Kopja Informali ta' Sentenza

MALTA

BORD DWAR IL-KONTROLL TA' KIRI TA' RABA

MAGISTRAT DR.
JOSEPH CASSAR

Seduta tat-13 ta' Lulju, 2005

Rikors Numru. 15/2003/1

Rikors Nru: 15/03

Carmelo Mizzi u Theresa sive Tessie Mizzi

vs

Hilda Schembri armla ta' Rokku u ghal kull interess li jista' jkollhom uliedha Joseph Schembri, Theresa Frey u Carol Bonnici

Il-Bord,

Ra r-rikors tar-rikorrenti pprezentat fit-3 ta' Novembru, 2003 fejn esponew:

Illi huma jikru lill-intimati r-raba li tinsab is-Siggiewi maghrufa bhala Tal-Puppulin li ghandha faccata fuq triq gdida fi Triq il-Profs Nerik Vassallo li fiha kejl superficjali ta' tminn mija u sebghin metru kwadri (870m2) cirka versu

l-qbiela ta’ lira Maltija u erbgha u tletin centezmu (Lm1.34) fis-sena pagabbli kull 15 ta’ Awissu, b’lura.

Illi r-rikorrenti inghataw permess sabiex jizviluppaw porzjoni ta’ din il-proprjeta’ ekwivalenti ghall-kejl superficjali ta’ tlett mija u wiehed u erbghin punt erba metri kwadri (341.4m2) skond kif jidher mill-permess tal-izvilupp hawn anness u mmarkat Dokument A.

Illi l-parti li jifdal ma teccedix il-kejl ta’ elf mija u erbghin u ghoxrin metri kwadri (1124m2).

Ghaldaqstant l-epsonenti jitolbu bir-rispett li dan il-Bord joghgbu jawtorizzahhom jirriprendu l-pussess ta’ ‘l fuq imsemmija raba ghar-ragunijiet premessi u li l-Bord jillikwida l-kumpens li huwa pagabbli lill-intimati a tenur tad-disposizzjonijiet tal-Kap. 199.

Bl-ispejjez kontra l-intimati li minn issa huma ngunti ghas-subizzjoni.

Ra r-risposta pprezentata mill-intimati fejn esponew:

Illi l-intimati sallum jirrifjutaw li jaccettaw li jhallsu lill-esponenti kumpens xieraq kif stipulat mill-ligi f’dawna c-cirkustanzi, u ghalhekk dana ghandu jigi determinat minn dan il-Bord. Minhabba dina r-raguni wkoll l-esponenti ma ghandhomx ibatu l-ispejjez ta’ dawna l-proceduri.

Semgha x-xhieda bil-gurament.

Ra l-atti u d-dokumenti kollha.

Ra l-verbal tat-28 ta’ Frar, 2005.

Semgha t-trattazzjoni ta’ l-avukati.

Ikkunsidra:

1. L-intimati mhumiex qeghdin joggezzjonaw li r-rikorrenti ghandhom bcca art li fuq parti minnha ghandhom permess ghall-isvilupp (esebit) u lesti li

jaghtuha lilhom flimkien mal-bqija li ma taqbisx l-1224m.k. (tomna)

2. Il-partijiet mhux qed jaqblu ghall-kollox fuq il-kumpens li ghandu jithallas.

3. Il-Bord hatar lill-AIC Frederick Valentino u l-PL Anthony Mifsud biex jaghmlu access u jistmaw il-kumpens fid-dawl tal-provi mressqa.

