



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-27 ta' Novembru, 2014

Appell Civili Numru. 36/2014

Emanuela Vella

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Emanuela Vella tat-2 ta' Lulju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-12 ta' Gunju 2014 kontra l-applikazzjoni PA 1922/08 'to sanction construction of agricultural store/tool room which was erected as a replacement to a pre 1967 rural structure which was demolished through implementation of PA 5508/98';

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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:-

Dan huwa appell minn rifjut tal-Awtorita' tal-applikazzjoni PA 1922/08 'To sanction construction of agricultural store/tool room which was erected as a replacement to a pre-1967 rural structure which was demolished through the implementation of PA 5508/98', b' decizjoni tas-26 ta' Mejju, 2011.

Ir-ragunijiet li ghalihom l-Awtorita' irrifjutat l-applikazzjoni PA 1922/08 kienu s-segwenti:

"1. The sanctioning of the agricultural store, runs counter to Policy 2.4A (1) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the applicant holds only 0.1.7 tumoli of land.

2. The proposed development also runs counter to Policy 2.4A (4a) of Policy and Design Guidance on Agriculture, Farm Diversification and Stables, since the site in question is registered on third parties.

3. The proposed development runs counter to Policy 2.4A (6) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), which does not permit such development within a protected, scheduled and designated area (AEI; SSI; Area/Site of Archaeological Importance (including Class A and B buffer zones); AHLV).

4. The proposed development runs counter to Policy RCO 4 of the Structure Plan for the Maltese Islands (December 1990), which prohibits development in rural areas that will adversely affect the scenic value of an area.

5. The site is located within a Special Area of Conservation of International Importance. The proposed development is not necessary to the management of the Special Area of Conservation, nor does it seek to improve the Special Area of Conservation. The proposal would adversely affect the integrity of the Special Area of Conservation and therefore conflicts with Article 19.1 of Legal Notice 311 of 2006."

Fl-appell taghha l-appellanti, permezz tal-Perit Attard, taghti r-ragunijiet tieghu ghal dan l-appell billi tghid:

"Reference is made to the above mentioned development application and to the Development Permit Application Reconsideration Letter of Refusal dated 2nd February 2011. Whilst attaching the relevant payment of €186/35, a copy of the letter of refusal and copy of the site plan, on behalf of my client I would like to forward her request in order to appeal on basis of the following arguments:

1. The existing rural structures to be sanctioned cannot be considered as new structures since these were built in replacement of pre 1967 structures – occupied by my client – store/room to be sanctioned is less than the area of the structures which used to exist prior to demolition through the implementation of PA 5508/98. In fact these structures were constructed prior to 1967, as indicated in the submitted true copy of part of the 1967 survey sheet, and used to cover a total floor space of some 40 square metres whilst the existing one covers an area of 27 square metres. Copies of photographs of the pre 1967 rural rooms which have been demolished and the site where the replacement rooms have been erected and are being submitted, but no mention has been made in the case officer's report for some reason or another.

2. From an aesthetical point of view, one should note that these structures lies just between the newly built camping club and the shanty building which form part of the summer residences of Torri l-Abjad Bay. With regards to aesthetics, this rural structures is much in character with the area than the surrounding ones.

3. According to Department of Agriculture, site was registered on the applicant's name when this application was submitted way back in 2008. In fact the Department of Agriculture did not object for such development.

4. MEPA cannot apply present regulations retrospectively to the detriment of applicant. It is manifest that the former rooms were removed by the government,

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through the blessing of MEPA, and the matter formed the merits of a Constitutional Court case, which stated that the government had overstepped its rights according to law. The applicant is entitled to have the rooms in substitution according to the prevailing situation then existing before the rooms were evicted with MEPA blessing in 1998.

5. The room is needed to house the pump for water extraction, and this according to the committed usage of part of the land. Any change would be illegal and arbitrary.”

Fir-rapport taghha l-Awtorita tghid is-segwenti:

“5.1.1 In this request for appeal, appellant is stating that this request for development is justified in view that the proposed development satisfies all the requisites of the relevant policies.

