MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO

ONOR. IMHALLEF
JOSEPH D. CAMILLERI

ONOR. IMHALLEF
JOSEPH A. FILLETTI

Seduta tas-27 ta' Gunju, 2003

Appell Civili Numru. 311/2000/1

Jimmy Vella

vs

Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp

Il-Qorti:

<u>I PRELIMINARI</u>

1. Illi permezz ta' Applikazzjoni Numru 1961/92, Jimmy Vella ("l-appellant") talab lill-Awtorita` ta' l-Ippjanar taghtih permess ta' zvilupp biex, f'sit f' Tat-Torba Street, Attard,

jibni *garage "for heavy duty machine repairs, adjacent to a garage approved for the parking of private cars"*.

2. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp ("il-Kummissjoni") kienet irrifjutat din l-applikazzjoni fis-26 ta' Frar 1996 ghal tmien ragunijiet elenkati minnha fir-rifjut relattiv.

3. L-appellant ressaq l-aggravji tieghu quddiem il-Bord ta' l-Appell dwar l-Ippjanar ("il-Bord) u talab ir-revoka tar-rifjut imsemmi u l-akkoljiment ta' l-applikazzjoni tieghu, taht dawk il-kundizzjonijiet li l-Bord ihoss necessarji li jimponi.

4. Id-decizjoni tal-Bord inghatat fl-1 ta' Settembru 2000. Biha l-appell gie michud u r-rifjut tal-permess mahrug mill-Kummissjoni gie kkonfermat wara li l-Bord ikkonsidra, *inter alia* hekk:-
"Ra Policy SET 11, SET 12, RCO 2, BEN 5, IND 6 u l-paragrafu 7.6 tal-Pjan ta' Struttura;

Ikkonsidra ulterjorment:

Illi l-Bord jaqbel mar-ragunijiet moghtija mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp fir-rifjut tal-permess liema ragunijiet jinsabu riportati a fol. 2 sa 4 ta' din id-decizjoni kif ukoll mal-motivazzjonijiet ta' dawn ir-ragunijiet li jinsabu a fol. 6 sa 14 ta' din id-decizjoni;

B'mod partikolari, l-Bord huwa tal-fehma li l-izvilupp propost jinsab barra miz-zona permessa ghall-izvilupp u f'*rural conservation area.* L-izvilupp propost mhux se jintuza ghall-fini agrikoli imma ghall-fini industrijali in kwantu l-appellant, skond l-appell, huwa d-dententur ta' licenzja ta' *heavy plant vehicles* u dan it-tip ta' zvilupp la huwa postu f'zona rurali u wisq anqas f'*rural conservation area*. L-izvilupp in kwistjoni ghandu jigi sitwat f'zona industrijali u ghalhekk dan il-Bord ma jara l-ebda raguni valida ta' ippjanar ghalfejn ghandu jiddipartixxi mill-*policies* tal-Pjan ta' Struttura u jaghti l-permess relattiv;

Ghal dawn il-motivi, l-Bord jichad l-appell u jikkonferma r-rifjut tal-permess mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp."

5. Din id-decizjoni tal-Bord qeghda tigi annessa bhala Appendici ma' din is-sentenza, sabiex tifforma parti integrali minnha u dana billi fiha elenkati ir-ragunijiet dettaljati tar-rifjut, ta' l-appell, kif ukoll is-sottomissjonijiet relattivi tal-kontendenti.

II L-APPELL

6. L-appellant ressaq l-appell tieghu minn din id-decizjoni quddiem din il-Qorti fl-14 ta' Settembru 2000. Wara li spjega r-ragunijiet tieghu ghaliex sar l-appell, huwa talab ir-revoka tad-decizjoni appellata tal-Bord u l-akkoljiment ta' l-appell kif propost quddiem il-Bord, jew fin-nuqqas ir-rinviju tal-process quddiem il-Bord biex dan jiddecidih skond il-ligi.

7. L-Awtorita` ta' l-Ippjanar ikkontestat l-appell b'eccezzjoni proceduruali preliminari kif ukoll fil-meritu billi spjegat ghaliex fil-fehma taghha d-decizjoni appellata tal-Bord kienet gusta u timmerita konferma. Ghalhekk talbet li l-appell jigi michud.

