MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF
MARK CHETCUTI

Seduta tat-2 ta' Mejju, 2013

Appell Civili Numru. 56/2012

Michael Farrugia

vs

L-Awtorita’ ta’ Malta dwar l-Ambjent u l-Ippjanar u l-kjamat in kawza Charles Camilleri

Il-Qorti,

Rat ir-rikors tal-appell tal-oggezzjonant ghall-izvilupp Michael Farrugia tat-18 ta’ April 2012 mis-sentenza tat-Tribunal ta’ Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta’ Marzu 2012 favur il-hrug ta’ renewal development permission PA 1320/10;

Rat ir-risposta ta’ Charles Camilleri u tal-Awtorita li ssottomettew li d-decizjoni tat-Tribunal kellha tigi konfermata u l-appell michud;

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

Rat li t-Tribunal wasal ghad-decizjoni tieghu hekk:
Ikkunsidra:

B'applikazzjoni pprezentata fil-25 ta' Marzu 2010, renewal Development Permission PA 1320/10, l-applikant Charles Camilleri talab t-tigdid tal-perrness dwar Plot Numru 15, fi Triq l-Ahwa Ghigo, Mqabba, ghall-'ground floor garage and overlying dwelling". Mill-PA file 1320/10, Red 7, jirrizulta li l-appellant oggezzjona ghall-izvilupp propost b'ittra tal-konsulent legali tieghu Dottor Tanya Sciberras Camilleri tat-28 ta' April 2010, registrata ghand l-Awtorita fit-3 ta' Mejju 2010.

L-applikazzjoni giet milqugha, u l-permess igib id-data 12 ta' Ottubru 2010, li nghata bil-kundizzjonijiet segwenti:

"1. This renewal is granted in relation to the original permit and without prejudice to any enforcement action and any order emanating from such enforcement action.

2. The conditions imposed in the previous Development Permit PA 0753/03 shall remain applicable. The parking arrangement shall be as per approved document PA 753/03/52A/52B.

3 a) This development permission is valid for a period of FIVE YEARS from the date of this notice but will cease to be valid if the development is not completed by the end of this five year period.

b) It should be noted that a third party may have the right of appeal against this permission. Any development which is carried out when such an appeal has been made, or until the time limitfor the submission of such an appeal has expired, is undertaken at the risk that this permission may be revoked by the Planning Appeals Board or quashed by the Court of Appeal.

c) This development permission does not remove or replace the need to obtain (he consent of the land/building

owner to this development before it is carried out. Furthermore, it does not imply that consent will necessarily be forthcoming nor does it bind the land/building owner to agree to this development. Where the land/building is owned or administered by the Government of Malta a specific clearance and agreement must be obtained for this development from the Land and/or Estate Management Departments.

d) All works shall be carried out strictly in accordance with the approved plans and the conditions of this permission. Where a matter is not specified on the plans then the conditions of this permission and of Development Control Policy and Design Guidance shall take precedence and modify the plans accordingly.

e) All building works shall he erected in accordance with the official alignment and proposed/existingfinished road levels as set out on site by the Malta Environment & Planning Authority's Land Surveyor. The Setting Out Request Notice must be returned to the Land Survey Unit of the Malta Environment & Planning Authority when the setting out of the alignment and levels is required.

f) Before any part of the development hereby permitted commences, the enclosed green copy of the Development Permit shall be displayed on the site. This must be mounted on a notice board, suitably protected from the weather and located not more than 2 metres above ground level at a point on the site boundary where it is clearly visible and can be easily read from the street. The copy of the permit must be maintained in a good condition and it shall remain displayed on the site until the works are complete.

g) The enclosed Commencement Notice shall be returned to the Malta Environment & Planning Authority so that it is received at least five days prior to the commencement of the development hereby permitted.

h) Copies of all approved plans and elevations shall be available for inspection on site by Malta Environment & Planning Authority staff at all reasonable times.

i) Where the street bordering the site is unopened, it shall be opened up prior to the commencement of the building operations hereby permitted.

j) Where applicable hoarding should be erected in accordance with Schedule 2 of the Environmental Management Construction Site Regulations, LN 295 of 2007.

k) No building material, waste material, machinery or plant shall obstruct the pavement or the smooth flow of traffic on the road in the vicinity of the site. The deposit of materials or the placing of equipment in the street must be authorised.

I) Any soil on the site shall not be built over but shall be collected for reuse. A permit from the Director of Agriculture is required to remove the soil from the site. All soil shall be deposited at the place indicated by the Director of Agriculture.

m) Rock spoil, boulders and other waste materials resulting from excavations or from demolition on this site shall be deposited at an official waste disposal site or used as fill material. If waste materials from the development are not to be reused, they shall not be disposed of other than at an official waste disposal site. A permit from the Environmental Protection Directorate is required to this effect.

n) The height of the building shall not exceed the permitted number of 3 floors and washroom (plus the underlying basement) as indicated on the approved drawings.

o) The facade of the building shall be constructed in local stone, except where other materials, .finishes and colours are indicated on the approved plans and drawings.

p) Apertures and balconies shall not be constructed of gold, silver or bronze aluminium.

