



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 13/2012

Grezzju Axiaq

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Grezzju Axiaq tas-17 ta' Frar 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-7 ta' Frar 2012 fejn gie konfermat ir-rifjut ghall-applikazzjoni PA 5060/04 liema applikazzjoni kienet tirreferi ghal sanctioning of warehouses and cold stores and landscaping scheme at Zabbar;

Rat ir-risposta tal-Awtorita li ssottomettiet li d-decizjoni ghandha tigi konfermata;

Rat l-atti u semghet id-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:
Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll ta' I-Izvilupp, fl-28 t'Ottubru 2006, ikkonfermat ir-rifjut tal-applikazzjoni ghall-permess tal-izvilupp PA 5060/04 "Stockenwington, Triq Has-Sajjed, Zabbar: Sanctioning of warehouse and cold stores and landscaping scheme at Zabbar."

Ir-ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposed development conflicts with Structure Plan Policy SET 11, which does not permit further urban development outside the development boundary. The development does not fall into a category of non-urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

2. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development cannot be located in an area designated for industrial development.

3. The proposed development runs counter to Structure Plan strategy for the location of warehouses in existing or planned industrial zones, as expressed in policy IND 12.

4. The proposal is not essential to the needs of agriculture and so the proposal runs counter to Structure Plan policies AHF 5 and AHF 9 which aim for the location and relocation of agricultural uses which are unsuitable in urban areas to suitable locations in the countryside. "

B. In-nota tal-Perit Mariello Spiteri ghall-Appellant, ipprezentata fl-14 ta' Novembru 2006, inter alia it-tmien punti segwenti:

"1. My client packs and freezes particular agricultural produce. Locating his business close to the agricultural area is crucial in order for his freezing activity to be successful.

2. Nevertheless the location in caption is within the hamlet of Has-Sajd, l/o Zabbar.

3. Other farm-related buildings surround my client's property from the North, East, South and West. Considering that this site falls outside the development boundaries is therefore futile. This neutralizes the argument supported by Structure Plan Policy SET 11 which prohibits any form of urbanization outside urban areas.

4. Moreover, kindly note that the Has-Sajd Hamlet hosts various buildings which are covered with the necessary permits. These prove that the area under study is already committed to development. Relevant Planning Authority application numbers include:

PA 5562/96 To erect two stores.

PA 0083/01 To construct additional room at first floor level and to sanction alterations already carried out

PA 2611/98 To install satellite dish antennae

PA 2535/90 Garage

PA 2028/94 Opening of garage door on facade of existing building

PA 3653/99 To sanction extension of room at first floor

5. that there are various other freezing and cold store operations which are permitted in outside development zone areas

7. Furthermore, Structure Plan policy SET 12 argues that the development has to be justified in accordance to planning plans if it has to be located outside the development zone. It is pertinent to point out that a cold storage facility requires the use of fresh produce to be brought in, cleaned, and frozen. My client is preparing for the exportation of agricultural goods and this will only be possible if the premises is located close to an agricultural

site outside the industrial area so that agricultural trucks find it easier to bring their produce to the freezing facility. Said facility will satisfy this requirement and, furthermore, the development can be considered to be an added bonus to the local agricultural community since, through this means, export of produce would be possible to reach other markets.

8. The proposed development, although contravening SET 11, can be justified by SET 12 as described above. Contemporarily, Policies AHF 5 and 9 are fully satisfied with the proposal presented.

9. It is pertinent to point out that my client's site can be considered as an infill site. "

Ma n-nota gew annessi kopji ta' estratti ta' applikazzjonijiet ghall-permess tal-izvilupp (inkluzi ritratti), ta' mill-inqas hdax il-permess li nhargu fuq tal-inqas erba' siti b' karatteristici allegatament simili ghal dak in ezami u in sostenn tal-punt numru 5 kif indikat supra, fosthom; PA 5462/03, PA 5554/02, PA 2414/01, PA 612/00, u PA 718/98 ilkoll fuq il-proprjeta Ta' Gauci Poultry; PA 2948/05, PA 2931/03, PA 2712/00, u PA 4386/94 ilkoll fuq il-proprjeta Ta' Smina Poultry; PA 6505/02 u PA 5773/97 fuq il-proprjeta ta' Chef Choice Ltd; u PA 2936/98 fuq il-proprjeta ta' Burgin Poultry.

