



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-14 ta' Novembru, 2013

Appell Civili Numru. 157/2012

Anthony Cauchi

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Anthony Cauchi tas-16 ta' Ottubru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tas-27 ta' Settembru 2012 li cahdet l-applikazzjoni PA 1474/09 'to sanction additions and alterations to create dwelling';

Rat ir-risposta tal-Awtorita appellata li sottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

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

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

B'applikazzjoni tad-9 t'April 2009 – Full Development Permission – PA 1474/09 fejn l-appellant, f' sit fi Triq Grunju, Qala, Ghawdex, talab:

“to sanction additions and alterations to create dwelling”

Permezz ta' rifjut mahrug fiz-19 ta' Novembru, 2010, l-Kummissjoni dwar il-Kontroll tal-Izvilupp cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

“1 The site lies outside the limits for development defined in Maps 14.8- A&C of the Gozo and Comino Local Plan and so it is located in an area where new residential development is unacceptable, as set out in Policy GZ-RLST-5.

2 The proposal runs counter to the adopted Development Control Guidance - Developments Outside Built up Areas (1995), and in particular to paragraphs 8.1 (i), (ii) and (iii) in that-there is no justification for additions-and-alterations to the rural building; and paragraphs 8.2(iii) and 8.2(viii) in that a new dwelling unit is being created.

3 The proposed development conflicts with Structure Plan Policy SET11 and Gozo and Comino Local Plan Policy GZ-LMDZ-1, which do 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 the limits to development in accordance with Paragraph 7.6 of the Structure Plan.

4 There is no justification for the development of this site as required by Structure Plan Policy SET12. It is apparent that there are no reasons from a planning point of view why the proposed development cannot be located within the development zone.

5 Structure Plan Policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan Policy RCO 4.”

L-Perit Saviour Micallef ressaq l-aggravji tal-appellant kif gej:

“1. The building existed before 1968 as shown on attached old survey sheet

2. Moreover attached affidavits clearly proof that the rooms were used for Habitation

3. Hence no dwelling is being created and proposal is acceptable as the proposed floor area (original plus extension) is 134 sq. m, that is less than the permitted 150 sq. m.”

Permezz ta' rapport l-Awtorita' ressqet il-kummenti taghha inter alia kif gej:

“5.0 COMMENTS ON APPELLANT'S ARGUMENTS

5.1 The Authority has noted the arguments as brought forward in appellant's request for appeal and shall address these issues hereunder:

5.1.1 In this request for appeal, appellant is stating that this request for development is justified in view that the proposed development satisfies all the requisites of the relevant policies.

5.1.2 However, after noting all of appellant's arguments as presented in this request for appeal the Authority disagrees with these justifications and states that the development as proposed breach the relevant policies as will be discussed below.

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

-- Principle of the development

The proposed development is related directly to application for the adjacent site PA1473/09. Sketch at document 12 shows that the proposal, together with proposal in PA1473/09, consists in the subdivision of a dwelling. Drawings 1C and 10 clearly indicate that the proposal is taking a room (approximately 27m²) and a swimming pool from the dwelling approved in permission PA0784/07, and adding new rooms over a footprint of 106m² to create a new dwelling. The proposal cannot be accepted in principle since the site lies ODZ and it runs counter to the provisions of SP Policies SET11 & SET12; and Local Plan Policies GZ-LMDZ-1 and GZ-RLST-5. The proposal cannot be considered in terms of paragraphs 8.1 and 8.2 of Policy PLP 20, since there is no justification for the creation of a dwelling on a site which falls ODZ. The proposal runs counter to SP Policy SET 12 as there is no justification to depart from the Structure Plan provisions to prohibit residential development ODZ.

-- Details of proposal

The assessment of the application does not include assessment of the details of the proposal, such as access, design, and the swimming pool, since the proposal is not acceptable in principle. A full assessment of the application would require details about the side elevations, in view of the creation of blank party walls in an area ODZ, landscaping, and details of the rubble wall. The massive extension (i.e. including also the proposals on the adjacent sites relative to PA1474/09, together with the proposed sanctioning of the stables on the eastern side relative to PA1473/09 and PA1615/09) in an area which should remain unbuilt and open, however, is still considered to create an unacceptable visual impact, in conflict with SP Policy RC04, particularly within an area designated as an Intensive Agricultural Zone.

