



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 28/2013

Carmel Gauci

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Carmel Gauci tat-13 ta' Mejju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013 li cahdet talba ghal extension of existing farmhouse PA 6625/07;

Rat ir-risposta tal-Awtorita li ssottomettiet 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, fis-26 ta' Jannar 2012, irrifjutat l-applikazzjoni għall-permess tal-izvilupp PA 6625/07 – 'Green Meadows', il-Mizieb, l/o Mellieha: Extension of existing farmhouse.

It-tlett ragunijiet għar-rifjut kienu s-segwenti:

"1 The scale of the proposed extension runs counter to the policy Development Control Guidance - Developments Outside Built up Areas, and in particular to criterion (v), Section 8.2 which requires that the scale of the extension must respect the character of the original building. In this case, the scale and design of the extension would significantly alter the visual composition of the building, will affect the wider landscape setting in which it is located, and will therefore run counter to Structure Plan policy RCO 2 for the protection of rural areas.

2 The proposal runs counter to the policy Development Control Guidance - Developments Outside Built up Areas, and in particular to paragraph (ii) of Section 8.2 - Extensions to buildings in rural areas in that it fails to provide sufficient evidence that the original building is used for habitation. Also, the proposal fails to indicate how the necessary utility services, including the disposal of sewage, could be carried out without having unacceptable environmental implications.

3 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. "

B. In-nota tal-Avukat Dott.ssa Joanne Vella Cuschieri għall-Appellant, ipprezentata fl-20 ta' Frar 2012, senjatament il-punti segwenti:

“1. a) Illi ghall-kuntarju ta' dak espost mill-Awtorita, dan il-kaz partikolari huwa ezempju prim fejn verament il-policy PLP 20 ghandha ssib applikazzjoni favorevoli u mhux kontra. F'dan ii-kaz partikolari jidher li l-Awtorita' ghal xi raguni injorat ghal kollox il-fatt li l-estensjoni proposta hija sahsitra izghar minn dak ezistenti. Fil-fatt fuq is-sit hemm ezistenti bini ta' 78 metru kwadru filwaqt li l-estensjoni proposta hija ta' 68 metru kwadru, total ta' 146 metru kwadru, cioe ' anqas mill-massimu mpost fil-policy PLP 20.

Illi f'dan il-kuntest wiehed ma jridx jinsa l-ghan wara l-policy PLP 20, cioe', li residenzi antiki li haqqhom jigu salvagwardjati jibqghu jintuzaw izda ovvjament bl-'istandards' neccessarji llum il-gumata sabiex familja tkun tista' tghix komodament f'dawn il-postijiet. Mill-proposta tieghu l-appellant ben konservattiv hafna ghaliex l-ghan principali tieghu kien li jzomm dak kollu gia ezistenti filwaqt li jaghmel biss dik l-estensjoni verament neccessarja sabiex il-fond ikun abitabbli skond il-bzonnijiet tal-lum il-gurnata. Bir-rispett kollu, l-appellant ma jistax jifhem kif estensjoni izghar muni dak gia ezistenti tista tigi kkunsidrata mill-Awtorita bhala mhux proporzjonata. Jigi rilevat li f'kazijiet ohra l-Awtorita' rrifjutat applikazzjonijiet simili jew ghaliex l-estensjoni kienet zghira wisq fejn dak ezistenti jew ghaliex l-estensjoni kienet kbira wisq fejn dak ezistenti. Jekk wiehed ghandu jiehu dan il-kejl uzat mill-istess Awtorita' f'kazijiet ohra allura wiehed bil-fors ghandu jifhem li dak propost mill-appellant huwa proporzjonat skond it-termini tal-'policies' ghaliex la huwa zghir wisq u lanqas jilhaq u wisq anqas jaqbez il-massimu mpost mill-Policy PLP 20 u lanqas huwa akbar minn dak ezistenti.

b) Illi wkoll f'dan il-kuntest issir referenza ghal dak li intqal mill-'Environment Protection Directorate EPD' dwar din l-applikazzjoni:

'Since the proposal only involves minor interventions to an already existing farmhouse, from an environmental point of view there is no objection to the proposed development'

Wiehed ghalhekk ma jifhimx kif l-EPD jikkunsidra din il-proposta bhala intervent minuri filwaqt li l-Awtorita' qed tghid li mihiex proporzjonata ma' dak ezistenti. Mhux biss izda ghalkemm l-EPD kien favorevoli, l-applikant xorta wahda mexa mad-direzzjonijiet li ta l-istess EPD dwar xi notamenti li ghamel fuq l-istess sit bhal per ezempju sigar li l-EPD hass li ma kienx lokhom fuq is-sit kif ukoll rakomandazzjoni sabiex jinzerghu sigar ohra. Qed jigu annessi ritratti tal-interventi li saru fuq talba ta' l-istess Awtorita sabiex jitnehhew is-sigar u jigu rimpjazzati. Apparti mirm hekk qed jigu esebiti ritratti li juru kemm is-sit, sal-lum ghadu mantnut ferm sew mill-applikant.

Illi ssir ukoll referenza ghal dak li jinghad minn-'Natural Heritage Advisory NHAC' cioe kif isegwi:

'There is no objection to the proposed extension to the farmhouse. No other interventions on site are to be allowed. In view of the possible impact during construction a construction method statement should be submitted.'

L-applikant ma jsib l-ebda objezzjoni li tigi mposta kundizzjoni f'dan is-sens.

