



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tad-9 ta' Ottubru, 2013

Appell Civili Numru. 85/2012

Lawrence Fino

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Lawrence Fino tat-28 ta' Mejju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012 li cahdet l-applikazzjoni ta' tigidid PA 8242/06;

Rat ir-risposta tal-Awtorita li ssottomettiet li d-decizjoni tat-Tribunal kienet timmerita konferma u l-appell michud;

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

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Ikkunsidra:-

Dan huwa appell minn rifjut tal-Awtorita tal-applikazzjoni PA 8242/06 'To erect beer garden. Renewal of permit PA 1287/02', b' decizjoni tat-30 ta' Novembru, 2010.

Ir-raguni li ghalha l-Awtorita' irrifjutat l-applikazzjoni PA 8242/06 kienet s-segwenti:

"1. The proposed development runs counter to Local Plan policies SMCO 03, SMCO 06, and SMCO 07 which states that there is a general presumption against:

- i) development that would create negative impacts on AEs and SAs listed within the Local Plan;
- ii) the creation of new built structures (including cultivation and animal husbandry related structure) in areas of high landscape value, and
- iii) any development within areas that will adversely affect the function of the valley an important water catchment area."

Fl-appell tieghu tad-9 ta' Dicembru, 2010, l-appellant, permezz tal-Perit Cassar u l-Professur Dr Refalo jaghti s-segwenti ir-ragunijiet ghal dan l-appell:

"My client was granted a full development permit for the construction of an underground parking and overlying beer garden as per PA 1835/92.

On the 26th June 2002, PA 1287/02 was issued granting a full development permit for the renewal of PA 1835/92. On 29th December 2006, i.e. almost six months prior to the expiry of PA 1287/02 an application for renewal was submitted.

The reasons quoted for refusals were:-

- i) development that would create negative impacts on AEs and SAs listed within the Local Plan

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- ii) the creation of new built structures (including cultivation and animal husbandry related structure) in areas of high landscape value, and
- iii) any development within areas that will adversely affect the function of the valley an important water catchment area.

During the DCC meeting it was contended that the provisions of the local plan take precedence, over the fact that there was a valid development permit since the site was committed.

On behalf of my client I wish to state that:

i) The site should never have been included in the local plan earmarked as an area of ecological and scientific importance and as a valley protection zone when:

a) There was a valid development permit granting the construction of an underground car park and overlying beer garden.

B) A permit PA 6425/05 sited closer to the valley was issued on the 24th March 2009.

ii) Inmaterial of what the board said there are actual physical commitments on site. Attached please find affidavit from my client and letter from Ballut Blocks Ltd. Which clearly show that during June/September 2004 excavation works had in fact been carried out. What exists on site is a disturbed site which definitely does not warrant protection.

iii) There are financial and legal implications involved in refusing to grant a renewal to an approved permit.”

Fir-risposta tieghu Mario Scicluna, ghall-Awtorita', jaghti r-ragunijiet ghaliex fl-opinjoni ta' l-Awtorita dan l-appell ghandu jigi michud. Is-segwenti huma siltiet minn dan ir-rapport li t-Tribunal jhoss ghandhom jigu ssottolineati:

"5.1.3 Reference is made to the assessment as carried out in the DPAR and which included:

Renewal

Architect certified that no changes are being made to the approved plans (Red 2). The existing permit (PA 01287/02 – red 3), issued on 26th June 2002, is valid for a period of five (5) years as per Condition 3g of development permit PA 01287/02. The current application has been submitted on 29th December 2006 and therefore there is no objection to accepting the submission of a renewal application.

Changes in Policies

Where the applicant requests a renewal of the development permit within the validity period in accordance with the provisions 33(3) of the DPA and there is a firm commitment on site in that part of the development which may give rise to a conflict between the existing policies and the previous policies governing the original development permit the principle of the previous permit shall prevail. On the other, if the development has not reached this stage, the provisions of the Local Plan shall prevail. This was further confirmed through internal consultations (minute 15).