5.1.2 However, after noting all of appellant’s arguments as presented in this request for appeal the Authority disagrees with these justifications and states that the development as proposed breach the relevant policies as will be discussed below.

5.1.3 Reference is made to the assessment carried out in the DPAR. This included the following:

The sanctioning of an agricultural store/tool room which has been erected as a replacement to a pre-1967 rural structure which has been demolished through the implementation of PA 5508/98 is being assessed mainly in relation to Policy NWLA 02 of the North West Local Plan and to Policy 2.4A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables.

Sanctioning of an agricultural store

The agricultural store (area: 28m² and height: 3m) is proposed to be sanctioned, (refer to Documents 22A and 22B).

In the attached PA5508/98 there was no indication or agreement about the demolition/reconstruction of the existing tool room, therefore this proposal is considered as a new tool room according to the eligibility and criteria of Policy 2.4A

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of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007).

To be eligible for the construction of an agricultural store, Policy 2.4A (1) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), requires that the applicant is registered as a farmer and that the site in question is registered with the Department of Agriculture on the applicant. Furthermore, the applicant must hold at least 5 tumoli of land. The Department of Agriculture indicated that the applicant is registered as a part-time farmer, holding 0.1.7 tumoli of land, registered on his name, (refer to Doc 29). In this regard, this proposal is objectionable in principle, since the proposal runs counter to Policy 2.4A (1) of Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the applicant holds less than 5 tumoli of land. Moreover, this proposal also runs counter to Policy 2.4A (1) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the Department of Agriculture objects for the proposed sanctioning of the agricultural store as land tilled by applicant does not justify the proposed development, (refer to Doc 29). Furthermore, the Department of Agriculture indicated that the site in question is not registered on the applicant, therefore this also runs counter to Policy 2.4A (4a) of Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007).

Environmental Constraints

The site in question lies within an Area of Ecological Importance (Degree of Protection: 3); Special Area of Conservation: International Importance; Special Protection Area and within an Area of High Landscape Value. In this regard, the sanctioning of the agricultural store runs counter to Policies RCO 2, RCO3, RCO 4, RCO 8 and RCO 9 of the Structure Plan for the Maltese Islands, December 1990, which prohibits developments in rural areas which will adversely affect the scenic value of an area and do not permit developments that will not harm the ecological, archaeological, and scenic value of the Area. This proposed development, also runs counter to Policy 2.4A (6 b and c) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), which requires that agricultural stores should not be located within a scheduled, listed, designated or protected area; (Area of Ecological Importance (Level 1/Level 2), Site of Scientific Importance (Level 1 / Level 2); Area/Site of Archaeological Importance (including a buffer zone under Class A and B) and an Area of High Landscape Value. Moreover, this proposal also runs counter to Policy NWLA 02 of the North West Local Plan, which states that MEPA will not permit the development of any inappropriate structures or activities which in the opinion of the Authority would adversely affect designated areas. In this regard, this proposal is objectionable in principle since it does not

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satisfy the criteria listed in Policy 2.4A (6) and consequently the agricultural store cannot be sanctioned.

5.1.4 As regards to the arguments of the appeal itself, the Authority disagrees with appellants' statement on various accounts and will be explained below.

5.1.5 Appellant argues that development under appeal cannot be considered as a new structure since it was built as a replacement of a pre-1967 structure which had been occupied by the Appellant. This pre-1967 structure had been demolished through the implementation of the approved PA 5508/98 since it formed part of the approved site. The camping site was subject to various studies and can be said that it is a unique project. Furthermore, the decision date for the camping site dates 9/10/2001 which is 6 years prior to the approved document Policy Design Guidance: Agriculture, Farm Diversification and Stables 2007. The development under appeal was constructed as a replacement to this pre-1967 structure and is subject to the policies listed in the Policy Design Guidance: Agriculture, Farm Diversification and Stables 2007.

The Department of Agriculture at Document 29 indicates that the site under appeal is not registered under the Appellant's name. Furthermore, the Appellant has only 0.1.7 tumoli registered on her name which does not exceed the minimum threshold of 5 tumoli stipulated in the Policy Design Guidance: Agriculture, Farm Diversification and Stables 2007. All the information submitted by the Department of Agriculture indicates that Policy 2.4A (3) & Policy 2.4A(4) of the Policy Design Guidance: Agriculture, Farm Diversification and Stables 2007 is being run counter to, since these state the following:

Policy 2.4A (3): no building for storage purposes will be permitted on arable farms of less than 5 tumoli.