5.1.4 As regards to the arguments of the appeal itself, the Authority states that as regards to the issue that a dwelling was on site pre 1968, there is no contestation on this notion except that the building relative to this appeal formed part of that dwelling and this appeal is requesting to subdivide that dwelling in order to create to independent and separate dwellings instead of the original one. In fact, the confirmation that a (only one) dwelling was on site had led to the approval of permit PA 784/07 which had granted alterations and additions to an existing dwelling. The DPA had declared that:

PROPOSAL

This application proposes to sanction additions and alterations to an existing house. The proposed development consist in demolition of part of the existing building, new additions and alterations and a swimming pool - see drawings at documents 15A, 15B, 15C and 15D.

In view of the above, the Directorate had recommended favourably in PA 784/07 and a permit had been granted.

The site plan of that permit clearly shows that that permit had related to all the old rooms (which constituted one dwelling as well as the adjacent land which also included a pool.

[...]

The Red is the site subject to that permit PA 784/07 whilst within the red colouring, it is clear that that permit related to ALL the 'old' rooms which had formed the old dwelling.

5.1.5 Furthermore, through the subdivision of that permit which had only approved alterations to a single dwellings, now, there are 2 applications which are attempting to sanction the two (now smaller) dwellings. PA 1473/09 has been submitted to sanction the new adjacent dwellings whilst PA 1474/09 (this appeal) is trying to sanction additional works (in excess to those already approved in

PA 784/07) but which in essence is creating a NEW, ADDITIONAL dwelling over and above to the one evident in the 1968 survey sheet. This is clearly not acceptable since the site is ODZ and there has not been sufficient justification on behalf of appellant to justify a new dwelling in ODZ either through policy PLP 20, the Gozo Local Plan or the PDG - Agriculture, Farm Diversification and Stables, December 2007. The site plan below is the one relevant to this appeal and which shows that the old building has now been split into two premises.

[...]

5.1.6 As regards to the affidavits submitted with this appeal, these only state that during the War, the house was habitable by a couple and for a short period even for some soldiers who sought refuge. This, however, is not relevant since in this appeal, the Authority is not denying that the old rooms had been used as a residence since, as already stated above, PA 784/07 had been issued on the bases that the old rooms were used for habitation.

5.1.1 Conclusively, the Authority states that whilst taking note of appellant's arguments in this request for appeal, the Authority notes that there are no sound planning justifications which could justify a breach to the above cited policies. Hence, reference is made to the reports as presented by the Directorate and to the DCC's decision which dismissed this request for development since the DCC Board had based their decision on the valid relevant policies applicable to this area. Reference is also made to the detailed reports as included in the file and to the submissions (verbal and written) which will be presented during the appeals sittings.

5.2 MEPA therefore reiterates that it acknowledges and confirms that the reasons for refusal can be justified on sound planning considerations which took into consideration all the relevant facts, planning policies, legislation and submissions and thus, respectfully requests that the Environment & Planning Review Tribunal to confirm the decision as issued with the refusal

notice and to refuse this appeal. The Authority reserves the right to forward further submissions during the appeals process as necessary.”

L-Perit Saviour Micallef wiegeb responsivament kif gej:

“SITE HISTORY

The site was committed with an old dwelling since a very long time and in fact much before 1968.

Indeed attached contract dated 9th Nov 1967 shows that this original old dwelling was subdivided into two, one on the East which is the site of this application and another one on the West. The subdivision is legal from a planning point of view as it is pre 1968.

It is hence clear that the site under consideration has existed as a distinct dwelling, separated from the western adjacent dwelling before 1968.

PA 784/07 issued 22nd October 2007 tempted to re-unite this Eastern part with the western parcel. This development was however not carried out as approved and this Eastern part remained separate. Illegal additions and alterations were carried out to the original structure and a pool added in front. This application tempts to sanction this illegal extension and the pool.

PROPOSED DEVELOPMENT

The proposed development consists of the sanctioning of an extension at the ground floor level to an existing structure.

The original legally subdivided dwelling shown on the plan attached with the 1967 contract consisted of a room measuring 20 ' x 17.5 ' (32.5 sq.m) plus an enclosed yard measuring 16.3' x 30' (45.4 sq.m.)). The sizes were calculated from the scale bar on said contract plan. MEPA always includes enclosed yards in the floorspace

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calculation. Hence the original legally divided dwelling had a floorspace of 78 sq.m.

The total floorspace of the building being sanctioned measures 133 sq.m. (original + extension) Hence the illegal extension consists only of 55sq.m. The proposed total footprint is also less than the 150 sq.m. permitted in policy PLP 20.

