MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF
MARK CHETCUTI

Seduta tad-9 ta' Ottubru, 2013

Appell Civili Numru. 82/2012

Grezzju Grech

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Grezzju Grech tal-24 ta' Mejju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012 fejn cahdet l-applikazzjoni ghal zvilupp PA 6183/08 konsistenti f'kostruzzjoni ta' residential dwelling and pool;

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

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

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

Dan huwa appell minn rifjut tal-Awtorita’ tal-applikazzjoni PA 6183/08 ‘To construct a residential dwelling and pool’, b’ decizjoni tal-24 ta’ Gunju, 2010.

Ir-ragunijiet li ghalihom l-Awtorita’ irrifjutat l-applikazzjoni PA 6183/08 kienu
s-segwenti:

"1. The site lies outside the limits for development of Zabbar and so it is located in an area which should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside.

2. 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.

3. 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 can not be located in an area designated for development or in an existing built up area.

4. The proposed dwelling unit within the site in question would lead to intensification of buildings within the respective rural area. Hence the proposal will detract from the aims of South Malta Local Plan policy SMCO 10 – Strategic Open Gap which aims at protecting open gap areas from urban development and maintaining its landscape.

5. 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 outside development zones 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.";

Fl-appell tieghu tal-14 ta' Lulju, 2010, l-appellant, permezz tal-Perit Cachia u l-Avukat Vella Cuschieri jaghati s-segwenti ir-ragunijiet ghal dan l-appell:

"(1) Illi l-ewwel aggravju ta' l-appellant huwa illi l-Awtorita' appellate irrifjutat il-permess abbazi biss li s-sit jinsab barra z-zona ta' zvilupp u njorat ghal kollox il-commitment massicc li hemm fiz-zona tant illi l-plot tal-appellant huwa l-uniku plot mhux mibni.

Illi l-appellant isostni li s-sit in kwistjoni huwa mdawwar b'permessi ta' zvilupp mahruga mill-istess Awtorita' liema permessi jrendu lill-Awtorita' hatja ta' diskriminazzjoni stante li huwa biss f'dan il-kaz li l-Awtoirta' irrifjutat il-hrug tal-permess ta' zvilupp de quo.

Issir referenza f'dan l-istadju tghar-ritratti annessi bhala dokumenti A u B minn fejn jidher is-sit ta' l-appellant imdawwar bil-bini. Dan ir-ritratt jaghmilha evidenti kemm id-decizjoni ta' l-Awtorita' li tirrijfuta dan il-permess hija wahda bla ebda bazi legali u tikkommetti ingustizza cara u manifesta fil-konfront ta' l-appellant. Qed jigu mmarkati fuq l-istess ritratt A anness in-numru ta' permessi ta' zvilupp madwar is-sit u cjoe' PA 2729/09, PA 2658/08, PA 3887/04, PA 5631/99, PA 940/98 u PA 2911/97.

Illi b'referenza ghal 'commitment' car u ezistenti fiz-zona issir referenza ghal bosta decizjonijiet tal-Bord ta' l-Appell kif ukoll tal-Qorti ta' l-Appell fejn ghal diversi drabi gie enuncjat illi f'kaz li jkun hemm 'commitment' mhux bizzejjed li wiehed jistrieh fuq dak li jghid il-Pjan Lokali u jevita li jaghti decizjoni abbazi ta' 'commitment'. Fost dawn id-decizjonijiet hemm is-segwenti:

(i) Trident Development Limited vs. l-Awtorita’ ta’ Malta dwar l-Ambjent ul-Ippjanar (4/2008) li ddecidiet kif isegwi:

‘Din il-Qorti thoss li jidher car li bhala fatt li hemm commitment fl-istess area ta’ diversi zviluppi, koperti bil-permess, ukoll bhal jew simili, u anke ta’ entita’ ikbar minn dak propost mill-istess appellant, u allura a bazi ta’ l-istess il-Bord (ta’ l-Appell dwar l-Ippjanar) hareg l-istess permess ta’ zvilupp a bazi ta’ commitment. B’hekk il-Bord iddecieda li fid-dawl li l-istess zonba hija kommessa, tali permess jista’ jinhareg u din hija l-pozizzjoni legali korretta.’

