



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 146/2012

George Gatt

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' George Gatt tat-12 ta' Ottubru 2012 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 fejn giet riffjutata l-applikazzjoni PA 623/10 u giet imposta multa ta' €2,500 fuq l-appellanti;

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

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

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

A. Il-Kummissjoni għall-Kontroll ta' l-Izvilupp, fit-8 ta' Lulju 2011, irrifjutat l-applikazzjoni outline development permission PA 623/10 "Site at Triq l-Imdina, Attard: Open storage area."

Is-sitt ragunijiet għar-rifjut kienu s-segwent:

"1 The proposed development is unacceptable since it does not comply with the Supplementary Guidance, Areas for Open Storage 2005.

2 The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

3 The site is located in an Area of Ecological Value as indicated on the Central Malta Local Plan. The proposal would therefore adversely affect the area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Structure Plan.

4 The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. 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.

5 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 development or in an existing built up area.

6 The proposal cannot be considered further unless the illegal development is first sanctioned or removed and this in terms of Regulation 14 of LN 514/10. The illegal development consists of levelling of site with concrete used as a parking area for vehicles.”

B. In-nota tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fid-29 ta' Lulju 2011, senjatament il-punti segwenti:

“Illi dwar l-ewwel raguni tar-rifjut, [...] l-applikant jissottometti li kif evidentement stabbilit fil-kontenut tad-DPAR koncernanti PA 11/11, l-imsemmi dokument Supplementary Guidance, Areas for Open Storage 2005 ma ghandux ikun interpretat b' mod ristrettiv. Bhalma agixxa fil-kaz PA 11/11, id-Direttorat kellu qabel xejn jistabilixxi jekk is-sit in ezami jikkwalifikax bhala 'open uncultivated field dominated by low lying grass' u fl-istess hin jitlob il-veduti tad- Dipartiment ta' l-Agricoltura. In oltre, d-Direttorat kien obligat li jevalwa jekk l-izvilupp kif propost huwiex ristrett ghal vicin it-triq. (u allura in linea mal-politika tal-Environment Protection Department). Fil-kaz odjern, id-Direttorat qed isostni sempliciment li 'parking of heavy vehicles outside designated area is prohibited' mingahjr ma kien ikkonsultat il-Planning Directorate Advisory Team (li huwa essenzjali fil-process sabiex ikun stabbilit jekk proposta tistax tkun akkomodata f'sit ODZ [...] u wisq anqas id-Dipartiment ta' l-Agricoltura bhalma jigri f'kazijiet simili [...]).

Illi dwar it-tieni [...] u t-tielet raguni tar-rifjut [...] l-esponenti jaghmel riferenza ghall-kunsiderazzjonijiet gia sollevati fir-rigward ta' l-ewwel raguni tar-rifjut [...] u] jsostni li d-Dipartiment ta' l-Agricoltura ma kienx ikkonsultat fil-process. Jinghad ukoll bla pregudizzju li fil-kaz tas-sit de quo mhux se tittiehed art bil-hamrija.

Illi dwar ir-raba [...] u] l-hames raguni tar-rifjut [...] l-esponenti jaghmel riferenza ghall-kunsiderazzjonijiet gia sollevati fir-rigward ta' l-ewwel raguni tar-rifjut.

Illi dwar is-sitt raguni tar-rifjut [...] l-applikant qed jiddikjara li huwa se jwettaq dawk l-interventi mehtiega u dan bil-ghan li l-izvilupp jakkorda mal-provedimenti citati fl-Awiz Legali 160 tal-1997. B'hekk, l-appellant qed jintrabat minn issa li jnehhi 'kull ivilupp illegali' (f'dan il-kaz il-concrete layer) u dan huwa se jaghmlu f'perjodu li ma jeccedix sitt xhur qabel il-hrug tal-permess skont il-provedimenti ta' l-Artikolu 14(5) ta' l-Avviz Legali 514 tal-2010 Att dwar l-Ambjent u l-Ippjanar tal-Izvilupp (Kap. 504).