In this case the site in question is now subject to Local Plan policies SMCO 03, SMCO 05, and SMCO 07, in view of the approval of the South Malta Local Plan in June 2006. Policy SMCO 03 states that there is a general presumption against development that would create negative impacts on these areas/sites and MEPA will endeavour to safeguard and protect the AEIs and SSIs listed within the Local Plan. Policy SMCO 06 states that there shall be a strong presumption against the creation of new built structure (including cultivation and animal husbandry related structure) in areas of high landscape value, only allowing for the consideration of compatible and sensitive positive interventions and activities (particularly informal recreational activities in the form of walking or cycling footpaths as well as educational initiatives) intended at the rehabilitation of Areas of High Landscape Value. Policy SMCO 07 states there will a presumption against any development within these areas

that will adversely affect the function of the valley as an important water catchments area.

5.1.4 As regards to the arguments of the appeal itself, the Authority states that as regards to the issue of the protection of the valley, if appellant wishes to challenge this area's protection, this should be done through a different fora and not through an appeal against a refusal. The Local Planning and protection procedures are a totally different procedures than those relating to assessing a particular development within a specific plot of land. Development assessments are bound to be carried out in full compliance to the lawful plans and policies which govern specific areas and which include: massing, use, design, access, bad neighbourliness as well as protection of the existing flora and fauna which exists in such ODZ sites. In fact, the Tribunal is from time to time asked to re-assess certain scheduling of certain area through a specific appeal and in which the Authority would forward its reasoning to sustain the existing level of protection. In this case however, such a procedure to challenge the existing protection as established by the local plan has not initiated let alone overturned the existing level of protection of this ODZ area.

5.1.5 In this regard, the assessment as carried out by the Directorate (and which included comments by the Legal Office) resulted that the site is in fact protected substantially by the South Malta Local Plan (Map MS4) and the removal of the topsoil (although fresh vegetation has colonized the whole site as per photos in file) is not considered as an irreversible development which committed the site up to an extent that the it would be more beneficial to the area if the original requested development was to be permitted to be carried out in the next 5 years. As stated above, such circumstances (where renewals are requested and some works commenced on site) fall under the provisions 33(3) of the DPA and which clearly stated that unless there is a substantial commitment (eg. major construction works already constructed) the Authority has the right to refuse

renewal application. In fact it is this reason why such a renewal is not an automatic right of applicant to extend the validity of a permit over and above the initial 5 year period and a fresh application is necessary so as to enable the particular circumstances to be analyzed vis-à-vis the actual situation on site as well as in the light of any new policy or protection relevant to that particular site. In this particular case, the facts can be simply summarized as that the initial development was first approved through application PA 1835/92, renewals were granted, on site only the topsoil is removed and as from August 2006 the area has been designated with a level of protection which clearly prohibits the requested disturbance of the whole plot to create a 'Beer' garden."

Fit-tieni nota tal-Perit Cassar u l-Professur Dr Refalo ghan-nom tal-appellant ipprezentata fiz-17 ta' Frar, 2011, huma jghidu li gej:

"Please refer to the directorate's report with respect to my client's appeal re renewal of permit to construct a beer garden at Marsascalea.

On behalf of my client I wish to state that in its reply the directorate refrained from commenting on the fact stated in our appeal that the site should never have been included in the local plan and marked as an area of ecological, scientific importance and as a valley protection zone when there was a valid building permit and there are other commitments in the area. Conveniently it sidlined this argument by stating that "If appellant wishes to challenge this area's protection, this should be done through a different for a and not through an appeal". This reasoning does in no way change the facts that a mistake was made when this area was designated as such in the local plan.

Even if this fact were to be ignored the renewal of the full development permit should have been given in view of the facts already stated in our previous communication i.e.

(i) The actual commitments on site

(ii) The legal and financial implications involved.

Moreover we would like to conclude by commenting on the proposal being requested for renewal. The renewal requested is for a proposed garden with the minimum of constructions overlying a car park. We strongly believe that such a proposal once executed would provide an amenity to the area which would definitely enhance the existing environmental situation”

Fit-tieni risposta ta' l-Awtorita ipprezentata minn Mario Scicluna huwa jghid hekk:

"The Authority has noted all the arguments as presented in the last submissions and states that:

Appellant has again reiterated and alleged that a 'mistake' was done in the site's designation in the Local Plan process as published in August 2006 but without any proof that the necessary procedures were applied to sustain such an allegation and seek a change in the Local Plan's contents re the site under appeal.