We have already submitted affidavits and 1968 site plan showing that a dwelling existed before 1968.

Mepa has in fact agreed that a dwelling existed on site but they are claiming that this development results in a subdivision, thereby constituting an unacceptable creation of a dwelling ODZ.

However the new evidence submitted, namely the attached contract dated 9thNov 1967, shows that the subdivision of the original old dwelling occurred before 1968 and not now. The subdivision is legal from a planning point of view as it is pre 1968.

Given that the entire development footprint is below 150 sq.m. and that the subdivision into two dwellings occurred before 1968, the proposal is sanctionable under the provisions of policy PLP 20.

Again the swimming pool has an area of 28 sq.m. , ie much less than the permitted 50 sq.m. for ODZ pools. The pool is hence also sanctionable.

For these reasons we respectfully ask the Appeals Board to approve the proposed development.”

Permezz tat-Tieni Statement taghha l-Awtorita' irrilevat kif gej:

“[...]

The above chronology shows that the 'old' plan had constituted of only 3 rural rooms at ground floor level

overlooking a common internal yard (typical of rural structures of that era) wherein only on small door had allowed access of these 3 rooms to the main road. Hence, although these rooms could have been subdivided into two owners, the one marked in 'B' surely cannot be considered as a genuine 'ODZ dwelling' but could only be considered as a rural room serving the neighbouring fields.

It is to be reiterated that the last permit PA 784/07 had granted alterations and additions to 'one' dwelling and its illegal subdivision has led to two appeals which seek to sanction the subdivision and the fact that a new dwelling is in fact being created. In fact, the proposal under appeal itself is also truefull since it states that:

To sanction additions and alterations to create dwelling.

Hence, if now, at appeals stage, appellant intends to change this proposal and limit this application to additions to an established and legal dwelling, then, a new application has to be submitted in this sense.

In these submissions, reference was made to Policy PLP 20 in that such a policy allows extensions to existing (fully legal) dwellings in ODZ up to a maximum of 150 sq.m. However, one must also note that the same policy, para 8.2 (IV) states that

Extensions should be confined to the area already included within the cartilage of the property.

Hence, when one considers the site under appeal, ie marked as room (B) on the 'old' plan vis-a-vis the proposed sanctioning plan above, it is clearly evident that the transformation of only 1 room into a fully fledged dwelling in ODZ plus a pool, is surely 'new development outside the original committed curtilage of the old structure'. Hence, while it is correct for one to state that PLP 20 Policy exists and is used by the Authority in cases of extensions to existing dwellings, the above plans show that Room B is only one room and a dwelling, even in

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1967 was not made up of just one room. Furthermore, appellant argument that since a room (which could have been part of an old dwelling) was in 1967 transferred to a new owner, then, this one rooms qualifies as a separate dwelling, then, on the same bases, if all the rooms were transferred to separate owners, then, each and every room would now qualify for a new dwelling on the same appellant's latest arguments !!!.

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 Board's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba, full development application, ghall-issanzjonar ta' addizzjonijiet u alterazzjonijiet ta' kamra ezistenti biex tigi kkreatta residenza gdida. Il-proposta tinkludi bidliet fil-layout tal-pool li kienet tiffirma parti mir-residenza precedenti u alterazzjonijiet fil-faccata biex tigi kkreatta entratura addizzjonali.

Il-bini propost huwa fuq sular wiehed u jokkupa 133 metru kwadru.

Skond l-Awtorita' is-sit mertu ta' dan l-appell jinsab ODZ f' zona mmarkata bhala Intensive Agricultural Zone fil-pjan lokali. Il-bini fuq is-sit huwa residenza li hija ezistenti peress li l-izvilupp diga sar. Originarjament is-sit kien jiffirma parti minn sit akbar (PA 3852/92 u PA 784/07) li wara xi zmien kien inqasam f' zewg zviluppi separati li huma koperti b' din l-applikazzjoni u bl-applikazzjoni PA 1473/09 li tinsab ukoll fli-istadju tal-appell.

Inhareg enforcement kontra l-izvilupp kopert bl-applikazzjoni in ezami (ECF 443/09) u enforcements ohra kontra l-izvilupp kopert bl-applikazzjoni PA 1473/09.