Illi fl-ahharnett, l-esponenti jirrileva li fir-risposta tieghu lid-DPAR huwa talab lill- Kummissjoni sabiex [...] jixhed rapprezentant ta' l-Awtorita dwar ir-Rizorsi [...] u] tad-Dipartiment ta' l-Agrikoltura sabiex jikkonferma[w] jekk [...] isibux] oggezzjoni ghal dan l-zvilupp, u dan peress li [...] ma kienux ikkonsultati] fil-process [...]. Di piu, il-Kummissjoni intalbet li jithalla jixhed rapprezentant tal-Planning Directorate Advisory Team sabiex jispjega jekk il-proposta odjerna tistax tkun akkomodata, stante li dan it-Team ma kienx konsultat [...] bhalma gara fil-kaz PA 11/11 citat. Ciostante it-talba ta' l-esponenti bil-miktub sabiex ikunu prodotti dawn ix-xhieda, huwa jissottometti li l-Kummissjoni cahdet it-talba dak in- nhar tas-seduta, u dan minkejja li dan il-fatt ma jirrizultax fil-minuti tal-Kummissjoni li ttiehdu waqt is-seduta. [...].”

C. In-nota risponsiva ta' Marthese Cassar Debono u Mario Scicluna ghall-Awtorita, ipprezentata fl-20 ta' Settembru 2011, precizament l-erba' punti segwenti:

“1.Preliminary Plea

(a) The [...] proposed development has, amongst other reasons, been refused on the grounds of Regulation 14 of the Legal Notice 514/10, in view of illegalities on site (refer to reason for refusal no. 6).

(b) These illegalities consist of levelling of site with concrete used as a parking area for vehicles

(c) Site is also subject to ECF 320/02. Direct Action was carried out and site was sealed off with concrete blocks. During 2010 cars were removed from site but in later it was confirmed by the Enforcement Unit that there was a breach of the enforcement notice since appellant had again deposited vehicles on site.

2. Article 14 of Legal Notice 514/10

This Article clearly states that where illegal development is present on a site, new development on that same site will not be considered further, unless illegalities are sanctioned or removed.

3. Further Comments

(a) In his appeal, the appellant states that he is binding himself to remove the illegal development within six (6) months, prior to the issue of permit, according to Article 14(5).

(b) The [...] illegal development must have been clearly specified in both the proposal description on the application form and also on the drawings submitted together with this application, to ensure that any unauthorized development on site forms part of the application.

(c) In this case, the illegalities do not form part of this application (this is an outline application which cannot sanction any illegalities on site), neither as part of the proposal description and are also not indicated in conventional colours on the proposed drawings.

(d) Reference is also being made to the second point in page 9 of the appeal submission where appellant is promising to remove the illegal concreting but no proof has yet been submitted to show that the whole area has been brought to its original state.

(e) Additionally, in view that the bills relating to direct action carried out on site on 1 March 2010 have not yet

been settled, no further development can be considered on this site.

4. Conclusions

(a) In view of what has been stated above, applicant should rectify this situation, by submitting a new application for the proper sanctioning of development on site.

(b) It is to be noted that fresh drawings or a change in proposal description cannot be accepted at appeals stage as the substance of the matter as presented to the Malta Environment and Planning Authority will definitively change and this is not permitted according to the proviso of Schedule 2(2) of Act X of 2010 (Environment and Development Planning Act). [...]"

D. In-nota ta' sottomissjonijiet tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fit-23 ta' Jannar 2012, inter alia l-punti segwenti:

"3. Illi in succinct l-Awtorita qed tinsisti li l-appellant ghandu jissottometti applikazzjoni gdida bil-ghan li jissanzjona numru ta' illegalitajiet li jissusistu fuq il-post. In oltre, qed ikun allegat mill-istess Awtorita li hemm xi hlasijiet pendenti da parte ta' l-appellant, liema hlasijiet huma dovuti ghal 'bills relating to direct action carried out on site on 1 March 2010.'

4. Illi fl-ewwel lok, l-appellant [...] jinsab propens li jnehhi kwalsijasi zvilupp illegali una volta jinhareg il- permess, u dan fil-kuntest tad-disposizzjonijiet ta' l-Artikolu 14 (5) ta' l-Avviz Legali 514 ta' l- 2010 [...]. Illi minn ezami ta' dawn id-dispozizzjonijiet legali, huwa pacifiku li kull ivilup illegali li ma jkunx indikat biex jigi sanzjonat f'applikazzjoni ta' zvilupp jista' addirittura jitnehha qabel il-hrug tal-permess ta' l-izvilupp fi zmien sitt xhur minn mindu l-Kummissjoni jew Tribunal t/jiddeciedi li l-permess jista' jinhareg. Kwindi, mhux minnu li l-allegati illegalitajiet iridu per forza jitnehew f' dan l-istadju.