q) A water cistern with a volume in cubic metres of 30% of the total roof area (in square metres) of the building(s) shall be constructed to store rainwater run-off from the built-up area of the development. This cistern shall be completed and available for use prior to the development hereby permitted being first brought into use.

r) The development hereby permitted shall not be brought into use until the Final Compliance (Completion) Certificate, certifying that the development has been carried out in full accordance with the plans approved by this permission and with the other conditions imposed in this permission, has been issued by the Malta Environment & Planning Authority.

s) The permit is issued on condition that, where applicable, any excavation shall be subject to the requirements of the Civil Code regarding neighbouring tenements.

t) Where applicable, the development, hereby permitted, shall be carried out in accordance with the provisions of the Environmental Management Construction Site Regulations, LN 295 of 2007.

4. This Development Permission is being granted saving third-party rights and without prejudice to the pending third-party appeal and/or to Development Permission PA 6593/04.”

Fl-appell taghhorn il-konsulenti ta' l-appellant Mikiel Farrugia ghamlu s-sottomissjonijiet segwenti:

"Nikteb fuq inkarigu ta' Mikiel Farrugia li jirrisjedi 49, Triq San Pietru u San Pawl, Mqabba sabiex nappella mill-permess datat 12 ta' Ottubru 2010 li nghata favur Charles Camilleri ta' 'Juliana', Lapsi Street, San Giljan, fir-rigward

tas-sit Plot Nru 15, Triq l-Ahwa Ghigo, Mqabba ghas-segwenti zvilupp:

Renewal of PA 753/03 (Maisonettes with basement store)

Il-klijent tieghi huwa parti interessata skond il-ligi, stante illi huwa jgawdi l-art mertu ta' din l-applikazzjoni b'titolu ta' qbiela u fuqha jmexxi razzett tal-baqar.

Fl-ewwel lok, ghandu jigi detereminat jekk l-applikazzjoni PA 1320/10 gietx ipprezentata qabel ma skada il-permess PA 753/03 li tieghu intalab it-tigdid.

Ir-razzett tal-klijent tieghi ilu ezistenti ghal madwar mitt sena u tinsab rikonoxxuta bhala attivita legittima tant illi ricentement, gie approvat il-permess PA 6593/04 favur il-klijent tieghi sabiex isir zvilupp iehor fuq parti mis-sit in kwistjoni konsistenti minn manure clamp. Tali zvilupp sar fuq insistenza tal-awtoritajiet veterinarji stess bhala accessorju ghall-izvilupp tat-trobbija tal-baqar, u sabiex l-istess razzett ikun konformi mal-Avviz Legali 343/2001 u Avviz Legali 139/2002 li jimplimenta n-Nitrates Directive tal-Unjoni Ewropea.

Jigi sottomess illi, in segwitu ghall-ahhar decizjoni tal-Kummissjoni ghall-Kontroll tal-Izvilupp fejn din tal-ahhar approvat il-permess PA 6593/04, l-Awtorita illum tinsab kommessa sabiex tipprotegi l-amenity tal-area illi llum jinsab stabbilit u committed ghal skop agrikolu u ghat-trobbija tal-annimali u mhux ghal skop residenzjali, kif qieghed jintalab in forza ta' din l-applikazzjoni.

Meta kienet giet ipprocessata PA 6593/04, l-awtoritajiet ikkonsultati u cioe l-Malta Resources Authority, id-Dipartiment tas-Sahha Pubblika u l-Focd and Veterinary Regulation Division ma sabu ebda oggezzjoni ghall-izvilupp propost. Oltre dan, Godfrey Camilleri, ufficjal tad-Dipartiment tal-Agrikoltura, irrakkomanda l-izvilupp tal-manure clamp billi, skond hu, "... this development will help to move the animal husbandry awayfrom the adjacent dwellings whilst reducing pollution and odours".

Huwa kontrosens illi l-Awtorita tapprova tibdiliet u zidied ghal razzett ghat-trobbija tal-annimali sabiex l-irwejjah u l-inkonvenjent jonqsu u ftit zmien wara, tapprova wkoll zvilupp residenzjali fuq l-istess sit li ovvjament qed tohloq inkonvenjent hi stess! Tali proposta llum tmur kontra kull logika jew regola tal-ippjanar u certament, il-prossimita ta' zvilupp residenzjali ghall-istess razzett ma jistax ma jkunx sors ta' inkonvenjent kbir Iill-eventwali residenti.

Ghaldaqstant, u billi r-razzett tratta ta' built environment ezistenti, jigi sottomess illi l-izvilupp propost ghandu jigi rifjutat billi jmur kontra s-segwenti policies tal-Pjan ta' Struttura u cjoe:

POLICY BEN 1: Development will not normally be permitted if the proposal is likely to have a deleterious impact on existing or planned adjacent uses because of visual intrusion, noise, vibration, atmospheric pollution, unusually high traffic generation, unusual operating times, or any other characteristic which in the opinion of the Planning Authority would constitute bad neighbourliness.

