



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 134/2012

Mark Antonio Farrugia

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Mark Antonio Farrugia tal-20 ta' Awwissu 2012 wara rifjut għall-ghoti ta' permess ta' zvilupp PA 3343/07 mit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012;

Rat ir-risposta tal-Awtorita li ssottomettiet illi l-appell għandu jigi michud u d-decizjoni tat-Tribunal tigi konfermata;

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

Kopja Informali ta' Sentenza

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

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fil-25 ta' Gunju 2009, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 3343/07 "Site at Ta' Sabbat L/O Dingli: Construction of dwelling with underlying garage and swimming pool and cesspit."

Iz-zewg ragunijiet ghar-rifjut kienu s-segwenti:

"1. The site in question does not qualify as uncommitted land where new dwellings can be constructed as per criteria listed in North West Local Plan policy NWRS 3 - Large Rural settlements (Category 2 Settlements ODZ). Thus the proposed new detached dwelling unit is unacceptable in principle in this site.

2. The proposed dwelling unit occupies a footprint of 383 sq metres. Thus the proposed footprint exceeds the allowable 150 sq metres specified in paragraph (1) of the North West Local Plan policy NWRS 3 - Large rural settlements (Category 2 Settlements ODZ). The disproportionately large garage can also provide parking for much more than 2 car parking spaces, hence running counter to paragraph (vii) of the same policy."

B. In-nota tal-Perit Mannie Galea ghall-Appellant, ipprezentata fil-15 ta' Lulju 2009, senjatament il-punti segwenti:

"The refusal was based upon insistence that the site is not an uncommitted land in line with NWKS 3. It is important to state that the site is located in the centre of the Dingli Sabbat large rural settlement category 2, and if this site is not eligible, No other site would be eligible for development for the whole settlement, which would be against the spirit of the Policy."

Din in-nota taghmel riferenza inter alia ghar-risposta tal-istess perit konsulent tal-Appellant fil-konfront tad-DPA Report, bid-data tat-30 ta' Marzu 2009 kif ukoll ghall-

permess PA 2476/07 li jirrigwarda proposta fir-rural settlement tal-Maghtab u allegatament simili ghal din in ezami.

C. In-nota responsiva ta' Lorinda Vella ghall-Awtorita, ipprezentata fil-11 ta' Dicembru 2009, inter alia l-erba' punti segwenti:

"5.3 Policy NWRS 03 allows the construction of new dwellings on uncommitted land within the designated Category 2 Rural Settlements. However, this policy provides a detailed definition of what qualifies such developable sites as uncommitted land, as follows:

1. Infill sites with a street frontage of not more than 14m which abut blank party walls one storey high, or more, on both sides.
2. Corner sites defined by two public roads with a site area of not more than 300m² which abut blank party walls one storey high, or more, on both sides.
3. Sites which have a road frontage of not more than 10m which abut blank party walls one storey high, or more, on one side and which form the end of a terrace of at least 3 dwellings provided a strip of land of at least 3m in width adjacent to the side elevation of the new dwelling is landscaped. No structures will be permitted below this 3m strip.

Contrary to that stated by the appellant, the site proposed for development does not fall under anyone of the definitions of uncommitted land. In particular, when noting the photographs submitted for this application (attached at red 1B), the only residential property adjacent to the site is the existing detached residence located to the north of the site. Moreover, there is no unsightly blank party wall adjacent to the site, but only an 8-10 course high boundary wall. The criteria listed in Policy NWRS 03 indicate that the development of uncommitted sites is aimed at creating environmental improvements to these rural settlements. As outlined, the development of this site would not result in any amelioration or improvement to the rural character of the site and its surrounding context. This

further confirms that the site does not qualify for development under the provisions of policy NWRS 03.

