of a watercourse. In this respect, it is insufficient for applicant to cite other clearances that may have been acquired. Unless this specific clearance is produced by applicant, this part of this policy will remain unattended.

5.1.8 Re Reason for refusal No. 6: Considering that applicant is not eligible for a new store in such an ODZ area and no valid arguments have been produced to justify why such a store (required to garage a large tractor which can easily travel through the existing road network of Gozo) cannot be located either in an area

within scheme or within the nearby Category 2 settlement, such development can only be described as unjustified urban development in ODZ.

5.1.9 Re Reason for refusal No. 7: Para 9 of the same policy states that such store rooms are not to exceed 3.2m from ground floor level. Any excess would result in a visual intrusion in the countryside and would note be in line with traditional one-storey rural rooms. The requested height of 3.7m is thus considered excessive and unjustified.

5.1.10 Re Reason for refusal No. 8: The Local Plan has identified this area as an area of potential significant agricultural value. The construction of such an unjustified store is thus considered to be contrary to the Local Plan land's designation and would result of loss of agricultural land for a development which could easily be located in other areas which do not necessitate the loss of good agricultural land.

5.1.11 Re Reason for refusal No. 9: The landscaping as proposed in latest plans Red 38A is not considered adequate since it consists only in the planning of two rows of trees which are not in conformity with the existing landscape of this particular area. Such orange and olive trees are more ideally situated in a garden or in places where other trees exists. In areas were no trees exists, any planning of trees for landscaping purposes should respect the existing landscape and other species which are normally found in the open countryside should have been proposed.

5.1.12 Re Reason for refusal No. 10: Since one of the areas tilled by applicant has been transformed from arable land into an animal farm, (subject to ECF 1079/99), this illegal activity and structures are still present on site and hence, their sanctioning should be requested. Furthermore, if applicant really needs an additional storage room for his daily agricultural activities, then, such a store could have been requested on this site (which is subject to ECF 1079/99) which is now committed by development. Such a proposal would ensure that applicant's requirements would be gathered in one site and not scattered in many fields. In this regard, reference is made to the DPA which had also stated that:

Structures circled in blue on document 15A are subject to enforcement action as per ECF1079/99 – "Ghandek zvilupp minghajr permess li jikkonsisti f'bini ta' hitan bil-kantun li jiffurmaw bitha, u bdil fl-uzu tal-art minn wahda agrikola ghal post fejn jinzammu l-annimali". Although these are not located on the site proper, agricultural storage could only be considered in relation to the applicant's arable farm. These illegalities are located within the applicant's farm as registered with the Department

of Agriculture, and therefore, the provisions of Circular PA2/96 apply, since the applicant has

control over these illegalities and should not be rewarded with any additional permissions before all illegalities on his registered farm are removed or sanctioned."

Fir-risposta tieghu tas-16 ta' Gunju, 2011, l-appellant, permezz ta' Dr Grech, jirrileva inter alia dan li gej:

"• Appellant already Owns Two Structures which can be utilised as Stores

The major bone of contention appears to be the fact that MEP A is arguing that appellant has already two rooms which can be used as stores and that therefore the surface area of these two rooms have to be taken into consideration when evaluating this development application. As already highlighted, one of the rooms which is being cited is a pump room. Its size and scope make it impossible for it to be classified as a store, let alone to be used as a store!! With reference to the second room, this is not appellant's property. It used to form part of a portion of land which was subject to a temporary emphyteusis which has now expired. So much so that now it is no longer registered on the Agricultural Departments LPIS system, as evidenced by the certificate annexed as Document G 1. With all due respect the argument that subsequently appellant will request the reconstruction of these two rooms with the result that he would have acquired more rooms than the surface area permissible by the policies is mere supposition and with all due respect it does not make sense. MEPA will always retain the right to refuse such an application, had this to be submitted.

The issue as regards the maximum allowable storage space for agricultural stores was recently dealt with in a decision given by this Tribunal. The Tribunal remarked that:

"Meta wiehed jigi biex jifli l-policies li hemm fil-PDG, Agricultural Farm Diversification and Stables, December 2007, dwar l-ispazji massimi li ghandhom jinghataw bhala agricultural stores wiehed jinnota li dawn jidhru li huma ibbazati fuq il-logika tradizzjonali ta' 'kamra fl-ghelieqi' li normalment kienet tkun ta' dimensjonijiet zghar hafna ghaliex fl-antik il-bdiewa ma kienx ikollhom ingenji kbar biex juzaw fix-xoghol taghhom." .

