



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 21/2013

Mario Gatt

vs

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

Il-Qorti,

Rat ir-rikors tal-appell tal-Awtorita tal-4 ta' April 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013 fejn laqa' limitatament l-applikazzjoni PA 1308/10 sabiex parti minn serra approvata jinqalbilha l-uzu sabiex ikuni jistghu jigu akkomodati broiler tat-tigieg u laying battery;

Rat ir-risposta tal-appellat li ssottometta 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:

A. Il-Kummissjoni għall-Kontroll tal-Ambjent u l-Ippjanar, fl-14 t' April 2011, irrifjutat l-applikazzjoni għall-permess tal-izvilupp PA 1308/10 – Ta' l-Andrejetta, Triq iz-Zebbiegh, Mgarr: Change in use of part of green house (approved by PA 6084/06) to cage free chicken broiler and laying battery.

L-erba' ragunijiet għar-rifjut kienu s-segwenti:

“1 The proposed rearing of poultry on this site is not favourably considered in terms of section (5) of policy 2.3C of Policy & Design Guidance – ‘Agriculture, Farm Diversification and Stables’ (December 2007) stipulates that new or relocated farms are to be located within an Intensive Agricultural Area or within disused or abandoned livestock farm buildings or other suitable agricultural buildings. In this case, the site consists of good arable land and hence the new farm would further compromise the availability of this agricultural land.

2 The proposed poultry farm is located on an Agricultural Area as identified in the North West Local Plan (NWLP) (map MG 1). The proposal thus runs counter to policy NWAG 01 of the NWLP, which states, that Areas of Agricultural Value will be safeguarded.

3 The applicant's experience in the farming sector is not recognised by the concerned entities, i.e. Department of Agriculture or Department of Veterinary Services. In view of this, the proposed new farm does not satisfy the criteria set in section (1) of policy 2.3C which makes reference to criterion 1 (b)(i) of Policy 2.3A. This criterion specifies that the applicant is either a registered livestock farmer, or that he has successfully followed a course in animal husbandry recognised by these departments.

4 The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of policy Circulars 2/96 and 2/98. The illegal development on site consists of the construction methodology of the boundary walls, and the rearing of poultry on site.”

B. In-nota tal-Perit Joseph Bondin ghall-Appellant, ipprezentata fit-30 ta' Mejju 2011, senjatament il-punti segwenti:

"It is important to note that for the proposed development there is;

1. No objection from the Malta resources authority.
2. No objection from the department of veterinary services
3. No objection from the department of agriculture (animal husbandry section)

Moreover please find attached block plan which shows the following;

1. A splay in the approved access wall,
2. The elimination of the existing fence from site,
3. Lowering of existing gate to 1.2m in height.

Regarding the use of 'franka' wall, this forms part of existing reservoir which has been made more than thirty years ago and cannot be built in rubble wall.

One may point out that the proposed activity will only occupy a small area of 34Sq.m.

Moreover one has to point out that this is a pilot project. In fact Frott Artna has encourage by my client to continue on with this educated pilot project. Please vide correspondence from Frott Artna. Furthermore my client has been registered as a ruminant producer."

Ma din in-nota gew annesi kopji ta' diversi dokumenti, pjanti w ritratti, in sostenn tal-punti kollha mressqa supra.

C. In-nota risponsiva ta' Darren Fava ghall-Awtorita', ipprezentata fit-8 ta' Lulju 2011, precizament il-punti segwenti:

"On a preliminary point, the Authority respectfully asserts that this Tribunal cannot hear and decide on the merits of this appeal, as this application does not seek to sanction any of the illegal developments on site, and hence the provisions of PA Circulars 2/96 and 2/98 are applicable.

The provisions of PA Circular 2/96 have now been transposed and amended in Article 14 of LN 514/10. Similar to PA Circular 2/96, Article 14(1) of LN 514/10 clearly states that where illegal development is present on a site, new development on that same site will not be considered unless it is regularized. The appellant should rectify this situation, prior to further consideration of this proposed development.