As regards to the alleged commitments on site, in last sitting as held on 15th March 2011, the Tribunal heard that only the soil was shifted at one time but after receiving complaints, the same soil was re levelled to its original position. Hence, when one considers that the requested works include an underground car park which would inevitably involve extensive engineering works whilst the only 'commitment' was the temporary shifting of soil, the site cannot be considered as 'committed' to the requested development up to an extent that if the total requested works were not to continue, the 'unfinished' part works would create such a negative impact that the remaining works would be allowed on planning grounds and for the general benefit of the area. This is clearly not the case of this appeal since as stated in last sitting, no substantial engineering or construction works has so far been carried out to justify an underground car park and the transformation of this large piece of land into a formal

garden but with huts, toilets, fixed kiosks and use of the whole ground floor as a Beer Garden.

Furthermore, one must emphasise that this site was always ODZ with no specific development zoning (building heights, type of urban use etc) so, even for the sake of argument, if the Local Plan had not specifically (along with the back valley area) imposed the present environmental constraints which further imposes restrictions to development (over and above normal ODZ restrictions) due to its ecological importance to both its isolated and commutative impact on the valley area, the proposed underground car park with the overlying formal garden with kiosks would still have had strong objections on environmental grounds by present environment standards and legislation.

Additionally, the Authority is producing hereunder a photo of the site as had been presented by appellant in previous application PA 1287/02 as submitted in 5th March 2002 and which clearly shows that the site in question is truly part of the valley area and was still tilled in exactly the same manner as the other fields located on the aft side of the site. This evidence justifies the Local Plan's designation and protection of the site under appeal as an integral part of the Valley and should thus not be detached from the valley area and be totally transformed through extensive engineering works and rendered as a commercial area with soft landscaping of the proposed Beer Garden.

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning polices and states that MEPA's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal."

Ikkunsidra ulterjorment:

Wara li kkonsidra il-premess u minn ezami tal-pjanti, ritratti u dokumenti li hemm fil-files PAB 347/10 u PA 8242/06, it-Tribunal jikkumenta kif gej:

Il-mertu ta' dan l-appell jirrigwarda applikazzjoni ghar-renewal tal-permess PA 1287/02 mahrug fis-26 ta' Gunju, 2002, li kien igedded il-permess PA 1835/92 ghall-kostruzzjoni ta' beer garden.

Is-sit in ezami jinsab ODZ u vicin il-Maghluq f'Marsascala u fuq triq principali. Skond is-South Malta Local Plan, z-zona li fiha jinsab is-sit in ezami, hija mmarkata bhala Area of Ecological Importance, Site of Scientific Importance, Area of High Landscape Value u Valley Protection Zone u tmiss ma' Special Area of Conservation (policies SMCO 03, SMCO 06 u SMCO 07).

L-applikazzjoni giet rifjutata peress li l-proposta tikser il-policies SMCO 03, SMCO 06 u SMCO 07 tas-South Malta Local Plan u ghalhekk fis-sit in ezami mhux permess zvilupp li

- Johloq impatti negattivi;
- Jikkrea strutturi godda; u
- Li jista jaffettwa il-wied li huwa water catchment area importanti.

Fl-appell tieghu, l-appellant jghid li s-sit in ezami huwa committed peress li

- Hemm full development permit fuq is-sit li diga kien gie imgedded ghal PA 1287/02;
- Is-sit adjacenti huwa committed bi zvilupp simili ghal dak propost; u
- Ix-xoghol fuq is-sit diga beda.

L-appellant jirrileva li meta gew mitluba mid-DCC biex juru li veramnet kien beda x-xoghol fuq is-sit huma ippresentaw affidavit tal-appellant u ittra minn Ballut Blocks li tghid li bejn Gunju u Settembru tas-sena 2004 kien beda xoghol ta' skavar fuq is-sit.

L-appellant jghid ukoll li s-sit in ezami qatt ma kellu jigi inklus fil-local plan bhala parti miz-zona li hija mmarkata bhala Area of Ecological importance, Site of Scientific Importance, Area of High Landscape value u Valley protection Zone peress li fuqha diga kien hemm permess

validu u anki peress li f'sit li huwa izjed vicin tal-wied kien hareg permiss f' Marzu 2009 (PA 6425/05).