5.4 The appellant also contends that the permit issued for PA 2476/07 serves as a precedent in favour of this present application. PA 2476/07 covers full development permission issued for the demolition of an existing garage structure and the construction of a garage and overlying residential unit. The site was already covered by an outline permit issued in PA 2062/03, as approved by the Planning Appeals Board in PAB 354/04 on 26th October 2007. The nature of this proposal is not similar to that of the application presently subject to appeal, as in the case of PA 2062/03 & PA 2476/07, the site was committed with an existing building structure. In the case subject to appeal, the site is not committed with any form of existing development. The only commitment applicable to the site under consideration, is the fact that this site was part of the arable agricultural land tilled by the applicant of PA 2052/92, and on the basis of which, that applicant was permitted a full-time farmer's residence. This fact further confirms the unacceptability of this proposed development.

5.5 Moreover, PA 2476/07 does not serve as any form of precedent in favour of this application as the site of PA 2476/07 and the site subject to appeal are located within different localities. This is supported by the Court of Appeal sentence of 28th June 2006: Anthony Ciappara vs. MEPA (Appell Civili Numru 11/2004), where the ideology of precedent and commitment was clearly explained. In this decision, the Court of Appeal indicated that a valid commitment would consist of a similar development present or permitted within the same immediate locality. The permit cited by the appellant is not located remotely within vicinity to the site subject to appeal, and hence the Authority considers that this permit should not be considered as a valid commitment.

5.6 With regards to the design of the proposed development, the second reason for refusal also indicated that the development exceeds the 150m² footprint

limitation, while the garaging space provides for the parking of more than two cars. These two design issues conflict with the design criteria provided in Policy NWRS 03 criteria (i) & (vii) respectively. The appellant has not addressed this reason for refusal, while the Authority contends that these considerations are still applicable."

D. Il-verbal tal-access fuq il-post tas-Seduta numru 32, mizmuma fis-6 ta' Mejju 2011, precizament il-punti segwenti:

"Il-perit [Mannie Galea ghall-Appellant] wera lit-Tribunal il-post ezatt fejn kien qed jipproponi l-izvilupp, li illum huwa ghalqa li tidher li qed tinhadem. Vicin din l-istess sit hemm zviluppi ad uzu residenzjali li l-appellant iddikjara li huma proprjeta ta' membri tal-familja tieghu.

Ir-rapprezentanti ta' l-Awtorita iddikjaraw, li peress li l-area hija Category 2 Settlement u peress li m'hijjex infill site, l-izvilupp propost ma jistax jigi approvat."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex tinbena dar f'category 2 rural settlement, rural conservation area u area of agricultural value l-barra miz-zona tal-izvilupp ta' Had-Dingli, konsistenti minn fully-detached dwelling b' garaxx u mahzen sottinterrati u pixxina. L-izvilupp ikopri footprint ta' madwar 118 metri kwadri, b'habitable floorspace u basement ta' madwar 200 u 265 metri kwadri rispettivament. In oltre qed jigu proposti wkoll soft landscaping li jduru madwar swimming pool ta' madwar 33 metru kwadru.

Il-fond in ezami jikkonsisti minn bicca ghalqa b'access minn triq imharbta, u li originarjament kienet tiffornna parti minn font hafna ikbar. Fil-fatt, fuq il-fond originali kienet inbriet farmhouse, cjoe residenza rilatata mal-operat agrikolu, koperta bil-permess PA 2052/92. Din ir-residenza kienet giet gustifikata minhabba l-fatt li dakinhar, l-applikanta (certu Rita Farrugia) kienet tahdem l-ghelieqi.

Sussegwentement l-art inqasment u propju fuq il-bicca mertu tal-appell de quo kienet giet intavolata applikazzjoni DN 34/05 sabiex tinbena giebja; izda din kienet giet irrifjutata wara li kien gie rilevati li kien hemm xi tfieh ta' skart illegali. Jirrizulta wkoll li bicca ohra art precizament biswit din in ezami u appartenenti ghall-istess Appellant odjem, kienet giet milquta b'avviz biex tieqaf uta' twettieq ECF 185/09 ghax inbnew giebja u xi kmamar bla permess.