Policy 2.4A(4):The proposed development is locate don arable land registered in the name of the applicant with the Department of Agriculture and all of this land is located within a radius of not more than 1 km from the footprint area of the proposed building.

Figure 1: Aerial photo submitted by the Department of Agriculture as per Document 29. (Yellow indicates site boundary under appeal; Red indicates boundary of site registered on the Appellant's name)

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Figure 2: Block Plan submitted by Architect as per Document 20A indicating the position of the pre-1967 structure and the position of the structure under appeal

5.1.6 The appellant states that the structure under appeal is needed to house the pump for water extraction. This runs counter to the Malta Resources Authority's consultation reply Document 9, which states the following:

A clear commitment is therefore required from the applicant stating that the tool room will be used exclusively for the storage of agricultural implements and NOT to house electrical pumping equipment.

5.1.7 Without prejudice to the above technical arguments the Authority has to inform the Tribunal that this site is a Scheduled Site (with Government Notice) and hence, according to the present law and as per Article 70 in connection with Schedule 6, no sanctioning of an illegal development can be considered on Scheduled Sites. Therefore, the Authority is re-iterating that this proposed sanctioning cannot be accepted even on this account and the Tribunal is asked to decide on this matter prior to further considerations on technical grounds.

Width of door is not wide enough for the structure to be used as an agricultural store, as machinery would not be able to pass.

Figure 3: Photo submitted by Architect as per Document 1B"

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghas-sanzjonar ta' agricultural store/ tool room li inbena biex jissostitwixxi struttura rurali ta' qabel l-1967 li kienet twaqqghet bil-permess PA 5508/98.

L-agricultural store li qed jintalab li jigi sanzjonat ghandu superfici ta' 28 m.k. u gholi ta' 3 metri. Il-hitan esterni huma tal-gebel tal-kantun antiki u l-aperturi huma tal-injam.

Is-sit, li huwa ODZ, jinsab gewwa Level 3 Area of Ecological Importance (GNO 400/96), Special Area of Conservation: International Importance u Special

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Protection Area. In-North West Local Plan jikklassifika din iz-zona bhala Area of High Landscape Value.

Is-sit huwa milqut minn Enforcement Notice, ECF 311/05, li hareg fuq V. Vella.

Din l-applikazzjoni giet rifjutata peress li l-istore:

- Jikser il-policy 2.4A (1) tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables peress li l-appellant kellu inqas minn tomna wahda ta' art agrikola;
- Jikser il-policy 2.4A (4a) tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables peress li s-sit in ezami huwa registrat fuq terzi;
- Jikser il-policy 2.4A (6) tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables li ma' tippermetthiex zvilupp gewwa zoni skedati;
- Jikser il-policy RCO 4 tal-pjan ta' struttura li ma' tippermetthiex zvilupp gewwa zoni li jkollhom scenic value;
- Jikser l-Artiklu 19.1 tal-Legal Notice 311/06.

L-argumenti li tqajmu mill-partijiet fil-kors tas-smiegh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

L-appellanti tissottometti inter alia li:

- L-izvilupp li qed jintalab is-sanzjonar tieghu m' ghandux jigu kkunsidrat bhala zvilupp gdid peress li l-kamra kienet inbriet biex tissostitwixxi kamra ta' qabel l-1967 u in fatti il-qies tal-kamra l-gdida huwa inqas minn dak tal-kamra originali. Il-case officer ma' jsemmi xejn dwar dan;
- L-estetika mhix qed tigi effettwata mill-kamra in ezami u dan speċjalment peress li s-sit jinsab vicin il-kmamar tal-bajja tal-Mellieha;
- Skond id-Dipartiment tal-Agrikultura s-sit huwa registrat f-isem l-appellant;
- L-Awtorita' ma tistax tapplika r-regolamenti retroattivament. Huwa car li l-izvilupp originali tneha mill-Gvern bl-approvazzjoni tal-Awtorita' u dan gie kkonfermat mill-Qorti Kostituzzjonali.