POLICY BEN 2: Development will not normally be permitted if, in the opinion of the Planning Authority, it is incompatible with the good urban design, natural heritage, and environmental characteristics of existing or planned adjacent uses, and is unlikely to maintain the good visual integrity of the area in which it is located. There will be a presumption against development which does not generally observe the design guidelines issued by the Planning Authority for built-up areas.

Fit-tieni lok, l-art in kwistjoni hija art sagwi, u dana kif ikkonfermat mid-Dipartirnent tal-Agrikoltura fl-ittra li kopja taghha qed tigi hawn annessa u mmarkata Dokument "A" Ghalhekk. ghandu jkun hemm prezunzjoni kontra l-izvilupp residenzjali propost, peress illi, jckk jinghata, tkun qed tinti1ef darba ghal dejjern medda art illi hija prezzjuza u utili mil-lat agrikolu u qed tintuza gbal skopijiet agrikoli sal-lum. L-art hija definita bhala Area of Agricultural Value skond il-policy RCO 1 tal-Pian ta' Struttura li tiddefinixxi

tali zona bhala "areas comprised of high grade agricultural land including irrigated and partially irrigated land"

L-applikant jissottometti illi l-izvilupp propost imur kontra l-Public Health Act billi l-izvilupp jista' jkun ta' pregudizzju ghas-sahha fizika u mentali tal-eventwali residenti, u jmur ukoll kontra l-policies tal-ippjanar tal-MEPA li jistipulaw distanza minima bejn razzett u zvilupp residenzjali li f'dan il-kaz, certament mhuwiex qieghed rispettat.

Finalment, jigi sottomess ukoll illi, in forza ta' sentenza tal-Prim' Awla tal-Qorti Civili (Sede Kostituzzjonali) tat-23 ta' Marzu 2010 fl-ismijiet "Carmel u Mary Vella vs Kummissarju tal-Pulizija, l-Avukat Generali, l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar, il-Ministru ta' l-Affarijiet Rurali u l-Ambjent u l-Ministru ghar-Rizorsi u l-Infrastruttura", gie deciz illi l-bdil ta' policies matul is-snin li wasslu sabiex l-izvilupp residenzjali wasal qrib razzett ezistenti tal-majjali fl-Imqabba (bil-kosegwenza illi l-istess farm spicca sors ta' irwejjah u hsejjes) kien jilledi d-drittijiet fundamentali ta'min kien imexxi l-istess razzett. Fis-sentenza taghha, il-Qorti, li sabet illi l-azzjoni tal-awtoritajiet kienet tilledi d-dritt fundarnentali tar-rikorrenti illi jgawdu r-razzett taghhorn, qalet hekk:

"Il-Qorti tifhem sewwa l-implikazzjonijiet tad-decizjoni oderjna, anke min-naha tal-lat uman. Tifhem sewwa lin-nies li joqghodu vicin tar-razzett u li jinsabu sewwa mdejqin mill-irwejjah, hsejjes ecc li razzett jista' jkun konsegwenza tieghu meta jinsab fast l-abitat. Izda kull min jaqra din is-sentenza ghandlu l-obbligu wkoll li japprezza sewwa l-pozizzjoni tar-rikorrenti li kellhom razzett f'idejhom u qed jaghmlu l-mestier taghhom meta razzett kien il-boghod mill-abitat u meta kawza ta' l-agir ta' terzi huma spiccaw imdawrin b'diversi residenzi li gew warajhom u li issa qed jilmentaw mill-prezenza u x-xoghol taghhom. Hija iebsa li wiehed jasal ghall-konkluzzjoni li ghax jersaq lejk haddiehor ikollok titlaq int u thalli warajk l-possedimenti li kellek anke jekk dawn jikkonsistu fi tmexxija ta' razzett. Certament li ma jaghmilx nozzjoni ta' gustizzja li l-agir ta' terzi jwassal ghall-hsara ta' l-individwu li kellu tgawdija precedenti.

Il-Qorti hija tal-fehma li l-awtoritajiet koncernati kellhom l-obbligu li jaraw l-iskop tar-razzelt meta taw il-permess f'distanzi verament qosra b'mod li stranament ir-rikorrenti sppicca misjub hati meta dan kellu l-permessi … (sottolinear tieghi)

Ghaldaqstant u bil-prezenti, l-applikant jissottometti illi l-approvazzjoni tal-applikazzjoni odjerna, jekk tinghata, tista' tilledi d-drittijiet fundamentali tieghu u ghalhekk, u bil-prezenti, qieghed jirrizerva d-drittijiet kollha tieghu fir-rigward tal-MEPA f'tali eventwalita."

Fir-risposta tieghu l-Avukat Dottor John Refalo ghall-applikant Charles Camilleri ssottometta kif gej :-

"Illi din hija risposta ghal appellipprezentat minn Michael Farrugia kontra l-hrug tal-permess in-numru ta' liema jinsab hawn fuq riprodott;

Jinghad qabel xejn li l-mertu ta' dan l-appell huwa identiku ghall-mertu ta' diversi appelli gia pendenti quddiem dan l-Onorabbli Bord tal-Appell u kwindi l-appell odjern ghandu jinstema kontestwalment mal-Appelli msemmija. Il-kumpanija attrici ottjeniet permessi mill-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar sabiex jizviluppaw l-istess fi djar residenzjali, liema permessi jgibu n-numru PA 749/03, PA 754/03, PA 758/03, PA 750/03, PA 756/03, PA 760/03, PA 751/03, PA 759/03, PA 755/03, PA 757/03, PA 752/03 u PA 753/03 u bdew ukoll proceduri quddiem il-Bord dwar il-Kontroll tal-Kiri tar-Raba ghar-ripreza tal-istess art (rikors numru 3/2006); il-permess in kwistjoni hu semplicement 'renewal' ta' permessi ezistenti.