The Tribunal further underlined that planning policies should be consistently updated, I thus implying that they should never be considered hard and fast rules.

Indeed in this particular case reported in Malta Today edition of the 12th June 2011, the Tribunal allowed the construction of an agricultural store which exceeded the 40square metre limit.

• Agricultural Activity

From the documents submitted, it is quite clear that appellant is involved in intense agricultural activity since he tills a substantial amount of land and he grows large amounts of fodder. Recently he managed to acquire under title of lease from the government of Malta a further portion of land situated in "Ta Dimnija", Part 2, Victoria. Originally the land was registered in appellant's mother's name and it was tilled by herself and her husband. However, in view of the couple's old age (as evidenced by the copies of the attached ID cards - Document G 2), appellant's mother decided to cede her rights in favour of appellant (Vide Documents G 3 & 4). This portion of land therefore needs to be added to the other ones which are currently being tilled by appellant.

• Clearance from MRA

The Malta Resources Authority vetted the application upon MEP A's request and it gave thumbs up for this application. This emerges clearly from the Development Permit Application Report dated 1 st September 2009? Even if one were to argue that this clearance was not obtained, appellant has submitted adequate proof by means of a site plan indicating the nearest water-course to the proposed development. This is more than the established five-metre threshold. Without prejudice to the above, there should be no obstacle in approving the said application nonetheless subject that the necessary MRA clearance is obtained before construction works are undertaken. After all a MEP A permit does not exonerate applicant from obtaining other relevant permits from other authorities and MEPA in terms of article 69(3) of Chapter 504 has the power to impose any condition which it deems appropriate.

• The Height of the Requested Store

Applicant is requesting permission to build a store of 3.7m in height for the simple reason that the tractor which applicant is proposing to house within the precincts of this store exceeds the 3.2metre mark. Photographic evidence as well as the log-book of the tractor was submitted and this as per the DCC's Board's request during one of its hearings. Indeed the DCC Board had given the impression that on

submission of the requested documentation, the height of the store would not remain a disputed issue.

• Enforcement Notice 1079/99

MEPA also quotes the provisions of Circular PA 2/96 as a further justification why this permit should not be issued. Appellant contends however that the provisions of Circular P A 2/96 do not apply in this case. First of all the owner of the property subject of enforcement 1079/99 is Francesca Saveria Sultana, appellant's mother. Appellant does not own this property as evidenced by the searches submitted. Appellant simply ended up involved in this whole enforcement saga simply because he had been authorised by his mother to represent her and take care of all MEPA related matters in view of her old age.

Secondly, the site subject to the enforcement action 1079/99 is not the same site referable to this planning application. This should come out clearly when comparing the site plan of this planning application with that attached to the enforcement notice. The two sites are different and distant from each and this is even acknowledged in MEPA's own report. Consequently any existing illegality on a different site should not prejudice the present application which concerns a completely different site.

• Landscaping

The landscaping scheme being suggested is in full conformity with MEPA's environmental planning for the area. Appellant is proposing to shield the store with a series of olive trees as indicated in the site plans submitted. Olive trees can be used for landscaping purposes in ODZ areas in terms of applicable MEP A polices. Once again and without prejudice to the above, appellant has no problem in changing the proposed landscape scheme using some other species of trees if MEPA will not be accepting olive trees. He is quite flexible in this regard and consequently the landscaping issue should not be used as an insurmountable obstacle justifying the refusal of this planning application."

Fit-tieni risposta tieghu tat-18 ta' Lulju, 2011, Mario Scicluna ghall-Awtorita' jesponi dan li gej:

"Re argument of the existing two rooms, the Authority makes reference to photos in file and especially to Reds 44 which show the entity of two rooms which could be converted to house the tractor which appellant is claiming needs to be garaged. Furthermore, photos of the tractor as submitted by appellant in doc 65 shows that this large tractor is also a full licensed vehicle with normal registration plats so as to travel through the road network as normal vehicles do. Hence, considering the size and travelling capabilities of this tractor, there is no real need for the construction of a new garage / store in such an ODZ area and which could easily be located in the nearby Category 2 Settlement (which is only 125m away from the proposed garage) or in a normal garage within zone.