C. In-nota ta' Mario Scicluna ghall-Awtorita, ipprezentata fit-18 ta' Jannar 2007, inter alia l-erba' punti segwenti:

"5.2.1 Structure Plan Policy SET 11 prohibits any form of urbanization outside areas specifically designated for urban uses in the Plan, even where roads and public utilities are available. Permitted forms of non urban development outside such areas are restricted to structures genuinely essential to agricultural, ecological, or scenic interest (para 7.6). The proposed warehouse and cold store do not fall under the category of legitimate uses which can be permitted outside the development zone. The proposed development therefore runs counter to Structure Plan policies SET 11 and SET 12.

5.2.2 Structure Plan Policy SET 12 provides that applications which infringe policy SET 11 may be considered only if applicant presents 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. In this case, there is no apparent justification why the proposed warehouse and cold store cannot be located in an existing or planned industrial zone as required by Policy IND 12. The area should be safeguarded for agricultural uses and activities, in line with Policy AHF 5 and Policy AHF 9 for the location / re-location of agricultural activities.

5.2.3 a similar application on the same site has already been refused by the DCC on the 7th September 2001 and 2nd May 2002 (reconsideration) and even by the Planning Appeals Board on 14th July 2004.

5.2.4 As regards to the permits quoted by appellant, the Authority states that after consulting with the relevant files, it resulted that there were no similar case which could be referred to since these all relate to alterations / modifications to existing buildings and new developments which abutted existing built-up areas."

D. In-nota risposta tal-Perit Mariello Spiteri għall-Appellant, ipprezentata fit-28 ta' Frar 2007, inter alia t-tlett punti segwenti:

"1. [The Authority] quoted that permit[s] quoted in our letter not similar to the case in application [Nevertheless] all these applications indicate that this area is committed and has been committed for a number of years and that said area is developed and supports numerous buildings within the strict vicinity of my client's site. The said report outlines that numerous permits were issued because they abutted to existing built-up areas. As clearly demonstrated in photos ... the building for which we are requesting sanctioning abuts to the east and north to an existing farm. To the east across the road there exist a number of

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buildings. To the south of this development there also exist numerous residences creating the Has-Sajd hamlet.

3. the whole site surrounding the whole building supports a significant amount of development and, actually, the site is surrounded on two sites by development.

5. Map no. RS 8 indicates that the location is a hamlet and therefore special development considerations apply. "

Man-nota gew annessi bejn tnax-il kopja ta' ritratti in sostenn tal-argumenti mressqa mill-konsulent tal-Appellant u cjoe' ta' dak li gie ndikat hawn fuq.

E. Il-verbal tal-access fuq is-sit tas-Seduta numru 32 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fil-5 ta' Novembru 2008, senjatament il-punti segwenti:

"Il-Bord ikkostata illi l-fond kif jinsab illum qieghed kif jidher fir-ritratti 1B li qieghed fil-PA file 5060/04. Il-Bord innota illi fuq in-naha ta' wara hemm bini li jmiss mal-fond li tidhol ghalih mill-isqaq jew triq li l-faccata tal-fond in kwistjoni jinsab fuqha. Il-fond in kwistjoni li hemm applikazzjoni fuqu jidher li huwa itwal minn kif huwa indikat fug is-site plan 1C, peress li ma jwassalx sal-bini li hemm indikat li jmiss ma wara mal-fond in kwistjoni. L-gholi tal-bini huwa kif indikat fug il-pjanta tal-permess. Il-Bord innota li fuq gewwa hemm cold room.