Illi ghall-kjarezza u sabiex ma jinheliex hin f'nota u risposti bla bzonn jigi ndikat li r-ragunijiet kollha migjuba mill-appellanti fil-pennessi PA 749/03, PA 754/03, PA 758/03, PA 750/03, PA 756/03, PA 760/03, PA 751/03, PA 759/03, PA 755/03, PA 757/03, PA 752/03 u PA 753/03 ghandhom japplikaw mutatis mutandis wkoll ghal dan l-appell.

IIli ghandu jirrizulta minn dawn il-proceduri li l-allegazzjonijiet tar-rikorrenti huma manifestament zbaljati. Fl-ewwel lok jirrizulta li l-appellant innifsu ghandu strutturi li ma humiex koperti bil-permess u fil-fatt estenda razzett illegalment. Il-fatti minnu dikjarati in konnessjoni mal-pretiza okkupazzjoni tal-art in kwistjoni huma qarrieqa u dan kif ser jigi ppruvat waqt is-smigh tal-kawza. Accertat dan l-appellant ma jista' jkollu ebda dritt jew aspettattiva legittima li ghandha tigi mharsa mill-Bord ta' l-Appell bil-mod li gie minnu indikat. Fi kwalsiasi kaz ic-cirkostanzi tal-kawza Vella vs. Kummissarju tal-Pulizija huma kompletament differenti minn dawk li ghandu quddiemu l-Bord illum u ma jistghux joholqu precedent f'dan is-sens.

Jirrizulta li z-zona in kwistjoni hi indikata fuq il-pjanti kollha tal-izvilupp bhala zona residenzjali u ghalhekk il-permessi hargu konformament maz-zoning rilevanti. L-appellanta ghandha dritt tizviluppa l-proprjeta taghha skond iz-zoning applikabbli."

L-Awtorita fir-rapport taghha ipprezentat fit-28 ta' Gunju 2011 ikkummentat kif gej:

“”1.0 Introduction

1. 1 This is a Third Party Appeal against the approval of a renewal of various development permissions issued for the construction of residential development and ancillary garages. The appeal refers to permission issued on 12 separate sites, however which are located adjacent and within close vicinity to each other. Permission issued for these applications all consist of outline development consent, with the exception of PA 0753/03 and PA 0758/03 for which full development perm.ission has been issued.

1.2 The following is a list of the permits issued and their relative renewals (in italics):

PA 0749/03 (PAB 65/05); PA 1321/10 (PAB 322/10)	- Mr. Antonio Ganado; Garages & overlying dwellings (23 garages & 15

	residential units)
PA 0750/03 (PAB 62/05); PA 1315/10 (PAB 314/10)	- Mr. Antonio Ganado; Garages & overlying dwellings (18 garages & 18 residential units)
PA 0751/03 (PAB 84/05); PA 1136/10 (PAB 310/10)	- Mr. Antonio Ganado; Garages & overlying dwellings (8 garages & 6 residential units)
PA 0752/03 (PAB 71/08); PA 1324/10 (permit not yet issued; hence no appeal yet)	- Ms. Maria Paris; 1 Terraced House plus garage
PA 0753/03 (PAB 70/08); PA 1320/10 (PAB 304/10)	- Ms. Maria Paris; Two Maisonettes (2 residential units)
PA 0754/03 (PAB 63/05); PA 1316/10 (PAB 316/10)	- Mr. Antonio Ganado; Garages & overlying dwellings (18 garages & 15 residential units)
PA 755/03 (PAB 68/08); PA 1317/10 (PAB 318/10)	- Ms Maria Paris; Garages and overlying dwellings (5 garages and 5 dwellings)
PA 0756/03 (PAB 64/05); PA 1318/10 (PAB 320/10)	- Ms Maria Paris; Garages & overlying dwellings (10 garages and 9 residential units)
PA 0757/03 (PAB 69/08); PA 1323/10 (PAB 306/10)	- Ms Maria Paris; Ground floor garage and overlying dwelling (1 garage and 1 terraced house)
PA 0758/03 (PAB 385/05); PA 1323/10 (PAB 308/10)	- Mr. Antonio Ganado; Two Maisonettes (2 residential units)
PA 0759/03 (PAB 61/05); PA 1314/10 (PAB 312/10)	- Ms Maria Paris; Garages & overlying dwellings (25 garages and 15 residential units)

PA 0760/03 (PAB 66/05); PA 1325/10 (PAB 102/11)	- Mr. Antonio Ganado; Garages & overlying dwellings (17 garages & 15 residential units)

1.3 The sites subject to appeal forms part of a larger stretch of arable land fronting on Triq L-Ahwa Ghigo, which land is located within the limits of development boundary at Mqabba. According to the South Malta Local Plan the site is located within a Residential Area and with height limitation set to 3 floors plus semi-basement.