Fir-risposta taghha l-Awtorita tghid li l-fatt li fuq is-sit in ezami kien beda jitnehha il-hamrija tal-wicc, f' dan il-kas dan mhux meqjus bhala zvilupp irriversibbli li jikkommetti is-sit tali li ikun izjed ta' beneficju generali li s-sit ikompli jigi zviluppat skond il-permess li kien inghata. Ghalhekk f'kazi bhal dawn fejn il-commitment tas-sit mhux meqjus bhala irriversibbli l-Awtorita' ghandha d-dritt li tirrifjuta li ggedded il-permess issa li, wara li dahal fis-sehh il-pjan lokali, dan is-sit gie mmarkat ghall-protezzjoni b' tali mod li l-izvilupp propost mhux permissibbli f' zoni hekk protetti.

L-Awtorita tikkonkludi billi tghid li, jekk l-appellant ma' jaqbilx maz-zoning li inghata is-sit fil-local plan ghandu jattakka dan l-iskedar permezz tal-proceduri differenti minn dawk tal-appell odjern.

It-Tribunal jaqbel mal-analizi tal-Awtorita' u in partikolari mal-punt fundamentali in ezami u cioe li minn mindu dahal fis-sehh il-pjan lokali s-sit jinsab f'zona li hija mmarkata bhala Area of Ecological importance, Site of Scientific Importance, Area of High Landscape value u Valley protection Zone u tmiss ma' Special Area of Conservation u ghalhekk ghandhom japplikaw l-policies relevanti tal-Pjan Lokali (li huma SMCO 03, SMCO 06 u SMCO 07). Wara li ghamel access fuq il-post, it-Tribunal jaqbel ukoll li ix-xoghol li lahaq sar ma' jikkommettix is-sit peress li dan huwa ghal kollox riversibbli.

Dwar il-kaz imqajjem mill-appellant ta' permiss li hareg fis-sena 2009 fis-sit adjacenti mas-sit in ezami, l-Awtorita' ma' tghid xejn. Dan jaghti wiehed x' jifhem li dan il-permiss ma' kellhux johrog. Fuq dan it-Tribunal ihoss li fejn jidhol l-ippjanar, anke meta jinghata permiss meta dan ma' kellux jinghata skond il-policies tal-ippjanar vigenti, kif jidher li gara f'din ic-cirkostanza, ma' ghandux jithalla li jsir zball iehor sempliciment minhabba xi tip ta' precedent li jkun inholoq minhabba l-ewwel zball. Dan ghaliex waqt li jista jigi argumentat li b'hekk tkun qed issir gustizzja mat-tieni applikant, fil-verita' tkun qed issir

ingustizzja akbar mal-pubbliku in generali li jkollu jsofri zball iehor. Ghandu wkoll jittiehed kont tal-fatt li zgur li l-Awtorita' tat numru hafna akbar ta' rifjuti f'kazi simili u dawn ukoll jikkostitwixxu precedent, se mai izjed b'sahhtu, peress li dawn ir-rifjuti ikunu inghataw konformi mal-ligijiet u l-polices vigenti.

Wiehed jista juza l-argument, kif jidher li qed jaghmel l-appellant, li la hareg permess ghall zvilupp urbanizanti fil-madwar tas-sit in ezami allura il-permess in ezami ghandu jinghata wkoll ghaliex ma' taghmilx differenza issa li z-zona kollha hija kompromessa. Hemm, pero mod iehor kif wiehed jista jhares lejn is-sitwazzjoni. Peress li l-Local Plan jikklassifika din iz-zona bhala li hija Area of Ecological Importance, Site of Scientific Importance, Area of High Landscape Value u Valley Protection Zone u tmiss ma' Special Area of Conservation, anke jekk hemm numru ta' zviluppi li jikkontradixxu tali zoning fl-inhawi, jibqa l-fatt li biex jigu salvagwardjati u rinforzati l-provedimenti tal-pjan lokali, li huwa ligi, huwa importanti li ma johorgux izjed permessi fiz-zona li huma ta' natura urbanizzanti. Fil-fehma kkonsidrata tat-Tribunal t-tieni argumentazzjoni hija dik it-tajba ghaliex din ma' tinvolvi l-ksur ta' ebda policy.