Din l-applikazzjoni giet rifjutata peress li:

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- Is-sit jinsab ODZ ai termini tal-mappa 14.8-A&C tal-Gozo and Comino Local Plan u ghalhekk jikser il-policy GZ-RLST-5 tal-pjan lokali;
- L-izvilupp imur kontra paras 8.1 (i), (ii) u (iii) u 8.2(iii) u 8.2(viii) tal-policy PLP 20;
- L-alterazzjonijiet u addizzjonijiet mhuwiex gustifikati, u ghalhekk l-izvilupp propost imur kontra l-policies SET 11, SET 12, RC04 tal-Pjan ta' Struttura u l-policy GZ-LMDZ-1 tal-pjan lokali.

L-argumenti li tqajmu mill-partijiet fil-kors tas-smiegh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

L-appellant jissottometti li:

- Il-bini kien jezisti qabel is-sena 1968;
- Ix-xhieda moghtija taht gurament jikkonferma li l-kmamar kienu uzati ghall-skopijiet t'abitazzjoni;
- F'dan is-sens mhijiex qed tigi kkreatta residenza gdida; u
- Il-floor area propost ta' 134 metri kwadri hija accettabbli skond il-PLP 20.

Fir-risposti taghha l-Awtorita' tirrepeti ir-reasons for refusal u telabora izjed fuq dan billi zzid li l-izvilupp tas-sit kollu inkluz l-isvilupp adjacenti u l-istables jikkrea impatt vizwali negattiv konsiderevoli u ghalhekk jikser il-policy RC04 tal-Pjan ta' Struttura. Il-fatt li qed tigi kkreatta residenza ohra fl-ODZ mhux accettabbli. Izjed minn dan, skond l-ispirtu li fih inkitbet il-policy PLP 20, biex konversjoni ta' bini rurali antik ghal abitazzjoni tkun accettabbli din ghandha tirrispetta il-kuntest tal-bini originali u l-izvilupp in ezami dan mhux qed jaghmlu.

L-Awtorita' tkompli billi taghmilha cara li mhuwiex kontestat li l-kmamar ezistenti kienu qeghdin jigu wzati fil-passat bhala residenza pero tinsisti li dan huwa dettall irrilevanti.

L-Awtorita' tispjega l-istorja tal-bini originali li kien jezisti qabel is-sena 1968 u li kien jikkonsisti minn tliet ti kmamar u bitha fil-kampanja u kif dan, permezz ta' zewg permessi (PA3852/92 u PA 784/07) kien gie zviluppat f' residenza moderna bil-pool u li issa inqaleb f' zewg residenzi

moderni, it-tnejn bil-pool u li taghhom qed jintalab is-sanzjonar.

L-Awtorita' tiddikjara li l-estensjoni li qed tigi proposta fl-applikazzjoni in ezami hija goffa zzejjed tali li anki kieku kellu jigi rikonoxxut li huwa legittimu li ssir residenza ohra fuq dan is-sit, minn kamra ta' 27 metru kwadru spiccat binja ta' madwar 133 metru kwadru jigifieri il-bini l-gdid huwa izjed minn tliet darbiet l-area tal-kamra originali. Ghalhekk dan it-tibdil huwa drastiku zzejjed tant li l-estensjoni qed tbiddel il-mod kif kien jidher il-bini originali.

Il-punt centrali li jrid jigi deciz f' dan l-appell huwa jekk l-Awtorita' kelliex ragun meta iddecidiet li l-proposta tal-appellant mhix fl-ispirtu ta' dawk l-oggettivi li kienu intenzjonati li jintlahqu permezz tal-PLP 20. Punt iehor li jrid jigi deciz huwa jekk huwiex gustifikat li, fl-ispirtu tal-policies rilevanti, jinholqu zewg residenzi u mhux wahda fuq dan is-sit li huwa ODZ.

Fil-fehma kunsidrata ta' dan it-Tribunal, l-enfasi tal-PLP 20 mhux li t-tibdil li jista jsir f' kull struttura rurali jista jigi accettat basta li l-floor area tibqa taht il-150 metru kwadru.

L-ispirtu veru tal-PLP 20 huwa li, purché li l-bini jisthoqqlu, dan ghandu jigi konvertit b'mod tali li kemm jista jkun il-bini jibqa jinqara bhala bini rurali fil-kuntest originali tieghu. L-oggettiv principali tal-policy hu li jinghata incentiv biex il-bini originali jigi ppreservat. Huwa cruciali li meta wiehed jitkellem fuq il-kuncett ta' residenza accettabbli f' dawn il-kazi, m'ghandux jimmagina three-bedroomed terraced house, jew semi-detached villa jew fully detached villa bil-pool imma pjuttost arrangement minimu li kemm jkun jista issir fl-envelope tal-bini ezistenti b' koncessjonijiet minimi biex jinkoraggixxu lill-applikant biex jippriserva l-bini.