III KONSIDERAZZJONIJIET TA' DIN IL-QORTI

8. Illi l-aggravju ta' l-appellant jikkonsisti fl-allegazzjoni li l-Bord interpreta hazin dak li jinghad fil-Pjan ta' Struttura SET 11 u SET 12. L-appellant jallega li l-Bord injora dak li jinghad f'SET 12 meta qal li *"the Structure Plan seeks to limit the type of development that can be located outside the development scheme boundaries to specific categories".* L-appellant jallega li l-Bord kellu jiehu wkoll in konsiderazzjoni il-*Policy* SET 12 billi din tikkomplimenta lil *Policy* SET 11 fis-sens li tikkreja eccezzjoni ghall-istess SET 11. B'hekk SET 11, skond l-appellant, "ma huwiex limitat ghal kategoriji specifici biss, kif erronjament, bir-rispett kollu, ikkonkluda l-Bord."

9. L-appellant spjega li l-*Policy* SET 12 tipprovdi zewg kundizzjonijiet li ghandhom jigu sodisfatti biex il-*Policy*

SET 11 ma tigix segwita. Skond l-appellant dawn iz-zewg kundizzjonijiet huma:
"(i) illi l-applikant ghandu jipprovdi evidenza li tissodisfa l-Bord illi hemm lok ghal eccezzjoni fis-SET 11, u

(ii) l-applikant irid jaghti ragunijiet validi mill-'*punto di vista*' ta' zvilupp ghala tali zvilupp ma jistax jigi lokat f'arja ohra desinjata ghall-izvilupp;"

Imbaghad, l-appellant jikkonkludi hekk:-
"L-esponent jidhirlu illi huwa ipprezenta provi bizzejjed sabiex tkun tista' tigi applikata l-eccezzjoni f'SET 12 izda l-interpretazzjoni zbaljata li nghatat lill-Pjan ta' Struttura mill-Bord kienet fatali ghall-applikazzjoni ta' l-esponent bir-rizultat li l-appell tieghu gie michud;"

10. Jekk wiehed janalizza l-aggravju ta' l-appellant, wiehed isib li dan jirriduci ruhu ghal-lament li:- (i) il-Bord ikkonsidra biss il-*Policy* SET 11; (ii) il-Bord naqas li jikkonsidra l-*Policy SET 12,* meta huwa kellu dover li jikkonsidra din il-*policy*, billi l-iskop taghha huwa li tikkreja eccezzjoni ghall-*policy* SET 11; (iii) l-appellant ressaq provi bizzejjed sabiex il-*policy* SET 12 tigi applikata; u li (iv) b'hekk, il-Bord interpreta hazin dak li jinghad fil-Pjan ta' Struttura dwar il-*Policy* SET 11 u SET 12.

11. L-aggravju ta' l-appellant ghalhekk, sostanzjalment, jikkonsisti fl-allegazzjoni li l-Bord ma ikkonsidrax u ma applikax il-*Policy* SET 12 ghal kaz tieghu, meta huwa, cioe` l-appellant, kien ressaq provi bizzejjed sabiex huwa jkun jista' jibbenifika minn din il-*Policy* SET 12 u b'hekk ma tigix applikata il-*Policy* SET 11.

12. Qabel ma dan l-aggravju jkompli jigi investigat, forsi huwa utili li dawn iz-zewg *policies* jigu citati:-
"*POLICY SET 11: No form of urban development will be permitted outside existing and committed built-up areas, and primary development areas as designated in the Structure Plan even where roads and public utilities are available. Permitted forms of non urban development outside such areas are restricted to the categories referred to in Paragraph 7.6*

....

POLICY SET 12: Notwithstanding the policy against any form of urbanisation outside areas designated for urban uses in the Structure Plan, the Planning Authority will consider applications for permission to develop which ostensibly infringe Policy SET 11. In any such case the onus will be on the applicant to present evidence as to why the policy should be infringed, giving reasons why from a planning point of view such proposed use cannot be located in areas designated for development. The Planning Authority will additionally require the applicant to submit at his own expense a full Environmental Impact Assessment of a form and content satisfactory to the Authority. This policy is not a means of evading policy SET 11 or any other policy. An Environmental Impact Assessment which adequately demonstrates acceptable impacts will not be a reason for the granting of a development permit if the proposed use can be located in an area intended for its development under the Structure Plan or any subsequent approved Planning Authority document.

13. F'dana l-istadju huwa opportun li jigu ezaminati il-premessi li fuqhom l-appellant jibni l-aggravju tieghu, cioe` li l-Bord interpreta hazin dawn il-*Policies.* Dana ghaliex jekk dawn il-premessi ma jinstabux li huma korretti, allura *cadit quaesitio*.