Minn naha l-ohra it-Tribunal jifhem il-punt tal-appellant li, meta jara li hareg permess ghal zvilupp simili adjacenti mas-sit tieghu, ma' jistax jifhem kif fil-kas tieghu dan ma' jinghatax meta ma' l-ewwel daqqa t'ghajn din tidher li ghandha tkun decizjoni oqvja. Minn naha l-ohra l-appellant m' attakkax dan il-livell ta' protezzjoni ghaz-zona meta din kienet giet proposta fil-kors tal-preparazzjoni tal-pjan lokali. L-uniku rimedju fl-ambitu ta' ippjanar li ghandu l-appellant f'dawn ic-cirkostanzi huwa li jaghmel dik li tissejjah Planning Control Application li fiha jargumenta l-kas tieghu mill-lat ta' ippjanar biex il-linja tal-izvilupp tigi imcaqilqa dik id-distanza necessarja biex iz-zona in ezami tigu gewwa z-zona tal-izvilupp.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smiegh ta' dan l-appell, billi jirrizulta li l-proposta in ezami tikser il-policies SMCO 03, SMCO 06 u SMCO 07 tas-South Malta Local Plan u peress li jirrizulta wkoll li x-

xoghol li lahaq sar fuq is-sit ma' jikkommettix is-sit ghall-izvilupp propost, dan l-appell ma jirrizultax fondat u ghalhekk ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut mahrug mill- Awtorita', tal-applikazzjoni PA 8242/06 'To erect beer garden. Renewal of permit PA 1287/02', b'decizjoni tat-30 ta' Novembru, 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Id-diskrezzjoni li t-Tribunal jichad tigidid ghax l-izvilupp jew il-'commitment' fuq is-sit bl-izvilupp ma jkunx 'irreversibbli' fl-istadju tat-tigidid mhix gustifikata jew legittima fil-ligi, ghax il-permess innifsu jikkreja aspettativi legittimi u jikkostitwixxi commitment;
2. It-Tribunal kien skorrett meta fl-applikazzjoni ghal tigidid applika policies vigenti f'dak il-mument u mhux dawk applikabli meta nhareg il-permess, ghax il-permess kien jikkostitwixxi dritt vestit fl-applikant. Iz-zoning li sar kien relattiv u mhux fattwalment gustifikat fil-konfront tal-applikant;
3. It-Tribunal ma setghax jinjora commitment f'sit adjacenti fuq il-premess illi tali permess inhareg bi zball ghax dan jikkostitwixxi arbitrarjeta li tirrasenta d-diskriminazzjoni, u mhix raguni legittima ghal rifjut tal-permess lil appellant.

L-ewwel u t-tieni aggravji

Il-Qorti ma taqbilx li t-Tribunal uza xi diskrezzjoni ingustifikata jew arbitrarja, jew li l-permess innifsu jikkostitwixxi 'commitment' fih innifsu u jikkreja xi aspettativi legittimi ta' tigidid.

Il-Qorti tqis illi t-Tribunal, li qabel mas-sottomissjonijiet tal-Awtorita fuq din il-kwistjoni qies illi permess igorr mieghu l-obbligu ta' zvilupp kif permess entro limitu ta' zmien. Skond il-ligi, darba li dan iz-zmien jiskadi u l-izvilupp ma jkunx ghadu seh jispicca milli jkun operattiv u ghalhekk ma jezisti ebda dritt awtomatiku ghal tigidid bl-istess kondizjonijiet izda skond il-ligi, jista' jerga' jinghata l-

permess ghal tigidid. Kwindi d-dritt kwezit bil-permess ma jistax jitqies aktar bhala tali la darba z-zmien li fih kellu jsir l-izvilupp ikun wasal biex jiskadi minghajr ma jkun sehħ l-izvilupp. Madankollu, it-Tribunal qies illi t-tigidid mitlub ghandha tinghata jekk fil-mument li fih jintalab il-policies vigenti f'dak il-mument ta' tigidid jippermettu tali tigidid. Dan hu konsoni ma' dak li hu l-principju regolatur f'materja ta' talba ghal zvilupp, cioe illi zvilupp hu permess jekk hu konformi mal-policies u pjanijiet vigenti fil-mument tad-decizjoni dwar it-talba ghal zvilupp.