L-appellant qed jinforma lill-Bord illi hu juza l-fond biex jistorja x-xoghol tal-haxix. L-appellant irrileva illi in parte dak juzah biex jistorja l-haxix tieghu kif ukoll dak impurtat."

F. In-nota ta' sottomissjonijiet ulterjuri tal-Avukati Dott. Michael Sciriha, Dott.ssa Sharon Mizzi u Dott. Lucio Sciriha ghall-Appellant, ipprezentata fl-4 t'Awwissu 2011, inter alia il-punti segwenti:

"Il-principju ta' Zona Kommessa - il-Gurisprudenza

1. Fil-kaz Joseph Tonna vs. l-Awtorita' Maltija ghall-Ambjent u l-Ippjanar (PAB 20/09 ISB)(PA 1498/07), deciz

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fid-9 ta' Lulju 2010 il-Bord ikkonferma il-principji enuncjati fit-Trident case li fejn area tkun committed ghandu jkun hemm konsiderazzjoni ulterjuri ta' zvilupp tal- istess area.

2. Illi wkoll il-Qorti ta' l-Appell fil-kawza Anthony Ciappara vs l-Awtorita' Maltija tal-Ambjent u l-Ippjanar deciza fil-28 ta' Gunju 2006 (Qorti Appell 11/04), il-Qorti dahlet fil-mertu ta' x'jikkostitwixxi precedent u fejn gie elenkat x'jikkonsisti 'commitment':

"A valid commitment would consist of a similar development present or permitted within the same immediately locality."

3. L-istess gie enuncjat fid-decizjoni (PAB 263/08 ISB)(PA 7339/01) fl-ismijiet Maria Dolores Cassar vs l-Awtorita' Maltija tal-Ambjent u l-Ippjanar:

4. Fid-decizjoni Anthony Borg vs l-Awtorita' Maltija tal-Ambjent u l-Ippjanar (PAB 218/07 ISB) u (PA 2057/06) fejn il-Bord accetta l-applikazzjoni hekk kif sottomessa a bazi ta' commitment simili approvat fl-area.

5. Fil-kaz (PAB 208/07 ISB)(PA 5648/05) deciz fid-19 ta' Gunju 2009 fl-ismijiet Steve Vassallo vs l-Awtorita' Maltija tal-Ambjent u l-Ippjanar, l-Bord seta' jikkonstata mill-access kif ukoll minn diversi pernessi citati li kien hemm diversi commitments fl-istess triq fejn il-height limitation ta' zewg sulari ma gewx osservati ...

6. Illi fil-kawza Gauci Joseph vs l-Awtorita' Maltija ghal Ambjent u l-Ippjanar, deciza fil-25 ta' Frar 2005, il-Qorti tal-Appell ghamlet referenza ghal diversi sentenzi minnha moghtija

Finalment jigi rilevat illi kemm-il darba dan l-appell jigi rifjutat ser issehh ingustizzja u diskriminazzjoni manifesta fil-konfront tal-appellanti. Dan gie kkonfermat mill-Onorabbli Qorti tal-Appell fil-kawza fl-ismijiet Joseph Muscat vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar deciza fit-18 ta' Mejju 2005 ...

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Il-principju tal-Ugwaljanza - Permessi identici ghal dak tal-Appellant

L-Appellant jaghmel riferenza ghall-PA 5462/03, 5554/02, 2414/01, 0612/00 u 0718/98 relattivi ghal Ta' Gauci Poultry Dok B, u ghal permessi PA 2931/03, PA 2712/00 u 4376/94 relattivi ghal Ta' Smina Poultry Dok C li gew debitament milqugha u jikkontendi li huwa ghandu jinghata l-istess trattament

[Kif ukoll] ... id-decizjoni tal-Bord ta' l-Appell fl-ismijiet Salvu Mallia vs. Kummissjoni ghall-Kontroll ta' l-izvilupp CPAB 221/97, PA 4213/96) [u] ... d-decizjoni Dione Bartolo kontra l-Kummissjoni ghall-Kontroll ta' l-Izvilupp (PAB 633/98, PA 0131/98)"

Man-nota gew annessi ukoll kopji tad-dokumenti kollha li kienu diga gew esebiti fin-noti ta' sottomissjonijiet precedent tal-perit konsulent tal-Appellant u kif fuq kollox diga gie rilevat supra.