Fir-rapport taghha l-Awtorita' telabora izjed fuq ir-reasons for refusal u zzid inter alia li:

- Fil-permess PA 5508/98 ma' tissemma mkien il-kamra originali;

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- Skond id-Dipartiment tal-Agrikultura l-appellanti hija registrata bhala part-time farmer u ghandha inqas minn tomna ta' art agrikola registrata fuqha u ghalhekk id-dipartiment qed joggezzjona ghal din l-applikazzjoni;
- Skond il-Malta Resources Authority li l-kamra ma' tistax tintuza ghall-apparat elettriku tal-pompa izda biss bhala store ghall-ghodda agrikoli;
- Is-sit in ezami huwa skedat u ghahekk japplika l-Artiklu 70 u Skeda 6. F' dan is-sens l-Awtorita' tgħid li l-Art 70 (1) u Skeda 6 (2) tal-Att X tal-2010 jagħmluha cara li ebda zvilupp ma' jista jigi sanzjonat f' zoni skedati.

L-Artiklu 70(1) tal-Kap. 504 jitratta dwar 'Supplementary Provisions regarding permissions and licences'. Minn dan l-Artiklu huma eskluzi pero' l-kazijiet elenkati fis-Sitt Skeda annessa mal-Att – fosthom dik numru 2 – applikazzjoni biex jigi regolarizzat zvilupp fi propjeta' skedata. L-applikazzjoni prezenti qed titlob li jigi sanzjonat agricultural store li nbena f' area li llum hi skedata.

Skond dan l-artikolu ghalhekk il-proposta ghas-sanzjonar tal-agricultural store in ezami ma tistax tigi awtorizzata.

L-appellanti ma' taghti ebda informazzjoni fl-appell tagħha dwar l-istatus tagħha bhala operatur agrikolu, kemm tahdem artijiet agrikoli, kemm ilha topera f' dan is-settur, x' tip u x' kwantita ta' produzzjoni agrikola għandha, ecc. In fatti d-Dipartiment tal-Agrikultura jiddikjara li waqt li l-appellanti hija registrata bhala part-time farmer, hija għandha inqas minn tomna art registrarata fuqha u izjed minn hekk li s-sit in ezami mhux registrat fuqha. Jirrizulta wkoll li ma' giex ikkonfermat li l-istruttura originali kienet twaqqgħet bil-permess PA 5508/98. Għalhekk, indipendentement mill-problema tas-sanzjonar li għandha l-appellanti u li giet ttrattata sopra, it-Tribunal ma' jistax jagħmel valutazzjoni fil-mertu tal-bzonn li jista jkollha l-appellanti għal dan store agrikolu.

It-Tribunal, għalhekk qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut mahrug mill-Awtorita' ta' l-applikazzjoni PA 1922/08 'To sanction construction of agricultural store/tool room which was erected as a replacement to a pre-1967 rural structure which was demolished through the implementation of PA 5508/98', tas-26 ta' Mejju, 2011, u dan peress li l-proposta ta' sanzjonar ta' zvilupp illegali f' area skedata, hi in kontravvenzjoni tal-Artiklu 70 u sitt skeda annessa mal-Att X tal-2010, Kap. 504.

Ikkunsidrat

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L-aggravji tal-appellant huma s-segwenti:

1. Dritt vestit f'kamra ma jistax jigi mcahhad. Bhala fatt jirrizulta illi l-kamra kienet gia ezistenti u twaqqghet biex minflokha ittellghet ohra mhux fl-istess post peress li z-zona kienet wahda agrikola bi skopijiet arkeologici u xenici u ttiehdet biex sar camping site. L-Awtorita zbaljatament ikkonsidrat il-binja bhala wahda gdida meta fil-fatt kull ma sar hu 'replacement' ta' kamra ma' ohra;
2. L-uzu tal-art biex jittella' l-ilma kien gia kommess u jehtieg pompa biex jittella' li ghandha tigi protetta mill-elementi billi titqieghed fil-kamra li tintuza' wkoll ghal godda agrikola. Iz-zona hi dizabitata u minnha jghaddu n-nies li jistghu ma jurux rispetta lejn il-proprjeta tal-appellant;
3. Id-dipartiment tal-agrikoltura ma kellux oggezzjoni ghal kamra ta' 27 metru kwadru u l-oggezzjonijiet tal-Awtorita huma arbitrarji u soggettivi. Ir-raba tinhadem u ebda esplorazzjoni arkeologika ma saret apparti li hi adebita ghal camping site bil-hsara li tista' tigi kommessa. L-istess jinghad ghall-argument tal-iskop xeniku meta qribha gew permessi strutturi ohra fiz-zona.