Bhal ma' intqal f' numru ta' decizjonijiet ohra ta' dan it-Tribunal, il-policies tal-ippjanar ghandhom jigu applikati b' mod flessibbli u dan biex dejjem jintlahaq l-ispirtu ahhari li jkun hemm warajhom. Irrid jigi enfasizzat il-punt li l-flessibilita' tal-policies tal-ippjanar ma' tfissirx li

iggebbidhom b' tali mod li l-applikant jiehu dak li jrid a kost ta' kollox anki jekk dan ikun imur kontra l-ispirtu tal-policy in kwistjoni. Il-flessibilita' ghandha dejjem tigi applikata fis-sens li l-oggettivi tal-Pjan ta' Struttura jintlahqu ghax din hija l-ligi suprema tal-ippjanar.

L-estensjoni li qed tintalab hija esagerata u tiznatura kompletament il-kamra li suppost qed tigi ppriservata. Ikun perikoluz hafna li wiehed jipprova igebbed izjed din il-policy ghaliex b' hekk ikun qed jinfetah il-bieb ghal numru kbir ta' talbiet simili li jistghu jwasslu ghad-distruzzjoni totali tal-kampanja f' numru ta' zoni f' dawn il-gzejjer u dan kontra wiehed mill-principji fondmantali tal-iStructure Plan. Ghalhekk, fil-fehma kunsidrata ta' dan it-Tribunal, il-pozizzjoni tal-Awtorita' f' dan il-kas hija wahda korretta u li hija pjenament sostnuta mill-PLP 20.

Apparti dan hemm l-issue ta' kemm huwa gustifikat li jinghataw zewg residenzi fuq dan is-sit u dan biex skond il-policy PLP 20 jkun ta' inkoraggiment biex jigu ppreservati it-tliet ti kmamar imdawwrin ma' bitha originali. Fuq dan it-Tribunal huwa tal-fehma li biex tippriserva tliet ti kmamar zghar imdawwrin b' bitha ma' tistax tuza dak li tghid il-PLP 20 biex tiggustifika il-kreazzjoni ta' zewg semi-detached bungalows kull wahda bil-pool.

F' dan il-kas partikolari u kieku l-affarijiet saru verament fl-ispirtu spjegat hawn fuq, il-konversjoni u l-preservazzjoni tat-tliet ti kmamar imdawwrin ma' bitha originali setghet saret kompletament gewwa l-envelope originali minghajr ma' nbnew il-kmamar zejda u l-pool li finalment inghatw bil-permess PA 784/07. Mhux il-kas li bil-fors trid tinbena three bedroomed semi-detached villa bil-pool; ahseb u ara tnejn.

Il-PLP 20 jekk tapplika' fl-ispirtu li ghaliha inkitbet ma' thallikx taghmel dan ghax fil-process jintilef il-kuntest tal-bini li propju qed tipprova tippriserva.

In konkluzjoni, kif jidher mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, peress li l-proposta in ezami tikser il-policies ta' l-Pjan Strutturali SET 11, SET 12 u RCO 4, il-

policies GZ-RLST-5 u GZ-LMDZ-1 tal-pjan lokali u l-policy PLP 20 jirrizulta li dan l-appell ma jistax jigi milqugh.

It-Tribunal, ghalhekk, qiegħed jichad dan l-appell u jikkonferma ir-rifjut tal-applikazzjoni PA 1474/09, "to sanction additions and alterations to create dwelling", mahrug fiz-19 ta' Novembru, 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkunsidra jew jaccenna għall-aggravju illi qabel is-sena 1968 l-appellant gab il-prova li s-sit kien diviz f'zewg zviluppi separati kif jirrizulta mill-kuntratt tad-9 ta' Novembru 1967 u affidavits ipprezentati pero li l-MEPA kienet isostni li l-izvilupp mitlub issa kien qed jikkreja divizjoni ta' sit. Dan jikkostitwixxi nullita tal-appell;
2. L-appellant talab li jagħmel nota ta' sottomissjonijiet wara li saret trattazzjoni orali u dan gie michud b'digriet tat-Tribunal bla ma gie motivat u b'hekk gie lez lilu d-dritt li jkollu raguni cara u motivata għal dan ir-rifjut, u b'konsegwenza ta' dan l-argumenti orali tad-difensur tal-appellant ma gewx riflessi fid-decizjoni.