Ir-raguni ghar-rifjut huma bbazat fuq il-fatt li din hi bicca art ma tikkwalifikax bhala art vergni fejn jistghu jinbnew residenzi skond il-parametri indikati permezz tal-policy NWRS 3 tal-Pjan Lokali. In oltre, il-proposta tokkupa footprint esagerat (i.e. madwar 383 metri kwadri) li jmorru oltre il-150 metri kwadri massimi permessibbli mill-istess policy.

Skond l-Awtorita, il-proposta hi wkoll in kontravvenzjoni tal-policies SET 11, SET 12 u RCO 2 tal-Pjan ta' Struttura.

L-aggravji tal-Appellant huma bbazati fuq il-punt li hawn si tratta minn bicca art mhux vergni (disturbed land) gewwa category 2 rural settlement u li ghalhekk din it-talba kellha tigi approvata skond il-policy NWKS 03 [recte NWRS 03] tal-Pjan Lokali. In oltre, jiccita permess (PA 2476/07) ghall-zvilupp gewwa l-Maghtab konsistenti ma' zvilupp fuq bicca art ikkunsidrata minflok bhala uncommitted (cjoe undisturbed) land.

Jigi rilevati li l-policy NWRS 03 taghmila tassattiva li zvilupp fuq committed land jigi permess jekk inter alia jirrizulta li l-bicca art hi infill site b'faccata ta' mhux aktar minn erbatax-il metru u maghsura bejn zewg hitan ta' terzi mikxufa; jew inkella b'faccata ta' mhux aktar minn ghaxar metri b'hajt ta' terzi mikxuf fuq nahha wahda u strixxa ta' tlett metri landscaping fuq in-nahha l-ohra. L-izvilupp irid ukoll jaghlaq terracing ta' almenu tlett residenzi.

Fic-cirkostanzi, is-sit in ezami mhux konformi ma' l-ebda wahda minn dawn ir-rekwiziti tal-policy suesposta. Kif

ikkonfermat permezz ta' kopji ta' ritratti li jindikaw is-sit megghruza mas-sottomissjonijiet tal-Appellant, mhux talli l-egreb residenza hi wahda detached u li tinsab fit-tramuntana tas-sit, talli ma hemm l-ebda hajt mikxuf ta' terzi li jmiss mas-sit in ezami. Anzi, minflok blank party wall, madwar il-proprjeta ta' ma' genb is-sit de quo hemm boundary wall ta' bejn tmien u ghaxar filati. In oltre, kif seta' jigi kkonfermat minn dan it-Tribunal permezz tal-access fuq il-post, il-bicca art in ezami prezentement tinhadem.

Jigi rilevat li l-permess PA 2476/07 kien jirrigwarda talba ghall-zvilupp gewwa lokalita ferm differenti minn dik in ezami; fuq sit li diga' kien kopert b'outline permit u fuq bicca art fejn diga kien hemm binja konsistenti minn undisturbed land. Ghalhekk, fic-cirkostanzi ma' jistax isir paragon bejn dak il-permess u din it-talba.

Tajjed li jigi nutat ukoll li kif rilevat mill-Awtorita, is-sit mertu tal-appell odjern kien jiforma parti minn agricultural holding kopert bil-permess PA 2052/92. Tant hu hekk li dakinhar kien anke gie permess li tinbena residenza propju minhabba l-fatt li l-applikant kien registered full-time farmer. Illum qed jintalab zvilupp ulterjuri fuq din l-istess agricultural holding.

Fl-ahharnett jigi rilevat ukoll li l-applikazzjoni odjerna tirrigwarda talba ghall-zvilupp li jaqbez sew il-150 metru kwadru ta' footprint barra z-zona tal-izvilupp (ODZ), kif permess mill-policy paper, Development Control Guidance: Development outside built-up areas (PLP 20); kif ukoll ghax qed jigi propost garaxx lijipprovdli parkegg ghal aktar minn zewg karozzi. Dan kollhu hu in kontravvenzjoni tas-subincizi (i) u (vii) tal-istess policy NWRS 03, u fic-cirkostanzi dan l-appell ma jimmeritax kunsiderazzjoni favorevoli.