G. In-nota second statement ta' Mario Scicluna ghall-Awtorita, ipprezentata fid-29 t'Awwissu 2011, inter alia l-punti segwenti:

“Use of premises.

... the official use of the proposed sanctioning is one of warehouse (i.e. bulk storage) and cold stores (ie bulk storage in low temperature). The submitted plans do not show any 'packaging' area or any tools / equipment used for large scale packaging of agricultural produce. The proposal per se does not even make direct reference to the use being exclusively related to any agricultural produce and if a permit was issued atfirst decision, the proposal above would have enabled applicant to use this large store as a warehouse and cold stores of objects not directly related to agriculture, let alone (as claimed) produce which originates from the nearby farming community.[sic.]

If what is claimed, ie packaging of agricultural produce in line with EU directives, is correct, this entails:

a. official proposal needs to be changed and all the necessary detailed information be submitted to ascertain that there is enough produce in the immediate farming community that justifies such a large warehouse in ODZ, and

b. such large scale packaging is considered as industrial activity which should be directed towards appropriate areas which house specific space for such industrial activity and not be located in such ODZ area. Considering the limited time required (i.e. a few minutes) that a van needs to travel from the field from which produce is harvested to warehouses in which packing on an industrial level is conducted, there is no justification (in local terms) ... why such produce cannot be transported for a few minutes (through special vehicles if need be) from the fields to a processing plants.

Reference is made to the official minutes of the PAB session dated 5th November 2008 which consisted of a site inspection, wherein it is recorded that ... appellant explained that he uses this warehouse to store his own produce as well as produce imported from abroad which is later distributed to small shops. Hence the actual use is that of a warehouse depot. This sustains the Authority stance that such 'industrial' activity should not be located in such ODZ area but could easily be located in appropriate locations where such structures are permitted by policies.

Nearby Development / Commitment

PA 5562/96 To erect two stores for agricultural use. Decided on 2.2.99. This was of a much smaller scale and agricultural stores are permitted on same land tilled by applicants.

PA 83/01 To construct additional room at first floor level and to sanction alterations already carried out.

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The description of the proposed works as per DPARR: The site is situated outside the Boundaries for Development for Zejtun. The existing building consists of a two-storey building with a frontage on existing street [and] ... adjacent with a one-storey building. This development differs substantially from case under appeal. Site not located in ODZ but in a Category 1 Settlement.

PA 2611/98 To install a satellite dish antenna

The approved dish antenna on a roof of an existing building cannot be cited as created any form of commitment for this case under appeal.

PA 2535/90 Fresh elevations of garage

The approved new elevation of a garage of an existing building cannot be cited as created any form of commitment for this case under appeal. Site not located in ODZ but in a Category 1 Settlement.

PA 2028/94 Opening of garage door on facade of existing building.

The approved new elevation of an existing building cannot be cited as created any form of commitment for this case under appeal. Site not located in ODZ but in a Category 1 Settlement.

PA 3653/99 To sanction extension of room at first floor.

The approved room at first floor to an existing building cannot be cited as created any form of commitment for this case under appeal.

... the Local Plan had acknowledged the amount of structures that exists in a nearby area so much so that it has designated the 'committed' area as a Category 3 Rural Settlement in which certain development could be allowed whereas the same development is prohibited in ODZ ... area.

Planning History

... the same request for sanctioning had been previously submitted through application PA 2553/01 ... wherein a

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refusal had also been issued and an appeal was lodged as per PAB 255/02 TSC.

In this appeal the same warehouse was shown in the submitted plans and its use was also the same as that under appeal. It is thus important to note that in that appeal, the PAB had considered the details of appellant's justification but eventually, dismissed that appeal in sentence delivered on 14th July 2004 (file attached).