(ii) L-istess jigi konfermat fid-decizjoni tal-Bord ta’ l-Appell fl-ismijiet Salvu Mallia vs. Kummissjoni ghall-Kontroll ta’ l-Izvilupp (PAB 221/97, PA 4213/96):

‘Ir-regola ta’ ceribus paribus maghdud mal-commitment massicc li hemm favour l-applikazzjoni odjerna ma thall ebda triq lill-Bord hlief li japplika f’dan l-appell dak li gie applikat mill-Kummissjoni stess fid-diversi binjiet.’

(iii) Fid decizjoni Dione Bartolo kontra l-Kummissjoni ghall-Kontroll ta’ l-Izvilupp (PAB 633/98, PA 0131/98):

‘Dak li thalla jsir fil-kaz ta’wiehed ghandu jithalla jsir fil-kaz ta’ kullhadd’.

(iv) Il-Qorti ta’ l-Appell fid-decizjoni fl-ismijiet Natalino Debono vs l-Awtorita’ ta’ Malta dwar l-Ambjent u l-Ippjanar deciza nhar il-25 ta’ Frar 2010 enuncjat kif isegwi:

‘Illi dwar il-mertu din il-Qorti thoss li fil-fatt l-istess Bord ta’ l-Appell dwar l-Ippjanar (Bord) naqas li jiddeciedi dwar il-punt ta’ commitment li gie migjub quddiemu, u dan jidher li huwa iktar serju meta l-istess Awtorita’ mhux biss ma kkontestatx l-ezistenza ta’ tali permessi, anzi adirittura rrikonoxxiet li kien hemm f’tali parametric permessi li jimpingu fuq il-kaz odjern, commitment f’dik l-area preciza u fil-vicinanzi. Dan in-nuqqas jirrendi l-istess decizjoni nulla wkoll ghaliex ikun ifisser li l-istess Bord ikun injora l-effett li commitment jista’ u ghandu jkollu fuq applikazzjoni, u allura jkun applika effettivament

procediment differenti minn dawk li kellhom jigu applikati ghal kaz in ezami.'

(v) Fl-istess data l-Qorti ta' l-Appell iddecidiet ukoll l-appell fl-ismijiet Joseph Gauci vs. Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar fejn ukoll enuncjat kif isegwi:

'Illi fl-opinjoni ta' din il-Qorti din am kienitx il-kwistjoni li l-Bord kellu quddiemu, u dan jidher car mit-termini stess tal-appell pprezentat quddiemu, fejn dak li kellu jigi kkunsidrat mill-istess Bord kien propju l-punt li la darba effettivament kien hemm bini fl-istess inhawi u area bil-permessi ghall-gholi ta' tlett sulari qabel dak propost mill-appellanti, mela allura dan l-izvilupp ga ezistenti jikkostitwixxi commitment ta' dik l-area ghal tali tip ta' zvilupp.. Illi fl-opinjoni ta' din il-Qorti dan it-tip ta' ragunament (tal-Bord) u motivazzjoni jinjoraw ghal kollox is-sottomissjonijiet u l-aggravji li l-istess appellant kien ressaq quddiem il-Bord u dan fis-sens li l-Bord kien mistieden sabiex jiddeciedi li in vista tal-fatt li kien hemm commitment fl-area tali gholi massimu ta' bini kif propost mill-appellanti, mela allura tali commitment kellu u ghandu jkun relevanti ghad-determinazzjoni tal-applikazzjoni tal-appellanti.'

Illi ghalhekk in vista tas-suespost, filwaqt li l-appellant jaghmel talba formali sabiex il-Bord ta' l-Appell jaghmel access fuq is-sit sabiex jara b'ghajnejh il-'commitment' massicc taz-zona, jsostni li legalment u in vista tac-cirkostanzi specjali tal-kaz tieghu, huwa ghandu dritt ghal permess ta' zvilupp de quo.

(2) Illi minghajr pregudizzju ghas-suespost, it-tieni aggravju ta' l-appellant jaghmel referenza specifika ghar-raba' raguni ta' rifjut li taqra kif isegwi:

"The proposed dwelling unit within the site in question would lead to intensification of buildings within the respective rural area. Hence the proposal will detract from the aims of South Malta Local Plan policy SMCO 10 – Strategic Open Gap which aims at protecting open gap areas from urban development and maintaining its landscape."