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 ir-rifjut ghall-

PA 3343/07 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fil-25 ta' Gunju 2009.

Ikkunsidrat

L-aggravju ta' Mark Antonio Farrugia huma tnejn:

1. It-Tribunal zbalja meta ddecieda li s-sit in kwistjoni kienet outside development zone u pproceda fuq din il-bazi biss minghajr ma kkonsidra li tinsab go category 2 rural settlement u ghalhekk kellu l-obbligu li jikkonsidra l-applikazzjoni fid-dawl tad-destinazzjoni effettiva taz-zona;
2. It-Tribunal zbalja meta qies l-art bhala 'committed' u applika l-policy NWRS 3 ghal committed land, aktar u aktar meta permess iehor 2476/07 f'lokalita ohra inhareg fuq cirkostanzi kwazi identici u ghalhekk l-applikant odjern kellu jircevi trattament ugwali.

L-ewwel aggravju

Harsa lejn id-decizjoni tat-Tribunal juri illi t-Tribunal ikkonsidra l-kwistjoni mill-lat kemm li s-sit jinsab f'ODZ u kif ukoll mill-lat li d-dar tinsab f'category 2 rural settlement. Dan fil-fatt jinghad fil-ftuh tal-konsiderazzjonijiet tat-Tribunal. Il-policy li ghalha jirreferi t-Tribunal cioe NWRS 3 titkellem fuq 'new constructions on uncommitted land within the designated category 2 rural settlements'. Apparti l-kwistjoni jekk is-sit kienx committed jew le, li hu l-mertu tat-tieni aggravju, it-Tribunal wasal ghal konkluzzjoni tieghu li l-applikazzjoni ma kinitx konformi mal-policy NWRS 3 fuq il-bazi illi kien qed iqis dwar jekk l-izvilupp kienx permissibbli f'category 2 rural settlements skond il-policy NWRS 03.

Kwindi hu zbaljat l-appellant li jargomenta illi t-Tribunal naqas li jikkonsidra l-applikazzjoni konformement mad-destinazzjoni effettiva taz-zona in kwistjoni u waqaf biss fuq konsiderazzjoni li l-art tinsab f'ODZ. Il-Qorti mhix ser tidhol fil-kontestazzjoni ta' kostatazzjonijiet fattwali li ghamel it-Tribunal biex wasal ghad-decizjoni tieghu ghax mhux il-kompitu ta' din il-Qorti li taghmel hekk sakemm it-Tribunal ikun applika l-ligijiet, pjanijiet u policies rilevanti ghal kaz in kwistjoni, kif jidher li hu l-kaz.

Dan l-aggravju ghalhekk qed jigi michud.

It-tieni aggravju

L-appellant jilmenta illi t-Tribunal zbaljatament ikkonkluda li l-art in kwistjoni kienet wahda 'committed'. L-appellant jargomenta illi t-Tribunal applika l-policy NWRS 03 minghajr mal-ewwel qies jekk l-art kinitx committed jew le.

Ghalkemm prima facie dan jidher qisu kwistjoni ta' fatt, il-Qorti kienet tkun favorevoli li tilqa dan l-aggravju tal-appellant kieku t-Tribunal ghamel kif qed jigi allegat u ghalhekk ikun applika zbaljatament ligi li mhix idonea ghall-fatti ppruvati. Pero f'dan il-kaz hu bil-wisq ovvju li ma garax hekk. It-Tribunal gustament hares lejn il-policy NWRS 03 u senjatament ghal artikolu 5(3) tal-istess policy li tidentifika x'jikkostitwixxi uncommitted land. Fil-konsiderazzjonijiet tieghu t-Tribunal, wara li ezamina l-fatti u fejn kellu okkazzjoni jaghmel access, ikkonkluda li s-sit in kwistjoni ma jaqghax fil-parametri ta' dak li jrid il-policy skond l-artikolu fuq deskritt u anki bhala struttura proposta tmur kontra l-kriterju tas-subinciz (i) u (vii) tal-istess policy. Ghalhekk is-sit ma setax jitqies bhala 'uncommitted' ergo l-applikazzjoni ma setghetx tiqies minn dik l-ottika izda mill-ottika tal-policy li kellha tigi rispettata. Hawn ukoll l-aspetti fattwali waslu lit-Tribunal jasal ghal konkluzzjonijiet tieghu mhux sindakabbli mill-Qorti sakemm ma jirrizultax zball grossolan u manifest li kien il-fattur ewlieni jew determinanti ghall-applikazzjoni tal-ligi rilevanti li ghalhekk jirrendi d-decizjoni monka u 'unsound', li mhix il-kaz f'din l-istanza.