L-aggravji

Dawn l-aggravji jimmeritaw jigu kunsidrati pero mhux wahedhom u fl-astratt. It-Tribunal iddecieda illi l-Awtorita kellha ragun ma taghtix il-permess mhux minhabba ragunijiet ta' ppjanar biss izda partikolarment u primarjament ghax it-talba ghal sanzjonar mitlub mill-applikant kien jivvjola l-artikolu 70 u s-Sitt Skeda tal-Kap. 504. Dan l-artikolu moqri mas-Sitt Skeda jispecifica li ebda sanzjonar ma jista' jsir f'art li hi skedata. Jidher illi l-appellant mhux jikkontesta li l-art hi skedata. It-Tribunal jikkonferma illi s-sit jinsab fl-livell 3 Area of Ecological Importance (GNO 400/96), Special Area of Conservation: International Importance u Special Protection Area. In-North West Local Plan jikklassifika din iz-zona bhala area of high landscape value. Dan kellu fil-fehma tat-Tribunal jirrendi applikabbli l-artikolu 70(1) u Seda 6 (2) fejn sanzjonar f'zoni skedati hu projbit. Tali artikolu tal-ligi hu mandatarju u ebda konsiderazzjoni ta' natura ta' ppjanar ma jistghu jsiru kontra dak li espressament trid il-ligi. It-talba tal-appellant hi ghal sanzjonar. Minnha nfisha din timporta li hemm xi haga li mhix koperta b'permess, u ghalhekk l-appellant ma jistax jitlob li tigi sanzjonata ebda struttura li

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tmur kontra skedar, u kull konsiderazzjoni fattwali u ta' ppjanar u anki ta' bzonni personali fit-talba ta' sanzjonar ma jistghux jigu kunsidrati sakemm iz-zona tibqa' hekk skedata.

Ghalhekk it-tieni u tielet aggravji qed jigu michuda.

Madankollu l-Qorti tqis li tqajjem punt interessanti fl-ewwel aggravju. L-appellant isostni illi hu ghandu dritt kwezit ghax kamra kienet ezistenti u twaqqgħet bil-permess PA 5508/98. Minflokha saret il-prezenti kamra li hi izghar u ftit il-boghod mill-istruttura pre ezistenti. Dan kollu sehħ qabel il-bdil tal-ligi. Harsa pero lejn l-atti juri illi ma ngiebet ebda prova illi l-permess PA 5508/98 kien jinkludi l-bini ta' din il-kamra li qed jintalab is-sanzjonar tagħha. Kieku kien hekk ma kienx ikun hemm bzonni ta' applikazzjoni għal sanzjonar. La darba jidher li fil-permess PA 5508/98 gie awtorizzat it-twaqqiegh tal-kamra ezistenti, kull struttura għda tinbena fejn tinbena ma tistax tintuza bhala argument li hemm dritt vestit. Dak id-dritt cioe tal-kamra antika gie obliterated bil-permess PA 5508/98 u ma jidherx li saret xi kondizzjoni jew awtorizzazzjoni fl-istess permess għal bini ta' kamra ohra. Tali prova fil-fatt ma saritx mill-appellant u għalhekk dan l-aggravju għalkemm interessanti fl-aspett legali tieghu ma jsibx sostenn fil-fatti u għalhekk ma jistax jigi kunsidrat bhala aggravju li jimmerita jigi milqugh.

Decide

Għalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Emanuela Vella u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ppjanar tat-12 ta' Gunju 2014, bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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