Bir-rispett kollu dan l-aggravju ma jaghmel l-ebda sens meta applikat ghall-kaz de quo stante li zgur ma kienitx l-intenzjoni ta’ min ghamel il-‘policy’ li din tkun applikabbli ghal plot wiehed fost bosta plots ohra mibnija! Dan aktar u aktar meta l-plot stess huwa sahansitra plot il-boghod mit-triq li ga tipprovdi se mai il-‘gap’ necessarja. Apparti minn hekk l-appellant ma jistax jifhem din il-‘gap’ xi skop strategiku jista jkollu apparti li qed thalli zewg hitan ta’ appogg mikxufa, fattur li zgur estetikament mhux accettabbli.”

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 The proposed development is not proposing an end-of-scheme building but is developing an unbuilt plot into a new two floor dwelling. From a planning point of view, the area is desingated as ODZ and as an area of Strategic Open Gap and hence this plot cannot be developed as if being located within the boundaries of development.

5.1.4 In this respect, the Authority fully agrees with the DCC’s decision to dismiss this request for development since the official land designation as approved through the Local Plan process (South Malta Local Plan – August 2006) prohibits such urban development which could (and should) be located in any one of the scheme boundaries as located all over the island.

5.1.5 On the other hand, appellant is basing his main arguments on grounds that nearby his plot of land, similar dwellings had been approved by the Authority. However, the Authority took note of the quoted PA numbers and resulted that:

PA 3887/04 – case decided on 30.11.05
PA 5631/99 – case decided on 06.03.02 (alterations to existing bld)

PA 0940/98 as follow up to:
PA 2911/97 - case decided on 01.10.97 (alterations to existing bld)

5.1.6 The above clearly shows that there are no similar buildings within this area since a relevant commitment would have been a permit which was issued for a similar development and decided through the present planning policies. Additionally, reference is being made to several Planning Appeals Board decisions in which the Boards constantly emphasise that decisions are to be taken through present policies and any 'commitment' on site which could have had been approved through different policies does not bind the Board to breach present policies.

Il-Pjan Lokali kien specifikament mahsub sabiex jaghti direzzjoni ta' kif zoni differenti ghandhom ikomplu jigu zviluppati. Kieku wiehed kellu jinjora l-pjan lokali u johrog permessi abbazi biss ta' xi tip ta' committment dan ikun ifisser illi l-ghanijiet tal-Pjan Lokali ma jkunu jistu qatt jintlahqu u l-ezercizzju kollu tal-pjanijiet lokali jkun sar ghal xejn. PA 5727/05 – RT 04.02.09 - PAB 161/07 - Fenech Victor – Attard – Scheme.

"Dan il-Bord ma ghandux gurisdizzjoni jew poteri li tippermettili jissindika l-kontenut tal-pjanijiet lokali. Iz-zona inkwistjoni hija stabbilita fil-Pjan Lokali bhala Industrial zone, kif inhuma ukoll iz-zoni fl-inhawi ta' madwar……Ghaldaqstant dan il-Bord huwa tal-fehma li stante li l-Bord m'ghandux gurisdizzjoni u fuq 'decizjonijiet dwar Kontroll ta' Zvillupp, u dwar xi zvilupp li jkun specifikament awtorizzat fi Pjan ta' zvilupp'. Skond l-Artiklu 15(1)(D)(ii) tal-Att dwar l-Ippjanar ghall-Izvilupp, dan l-appell huwa null." PA 6039/05 - ISB 24.07.09 – PAB 46/06 - Bondin Malcolm – Mqabba – ODZ

Il-Bord ikkunsidra wkoll illi permessi maħruga taħt policies differenti minn dawk tal-lum ma jistawx awtomatikament iservu ta' preċendent sabiex illum jinħargu permessi li jmorru kontra l-policies in vigour fil-prezent. - PA 1154/05 -

RT 29.07.09 – PAB 205/06 - Agius Bernard – Paola – UCA

Il-permess PA 0511/05 inhareg qabel ma gie fis-sehh il-Pjan Lokali u ghalhekk ma jistax jitqies bhala precedent; il-permess PA 0056/05 ukoll inhareg qabel ma gie fis-sehh il-Pjan Lokali u ghalhekk ma jistax jitqies bhala precedent. PA 4290/04 – RT 14.04.10 – PAB 61/06 - Vella Clint – Mosta – UCA

Il-Bord ikkunsidra l-argumenti kollha mqajjma miz-zewg partijiet u jinnota illi hemm numru ta' decizjonijiet tal-Qorti ta' l-Appell li jistabilixu illi, decizjonijiet fuq applikazzjonijiet ghal permessi tal-bini, ghandhom jittiehdu mhux fuq il-policies fiz-zmien meta tkun saret l-applikazzjoni izda fuq il-policies in vigore meta tkun qed tittiehed id-decizjoni. PA 1597/05 – RT 14.04.10 – PAB 77/07 – Cassar Mark – Siggiewi – ODZ.