2.0 Comments on Appellant's Arguments

2.1 The applications subject to this appeal have been issued development consent as the sites for development are located within the Temporary Provision Scheme boundary identified for Mqabba, and the nature of the proposed developments comply with the zoning designations for these sites, i.e. terraced house development. Notwithstanding this, an objector to the issuance of permission has filed an appeal for these applications, with the main grounds for appeal consisting of the following:
a) The sites are used for agricultural purposes, which include irrigated agricultural land and an animal farm;
b) A total of 12 separate applications have been submitted, and this has not enabled a comprehensive assessment of the developments and their impact on the surrounding streetscape;
c) The development of these sites should have been subject to an EIA.

2.2 Present Use of the Site for Agricultural Purposes

The area of land applied for development through these applications include the appellant's animal husbandry farm, and agricultural land cultivated by the appellant for several years. Notwithstanding this, this area of land has been schemed for terraced house development since 1988 in accordance with TPS 68, while the South Local Plan issued for public consultation retains this area with

such zoning conditions. In view of this, the issuing of development permission for the construction of residential development is justified as the developments comply with the zoning conditions for each site, and as permitted by the provisions of Structure Plan policy SET 8.

Furthermore, although the Department of Agriculture have indicated that the area of land is intensively used for agricultural purposes and the land is registered as irrigated, this same Department has also indicated that the land has been recently registered as irrigated land with the use of an unregistered borehole. Moreover, the retention of an animal husbandry farm on this land is not justified, as Structure Plan policy AHF 9 encourages the relocation of livestock units from existing and committed urban areas to more suitable sites where the impacts generated by such activities may be minimised. In fact, paragraph 1.9.1(c) requires that animal husbandry farms are distant by at least 200m from urban areas.

2.3 Comprehensive Assessment of Applicalions

The appellant is also stating that MEPA has not adequately assessed the proposed development in terms of the impact that may be created on the streetscape of the area. The appellant further states that these applications should have been assessed in a holistic and comprehensive manner, rather than each of the 12 applications being assessed on its own merits. Notwithstanding this, the appellant has only appealed against 8 of the submitted applications, whereas a total of 12 development permission applications were submitted in the area. This does not offer a comprehensive assessment of the developments proposed in the area for the Planning Appeals Board.

However, it is also to be pointed out that when a decision was issued for these applications, the DCC was aware that several development permission applications were submitted in the area, as highlighted by the Planning Directorate in the DPA Report. Hence, a comprehensive assessment was enabled, notwithstanding the fact that 12

separate applications were submitted instead of a single application. Furthermore, the consequence of these 12 separate applications would result in the same impact on the streetscape if the land was sold to third parties, parcelled into plots, and each individual plot owner applied for their own development permission. Such practices are common forms of development in the Maltese Islands, and there appears to be no form of evidence that indicate that the development of parcels of land has resulted in negative visual impacts on a particular streetscape.

2.4 Requirement of an EIA

The appellant is also claiming that an EIA should have been requested for these applications prior to issuing an approval. L.N. 2040/2001 'Environment Impact Assessment Regulations, 2001' list the procedures and categories of development that require the preparation of an Environment Impact Statement (EIS) or an Environment Planning Statement (EPS). According to Schedule 1, Section 3 - Land Use & Built Development Projects, none of the applications subject to this appeal qualify for the preparation of either an EIS or and EPS. Even if all the 12 applications submitted in the area were considered as a single development, an EIS or an EPS would not be required according to the provisions of Schedule 1, Section 3. Therefore, the appellant's argument that and EIA should have been requested is unfounded.

Ikkunsidra ulterjorment:

Il-konsulenti tal-appellant ddikjaraw li ghandu jigi determinat jekk l-applikazzjoni PA 1320/10 (l-applikazzjoni mertu ta' dan l-appell) gietx ipprezentata qabel ma skada l-permess PA 0753/03 li tieghu qed jintalab t-tigdid.

Ghalkemm ma nghatat l-ebda eccezzjoni specifika, fl-eventwalita li jirrizulta li l-applikazzjoni ta' tigdid giet ipprezentata wara li skadiet l-validita tal-ewwel permess,

l-inferenza hi precizament dik, cjoe li l-process mhux konformi mal-ligi.

Minn ezami tal-file PA 753/03 jirrizulta li l-permess igib id-data tat-28 ta' Novembru 2005 - kien validu ghall-(5) hames snin mill-imsemmija data - cjoe sat-28 ta' Novembru 2010. Billi l-applikazzjoni PA 1320/10 giet ipprezentata fil-25 ta' Marzu 2010, jirrizulta li l-applikazzjoni ghat-tigdid giet ipprezentata qabel ma skadiet il-validita tal-permess originali.