The Authority asserts that the appellant may only regularise this situation by way of a new application. The appellant cannot submit fresh drawings and change the proposal description at this stage because in order to address the illegalities and irregularities mentioned above, the substance of the matter as presented to the Authority will definitively change (example different policies will apply). This is clearly not permitted according to the proviso of Schedule 2 (2) of Act X of 2010 (Environment and Development Planning Act).”

D. In-nota ta' sottomissjonijiet tal-Perit Joseph Bondin għall-Appellant, ipprezentata fit-28 ta' Settembru 2011. Ma din in-nota, apparti ritratti u block plan li juru li tnehhew l-illegalita' in vista tax-xatba approvata bil-permessi PA 2435/09 u PA 6084/06, giet annessa wkoll nota ta' Tony Meli, konsulent tas-socjeta' APS Consult Ltd., in sostenn tal-appell odjern kif gej:

“1. The proposed rearing of poultry, far from comprising agricultural use is a complementary activity to current greenhouse herb agricultural production.

2. The arable land in question is being put to a more sustainable use. Alfalfa, a forage crop, is being grown as a source of feed to poultry and, at the same time, poultry droppings are recycling back organic and inorganic minerals into the system.

3. By having two synergetic activities, both sustainability and agricultural value are not only safeguarded, but enhanced.

4. Applicant is already registered as a livestock breeder, and typical of small scale farming, is diversifying his activities.

5. The rearing of less than 20 poultry heads for personal use is allowable, whilst having less than 350 would not necessitate application of Animal Welfare regulations. Consequently the provision of a barn system is a livestock rearing activity that can be sanctioned by the veterinary Services provided that roosting space be provided. This would allow up to 9 heads per square metre of usable space.

6. Current greenhouse activities are not continuous, but essentially constitute the growing of seasonal herbs with each variety usually not exceeding a three month cycle. Generally not more than two crops are grown on an annual basis.

7. Essentially the small greenhouse is empty and non-productive for half the year.

8. By projecting access to crops with appropriate barriers, such as chicken wire, the use of the greenhouse structure can be resorted to all year round, making more efficient usage of the present building.

9. Use of this otherwise unutilised structure shall not necessitate the need for an alternative structure.

10. Returns from livestock activity shall constitute a complementary source of income that is practically constant all year round, thus utilising economic viability to ensure holding sustainability by the proposed approach.”

E. Il-verbal tas-Seduta numru 96, mizmuma fl-14 ta' Dicembru 2011, senjatament il-punti segwenti:

“Il-partijiet jaqblu illi mil-ahhar diferiment lil hawn, il-kwistjoni tal-illegalita' dwar il-boundary wall u l-gate giet regolarizzata.

Kopja Informali ta' Sentenza

Jonathan Borg ghall-Awtorita' jirrileva pero', billi qed isir rearing of poultry ghad hemm l-illegalita on site.

L-appellant jiddikjara illi kemm il-darba dan ikun f' ammont ta' ghoxrin tigiega dan ikun permissibbli."

F. In-nota second statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fl-24 ta' Jannar 2012, inter alia l-punti segwenti:

"In reply to the appellant's assertion during the last sitting that he rears less than 20 chicken on site, the Authority would like to make reference to the photographs submitted by the appellant during the processing of the application (Red 19) which show much more than 20 chicken present on site."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex parti minn serra (greenhouse) approvata bil-permess PA 6084/06 jinqalbilha l-uzu sabiex ikunu jistghu jigi akkomodati brojler tat-tigieg u laying battery. Is-sit jinsa fl-iMgarr, gewwa zona definita permezz tal-mappa MG 1 tal-Pjan Lokali (NMLP) bhala agricultural area.

Ir-raguni ghar-rifjut jistrieħu fuq il-premessa li peress li hawn si tratta minn bdil fl-uzu minn ghalqa għall-razzett, il-proposta hi in kontravvenzjoni ta' section 5 tal-policy 2.3C tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables li tipprojbixxi li rziezet jigu stabbiliti gewwa zoni tajba għall agrikoltura. Jirrizulta għalhekk, li ser tintilef art li tista' tinhadem u di konsegwenza jsegwi li l-proposta hi wkoll f' kunflitt mal-policy NWAG 01 tal-istess Pjan Lokali.