5.1.7 As regards to the reference to the Court of Appeal sentences, the Authority has noted these arguments and states that as regards to the cited Court of Appeal sentences, one is to note that these decisions simply emphasize that the Board is to take into consideration ALL relevant information submitted by appellants, that the Court decided was not taken into account in these 3 cases. However, nowhere do these decisions state that the local plan is to be ignored. So the Appeals Board has to consider these submissions by appellant in above 3 mentioned cases and then decide according to law. Other development in the first place does not mean or translate into commitments. Commitments exist where it would be discriminatory not to issue a permit when other similar permits in same area have been issued on the basis of the same time-period, policies and other considerations being identical. In fact, in the above mentioned cases, the Court of Appeal did not issue permits but resent them back to be decided by the Appeals Board after they take note of all submissions made by the parties, which cases are still sub-judice.";

Fin-nota tal-Avukat Dr Joanne Vella Cuschieri ghan-nom tal-appellantipprezentata seduta stante fl-1 ta' Frar, 2011, hija tghid li gej:

"Nikteb ghan-nom tal-appellant Grezzju Grech u filwaqt naghmel referenza ghal dan l-appell qed nesebixxi rtiratt li jindika is-sit koncernat f'din l-applikazzjoni kif ukoll permessi ta' zvilupp li nhargu fis-sit adjacenti ghall-istess sit. Qed jigu annessi wkoll id-deskrizzjoni ta' kull applikazzjoni ghall-informazzjoni tal-Bord fl-ordni li ssegwi:

1. PA 3887/04
2. PA 2658/09
3. PA 2729/09
4. PA 5631/99
5. PA 2911/97
6. PA 940/08.

L-appellant umilment jitlob li jsir access fuq il-post jekk il-Bord ihoss li huwa mehtieg, altrimenti jiddikjara li ma ghandu l-ebda provi ulterjuri.";

Fit-tieni risposta ta' l-Awtorita' ipprezentata fis-16 ta' Frar, 2011 minn Mario Scicluna jghid hekk:

"The Authority has noted all the arguments as presented in the last submissions and states that as regards to the permits cited in this letter, the Authority took note of their particular planning considerations and notifies that Tribunal that:

a) PA 3887/04 – Gtd To construct dwelling in a committed built up area.
DCC approved on 30.11.05
Note: Case decided prior to August 2006 when the Local Plans were issued.

b) PA 2658/09 – Gtd Minor changes to previously approved permit PA2849/08; minor internal alterations; addition of small balcony; revised treatment to elevations.
DCC approved on 16.09.09

Note: Only additions / alterations were approved + Site is in Kappara

c) PA 2729/09 – Gtd Construction of swimming pool, pump room and balance tank in the garden of property - PA2658/08.
Note: Only additions / alterations were approved

d) PA 5631/99 – Gtd Alterations to garage and additional floor.
DCC approved on 6.3.02
Note: Case decided prior to Local Plans and site was committed by a full ground floor.

e) PA 2911/97 – Gtd To demolish front part of building and reconstruct to form building.
DCC approved on 1.10.97
Note: The DPA was gtd since the footprint was not altered, the site was committed and decision was taken prior to Local Plan.

f) PA 940/98 – Gtd Construction of garage at ground floor and bathroom and terrace at first floor
DCC approved on 21.08.98
Note: Site was committed and decision taken eight years prior to the Local Plans.

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 the EPC’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 187/10 u PA 6183/08, it-Tribunal jikkumenta kif gej:

Il-mertu ta’ dan l-appell jirrigwarda applikazzjoni tat-tip outline ghall-kostruzzjoni ta’ residenza u swimming pool. Huwa propost li r-residenza tkun tokkupa madwar 150

metru kwadru bhala footprint bi floor space ta’ 200 metru kwadru fuq zewg sulari.