As regards to the quote from a recent Tribunal decision, the Authority disagrees that the Tribunal somehow changed the policy for granting stores in ODZ but in its detailed decision, the Tribunal justified the specific circumstances which led the Tribunal to accept that appeal. A quote from part of a decision cannot be interpreted as if the Tribunal has its own policies and in many other decisions, the Tribunal insisted that the approved policies (unless being officially amended) should be adhered to.

As regards to the enforcement notice, it is to be noted that this enforcement has also been issued against appellant and no appeal against this enforcement has been lodged.

The landscaping issue is also unsolved since the proposed planting of trees as per Red 38A is not in line with the natural landscape of this area but resembles more that of a formal garden.

Furthermore, the Tribunal is informed that justification for a garage for tractor in such ODZ is also not permissible by Policy 2.4A since para C clearly states that for registered land to qualify for the construction of an agricultural store, such land must not be cultivated for fodder since such farming activity is not considered as an intensive activity and can easily be worked by machinery which is brought on land only a few times per season. In fact, the photo of the tractor itself shows that this type of machinery can easily travel in the road network of Gozo and hence there is no genuine need for such a tractor to be garaged in the immediate vicinity of the land which it tills. In fact, para C states:

(c) the applicant’s registered arable farm occupies a total land area (i.e. arable agricultural land) of at least 5 tumoli in size, excluding land that is used for the production of fodder or which has been used for the production of fodder during the last 2 consecutive years prior to the application;

Re other issues presented in last submission, the Authority requests the Tribunal to take note of the DPAR and relative documentation in file."

Ra wkoll id-decizjoni ta' dan it-Tribunal diversament ippresedut tat-13 ta' Ottubru 2011;

Ra wkoll is-sentenza tal-Qorti ta' l-Appell tas-26 ta' Gunju 2012 li hassret id-decizjoni tat-Tribunal tat-13 ta' Ottubru 2011 u rremettiet l-atti lura li dan it-Tribunal sabiex l-appell jerga' jinstema' mill-gdid;

Ra l-verbal tal-14 ta' Gunju 2013 fejn it-Tribunal zamm access fis-sit mertu ta' dan l-appell. Waqt l-access gie kkostatat li s-sit in kwistjoni jigi fit-triq mad-dawra tac-Cittadella, li kien hemm ghalqa pjuttost mdaqqsa tal-appellant u li kien qed jigi propost li jinbena agricultural store li jmiss ma' appogg ta' dar. Mill-att ta' zvilupp, fl-inhawi, ma kien hemm ebda zvilupp ghajr ghal dar solitarja li tidher li kienet inbniet iktar minn 25-30 sena ilu;

Ra n-nota ta' sottomissjonijiet tal-Avukat Dottor Carmelo Galea ghall-appellant ipprezentata fis-17 ta' Lulju 2013 li taqra kif gej:

"In the course of the sitting held on 14th June 2013 appellant refered to the fact that a permit for an agricultural store had been issued earlier on this year in an area of High Landscape sensitivity. The relative planning application reference is PA 1142/12. Appellant l sattching as Docs JPG1 and JPG2 MEPA's decision notice as well as the case officer's report. In overturning the recommendation of the case officer, the Board noted that the site was situated on the periphery of a high landscape value designation area. In addition the site was surrounded by a telecom antenna, an air monitoring station and Enemalta lines and transformers. Appellant is also submitting a site plan marked Doc JPG3 indicating the exact position of the site where this agricultural store was approved. The EPC also insisted that adequate landscaping was also provided via the planting of olive tress. A copy of the Board minutes in relation to PA 1142/12 are attached and marked as Doc JPG4.

In so far as appellant is concerned, the agricultural store will be constructed adjacent to an existing blank party wall belonging to third parties and not in the middle of his field. Secondly, adequate landscaping will be provided. A look at the plans reveal that appellant will be planting numerous olive trees, just as in PA

1142/12. These will have the effect of shielding completely the proposed agricultural store. Another important aspect to highlight is that the site falls outside the Citadella buffer zone as clearly shown in MEPA's own policy Map. In fact the site shown in red on the attached policy MAP marked as Doc JPG5 is situated opposite the buffer zone, adjacent to an existing building.