5. Illi dwar il-kwistjoni tal-hlasijiet pendenti, irid jinghad li l-Awtorita ma gabet ebda prova in sostenn ta' tali allegazzjoni. Molta piu, l-Awtorita ma semmiet xejn f' dan ir-rigward fid-decizjoni taghha stess ta' l-4 ta' Lulju 2011, liema decizjoni illum tiffirma l-mertu ta' dan l-appell odjern, u ghalhekk ma tistax tqanqal din il-kwistjoni proprju issa. [...]"

E. In-nota ulterjuri tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fil-31 ta' Jannar 2012, fejn gew ipprezentati kopji ta' rcevuti ta' hlasijiet, in sostenn tal-argument li kienu thalsu l-pagamenti kollha dovuti mill-istess Appellant lill-Awtorita:

F. In-nota second statement ta' Edward Borg ghall-Awtorita, ipprezentata fis-16 ta' Lulju 2012, precizament il-punti segwenti:

"The Authority notes that although the pending bills with respect to the various direct actions taken on site were settled, the primary issue related to the existing illegal development of site, which cannot be sanctioning through this application, are still considered as an impediment for further processing of this application.

Moreover, it is pertinent to point out that the planning history and the various enforcement actions on site show in clear terms the lack of will from the appellant's side to regularise the current illegitimate use of the site. This application is yet another attempt to seek approval of the existing illegal development, which was already refused at various stages by the Authority and this as confirmed by the Planning Appeals Board (PAB 201/03)."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba ghal outline development permission sabiex tkun tista' ssir open storage area f'H'Attard.

Ir-ragunijiet ghar-rifjut jistrieħu fuq il-premessa li galadarba skond il-Pjan Lokali (CMLP) is-sit in ezami jiffirma parti

minn area of ecological value, il-proposta in ezami hi f'kunflitt mas-Supplementary Guidance - Areas for Open Storage u l-policy RCO 4 tal-Pjan ta' Struttura minhabba l-fatt li l-uzu propost mhux essenzjali ghall-agrikoltura hu mhux kumpatibbli ma' kusiderazzjonijiet ekologici u xenografici kif normalment huma permessi f' rural conservation areas. Ghalhekk, l-izvilupp propost sejjer jikkomprometti l-harsien ta' dawn l-istess areas.

In oltre, skond il-policies SET 11, SET 12 u BEN 5 kif ukoll l-paragrafu 7.5 tal-istess Pjan ta' Struttura, proposti bhal dawn - ta' natura urbanizzanti - ma jistawx jigu permessi gewwa zoni rurali, u ma hemm xejn li jipprekludijhom sabiex jigu intergati gewwa zoni li huma idoneji ma' bini w zvilupp.

Fl-ahharnett l-Awtoirta tirrileva li kien gie mwitti saff tal-konkos illegali u li qed iservi sabiex jigu pparkjati xi vetturi - liema attivita hi wkoll minghajr permess. Ghalhekk, galadarba tali konkos la tnehha u wisq anqas mhux qed jigi ttentat is-sanar tieghu, ghandu japplika ir-regolament 14 tal-Avviz Legali 514 tal-2010.

Jigi rilevat li fil-fatt kien inhareg avviz biex tieqaf u ta' twettieq (ECF 320/02) fil-konfront ta' dan il-konkos, li gie segwit minn direct action. Is-sit kien gie ssigillat mill-Awtorita b' blokki tal-konkos sabiex ma' jitqeghdux aktar vetturi, izda madwar is-sena 2010, dawn kienu tnehhew u l-Appellant rega' halla vetturi fuq is-sit bi ksur flagranti tal-istess enforcement notice.

L-Appellant jissottometti qabel ma ddecidit li tirrifjuta l-applikazzjoni odjerna, l-Awtorita kien imissa l-ewwel ikkonfermat jekk tali bicca art kienitx idoneja ma' attivita' agrikola billi ntalbet l-opinjoni tad-Dipartiment tal-Agricoltura, imbaghad kien imissha kkonsultat ukoll mal-Planning Directorate Advisory Team sabiex tasal biex tevalwa jekk din l-art tistax tintuza bhala open storage area jew le, kif kienet ghamelet f' kazijiet ohra (p.ez. PA 11/11).

L-Appellant jirrileva wkoll li bil-proposta in ezami mhix ser tittiehed art bil-hamrija – pero fil-kuntest ta' dak li gie sottomess mill-Awtorita wiehed jistaqsi jekk tali dikjarazzjoni mhix kundizzjonata bil-fatt li b' it-tfiegh tal-konkos illegali l-art bil-hamrija diga' ttiehdet.