Is-sit in ezami jinsab ODZ fi Triq Pawlu Scicluna f’ Haz-Zabbar. Fis-South Malta Local Plan din iz-zona hija mmarkata bhala Strategic Open Gap (Map ZA 2). Is-sit jinsab madwar 6.4 metri mill-linja tal-izvilupp u z-zona hija imdawwra bil-bini li l-bicca l-kbira minnu huwa gewwa l-linja tal-izvilupp. Bhal issa fis-sit hemm bini zghir li qed imiss ma’ bini li huwa gholi zewg sulari. Fuq naha minnhom hemm bini ezistenti waqt li fuq in-naha l-ohra hareg permess ghall-bini ta’ residenza (PA 2658/08).

L-applikazzjoni giet rifjutata peress li is-sit mertu ta’ dan l-appell jinsab ODZ u ghalhekk din il-proposta tikser il-policies SET 11, SET 12, BEN 5 u RCO 4 tal-Pjan ta’ Struttura. Oltre minn dan is-South Malta Local Plan jindika iz-zona li fiha jinsab is-sit in ezami bhala Strategic Open gap (Policy SMCO 10) u ghaldaqstant mhux permess zvilupp ta’ tip urbanizzanti f’din iz-zona.

Fl-appell tieghu, l-appellant jghid li:
• Fiz-zona li fiha jinsab is-sit mertu ta’ dan l-appell hemm commitment ta’ bini qawwi hafna tant li, skond l-appellant, il-plot tieghu huwa l-uniku li mhux mibni. Peress li l-Awtorita’ harget dawn il-permessi kollha ghall-bini ta’ residenzi, ikun diskriminatorju kontra l-appellant jekk l-permess ma’ jinghatax lilu biss. L-appellant jissottometti numru ta’ ritratti li juru l-izvilupp kollu li hemm madwar is-sit in ezami u jikkwota wkoll in-numri tal-permessi relattivi.
• L-appellant isostni li, skond kif iddecidew f’kazi precedenti il-Bord tal-Appell (illum it-Tribunal ta’ Revizjoni Dwar l-Ambjent u l-Ippjanar) kif ukoll il-Qorti tal-Appell, f’ sitwazzjonijiet bhal dawn, meta jkun hemm dan it-tip ta’ commitment qawwi, mhux bizzejjed li l-Awtorita’ toqghod biss fuq il-Local Plans.
• L-appellant jzid li ma’ jaghmilx sens li l-iStrategic Open Gap issir biss applikabbli ghal plot wahda biss. L-appellant ghalhekk ma’ jistax jifhem xi skop jista jkolla din l-iStrategic Open Gap mill-punto di vista ta’ ippjanar.

Fir-risposta taghha l-Awtorita’ tghid:

• Is-sit jinsab ODZ u gewwa Strategic Open gap u ghalhekk dan is-sit ma’ jistax jinbena qisu qed jinbena plot normali gewwa z-zona ta’ l-izvilupp;
• Il-permessi li semma l-appellant kollha hargu qabel ma’ dahal fis-sehh il-pjan lokali u ghalhekk hawn wiehed ma’ jistax jitkellem dwar commitment peress li l-policies li japplikaw f’kull kas huma dawk li jkunu vigenti meta tkun qed issir id-decizjoni;
• Fuq spjegazzjoni ta’ kif jista jinholoq commitment legittimu fl-ghoti tal-permessi tal-bini din tohrog minn numru ta’ decizjonijiet li saru recentement mill-Bord tal-Appell (illum it-Tribunal ta’ Revizjoni Dwar l-Ambjent u l-Ippjanar) u mill-Qorti tal-Appell, u cioe commitment jinholoq meta jigi rifjutat permess f’kas partikolari meta jkunu diga inghataw permessi simili fl-istess perjodu jigifieri meta jkunu japplikaw l-istess ligijiet u policies tal-ippjanar;

It-Tribunal jaqbel mal-analizi tal-Awtorita’ u in partikolari mal-punt fundamentali in ezami u cioe li s-sit jinsab ODZ u gewwa Strategic Open Gap u ghalhekk ghandhom japplikaw l-policies relativi tal-Pjan ta’ Struttura u tal-Pjan Lokali. Gew ukoll spjegati b’mod mhux dejjem konvincenti ghall-ahhar il-kazi imqajjma mill-appellant ta’ permessi li hargu barra miz-zona tal-izvilupp fil-madwar tas-sit in ezami. Minn dawn ir-risposti jidher li l-permessi imsemmija jew kienu inghataw qabel ma gie fis-sehh il-pjan lokali jew inkella kienu ta’ natura sekondarja li inghataw biex isir tibdil f’residenzi diga ezistenti u bil-permess. Xorta jidher li xi permessi li hargu fl-inhawi ma’ kellhomx johorgu ghax il-linja li tiddemarka z-zona tal-izvilupp jidher li ghada fejn kienet qabel ma’ dahal fis-sehh il-pjan lokali ghalkemm certament li iz-zona saret Strategic Open Gap meta dahal fis-sehh il-pjan lokali.