4. Ra r-relazzjoni ta' l-imsemmija periti.

5. Skond il-Kap 199 meta sid jehtieg raba li mhux saqwi "ghall-kostruzzjoni fuqu ta' bini ghall-skopijiet ta' residenza, negozju jew industrijali", huwa ghandu jhallas lill-kerrej kumpens xieraq kif provdut fl-ahhar subartikolu qabel dan u , barra minn dan, ammont daqs il-valur tal-prodotti migbura mill-kerrej jew minn membru tal-familja mill-imsemmi raba jew parti minnu, wara li jitnaqqsu l-ispejjez li jkunu saru ghall-koltivazzjoni tieghu, fl-ahhar erba' snin minnufih qabel id-data tat-terminazzjoni tieghu. Izda ma ghandhomx jitnaqqsu bhala parti minn dawk l-ispejjez il-prezz tax-xoghol tal-kerrej stess jew tax-xoghol ta' xi membru tal-familja fir-raba' jew parti minnu".[Artikolu 4(5)]. L-Artikolu ta' qablu 4(4) li ghalih saret referenza jipprovdi li "Meta sid il-kera jiehu pussess lura tar-raba' jew ta' parti minnu bis-sahha ta' decizjoni tal-Bord bazata fuq is-subartikolu (2)(a)(htiega agrikola), huwa ghandu jhallas lill-kerrej kumpens xieraq ghal kull benefikat agrikolu li jkun sar mill-kerrej jew minn membru tal-familja fl-imsemmi raba' jew parti minnu matul il-perijodu ta' tmien snin konsekuttivi minnufih qabel id-data tat-terminazzjoni".

6. Ir-regolamenti ta' l-1943 ma kienu jipprovdu l-ebda kumpens. L-Att XVI tal-1967 biddel dan u sejjes fuq legislazzjoni barranija. Kif jikkummentaw Abensour u Morol Lopes- Principles of Lord Tenancy Legislation" (F A O 2nd ed. Rome 1966):

"in countries where the owner may resume the holding for purposes other than farming, the right of resumption is normally made subject to compensation to the tenant

……. The various types of compensation provided in the tenant’s favor on the expiration of the agreement are intended to encourage him to cultivate the holding properly and not to have the soil exhausted on his departure. They also increase his security of tenure, since a landowner will frequently prefer to keep his tenant rather than be obliged to pay his sums which may be of a considerable amount.

For a long period in the past no compensation was payable to the departing tenant in respect of the improvements which he had effected. The trend of legislation of the tenant has even led, in more recent times, to the conception of “compensation for eviction” in favor of the outgoing tenant, indefendent of compensation payable for improvements. This compensation in principally based on the conception of “ownership of cultivation”, which efforts are being made to establish in the tenant’s favor and which takes into account the damage suffered by the tenant by the fact of his eviction” (pp 35-37).

7. Il-partijiet jaqblu li joqghodu fuq l-istima ghall-kumpens maghmul skond il-ligi (ara pagna 5) li ta’ din is-sentenza. L-ammont dovut maghmul minn espert ex-parte jammonta ghall Lm1540.40c li hu aktarx generuz.

8. Ir-rikorrent qed jitlob kumpens ghal zieda ta’ hamrija u bini ta’ hitan u qed jitlob ghal xoghol f’hitan tas-sejjieh/kantun Lm1221 ghal dawn il-benefikati. Ma jirrizultax li dawn il-benefikati saru ‘matul il-perijodu ta’ tminn snin konsekuttivi minnu fih qabel id-data tat-terminazzjoni”. Kien sar qsim ta’ l-art fil-familja tar-rikorrenti fil-1973. Wara dawn marru jaraw il-qasam “de quo”. Ix-xhieda ta’ Dottor George Attard hi elokwenti hafna u dettaljata u l-Bord jistrieh fuqu. L-intimati qeghdin semplicement jaghmlu sforz biex “igebbdu sa tminn snin”.

Ghalhekk il-Bord jilqa’ t-talba tar-rikorrent u jaghtihom il-permess jiehdu f’idejhom ir-raba’ li tinsab is-Siggiewi maghruha bhala Tal-Puppulin li ghandha faccata fuq triq gdida fi Triq il-Profs. Nerik Vassallo li fiha kejl superficjali

ta' tminn mija u sebghin metru kwadru (870m2). Ghal ghan ta' tkeccija jaghti tlett (3) xhur zmien millum. Xieraq u hekk il-Bord jordna, li l-ispejjez jithallsu mir-rikorrent, il-kumpens qed jigi likwidat fl-ammont fuq imsemmi ta' elf hames mija u erbghin lira Maltija u erbghin centezmu (Lm1540.40) li ghandu jithallas fi zmien xahar m' illum.

< Sentenza Finali >

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