Following the last sitting, appellant has also managed to trace another permit for the construction of an agricultural store which was granted recently. Just as in the application mentioned above, this permit was also approved by the EPC and this notwithstanding that the case officer had recommended a refusal since the store was situated in an area of high landscape sensitivity. The reference is to PA 1529/12. This application even allowed the construction of an underground electricity service duct to have electricity installed in the same agricultural store. A copy of the case officer's report as well as a copy of the decision notice are attached and marked as Doc JPG6 and JPG7. As a reason for overturning the EPC said that the store was situated in a low lying field adequately screened with trees resulting in a minimal visual impact (Board Minutes attached as Doc JPG8). The store has now been constructed and appellant is attaching as Doc JPG9 a photo showing the store approved by virtue of PA 1529/12. No need to say that compared to the store which is being proposed by appellant, the store approved by virtue of PA 1529/12 has a more visual impact. As can be clearly seen by the same photo the store is situated in the middle of an agricultural area and not adjacent to an existing building.'';

Ra d-dokumenti kollha annessi ma' dik in-nota;

Ra l-permess PA 1142/12 annessa man-nota tal-Avukat Dottor Carmelo Galea bhala Dok. JPG 1. Minn dan il-permess jirrizulta li s-sit mertu tal-permess PA 1142/12 jinsab fi Sqaq Ta' Cini, l-Gharb, Ghawdex u ghalhekk m'huwiex fil-vicinanzi immedjati tas-sit mertu ta' dan l-appell. Fil-fatt fis-sit mertu ta' dan l-appell ma hemm l-ebda zvilupp ghajr ghal dar antika. L-istess konstatazzjonijiet qed jaghmel dan it-Tribunal fil-kaz ta' PA 1529/12 fejn il-permess inhareg ghal sit fi Ta' Mgarr ix-Xini, Ghajnsielem, Ghawdex – ara dokument JPG 6 anness man-nota tal-Avukat Carmelo Galea. Peress li dawn iz-zewg siti muniti bil-permess mhumiex fl-inhawi tas-sit mertu ta' dan l-appell ftit li xejn jista' jkollhom rilevanza ghal dan it-Tribunal peress li bl-ebda mod ma jista' jinghad li s-sit mertu ta' dan l-appell li jinsab fir-Rabat, Ghawdex, jinsab committed bi zvilupp, anke jekk simili, f'siti fl-Gharb u fl-Ghajnsielem;

Ikkunsidra ulterjorment:

Illi l-proposta prezenti hi to construct agricultural store fi sit f'ta' wara s-Sur, Rabat, Ghawdex. Is-sit in kwistjoni, ghajr ghal dar antika, jikkonsisti f'art agrikola li mhix mittiefsa b'xi forma ta' zvilupp. Terga' l-appellant, ghalkemm qed jahdem medda ta' art ta' madwar 101 tumoli, huwa mhux il-propjetarju ta' dik l-art mertu ta' dan l-appell u ghalhekk ma jistax jibbenefika mill-policies relevanti li jippermettuh li jibni agricultural store li kieku huwa kien is-sid tal-art. Ghalhekk, b'differenza miz-zewg permessi citati mill-appellant fl-Gharb u Ghajnsielem, mhux biss wiehed irid ihares lejn id-dintorni tas-siti muniti b'dawk il-permessi imma anke lejn il-policies applikabbli.

Fil-kaz tal-appell quddiem dan it-Tribunal, l-appellant jahdem numru ta' eghlieqi izda dawn huwa sitwati 'l boghod minn xulxin u mhumiex ikkoncentrati fil-vicinanzi tas-sit mertu ta' dan l-appell. L-attivita' tieghu fis-sit mertu ta' dan l-appell ghalhekk ma tistax titqies bhala intensive agricultural activity. Wiehed irid dejjem jiftakar li l-izvilupp propost jinstab barra miz-zona permessa ghall-izvilupp u ghalkemm huwa minnu li f'din iz-zona jinghataw permessi ghal agricultural store, l-appellant ma jikkonformax mal-policies vigenti li jippermettuh li jinghata tali tip ta' permess. Terga', il-kobor tal-agricultural store propost, ta' 40.5m.sq. flimkien maz-zewg stores ezistenti ta' 32.5m2, jeccedu l-massimu ta' 40m.sq. permessibbli mill-policy – ara t-tielet raguni ghar-rifjut. Dan it-Tribunal huwa sodisfatt li l-policies li gew citati fic-cahda tal-permess ghall-izvilupp japplikaw ghal dan il-kaz u ghal dawn il-motivi, dan it-Tribunal qed jichad dan l-appell u jikkonferma r-rifjut tal-permess approvat mill-Kummissjoni ghall-Kontroll tal-Izvilupp.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal sahaq li l-applikant ma gabx prova li hu sid l-art biex jibbenefika mill-policy 2.4 Agricultural, Farm Diversifiction and Stables tal-2007. Invece l-artikolu 2.4(4) jistipula bhala rekwizit li l-applikant ikollu art registrata mad-Dipartiment tal-Agrikoltura u li l-binja ma tkunx aktar minn kilometru l-boghod mill-art li jahdem. It-Tribunal agixxa ultra vires r-rekwiziti tal-policy u kwindi d-decizjoni ghandha tigi revokata. In oltre f'argument li t-Tribunal ghamel dwar l-kobor ta' strutturi ohra tal-appellant, ha in konsiderazzjoni struttura fuq art li lanqas hi proprjeta tal-istess applikant. Dan ma kienx jaghmlu kieku l-interpretazzjoni li t-Tribunal ghamel tal-policy 2.4 kienet korretta.