Fuq l-issue in generali tal-commitments dan it-Tribunal ihoss li fejn jidhol l-ippjanar, anke meta jkun sar zball u inghata permess meta ma’ kellux jinghata skond il-policies tal-ippjanar vigenti, li mhux necessarjament hu l-kas 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' taghat 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.

Jaqbel ma' l-appellant li madwar is-sit in ezami jezistu numru ta' zviluppi li, anke peress li huma tat-tip li normalment ma' jsirux fl-ODZ, huma simili ghall-proposta in ezami u dan innotah ukoll it-Tribunal meta ghamel access fuq il-post. Jibqa l-fatt li skond il-pjan lokali, li ghandu status ta' ligi, iz-zona in ezami hija ODZ u SOG u allura japplikaw il-policies kollha relevanti ghal din il-klassifikazzjoni.

Wiehed jista juza l-argument, kif jaghmel l-appellant, li la jezistu zvilupp urbanizanti fil-madwar tas-sit in ezami allura dan il-permess ghandu jinghata 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 ODZ u SOG, anke jekk hemm numru ta' zviluppi li jikkontradixxu tali zoning fl-inhawi, allura, 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.

Min-naha l-ohra it-Tribunal jifhem il-punt tal-appellant li, meta jara dak l-izvilupp kollu madwaru ma' jistax jifhem kif fil-kas tieghu ma' jistax johrog permess meta kull ma' qieghed jitlob huwa li jibni plot wahda li ma' l-ewwel daqqa t'ghajn tidher li ghandha tkun decizjoni ovvja. L-uniku rimedju 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 dawk il-ftit metri necessarji biex il-

grupp ta' bini in kwistjoni kif ukoll il-plot tieghu jigu 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 SET 11, SET 12, BEN 5 u RCO 4 tal-Pjan ta' Struttura u l-Policy SMCO 10 tas-South Malta Local Plan 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 6183/08 'To construct a residential dwelling and pool', b' decizjoni tal-24 ta' Gunju, 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:
1. It-Tribunal naqas li jikkonsidra l-commitment li hemm fiz-zona u applika l-policies u kwindi ivvjola dak li jrid l-artikolu 69(2) tal-Kap. 504;
2. It-Tribunal iddecieda punt ta' ligi hazin meta ddecieda li r-rimedju tal-appellant hu planning control application li mhux rimedju xejn izda abdikazzjoni tat-Tribunal li jezercita l-policies moghtija lilu skond il-ligi.

L-ewwel aggravju

Dan l-aggravju kien gia mertu ta' diversi appelli f'kawzi ohra. Din il-Qorti gia kellha okkazjoni tidhol f'din il-kwistjoni u waslet ghal konkluzjoni li l-artikolu 69 tal-Kap. 504 gia l-artikolu 33 tal-Kap. 356 jimponi fuq l-Awtorita u t-Tribunal li japplika l-ligijiet, pjanijiet u policies ghal kaz fiz-zmien li tkun qed tittiehed id-decizjoni. Pero meta jkun qed jigi kunsidrat il-kaz l-Awtorita u t-Tribunal ghandhom iqisu kwistjonijiet ta' sustanza u sottomissjoni ta' 'commitment' hi kwistjoni ta' sustanza li t-Tribunal ghandu jqis jekk titqajjem. Pero hawn il-Qorti taghmel distinzjoni netta u dan kif l-istess ligi hi redatta. Ghalkemm it-Tribunal ghandu jqis kull kwistjoni ta' sustanza pero ebda kwistjoni ta' sustanza qatt ma tista' tingieb bhala prova li jgieghel lil Awtorita jew it-Tribunal ma japplikax jew jinjora jew

addirittura jivjola dak li jirrizulta b'mod car mill-ligi, pjan jew policy li ghandhom forza ta' ligi u fejn tali ligi, pjan jew policy ma jhallux diskrezzjoni residwa lit-Tribunal li jiddipartixxi mill-ordni li kull ligi pjan jew policy torbot lil Awtorita gudikanti.