14. Din il-Qorti ezaminat bl-akbar reqqa d-decizjoni appellata tal-Bord u sabet li
(a) Din id-decizjoni ma fihiex "interpretazzjoni" tal-*policiy* SET 11 izda semplici parafrasi ta' l-istess *policy*;
(b) Kontrarjament ghal dak li jallega l-appellant, din id-decizjoni tirriferi ghal *Policy* SET 12 <u>diversi</u> <u>drabi</u>, u jirrizulta car daqs il-kristall lil din il-Qorti, li l-Bord debitament <u>ikkonsidra</u> u zamm <u>quddiem</u> ghajnejh din il-*Policy* SET 12;
(c) Tkun hekk biss, izda jidher ukoll car, li l-Bord <u>applika</u> din il-*policy* SET 12 ghall-kaz.

Il-Bord, infatti, espressament qabel mar-ragunijiet moghtija mill-Kummissjoni ghar-rifjut tal-permess, kif ukoll mal-motivazzjonijiet ta' l-istess ragunijiet, ghamilhom tieghu u adottahom fil-konkluzjoni tieghu citata f'para. 4 ta' din is-sentenza. Din il-konkluzjoni tikkontjeni, b'mod konciz, l-apprezzament tal-fatti u c-cirkostanzi tal-kaz li ghamel il-Bord wara li l-istess Bord aktar qabel kien ikkummenta li jaqbel mas-sottomissjonijiet tal-Kummissjoni citati fl-istess decizjoni.

15. Fil-verita`, il-kritika kollha li l-appellant qieghed iressaq fil-konfront tad-decizjoni appellata tirriduci ruhha sostanzjalment ghall-fatt li l-appellant ma jaqbilx mal-mod kif il-Bord applika din il-*policy* SET 12 ghall-kaz tieghu. L-appellant sostanzjalment ma jaqbilx ma' l-apprezzament tal-provi li ghamel il-Bord. L-appellant qieghed isostni t-tezi tieghu li huwa ipprezenta provi bizzejjed sabiex tkun tista' tigi applikata l-eccezzjoni f'SET 12.

16. Naturalment, l-appellant hu konxju mill-fatt li ma jistax jappella quddiem din il-Qorti minn kwistjonijiet ta' fatt decizi mill-Bord. Kien ghalhekk li l-appellant, b'mod pjuttost krejattiv, ittanta li "jlibbes" il-kritika tieghu ghad-decizjoni appellata b'tali mod li l-istess kritika tinghata s-sura li hu qed jinficja "l-interpretazzjoni" jew l-"enuncjazzjoni" skorretta li allegatament ghamel il-Bord ghal-*Policy* SET 11. L-appellant isostni li bhala rizultat ta' dan "giet totalment eskluza l-possibilita` ghall-appellant li jkun jista' juzufruwixxi mis-SET 12" (ara Nota ta' Sottomissjonijiet ta' l-appellant a fol 42). Anzi, l-appellant imur oltre billi fl-istess nota jallega li huwa "lanqas biss inghata l-possibilita` li jtella' l-provi taht is-SET 12 b'konsegwenza li l-Bord .... ma kellux dawn il-provi quddiemu, jew jekk dawn kienu quddiemu jew kellhom jigu injorati konsegwenza ta' kif gie applikat is-SET 11" (*sic!*).

17. Din il-kritika ta' l-appellant fil-konfront tad-decizjoni appellata hija kompletament skorretta w infondata. Din il-Qorti diga` kkummentat u spjegat ghaliex (ara para. 13 u 14 *supra*) l-premessi li fuqhom l-appellant jibni l-aggravju tieghu m'humiex korretti. Ghalhekk kwazi kwazi din il-

Qorti setghet waqfet hemm, pero`, dehrilha li kellha dover tanalizza analitikament l-aggravju ta' l-appellant biex tesponih fil-vera vesti tieghu. Infatti sabet li dan, fil-verita`, jirriduci ruhu sostanzjalment ghall-gravam li l-Bord ghamel apprezzament zbaljat tal-provi li kellu quddiemu.

18. It-tezi ta' l-appellant hija li huwa ressaq provi bizzejjed quddiem il-Bord biex dan kellu jkun konvint li l-izvilupp propost seta' validament isir (*ai termini* tal-*Policy* SET 12) f'sit li jinsab barra miz-zona permessa ghall-izvilupp u f'zona ta' konservazzjoni rurali, u b'hekk, il-Bord kellu jeskludi l-applikazzjoni tal-*Policy* SET 11.