In oltre, l-Appellant jiddikjara li bi hsiebu jottempera ruhhu mal-illegalita f'zmien opportun. Il-kliem li ntuzaw kienu li l-Appellant 'jinsab propens li jnehhi kwalsijasi zvilupp illegali una volta jinhareg il-permess' kif ukoll li 'jintrabat minn issa li jnehhi kull ivilup illegali' in linja mal-provedimenti citati permezz tal-Awiz Legali 160 tal-1997, f' perjodu li ma jeccedix sitt xhur qabel il-hrug tal-permess skont il-provedimenti tar-regolament 14(5) ta' l-Avviz Legali 514 tal-2010.

Jigi rilevat li tali dikjarazzjoni hi nettament irrita' ghax l-imsemmi avviz legali jaghmilha cara li kwalsiasi illegalita li mhix qed tigi ssanata ghandha titnehha minn fuq is-sit qabel ma tigi intavolata l-applikazzjoni; eccezjonalment sitt xhur minn meta' l-Appellant jigi ghal konoxxenja tal-izvilupp illegali; u in ogni caso qabel ma digi deciza din l-applikazzjoni.

Jirrizulta ghalhekk li mhux talli l-partijiet illegali mhux qed jigu ssanati; talli l-izvilupp illegali li mhux qed jigi ssanat ghadu fuq is-sit sal-gurnata tal-lum. Zgur li bil-hrug tal-enforcement notice ECF 320/02, u d-direct action sussegwenti, l-Appellant kien ben konsapevoli li kellu illegalita in situ, jekk seta' kien hemm xi dubbju rigward dan, zgur li meta sar il-pagament ghad-direct action (kopja tal-ircevuta giet sottomessa mill-istess Appellant fil-mori ta' dan l-appell) gie ghall-korrenti.

Zgur li f'aktar minn tnax-il sena, l-Appellant kellu bizzejjed zmien sabiex jirregola ruhhu fil-konfront ta' din l-illegalita.

Irid ukoll jigi osservat li dan l-appell si tratta minn outline development permit, u li applikazzjoni ta' dan it-tip ma' tista' qatt tissana zvilupp illegali. Anke jekk stess, il-pjanti li gew sottomessi fil-kors ta' din l-applikazzjoni huma ekwivalenti ghal dikjarazzjoni falza ghax fl-ebda wahda

mid-drawings ma' hemm imnizzel li hemm illegalita on site. Anzi, l-pjanti jaghtu lill-wiehed x'jifhem li qed tigi proposta parking area (gdida), u mhux li ghad hemm pjattaforma tal-konkos.

Dan hu agir oggezzjonabbli ferm - li persuna, minbarra li tippersisti mpunement b'illegalita sahasitra tikser l-avviz biex tieqf u ta' twettieq, sabiex imbaghad tissottometti outline application b'informazzjoni nkorretta u li lanqas biss tittenta tissana l-illegalita li baqghet tgawdi minnha. Ghalhekk, anke minn dan l-aspett, l-appell odjern hu irritu u jimmerita l-imposizzjoni tas-sanzjoni fit-termini tal-Artikolu 14 tat-tieni skeda tal-Att X ta' l-2010 (Kap. 504).

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 623/10 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fit-8 ta' Lulju 2011.

In oltre, fit-termini tal-Artikolu 14 tat-tieni skeda tal-Att X ta' l-2010 (Kap. 504), dan l-istess Tribunal qed jimponi l-multa ta' elfejn u hames mitt Euro (€2,500) li ghand tithallas fi zmien tletin (30) gurnata mill-lum.

Ikkunsidrat

L-aggrvji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkonsidra sottomissjonijiet li saru f'kaz iehor numru 11/11 li jittratta dwar decizjoni li tohrog mid-dokument 'Supplementary Guidance Areas for Open Storage 2005' u jara jekk sit l-appellant jikkwalifikax bhala 'open cultivated field dominated by low lying grass' u ghalhekk kellu jitlob veduti tad-Dipartiment tal-Agricoltura kif mitlub mill-appellanti fir-rikors tal-appell u nota ta' sottomissjonijiet quddiem it-Tribunal;
2. In-nuqqas tat-Tribunal li jaccetta li jixhdu rapprezentanti tal-Awtorita dwar ir-Rizorsi u d-Dipartiment tal-Agricolutra biex jigi spjegat in-natura tal-izvilupp;

3. Id-direct order u azzjoni mehuda fuq is-sit fl-1 ta' Marzu 2010, ma kellux jigi enforzat meta l-appellant kien lest li jnehhi l-izvilupp fi zmien sitt xhur mindu l-permess jinhareg, u ghalhekk ma kienx hemm bzonn li jitnehhew l-illegalitajiet meta l-kaz ghadu sub iudice.