Hu f'dan il-kuntest illi jrid jigi deciz dan l-appell. F'dan il-kaz it-Tribunal wasal ghal konkluzjoni illi s-sit kien jinsab f'ODZ u ghalhekk l-izvilupp kien ser jikser il-policies SET 11, SET 12, BEN 5, u RCO 4 tal-Pjan ta' Struttura. In oltre s-sit kien jinsab fiz-zona indikata bhala Strategic Open Gap (Policy SMCO 10) tas-South Malta Local Plan.

Il-lanjanzi tal-appellant ma jmissux il-bazi legali li jostakolaw zvilupp tas-sit mertu ta' din l-applikazzjoni u kwindi din il-Qorti ma hix ser tissindaka dak li t-Tribunal ghamel u cioe li applika l-pjanijiet u policies relevanti li hu obbligat li jaghmel b'mod tassattiv ai termini tal-artikolu 69(1) tal-Kap. 504.

In kwantu ghal kwistjoni tal-commitment it-Tribunal qabel mal-analizi tal-Awtorita fejn sostniet li l-permessi msemmija mill-appellant biex juri li nhargu permessi simili hargu qabel ma dahal fis-sehh il-pjan lokali u kull applikazzjoni trid tigi mistharrga skond il-policies applikabbli fiz-zmien tad-decizjoni u illi commitment jinholoq meta jigi rifjutat permess meta jkun diga nghataw permessi simili fl-istess perjodu cioe meta jkunu japplikaw l-istess ligijiet u policies ta' ppjanar.

Hu minnu li t-Tribunal irrimarka obiter kif ghandu kull dritt dwar decizjonijiet ohra u hass li ma kellux jaqbel maghhom minhabba li l-policies vigenti kellhom jipprovdu pero b'daqshekk ma jistax jigi argumentat, kif qed jargumenta l-appellant, li t-Tribunal kellu jaddotta dak li l-ligi tiprojbixxi, cioe li jsir ragunament li bih jinghata permess meta l-pjanijiet u policies jivjetawh. In oltre ma hemm ebda principju ta' xi tip ta' 'precedent' fid-decizjonijiet tat-Tribunal ghalkemm hu car illi hu fl-interess tal-gustizzja u tal-certezza ghac-cittadin li jkun hemm uniformita fid-decizjonijiet. It-Tribunal qal sew li jekk inhareg peress li fl-opinjoni tieghu kien ingustifikat, l-izball

jipperpetwa ruhu billi jinhareg permess a bazi ta' decizjoni antecendenti li fl-opinjoni tat-Tribunal kienet tippekka mill-lat legali taghha. Dan hu guridikament korret ghalkemm il-Qorti hi konxja li c-cittadin jisthoqqlu li jkun trattat bl-istess mod, dejjem a bazi ta' dak li trid il-ligi, biex jigi assikurat li qed issir gustizzja mieghu skond il-ligi. Pero kif qal it-Tribunal u dan taqbel mieghu l-Qorti ghax legalment fondat, ghalkemm gew notati zviluppi ohra fiz-zona, it-Tribunal ghandu jkun marbut bil-pjanijiet u policies ghax hekk trid il-ligi tal-ippjanar.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Ghalkemm dan ghandu somiljanza ta' punt ta' ligi, pero fil-fatt hu biss hsieb u ipotesi tat-Tribunal dwar dak li jista' jaghmel l-appellant biex jirranga dak li jezisti llum fil-pjan lokali. Bl-ebda mod din l-osservazzjoni tat-Tribunal ma kkostitwiet xi parti decisiva fil-konsiderazzjonijiet tieghu jew assumiet xi rwol sostantiv fil-parti decisiva li strahet essenzjalment fuq il-piz li kellu jinghata lill-ligijiet paragunati ma' dak li l-appellenat hass li kellu qua dritt percepit minnu a bazi ta' zvilupp iehor fiz-zona. L-aggravju ma jikkostitwix punt ta' ligi appellabbli billi ma kienx kwistjoni li fuqha gie intavolat appell izda kif inghad kien hsieb tat-Tribunal ta' dak li jista' jaghmel l-appellant fic-cirkostanzi, liema hsieb, errat jew gustifikat, ma jinkwadra bl-ebda mod fid-decizjoni.

Ghalhekk dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti qed tichad l-appell ta' Grezzju Grech u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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