Fi kwalunkwe kaz, anke jekk ghall-grazzja tal-argument l-applikazzjoni ghat-tigdid tigi pprezentata meta l-permess originali jkun skada, dan ma jfissirx li l-applikazzjoni ta' renewal ma tistax tigi pprezentata u dan ghall-diversi ragunijiet, principalment li ma hemm l-ebda artikolu fil-ligi li jipprekludi li xi persuna li tkun akkwistat permess, li tapplika ghal tigdid wara li tkun skadiet l-validita tal-permess originali; in oltre l-applikazzjoni ghall-renewal, ma tfissirx li awtomatikament l-permess originali jigi mgedded billi l-applikazzjoni tigi kkunsidrata fil-kuntest tal-policies vigenti, u ghalhekk jista' jkun hemm kazijiet fejn billi nel frattemp ikunu inbiddlu xi policies, l-permess ghat-tigdid ma jinghatax, jew jinghata b'kundizzjonijiet li ma kienux imposti fil-permess originali.

Il-mertu

Irrizulta mill-provi li l-appellant Mikiel Farrugia ghandu razzett propju fl-istess sit fejn inghata l-permess ghall-zvilupp residenzjali, li fih irabbli l-annimali u jahdem ir-raba. Dan ilu jsir minnu stess ghal cirka 45 sena, u qablu minn antenati fil-familja tieghu. L-attivita tar-razzett hi rikonoxxjuta mid-Dipartiment ta' l-Agrikoltura, u dipartimenti ohra fosthom l-Food and Veterinary Regulation Division.

L-appellant applika biex jaghmel addizzjonijiet u estensjonijiet fir-razzett tieghu, PA 6593/04, pero din l-applikazzjoni giet milqugha limitatament ghall-kostruzzjoni ta' 'Manure clamp'. Dan iffisser li filwaqt li l-Awtorita tirrikonoxxi l-ezistenza legittima tar-razzett, ma gietx milqugha t-talba biex din l-attivita tizdied, izda giet

milqugha biss, biex tigi assikurata izjed igene, u kontroll ahjar ta' dawk l-elementi li jikkostitwixxu inkonvenjent f’area residenzjali.

Dan il-permess limitat favur I-appellant, ma jfissirx li z-zona hi wahda rurali u agrikola. Iz-zoning tal-area gie stabbilit mit-Temporary Provisions Schemes tal-1988; gie hekk indikat fis-South Malta Local Plan meta hareg ghall-konsultazzjoni pubblika, u definitivament ikkonfermat bil-pubblikazzjoni tal-Pjani Lokali f'Lulju 2006.

Ma irrizultax li I-appellant oggezzjona ghaz-zoning propost, la fl-1988, meta saru t-Temporary Provisions Schemes, u I-anqas meta hareg ghall-konsultazzjoni pubblika s-South Malta Local Plan eventwalment finalizzat u ppubblikat f'Lulju 2006.

L-appellant naturalment jhossu gustifikat jopponi ghall-izvilupp residenzjali propost; billi zvilupp residenzjali hu irrikonciljabbli mal-attivita rurali tar-razzett; li kien legittimament jopera qabel ma gie stabbilit z-zoning residenzjali.

Mill-banda l-ohra l-Awtorita u l-applikant jikkontendu li l-permess kontestat, u ohrajn fl-istess lokalita inghataw billi huma konformi maz-zoning residenzjali tal-area.

L-applikazzjonijiet ghall-izvilupp jigu kkunsidrati u determinati skond dak elenkat fl-artikolu 33 tal-Kap. 356, illum l-artikolu 69 tal-Kap. 504; cjoe l-Pjan ta' Struttura, pjanti, policies, konsiderazzjonijiet materjali fosthom dawk ambjentali, estetici u sanitarji; l-permess infatti, inghata billi z-zoning hu wiehed residenzjali.

Il-perrnessi jinghataw fuq konsiderazzjonijiet ta' ippjanar, u minghajr pregudizzju ghad-drittijiet civili ta' terzi. Indubbjament bejn il-partijiet, l-applikant u l-appellant hemm kwistjonijiet li huma prettament legali, u ghalhekk m'humiex fil-kompetenza ta' dan it-Tribunal izda tal-Qrati.

Fir-risposta tal-applikant, in fatti gie ddikjarat li ttiehdu proceduri fil-Bord dwar l-Kontroll tal-Kiri tar-Raba ghar-

ripresa tal-istess art mill-poter tal-appellant Rikors Numru 3/06GG.

Hemm kontestazzjoni bejn il-partijiet jekk r-raba hux baghli jew saqwi; l-propjetarji jallegaw li jekk ir-raba sar saqwi dan sar illegalment, u mhux bil-permess taghhom. Kwistjonijiet ohra, fosthom jekk l-appellant kisirx xi kondizzjoni tal-kirja originali, billi skond l-propjetarji l-kirja kienet biex tinhadem r-raba u mhux biex isir razzett ghat-trobbija tal-annimali, huma wkoll fil-kompetenza esklussiva tal-Qrati, u baqghu impregudikati billi l-permessi jinghataw minghajr pregudizzju ghad-drittijiet civili ta' terzi.