19. Din il-Qorti jidrilha li l-kwistjoni quddiem il-Bord kienet wahda ta' semplici apprezzament ta' stat ta' fatt u r-relattiva applikazzjoni tal-*policies* relevanti ghall-istess fatti. Ma kienx hemm xi divergenza bejn il-kontendenti dwar xi punt ta' xi interpretazzjoni ta' xi ligi. Il-Bord applika il-*policies* kollha relevanti ghall-kaz ta' l-appellant. Il-Bord sab li ma setghax jakkolji t-tezi ta' l-appellant ghax ma giex ippruvat sodisfacentiment li kienu jezistu ragunijiet ta' l-ippjanar li kienu jiggustifikaw l-applikazzjoni tal-*policy* SET 12 u li kien wiehed jiddipartixxi mill-applikazzjoni fil-*policy* SET 11.

20. Tant hu hekk li l-Bord adotta pjenament is-sottomissjoni segwenti tal-Kummissjoni li tissemma f'pagna 12 u 13 tad-decizjoni tieghu:-
"*4.6 The appellant argues on the grounds of paragraph 6.10 of the Structure plan which states that "... one has to rigorously examine each proposal on its own merits and appropriate modification to the general concept of the Structure Plan may be possible.". Paragraph 6.10 of the Structure Plan states that there may be occasions on which the Planning Authority "... has to seriously consider the merits of a proposal ..." for development outside the designated urban areas. If and when these situation* (sic!) *arise "... the Authority will require an exhaustive examination of the advantages and disadvantages of each such proposal in order to arrive at a conclusion.". In fact, this requirement is laid down in Structure Plan policy SET 12 where "... the onus will be on the applicant to*

present evidence as to why the policy should be infringed, giving reasons why from a planning pont of view such proposed use cannot be located in areas designated for development.”.

4.7 The appellant’s reasons why the proposed development should be located on this site, and therefore outside the development scheme boundary, pertain to the fact that the development proposed constitutes an extension to an “... existing, fully functioning garage ... which is covered by the necessary permits;”, the fact that there exists other development in the area, the fact that he is “... a holder of a licence to operate on heavy plant vehicles ...,” and the fact that “... the proposed extension was suggested ... by the association for the protection of workers ...”. The latter two of these four reasons are not planning considerations in so far as they do not justify the development of an essentially urban activity ON THIS SITE. Both these matters could be equally resolved by the construction of the development on a site within the development scheme boundary.

4.8 In regard to the former two reasons, in permiting development outside the development scheme boundary the Planning Authority will give priority to development which extends or is adjacent to an existing development over that which sees the development of a virgin site. However, this is only a consideration after the Authority is satisfied that the proposed activity is acceptable in the rural area. The proposed activity in this case is not an acceptable form of development in this area. Furthermore, the issue of the surrounding development has already been discussed in paragraph 4.5 above where it is clear that both the Planning Authority and the PAPB have consistently prohibited the location of essentially urban activity in this rural area.”

21. Ovvjament, din il-Qorti ma ghandhiex il-gurisdizzjoni li tirrevedi dana l-apprezzament tal-provi li ghamel il-Bord. Dana ghaliex skond l-Artikolu 15(2) ta’ l-Att dwar l-Ippjanar ta’ l-Izvilupp, din il-kwistjoni tinsab <u>finalment</u> deciza. Infatti, l-istess subartikolu jaghti dritt ta’ appell lil

din il-Qorti minn decizjonijiet "biss dwar punti ta' ligi decizi mill-Bord fid-decizjoni tieghu". Id-decizjoni appellata sostanzjalment tikkontjeni apprezzament fattwali u tekniku ta' fatti u cirkostanzi li l-Bord seta' wkoll jistabilixxi waqt l-access li zamm fuq il-post. Il-Bord applika l-*policies* rilevanti tal-Pjan ta' Struttura u ma iddecieda l-ebda punt ta' ligi li fuqu kien hemm xi sentenza bejn il-partijiet. Isegwi li l-appell, ikkunsidrat ukoll taht dana l-aspett procedurali hu inammissibbli u allura infondat.

22. Ghal dawn ir-ragunijiet kollha l-appell huwa michud u d-decizjoni appellata tal-Bord hija kkonfermata. L-ispejjez jithallsu mill-appellant.

Deputat Registratur
df

APPENDICI

Kopja tad-decizjoni moghtija mill-Bord fl-1 ta' Settembru 2000, qeghdha tigi annessa ma' din is-sentenza biex tifforma parti integrali minnha.

< Sentenza Finali >

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