Reference is made to the site plan Red 1C and which shows the footprint of the existing warehouse, however, the actual footprint is much larger."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda s-sanar ta' mahzen flimkien ma' cold stores, inkluz proposta ghall-landscaping (b'sigar tal-frott, etc.). L-istess stores inbnew bil-gebel tal-franka fuq gholi ta' tmintax-il filata, jkopru arja ta' 328 metri kwadri, u ghandom bhal dahla quddiemhom ta' madwar hamsin metru kwadru. Is-sit jinsab fir-rahhar zghir (hamlet) ta' Haz Sajd, fil-limiti ta' Haz Zabbar, f'arja li tikkonsisti minn ghelieqi u rziezet, etc., ilkoll rilatati ma' attivita agrikola.

Skond l-Awtorita', peress li din il-proposta tinsab l-barra z-zona tal-izvilupp, u peress li dan it-tip ta' bini jista' facilment jigi akkomodat f'zoni urbani, il-proposta ghas-sanar hi in kontravvenzjoni tal-policies SET 11, SET 12, BEN 5 u l-paragrafu 7.6 tal-Pjan ta' Struttura. In oltre, skond il-policy IND 12, dawn it-tip ta' mhazen jistghu jigu permessi biss gewwa zoni ndustrijali, u ghalhekk, billi jirrizulta li l-uzu tal-imhazen in ezami mhux strettament indispensabbli ghall-agrikoltura, l-izvilupp qed jikser wkoll il-policies AHF 5 u AHF 9 tal-istess Pjan ta' Struttura li ghandhom bhala mira l-harsien tal-kampanja.

L-aggravji tal-Appellant huma li l-warehouses huma integri ghall-operat tieghu; cjoe ghax hu jippakkja w jiffriza prodotti agrikoli friski. Saru wkoll sottomissjonijiet fil-konfront ta' zvilupp simili (cold stores, etc.) li allegatament

gew permessi f'outside development zones, kif ukoll argumenti in kwantu li fiz-zona de quo, hemm diversi commitments ta' natura urbanizzanti (bhalma huma farmhouses, etc.), tant li dan is-sit jista jittqies bhala infill site. In oltre, l-Appellant jargumenta li l-imhazen u l-cold stores ghandu bzonnhom propju f'dan il-post peress li billi jippakkja prodotti agrikoli ffrizati, ghandu bzonn ikun vicin l-ghelieqi, halli t-trakkijiet u l-vannijiet jaslu ghandu f'qasir zmien, u ghalhekk jkun jista' jaqta' minn hafna skariggar.

Jirrizulta pero, li skond il-verbal tal-access fug is-sit tal-5 ta' Novembru 2008 kif indikat supra, l-Appellant kien iddikjara, li l-fond juzah ukoll sabiex jahzen il-prodotti tieghu flimkien ma' ohrajn t'importazzjoni. In oltre, permezz tal-istess verbal, jigi rilevat ukoll li hemm inkosistenza bejn il-fond kif jirrizulta mibni u kif qed jintwera fil-pjanti sottomessi ghal-permess tas-sanar. Jekk ghall-grazzja tal-argument jigi sorvolat il-punt tal-inkonsistenza bejn il-pjanti sottomessi u l-istat ta' fatt - punt li lanqas ma gie kkontestat mill-Appellant - jigi osservat li ghalkemm l-istess pjanti ma jaghtux indikazzjoni cara ta' kif l-ispazji mmarkati ser jintuzaw ghall-attivitá proposta - per ezempju, packing areas, etc. - l-Appellant naqas li jipprova jikkonvinci lil dan it-Tribunal kif bihsiebu jadopera dawn l-imhazen u l-cold stores.