Gie rilevati ukoll li l-Appellant mhux rikonoxxut jew registrat mad-Dipartiment tal-Agrikoltura jew tas-Servizzi Veterinarji bhala bidwi li jrabbi l-animali, u għalhekk il-proposta in ezami tikser il-kriterji stabbiliti permezz tal-istess policy 2.3C (u di konsegwenza l-policy 2.3A wkoll).

Fl-ahharnett, l-Awtorita' tirrileva li hemm illegalita' fuq is-sit, konsistenti minn: (kostruzzjoni bla permess, cjoe')

hitan tas-sejjieh li nbnew gholjin u mill-franka, etc., kif ukoll; (minn uzu illegali cjoe') ghax l-Appellant gja' jzomm xi tigieg fuq il-post. Tajjeb li jinghad pero', li fil-kors tas-smiegh ta' dan l-appell, l-Appellant ottempera ruhhu in kwantu l-bini illegali gie regolarizzat. Ghar-rigward tal-allegazzjoni li t-tigieg kienu gja' qed jinzammu minghajr permess, l-Appellant iddikjara li hawn si tratta minn numru ta' mhux aktar minn ghoxrin tigiega u li mhemx bzonn permess ghal numru hekk zghir (konsistenti ma' delizzju).

Jibqa' ghalhekk il-mertu tat-talba per se – cjoe' jekk iz-zamma tal-brojler u laying battery gewwa s-serra in ezami, tistax tkun ta' hsara ghall-attivitá' agrikola li hemm fuq il-font jew meno.

Jigi rilevat li dik il-parti tas-serra proposta li tinqaleb ghat-trobbija tat-tigieg tikkonsisti minn spazju zghir ta' madwar 34 metri kwadri – dsatax minnhom ser jintuzaw ghall-brojler ta' 120 tigiega u l-hmistax l-ohra f' laying battery ghal tmenin qroqqa. Del resto ser jinbnew fossa u demmiela ta' qisien ridotti hafna.

Irid jinghad li gew ipprezentati bosta clearances u no objections ghal din l-attivitá'; mid-Direttur tal-Agricoltura (datata fil-5 ta' Frar 2010), mill-Awtorita' ta' Malta ghar-Rizorsi (datata fil-11 ta' Frar 2010) u mill-ufficjal veterinarju tat-Taqsima tar-Regolament tal-Agricoltura u s-Sajd (data fit-12 ta' Marzu 2010). Gie pprezentat anke rapport mis-socjeta' APS Consult Ltd., ta' kif din l-attivitá' tista tittejjeb il-bqijja tal-operat agrikolu li jhaddem l-Appellant.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet jidher car li hawn si tratta minn brojler u laying battery tat-tigieg ta' dimensjoni modesta - ta' mhux aktar minn mitejn free chickens, u mhux xi tip t' attivita' massicca tat-trobbija tat-tigieg fuq livell industrijali. In oltre, kif gie sottomess mill-Appellant, intwera ghas-soddisfazzjon ta' dan it-Tribunal, li din l-attivitá' sejra tkun ta' beneficju ghat-tip t' agrikoltura biologica li l-Appellant jiggstixxi, u ghalhekk, tali kunsiderazzjonijiet jimmeritaw kunsiderazzjoni favorevoli.

F' ic-cirkostanzi dan it-Tribunal hu propens li jilqa' din it-talba, kemm ilk-darba jigi garantit li tabilhaqq, l-attivitá proposta ser tkun ta' beneficcju ghall-attivitá agrikola – cjoe' li tikkontribwixxi (proattiva) u mhux semplicement li ma tkunx ta' hsara lill-ghelieqi, ground water, etc. (passiva).