It-tieni aggravju

Dan l-aggravju ma fihx mertu. Jirrizulta mill-atti illi l-partijiet ingħataw l-opportunita li jressqu l-argumenti tagħhom bil-miktub waqt is-smigh tal-appell u in oltre ingħataw l-opportunita u fil-fatt trattaw l-appell quddiem it-Tribunal u l-kaz gie differit għas-sentenza mingħajr ebda riserva, kondizzjoni jew oggezzjoni. Ma jistax l-appellant jivvanta xi nuqqas ta' smigh xieraq għax hass li wara li l-kaz gie differit għas-sentenza irid jerga' jiftah il-kaz biex jagħmel sottomissjonijiet bil-miktub. La darba vertenza tkun giet differita għad-decizjoni huma eccezzjonalment ic-cirkostanzi li jistghu jagħtu lok għal ftuh mill-gdid tal-proceduri anki jekk hu biss biex jigu prezentati sottomissjonijiet ulterjuri, din id-darba bil-miktub. L-accettazzjoni tal-partijiet li kaz jmur għad-decizjoni jfisser li l-atti huma konkluzi u magħluqa definittivament hlief kif

intqal ghal cirkostanzi eccezzjonali, li bl-ebda mod ma rrizultaw minn qari ta' dan l-aggravju. Il-fatt li t-Tribunal ma ggustifikax ic-cahda tat-talba mhix ta' rimproveru ghat-Tribunal billi l-gustifikazzjoni hi implicita mill-fatt innifsu li l-partijiet qablu li l-appell jigi differit ghad-decizjoni u ma ngieb xejn gdid fir-rikors li jimmeritaw il-ftuh mill-gdid tal-proceduri. Ix-xewqa tal-appellant, kif jidher mir-rikors tieghu tal-10 ta' April 2012, li jixtieq jaghmel sottomissjonijiet bil-miktub wara li saret it-trattazzjoni orali setghet saret seduta stante u mhux wara l-qbil li l-kaz jigi differit ghad-decizjoni.

Kwindi l-Qorti tqis li ma hemmx gustifikazzjoni f'dan l-aggravju.

L-ewwel aggravju

Il-Qorti ma taqbilx li t-Tribunal ma kkunsidrax l-aggravju tal-appellant rigward il-kuntratt tal-1967 u l-affidavits esebiti. Dak li qal it-Tribunal kien effettivamente illi nonostante dak li qal l-appellant, is-sit kien wiehed komprendenti tlett ikmamar imdawwra ma' bitha u l-policies rilevanti principalment PLP 20 kellhom jigi applikati kemm fil-kelma u kemm fl-ispirtu. Bil-permess PA 784/07 kien gia nghata permess biex din il-binja kunsidrata bhala zvilupp jew binja wahda tizdied bi kmamar u pool li gia, fil-fehma ta' dan it-Tribunal kien qed jestendi u jgebbed l-iskop tal-konverzjoni ta' bini rurali f'ODZ in sintonia mal-PLP 20. Dak li ma kienx accettabbli fil-fehma tat-Tribunal li wara l-hrug tal-permess PA 784/07, kamra mill-istess zvilupp jigi segretat u jintalab zieda ta' kmamar u pool biex jigi krejat mhux wiehed izda zewg zviluppi.

It-Tribunal ma injorax l-affidavit u l-kuntratt tal-1967 tant li ha konjizzjoni taghhom fil-konsiderazzjonijiet inizjali bhala provi li ngiebu pero sostna li l-kwistjoni ma kinitx tirrigwarda dak li seh bil-kuntratt ta' qabel l-1967 izda dak li kien gie permess bil-PA 784/07 li kien jorbot lil applikant u li nonostante dan il-permess saru xogholijiet koperti minn enforcement notices kontra s-segregazzjoni li saret.

Kopja Informali ta' Sentenza

Dan mhux kaz fejn it-Tribunal injora aggravju izda kaz fejn it-Tribunal indirizza dak li dehrlu kienet il-kwistjoni legali mill-punto di vista ta' ippjanar u applika l-policies rilevanti.

Ghalhekk dan l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Anthony Cauchi, u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tas-27 ta' Settembru 2012. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

-----TMIEM-----