Kif intqal f'kazijiet ohra appell minn terz ghall-permess moghti skond iz-zoning ufficjali ma jistax jservi u mhux l-istrument adattat biex jinbiddel iz-zoning stabbilit.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma l-permess tat-12 ta' Ottubru 2010 tal-applikazzjoni PA 1320/10 mahrug favur l-applikant Charles Camilleri, salvi u impregudikati d-drittijiet civili tal-appellant.

Ikkunsidrat

Din is-sentenza qed tigi limitata ghall-eccezzjoni tal-Awtorita li l-appellant qua third party objector ma ghandux dritt jappella u dan a bazi tal-paragrafu 11 tat-Tieni Skeda tal-Kap. 504, kif ukoll ghall-ewwel aggravju tal-appellant li d-decizjoni appellata hi nulla ghax hemm zewg decizjonijiet moghtija fir-rigward ta' appell wiehed.

Dritt ta' third party objector li jappella

Din l-eccezzjoni tal-Awtorita hi nfondata.
L-artikolu 68(4) tal-Kap. 504 ighid hekk:
Kull persuna tista' tiddikjara interess f'xi żvilupp u, abbażi ta' raġunijiet li jkunu rilevanti għall-ippjanar, tagħmel ilmenti dwar dak l-iżvilupp. Dik id-dikjarazzjoni ta' interess

flimkien mal-ilmenti għandha ssir bil-miktub u tasal għand l-Awtorità fiż-żmien kif stabbilit mill-Awtorità.

L-artikolu 41(1)(c)(i) tal-Kap. 504 ighid hekk:
dak l-appell (quddiem it-Tribunal – kliem mizjud tal-Qorti) jista' jsir biss minn terza persuna interessata li tkun għamlet xi kummenti bil-miktub skont l-artikolu 68(4) meta tiġi pubblikata l-applikazzjoni għall-għemil ta' żvilupp,

Il-paragrafu 7 tat- Tieni Skeda tal-Kap. 504 ighid hekk:
Jekk l-appellant jew l-Awtorità ma jaqblux ma' xi punt ta' liġi deċiż mit-Tribunal, huma jistgħu jappellaw lill-Qorti tal-Appell (Kompetenza Inferjuri) b'rikors ippreżentat kif provdut fl-artikolu 42

Il-paragrafu 11 tat- Tieni Skeda tal-Kap. 504 ighid hekk:
Terza persuna li tkun reġistrata skont l-artikolu 68(4) ta' dan l-Att għandha tiġi infurmata mit-Tribunal li jkun ġie ppreżentat appell u din tista' titlob lis-Segretarju tat-Tribunal sabiex jirreġistraha bħala terza persuna interessata f'dak l-appell. Tali persuna għandu jkollha d-dritt li tindirizza lit-Tribunal u tista' tkun mitluba mill-Awtorità jew mill-Kummissjoni sabiex tagħti x-xhieda fil-proċedimenti ta' appell rigward l-imsemmi appell. Sakemm it-Tribunal ma jiddeċidix mod ieħor, tali persuna tista' tkun preżenti matul is-seduti tat-Tribunal. Tali persuna ma tkunx tista' tattendi fuq il-post meta t-Tribunal jidħol fuq il-proprjetà tal-appellant jekk l-appellant joġġezzjona għall-preżenza ta' tali persuna fil-proprjetà tiegħu. Tali persuna għandu jkollha d-dritt li tingħata kopja tad-deċiżjoni tat-Tribunal fir-rigward ta' dawk il-proċedimenti ta' appell li għalihom ikunu ġew reġistrati mis-Segretarju tat-Tribunal bħala terzi persuni interessati. Tali persuna ma tistax tagħmel appell
minn deċiżjoni tat-Tribunal quddiem il-Qorti tal-Appell (Kompetenza Inferjuri).

Qari ta' dawn l-artikoli flimkien juru illi terza parti interessata registrata skond l-artikolu 68(4) tal-Kap. 504 tista' tappella quddiem it-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar. La darba isir appell mit-terza persuna interessata din ghandha titqies bhala 'appellant' ghal

finijiet tal-paragrafu 7 tat-Tieni Skeda tal-Kap. 504 billi dan il-paragrafu ma jaghmilx distinzjoni bjen applikant u terz interessat li jkun oggezzjona ghall-izvilupp skond il-ligi u appella mid-decizjoni tal-Awtorita quddiem it-Tribunal. Hi biss jekk it-terz interessat ma jkunx appella quddiem it-Tribunal li ma jistax jappella quddiem il-Qorti tal-Appell skond ma jipprovdi l-paragrafu 11 tat-Tieni Skeda.

F'dan il-kaz ma hemmx lanjanza fis-sens li t-terz interessat ma kienx 'registered objector' ai fini tal-artikolu 68(4), tant li thalla jappella bla xkiel quddiem it-Tribunal.

Ghalhekk il-Qorti qed tichad dan l-aggravju tal-Awtorita billi ma jsibx sostenn fil-ligi.