L-appellant izid f'dan l-aggravju illi t-Tribunal naqas li jqis din l-applikazzjoni bl-istess mod bhal aplikazzjoni 2467/07 fejn b'fatti kwazi identici qies l-art bhala 'uncommitted'.

Fl-ewwel lok il-Qorti taghmilha cara illi din il-Qorti tirrevedi biss punti ta' dritt imqajma fl-appell. Ma jfissirx illi jekk kwistjonijiet bhal din cioe trattament ugwali f'cirkostanzi identici jigu mqajma, trattati u mehuda in konsiderazzjoni

mit-Tribunal u rigettati minnu ghal ragunijiet imsemmija minnu allura din il-Qorti tista' awtomatikament terga tassindaka l-operat tat-Tribunal. L-apprezzament tal-fatti li jwasslu lit-Tribunal jiddeciedi jekk applikazzjoni jew permess iehor kienx identiku jew le ghal dak in ezami hu fil-poter tat-Tribunal u darba li jkun tratta l-kwistjoni bid-debita serjeta biex jigi zgurat smigh xieraq u l-applikant jinghata r-raguni cara ghar-rifjut, mhux kompitu tal-Qorti li tassindaka l-fatti hi biex tara kinitx tasal ghall-istess konkluzzjoni, semplicement ghax l-appellant ma qabilx mar-ragunijiet fattwali li waslu lit-Tribunal jiskarta l-aggravju tal-appellant. Dan hu dak li qed jittenta jaghmel l-appellant f'dan l-appell u din il-Qorti la darba sodisfatta li l-aggravji tal-appellant gew mressqa quddiem it-Tribunal, ittiehed konjizzjoni taghhom li gew trattati, il-Qorti ma tid-disturbax id-decizjoni tat-Tribunal hlief fejn tqis li punt ta' dritt gie applikat hazin ghal fatti li ukoll mhux il-kaz.

L-appellant f'dan l-aggravju qed iqajjem implicitament l-importanza li ghandha tinghata ghad-dottrina tal-precedent. Din hi dottrina li mhix applkata mill-Qorti, u ghalhekk it-Tribunal ghandu jzomm car quddiem ghajnejh id-differenza bejn decizjonijiet ohra tieghu ma' dak li qed jigi allegat hemm cioe trattament ugwali fuq kaz identiku. Din hi kwistjoni li t-Tribunal ghandu jidhol fiha jekk mitlub pero mbaghad jispetta lill-istess Tribunal li jiddeciedi jekk il-kaz partikolari fuq il-fattispecie tieghu, in konformita mal-ligijiet, pjanijiet u policies ghandhux jitqies ugwali jew le ghal permess iehor trattat mill-applikant in sostenn tat-tezi tieghu. Permess simili mhux necessarjament timbru ghal kull applikazzjoni sussegwenti u din il-Qorti hi ferm riluttanti li tid-disturba apprezzament ta' fatti maghmula mit-Tribunal sakemm ikunu relatati mal-ligijiet, pjanijiet u policies mertu tal-kaz li jkun qed jigi ezaminat.

Ghalhekk dan l-aggravju wkoll qed jigi michud ghax ma fihx mertu.

Decide

Il-Qorti ghalhekk qed tichad l-appell ta' Mark Antonio Farrugia u tikkonferma d-decizjoni tat-Tribunal ta'

Kopja Informali ta' Sentenza

Revizjoni tal-Ambjent u l-Ippjanar tal-31 ta' Lulju 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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