Il-Qorti tqis illi d-diskrezzjoni tat-Tribunal hi wahda lecita fit-termini tal-artikolu li jitkellem dwar talba ghal tigidid cioe artikolu 33(3) tal-Kap. 356 rifless fl-artikolu 69(4) tal-Kap. 504 wara l-emendi fil-ligi.

Hu minnu illi diskrezzjoni afdana lit-Tribunal ghandha tkun uzata b'mod ragonevoli b'mod li ma tikkreja ebda ingustizzja jew diskriminazzjoni. F'dan il-kuntest ghalhekk it-Tribunal ikkonsidra l-possibilita illi zvilupp ikun lahaq inbeda u mhux fi stat li jkun riversibbli applikati l-policies u pjanijiet vigenti fil-mument tad-decizjoni. Din l-eccezzjoni ghar-regola hi intiza favur l-applikant f'kaz illi l-izvilupp ikun wasal fi stadju fejn jekk jigu applikati l-pjanijiet u policies vigenti l-izvilupp gia kompjut ser jigi pregudikat.

Il-Qorti ma tqis li din l-eccezzjoni ghal regola stretta hi b'xi mod arbitrarja. Anzi hi intiza biex issalva zvilupp mhux konkluz qabel ma jiskadi permess liema zvilupp kompjut, applikati l-pjanijiet u policies vigenti jistghu jipregudikaw dak kompjut bil-permess ottenut antecedentement.

Madankollu l-kwistjoni jekk zvilupp wasalx fi stadju li ghandu jitqies irriversibbli u kwindi ghandu jibqa' jsehħ u jinghata estensjoni fil-permess malgrado il-pjanijiet u policies godda hi wahda ta' fatt dwar liema din il-Qorti hi prekluzza tissindaka.

F'dan il-kaz it-Tribunal ikkonkluda li l-izvilupp kien tali li ma kien bl-ebda mod juri li l-izvilupp kien talment kommess cioe fi stadju irriversibbli li l-applikazzjoni tal-pjanijiet u policies kienu ser jikkompromettu l-izvilupp gia kompjut.

F'dan is-sens ghandu jigi miftiehem l-commitment li alluda ghalih it-Tribunal li hi kwistjoni ghalhekk fattwali dwar l-entita u irriversibilita tal-izvilupp u dwar liema din il-Qorti ma ghandhiex tissindika.

Ghalhekk it-Tribunal ma jistax jinghad li agixxa kontra l-ligi jew il-principji legali li johorgu mill-applikazzjoni tal-pjanijiet u policies ghal kaz in ezami. Lanqas jista' jinghad li uza diskrezzjoni b'mod arbitrarju u irragonevoli u ghalhekk dawn l-aggravji qed jigi skartati.

It-tielet aggravju

Dan l-aggravju wkoll ma jisthoqqlux li jintlaqa'. It-Tribunal mhux marbut bil-precedent u ghandu kull dritt jesprimi fehma dwar decizjonijiet ohra li ma jaqbilx magghom. Ghalkemm l-uniformita fid-decizjonijiet hi necessarja biex kull applikant jircevi l-istess trattament, pero kif qal l-istess Tribunal, il-fatt li fil-fehma tieghu, il-policies u pjanijiet vigenti ma kellhomx jippermettu zviluppi bhalma nghataw biswit dik in kwistjoni, ma jfissirx li la darba giet applikata hazina l-ligi, din ghandha tiffirma bazi u regola ghal applikazzjonijiet ohra. Ir-rimedju f'kaz simili ghandu jittiehed bi proceduri ohra f'sede differenti, u kontra l-persuni u/jew l-entitajiet appoziti skond u jekk ikun il-kaz.

Din il-Qorti ma tistax ticcensura l-operat tat-Tribunal li mexa skond il-pjanijiet u policies ezistenti fi zmien id-decizjoni u dwar liema l-appellant ma nnegax l-applikabilita tagghom, izda invece sahaq biss li kellhom jibqghu jigu applikati dawk ezistenti fi zmien l-ewwel permess. Dan l-argument hu differenti u ma jindirizzax jew jinnewtralizza l-argumenti legali u teknici tat-Tribunal.

Ma hemm xejn arbitrarju li Tribunal jiddeciedi skond il-ligi pjanijiet u policies vigenti fil-mument tad-decizjoni u ghalhekk anki dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Lawrence Fino u tikkonferma d-decizjoni tat-Tribunal ta'

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Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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