In oltre, ghalkemm issir riferenza li l-prodotti agrikoli li jippakkja w jiffriza jinhasdu mill-lokalita, l-Appellant naqas ukoll li jissottometti provi konkreti in sostenn ta' din id-dikjarazzjoni. Anzi, permess ta' dikjarazzjoni tal-Appellant innifsu - cjoe li jahzen ukoll prodotti t'importazzjoni - dan it-Tribunal ma jsibx komfort fil-fatt li dan l-izvilupp ser iservi ghal kwalsiasi attivita ta' packing u freezing - altro che strettament ghal prodotti agrikoli friski mid-dintorni. Jirrizulta ghaldaqstant, li l-affermazzjoni tal-Appellant; li ghandu bzonn dan l-izvilupp minhabba l-operat tieghu - u mhux biex jahdem ta' distributtur ta' prodotti agrikoli mpurtati minn barra - ma timmeritax kunsiderazzjoni favorevoli, speċjalment peress li din it-tip t'attivitá ssib postha gewwa zona ndustrijali apposta.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan it-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut ghall-PA 5060/04 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fit-28 t'Ottubru 2006.

Ikkunsidrat

L-aggravju tal-appellant kontra din id-decizjoni huma is-segwenti:

1. It-Tribunal ma ta ebda kont tas-sottomissjonijiet tal-appellant reigward il-kwistjonijiet ta' 'commitment' u 'ugwaljanza' u 'diskriminazzjoni'.
2. In-nuqqas tat-Tribunal li jikkonsidra l-premessi citati mill-appellant li jindikaw 'commitment' kif verbalizjat mill-istess verbal tal-access tal-Bord li jghid testwalment li l-bini imiss minn wara ma' fond iehor.
3. It-Tribunal niseg id-decizjoni tieghu fuq il-verbal li sar waqt l-access.

Fl-ewwel lok il-Qorti taghmilha cara illi ma tirrikonsidrax kwistjonijiet ta' fatt decizi mit-Tribunal. Id-diskrezzjoni tat-Tribunal hi assoluta f'dak li hu valutazzjoni, apprezzment u piz probatorju tal-provi li jitressqu quddiemha u salv ghal zball grossolan u manifest li jirrizulta bhala l-fattur determinanti ghad-decizjoni tat-Tribunal, li allura jirrendiha annullabbli, din il-Qorti ma tindahalx.

Gie deciz diversi drabi illi kwistjonijiet ta' 'commitment' u 'ugwaljanza' huma kwistjonijiet bazati fuq fatti illi t-Tribunal ghandu jinvestiga jekk jitqajmu qua aggravji u fil-kaz li ma jigux investigati jew addirittura injorati jistghu jwasslu ghal incertezza tal-ligi applikabbli u kwindi appellabbli. Dan pero ma jfissirx illi jekk it-Tribunal investiga u ddetermina l-kwistjoni, dan jaghti lok ghal revizjoni ta' dak deciz semplicement ghax il-parti sokkombenti ma qablitx mal-konkluzjoni li wasal ghalha t-Tribunal. La darba t-Tribunal ikun investiga l-aggravju, sakemm ma jkunx gie kommess zball ta' punt ta' ligi mqajjem u deciz, il-kwistjoni deciza dwar commitment u ugwaljanza issir finali mad-decizjoni tat-Tribunal ghax altriment ikun qed jinghata skop li

jinfethu provi fuq apprezzament ta' fatti, hafna minnhom ta' natura teknika, biex jigi skartat l-apprezzament tat-Tribunal dwar il-kwistjonijiet ta' 'commitment' u 'ugwaljanza' mqajma quddiem it-Tribunal.

Il-kwistjoni ta' allegazzjoni ta' diskriminazzjoni fil-konfront tal-appellant hi differenti u ma hix bazi ghal appell qua punt ta' ligi (ara f'dan is-sens **Joseph Difesa vs Awtorita tal-Ippjanar**, App Civ 12/06/1998). Il-Qorti izzid illi f'dan il-kaz lanqas jista' jinghad li tqajmet qua xi kwistjoni ta' ligi applikabbli quddiem it-Tribunal u di hi raguni ohra ghalfejn din il-Qorti mhix ser tikkonsidra din il-parti tal-aggravju tal-appellant.