Nullita tad-decizjoni

L-appellant isostni illi t-Tribunal ippronuncja zewg decizjonijiet fir-rigward tal-appell li sar fil-konfront tal-hrug tal-permess 1320/10 fl-istess ismijiet. Dawn iz-zewg decizjonijiet huma enumerati 304/10CF u 324/10CF b'dan mertu ta' dan l-appell igib in-numru 304/10CF. Iz-zewg decizjonijiet inghataw fl-istess jum, pero ghalkemm simili mhumiex identici billi f'din id-decizjoni hemm aggravju aktar milli hemm fid-decizjoni 'l ohra cioe li jgib in-numru ta' Appell 53/12, u t-Tribunal ghalhekk ippronuncja ruhu fuq aggravju aktar pero ghal bqija hu kopja ta' din il-decizjoni.

Il-Qorti tqis illi dan l-istat ta' fatt spjacevoli hu frott in-numru ta' applikazzjonijiet simili li saru fuq porzjonijiet differenti tal-istess art mill-applikant Charles Camilleri. Id-dizgwid beda minnu meta huwa ghamel zewg talbiet ghal renewal permit fuq l-istess plot cioe plot 15 Triq l-Ahwa Ghigo, Mqabba u minghajr ma donnu hadd ma nduna nhargu zewg permessi, it-tnejn enumerati 1320/10 fuq l-istess plot u t-tnejn datati 12 ta' Ottubru 2010. L-oggezzjonant Michael Farrugia appella miz-zewg decizjonijiet, din in kwistjoni bin-numru 304/10 li dahal fid-9 ta' Novembru 2010 u l-appell l-iehor cioe bin-numru 324/10 li dahal fil-11 ta' Novembru 2010.

Kif gia nghad l-atti taz-zewg appelli juru illi z-zewg appelli mxew flimkien u mkien ma jidher li tqajmet il-kwistjoni tan-nullita jew mankanza f'xi wiehed jew iehor mill-appell. Inghataw ghalhekk zewg decizjonijiet mit-Tribunal tal-Appelli fid-29 ta' Marzu 2012 li fuqhom saru zewg appelli distinti dak mertu ta' din is-sentenza bin-numru 56/12 u l-iehor bin-numru 53/12 li qed jigi deciz ukoll illum fuq dawn iz-zewg lanjanzi.

Hu car illi zewg sentenzi fuq l-istess mertu identiku bejn l-istess partijiet ma jistghux jikkoezistu u soluzzjoni li fil-fehma tal-Qorti tkun semplicistika wisq hi li jigu dikjarati t-tnejn nulli u l-atti rinvjati lit-Tribunal biex jidderrigi ruhu.

Pero l-Qorti tqis li dan mhux kaz fejn il-gustizzja ghandha tigi procrastinata jekk hemm soluzzjoni aktar prattika u fl-istess hin li ma tippregudika lil ebda parta.

Il-Qorti tqis illi l-ewwel process ta' appell li ddahhal quddiem it-Tribunal cioe dak bin-numru 304/10 dak odjern ghandu jipprevali kemm ghaliex il-mertu taz-zewg applikazzjonijiet kien identiku, l-partijiet identici u anki d-decizjoni tal-Awtorita identika, kemm ukoll ghaliex f'dan l-appell quddiem it-Tribunal l-appellant ressaq aggravju aktar milli resaq fl-appell 324/10 u ghalhekk biex jigu salvgwardati d-drittijiet tieghu ghandu jipprevali.

Il-Qorti hi konsapevoli li zbalji simili ghandhom jigu evitati ghaliex il-komplikazzjonijiet legali jistghu jkunu insormontabbli pero f'dan il-kaz fortunatament ebda pregudizzju ma hu ser jigi krejat jekk din il-Qorti taghzel li tannulla appell u tisma' appell wiehed minn decizjoni wahda li jitqies bhala dak li ghandu jkun validu ai finijiet tal-ligi, liema decizjoni kif gia nghad hi replika tal-ohra hlief ghall aggravju wiehed li gie trattat mill-istess Tribunal u li dwaru dal resto ma tressaq ebda appell quddiem din il-Qorti, u li fortunatament dahal quddiem it-Tribunal qabel dak li hu mertu tas-sentenza (Appell nru 53/12). Ghalhekk hu prudenti u gust li f'dan l-appell id-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 tigi dikjarata valida filwaqt li d-decizjoni fl-appell 324/10 quddiem it-Tribunal tigi dikjarata nulla.

Decide

Ghalhekk ghar-ragunijiet fuq moghtija l-Qorti qed tichad l-eccezzjoni tal-Awtorita li l-oggezzjonant ma ghandhux dritt ta' appell quddiem il-Qorti fic-cirkostanzi tal-kaz u tichad l-aggravju tal-appellant safejn kompatibbli u fil-limiti ta' dak hawn deciz billi zzomm bhala valida fil-forma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Marzu 2012 mill-appell numru 304/10 salv il-kontestazzjoni tal-mertu tal-appell innifsu fuq l-aggravji l-ohra kollha. L-ispejjez ghandhom jigi sopportati ugwalment bejn Michael Farrugia, Charles Camilleri u l-Awtorita.

Il-Qorti tordna li s-Segretarju tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar jigi notifikat b'din id-decizjoni.

< Sentenza In Parte >

--------------------------------TMIEM--------------------------------