L-ewwel aggravju

Il-kwistjoni jekk l-art hix 'open uncultivated field dominated by low lying grass' jew hix art li tigi konsiderata bhala 'area of ecological value' skond il-pjan lokali u ghalhekk eskluza mill-applikazzjoni tal-policy ghal 'Areas for Open Storage' hi wahda ta' fatt illi l-istess Tribunal ikkunsidra u ddecieda dwarha u mhux lecit u ghal din il-Qorti li tissindaka. Tant hu hekk illi t-Tribunal iddedika tmien paragrafi fil-konsiderazzjonijiet tieghu fuq din il-prova fattwali li minnha giet eskluza l-applikabilita tal-policy ghal 'Areas for Open Storage'. It-Tribunal ha konjizzjoni tal-istat fattwali tas-sit u l-applikabilita o meno tal-policy u billi l-istat fattwali u l-policy ta' Areas for Open Storage ma nstabx li kienu applikabbli ma hemmx il-htiega li jassimila din it-talba ma' dik kontenuta f'PA 11/11 u ghalhekk uza d-diskrezzjoni tieghu kif kellu d-dritt li jaghmel fil-parametri li ttih il-ligi.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju ma tantx jiftiehem. Il-fatt li l-appellant iddikjara li hu kien lest li jnehhi l-pjattaforma illegali tal-concrete fi zmien sitt xhur qabel il-hrug tal-permess ma ssibx konfort fil-ligi kif qed jipprospetta l-appellant skond l-artikolu 14(5) tal-Avviz Legali 514/2010. Dan l-artikolu jitkellem fuq ordni tal-Awtorita, Kummissjoni jew Tribunal li jitnehha zvilupp illegali qabel il-hrug ta' permess ghal zvilupp f'terminu impost li ma ghandux jaqbez is-sitt xhur u fin-nuqqas l-applikazzjoni tigi rifjutata. F'dan il-kaz fl-ebda hin ma kien hemm decizjoni tal-Awtorita, Kummissjoni jew Tribunal f'dan is-sens.

La darba ma nharget ebda ordni simili kif jipprospetta l-istess subartikolu, l-appellant ma ghandux u ma nghatax

Kopja Informali ta' Sentenza

d-diskrezzjoni lil japplika dan is-subartikolu hu minn rajh. Fuqu jibqa' l-obbligu impost mill-ewwel parti tal-istess subartikolu li jnehhi l-izvilupp illegali qabel jipprezenta l-applikazzjoni ta' zvilupp li ma kienx wahda li tikkontejni sanzjonar tal-izvilupp illegali innifsu. Del resto anki t-Tribunal ikkonsidra din il-kwistjoni u amplifika fuqha.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju mhux ta' siwi billi l-atti juru li fl-ebda stadju tal-atti, l-appellant ma talab li jittellghu x-xiehda u t-Tribunal naqas li jismagghom. Il-fatt li l-appellant fl-appell tieghu ssottometta li ghandhom jinstemghu ma tefa' ebda obbligu fuq it-Tribunal li jismagghom u anqas l-appellant ma talab hu li jigu mismugha u gie rifjutat, tant li d-differimenti qabel id-decizjoni tat-Tribunal kienu ghal noti ta' sottomissjonijiet tal-appellant li fl-ebda waqt ma ddikjara li kien fadallu xi provi ohra li xtaq jipproduci.

Ghalhekk dan l-aggravju qed jigi michud.

Ir-raba aggravju

Dan l-aggravju hu relatat mat-tieni wiehed u ghall-istess raguni tat-tieni aggravju l-appellant kellu l-obbligu li jnehhi l-izvilupp illegali iktar u iktar meta kellu kontrih enforcement notice u direct action mahrugin legalment kontrih, u li fil-fatt thallsu mill-istess appellant. Il-fatt li hu ppropona li jnehhi l-izvilupp fi zmien sitt xhur mindu johrog il-permess mhux opzjoni fdata f'idejn l-appellant li l-istess ligi ma tipprospettax. Ghalhekk il-hlasijiet li saru gew maghmula skond ma titlob il-ligi.

Dan l-aggravju wkoll qed jigi michud.

Decide

Ghalhekk il-Qorti qed tichad l-appell ta' George Gatt u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-

Kopja Informali ta' Sentenza

Ambjent u l-Ippjanar tas-27 ta' Settembru 2012. Bl-ispejjez jithallsu mill-appellant.

< Sentenza Finali >

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