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa l-istess limitament u jhassar ir-rifjut ghall-PA 1308/10 kif mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fl-14 t' April 2011. In oltre jordna li f' zmien tletin (30) gurnata, l-Appellant jinhariglu permess kif minnu mitlub biz-zieda tas-segwentu kundizzjonijiet ma dawk normalment imposti f' permessi simili:

1. Minhabba n-natura sperimentali ta' din it-tip t' attivita', dan il-permess ghandu validita' ta' ghaxar (10) snin mill-lum, izda jista' jigi mgedded kemm il-darba ssir talba opportuna u l-Awtorita' jidhrilha li t-talba tkun in linja mal-pjanijiet u policies in vigore.
2. Dan il-permess qed jinhareg bl-intiza cara li parti minn serra ser jinqalbilha l-uzu ghal free chicken broiler u laying battery - u strettament ghall-attivitá li qed tintalab permess ghaliha. L-uzu tal-font ser jibqa ghal kull effetti, wiehed agrikolu (cjoe' ghat-trobbija ta' hwawar, hxejex etc.) L-intiza hi li l-brojler u l-laying battery ser ikunu ameljorament tal-agrikoltura biologica prattikata fuq dan il-font ,u ghalhekk ghandhom ikunu ta' beneficcju u jrendu it-trobbija organika tal-hxejjex aktar sostenibbli.
3. L-uzu li qed jigi permess mghandux jitqies bhala dritt kwezit jew planning commitment, kemm fuq is-sit kif ukoll fiz-zona. Kemm il-darba l-attivitá li qed tigi approvata b' dan il-permess tieqaf, tispicca jew tintalab talba ghal-modifika taghha (inkluz izda mhux limitata ghall-uzi ohra, addizzjonali u/jew alternattivi), l-Awtorita' ghandha tikkunsidra l-font bhallikieku hu ghalqa b' serra fuqha – mhux per ezempju razzett, chicken farm, etc.

4. Din il-parti tal-font tista' tintuza biss ghat-trobbija tat-tigieg. Dan qed jinghad sabiex jigi evikat kwalsiasi ekwivoku - in kwantu jirrizulta li l-Appellant irabbi wkoll annimali li jixtarru. Ghalhekk, ma' tista ssir l-ebda attivita' ohra li tista' b' xi mod titqies ancillari u/jew rilatata mal-attivita' hawn permessa, u/jew jinzammu annimali ohra. In oltre, f' kull hin jista jkun hemm biss mhux aktar minn mitejn tigiega.

Ikkunsidrat

L-aggravju tal-appellant hu s-segwenti:

1. It-Tribunal applika hazin il-ligi billi mar kontra policy cara cioe Policy 2.3A tal-Policy and Design Guidance – Agriculture Farm Diversification and Stables fejn fil-paragrafu 1(b)(i) tirrikjedi li l-applikant biex jkun jista' jinghata l-approvazzjoni ghall-izvilupp irid ikun 'registered livestock farmer jew segwa b'success kors tal-animal husbandry rikonoxxut mid-Dipartiment tal-Agrikoltura jew servizzi veterinarji, meta rrizulta lill-istess Tribunal li ma kienx.

Dan l-appell jigi ezaminat biss fit-terminu maghmul u xejn aktar.

Ir-risposta tal-appellat ghal dan l-appell hi wahda semplici. L-aggravju tal-Awtorita hu fattwalment zbaljat billi l-appellat hu 'registered ruminant producer' kif jirrizulta mic-certifikat mahrug mill-Ministeru ghar-Rizorzi u Affarijiet Rurali fit-13 ta' Mejju 2011 (fol. 62 tal-process) fl-istess sit fejn qed jintalab il-permess.

Dan jirrizulta li hu il-kaz mill-atti a dizpozizzjoni tal-Qorti. Il-kliem 'ruminant producer' tirreferi ghal annimali li jixtarru kfi titlob il-policy cioe li jrabbi annimali mhux necessarjament bhal dawk li qed jitlob fil-permess moghti mit-Tribunal. Ghalhekk l-appell tal-Awtorita hu fondat fuq allegazzjoni fattwalment zbaljata u ghalhekk it-Tribunal ma injorax jew addirittura ddecieda kontra dak li tipprovdi l-policy citata mill-Awtorita, ghalkemm jinghad li t-Tribunal seta' kien aktar ezatt fil-kliem uzat minnu meta kien qed jikkunsidra dan il-fatt.

Decide

Ghalhekk l-appell tal-Awtorita hu infondat u qed jigi michud filwaqt li qed tigi konfermata d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013. Bl-ispejjez kontra l-Awtorita.

< Sentenza Finali >

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