Rigward il-kwistjoni tal-'commitment' u 'ugwaljanza' hu car illi din tqajmet mill-appellant quddiem il-Bord b'diversi referenzi specifici ghal applikazzjonijiet ohra liema kwistjoni giet argumentata miz-zewg partijiet b'mod sostanzjali kif jidher mill-atti.

Prima facie jidher illi l-appellant ghandu ragun jilmenta li t-Tribunal injora li jidhol fil-mertu ta' dawn l-aggravji, meqjusa importanti ghall-appellant kontra r-rifjut tal-permess. Pero harsa lejn id-decizjoni tat-Tribunal iwassal lil din il-Qorti illi tiskarta l-aggravju tal-appellant bhala wiehed li jista' f'dawn ic-cirkostanzi jwassal ghar-revoka tad-decizjoni tat-Tribunal. Hu minnu illi t-Tribunal beda biex semma l-kwistjoni tal-'commitment' u 'ugwaljanza' pero qabel ma dahal f'dawn il-kwistjonijiet, it-Tribunal issoferma ruhu fuq il-fatti mertu ghall-applikazzjoni.

Harsa lejn l-appell redatt f'isem l-appellant quddiem it-Tribunal fl-14 ta' Novembru 2006 jispecifica fl-ewwel paragrafu illi "My client parks and freezes agricultural produce. Locating his business close to the agricultural area is crucial in order for his freezing activity to be successful."

Fil-valutazzjoni ta' dawn il-provi, liema kwistjoni mhix sindakabbli minn din il-Qorti, wasal ghal fehma illi l-appellant lanqas ipprova qua fatt dak li allega cioe l-indikazzjoni cara bi provi konkreti tal-iskop tal-izvilupp jew

sanzjoni tieghu u tal-modalita dwar l-uzu tal-izvilupp u l-bzonn tal-istess zvilupp cioe l-packing u freezing ta' prodotti agrikoli friski mid-dintorni tal-izvilupp. Dan kollu, fil-fehma tat-Tribunal, kien necessarju li jigi ppruvat qabel seta' jikkonsidra l-konformita mal-policies vigenti, liema policies it-Tribunal ghandu japplika ai termini tal-artikoli 69 meqjus flimkien mal-artikolu 41(13) tal-Kap. 504.

Ghalhekk la darba t-Tribunal fuq il-fatti wasal ghal konkluzjoni illi l-appellant ma gabx provi validi u konkreti biex jiggustifikaw l-ezami tal-applikazzjoni mill-punto di vista tekniku legali tal-bzonn ghall-istrutturi in ezami fis-sit in kwistjoni ghall-operat tal-appellant tenut kont il-ligijiet u policies, ma kellux ghalfejn jidhol fl-istadji l-ohra tal-lanjanzi li jirrigwardaw 'commitment' u 'ugwaljanza', anki jekk ma jissodisfawx f'kollox it-termini ta' ligijiet u policies vigenti.

F'dan is-sens ghalhekk l-aggravji tal-appellant kif msejsa mhux gustifikati ghax it-Tribunal waqaf fl-istadju preliminari tal-konsiderazzjonijiet tieghu cioe fuq il-fatti li taw lok ghall-applikazzjoni li fil-fehma tieghu dehrlu li hu infondati.

Tieni aggravju

Bl-istess mod din il-Qorti ma tistax tikkunsidra t-tieni aggravju tal-appellant billi dan l-aggravju jirrigwarda l-piz u l-apprezzament tal-provi senjatament dawk rigwardanti l-access li sar fuq is-sit mill-Bord tal-Appelli u li din il-Qorti ma tistax terga tiftah ghax ma jaqax fil-poteri taghha, izda jaqa' esklussivament fil-poter tat-Tribunal.

Decide

Ghalhekk din il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Grezzju Axiaq u tikkonferma d-decizjoni tat-Tribunal tas-7 ta' Frar 2010. Bl-ispejjez kontra l-appellant.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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