Hu minnu illi t-Tribunal ezamina diversi aspetti ta' ippjanar ta' din il-proposta u kif tali proposta tippekka minn diversi aspetti tal-policy 2.4 Agricultural, Farm Diversification and Stables tal-2007. Hu minnu wkoll li ma sar ebda aggravju fuq dawn l-aspetti tal-vertenza li wahedhom allura suppost jikkonfermaw id-decizjoni li ttiehdet mill-Awtorita.

Pero din il-Qorti tqis li tali argumentazzjoni, kif del resto hu l-argument principali tal-Awtorita, ma jrendix gustizzja skond il-ligi bejn il-partijiet. Il-kwistjonijiet trattati mit-Tribunal li jirraforzaw l-opinjoni tieghu li l-appell quddiemu kellu jigi michud isegwu l-ewwel paragrafu, u li din il-Qorti tqis kien il-motivatur principali u li wahdu kien jimmilita kontra l-proposta tal-applikant. It-Tribunal bla mezzi termini jibda l-konsiderazzjonijiet tieghu fuq il-premessa bazilari li l-applikant ma jistax jibbenefika mill-policies relevanti (senjatament 2.4 Agricultural, Farm Diversification and Stables) ghax mhux sid l-art li fuqha qed jitlob li jibni l-istore. Imbaghad jorbot din il-kostatazzjoni bazata fuq fatt u li ghaliha l-policy qua ligi teskludi l-applikazzjoni taghha, ma' zewg permess citati mill-appellant.

Sfortunatament din hi applikazzjoni totalment skorretta tal-ligi u jekk tithalla kif inhi din il-Qorti ma ghandhiex ic-certezza morali li t-Tribunal kien jasal ghall-istess konkluzzjoni li wasal ghaliha bl-argumenti l-ohra li ngiebu wara kontra l-approvazzjoni tal-applikazzjoni. L-Awtorita stess tikkwota l-paragrafu 4 tal-policy 2.4 bhala raguni ta' rifjut mhux pero ghax l-applikant mhux sid l-art li fuqha ried jibni l-istore izda ghax l-istore propost 'is now located on arable land registered in the name of applicant'. Ma hemm ebda htiega ta' prova ta' titolu ta' proprjeta fuq l-art kif kunsidrat mit-Tribunal u dan irendi din il-parti tal-gudikat hazin u kontra l-ligi.

Hu ferm facli ghal Qorti li tinjora dan l-izball ta' ligi u tissoferma ruhha fuq il-konsiderazzjonijet l-ohra mhux appellati. Pero l-Qorti ma tistax taghmel dan ghax dan l-argument mressaq mit-Tribunal kien wiehed li anki mill-mod kif progettat fid-decizjoni inghata importanza primarja u kwindi jpoggi l-bqija tal-gudikat f'dubju.

Ghalhekk qed jintlaqa' l-aggravju fuq din ir-raguni.

Decide

Ghalhekk il-Qorti taqta’ u tiddeciedi billi tilqa’ l-appell ta’ George Sultana, tirrevoka d-decizjoni tat-Tribunal ta’ Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta’ Novembru 2013, u tirrinvija l-arti lura lit-Tribunal biex jerga’ jiddeciedi l-appell in linea ma’ dak deciz f’din is-sentenza tenut kont ta’ dak li fuqu appella l-appellant. Bl-ispejjez ghall-Awtorita.

< Sentenza Finali >

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