Illi jidher li l-uniku oggezzjoni ghal dan l-izvilupp giet mill-'Cultural Heritage Advisory Committee CHAC' principalment fuq zewg ragunijiet:

A. 'Illi l-bini propost huwa eccessiv f'zona ODZ u qed johloq impatt vizwali negattiv fuq l-aspett rurali tal-post.'

Bir-rispett kollu din ir-risposta tal-Kumitat ma tiehu bl-ebda mod konsiderazzjoni tal-PLP 20 li ai termini ta' l-istess, l-applikant ghandu kull dritt li jissottometti din l-applikazzjoni bid-dimensjonijiet propusu. Fl-istess hin il-Kumitat injora ghal kollox kemm l-appellant ilu snin jiehu hsieb u jindokra s-sit in kwistjoni sabiex sal-lum ghadu tant mizmum tajjeb. F'kaz li din l-applikazzjoni tigi rifjutata jkun hemm ir-riskju li dan il-fond jithalla jiddeterjora u jintilef ghal kollox.

B. Elementi fil-binja bhal gallerija u 'trellies' li ma jmorru mal-karattru tal-bini. Jigi rilevat li dwar dan sahsitra gew

proposti pjanti emendati lill-EPC. Dan juri l-buona volonta ta' l-applikant li jottempera ruhu ma dak kollu neccessarju skond il-policies'. Jigi emfasizzat li l-appellant sal-lum huwa lest li jemenda l-fattizzi tal-faccata kif tixtieq l-Awtorita' jew kif jordna dan it-Tribunal kif jidhrilu l-ahjar xieraq ghal mal-bqija tal-bini gia ezistenti. Fl-istess hin izda wiehed irid jibqa jzomm f'mohhu li dan is-sit gia huwa residenza u jrid jintuza bhala residenza u ghalhekk certu fatturi bil-fors iridu jkunu prezenti fil-binja sabiex tkun konformi mal-'istandards' ta' residenzi applikabbli llum-il gurnata. "

2. Illi t-tieni raguni ta' rifjut [...] ma tistax tkun aktar il-boghod mill-verita '. Is-sit in kwistjoni kif ammess mill-istess Awtorita' jirrizulta li huwa binja li tiprecedi is-sena 1967. L-Awtorita' da parti taghba tablet specifikatament lill-applikant prova li s-sit kien jintuza bhala residenza qabel is-sena 1992 (dan jirrizulta mid-DPA report). Ghal din ir-rikjesta l-applikant prezenta tlett affidavits ta ' Salvatore Gauci, Evangelista Vella u Alfred Roy Lock li lkoll ikkonfermaw bil-gurament li dan is-sit kien ilu ghal basta ghexieren ta ' snin jintuza bhala residenza minn Lawrence Vella u l-familja tieghu (kopja annessa wkoll rna dan l-appell). L-appellant prezenta wkoll kopja tar-registru elettorati tas-sena 1987 ghaliex huwa malab prova qabel is-sena 1992 (annessa ma' l-affidavit ta' Salvatore Gauei) li juri li f'dan ir-razzett ben fil-fatt jirrisjedi Lawrence Vella. Jrid jigi rilevat li Salvatore Gauci jispjega sew fl-affidavit tieghu li huwa ben jghix fir-razzett adjacenti ghal dak ta' Lawrence Vella u jidher li dak iz-zmien l-ebda wiehed minn dawn l-irziezet ma kellu isem biex jiddistingwi wiehed mill-iehor.

Illi wara li giet prezentata l-evidenza hawn fuq indikata l-Awtorita' rat kif ghamlet u sabet oggezzjoni ghaliex skond hi xorta wahda ma kienx hemm prova konklussiva. Qed jigi ghalhekk esebit kopja tar-registru elettorali tas-sena 1966 li Juri bic-car illi f'dan ir-razzett fis-sena 1966 kienu jirrisjedu tlett persuni cioe' John May Vella, Lawrence Vella u Maria Vella. Kif jidher mill-istess kopja dak iz-zmien ukoll fir-razzen adjacenti kienu jirrisjedu Joseph Gauci u Saviour Gauci fejn dan ta' l-ahhar huwa l-istess

wiehed li ghamel l-affidavit u bil-gurament tieghu ikkonferma dak li huwa evidenti mir-registru elertorali, cioe' li huwa ben girien ma' Lawrence Vella anki qabel is-sena 1967. Jigi sottomess li wiehed jispera li l-Awtorita' mihiex qed tallega li dawn in-nies kollha mnizzla fir-registru (tmienja mill-anqas) kienu kollha jghixu f'razzett wiehed sabiex teskludi r-razzett ta' l-appellanti. In vista ta' dawn il-provi ma ghandu jezisti l-ebda dubju li dan is-sit ilu uzat bhala residenza sa minn qabel is-sena 1967 u ghalhekk din ir-raguni ta' rifjut ma ghandix applikabilita.

Illi dwar il-kwistjoni tas-servizzi l-applikant isostni li l-pjanti prezentati minnu fil-fatt jiprovdu ghal dawn is-servizzi. Izda jekk l-Awtorita' thoss li ghandha xi proposta ahjar jew dan it-Tribunal jahseb li hemm xi alternattivi aktar idonei, l-appellant ma jsib l-ebda objezzjoni li dawn jigu mposti bhala kundizzjonjiet fl-ghoti tal-permess ta' zvilupp.

3. [...] Illi bir-rispett kollu, jigi sottomess li fil-kuntest ta' din l-applikazzjoni din it-tielet raguni ta' rifjut ma taghmel l-ebda sens logiku, is-SET 11 issib biss applikabilita' kieku s-sit in kwistjoni mhux tiga kommess ghall bini u huwa uzut bhala residenza u kieku biss is-sit jikkonsisti f'art agrikola u xejn aktar. F'dan il-kaz kif diskuss aktar il-fuq, fuq is-sit gia jezisti razzett uzat bhala residenza allura l-policy applikabbli hija il-PLP 20 u mhux is-SET 11 ikkwotata mill-Awtorita'. Ma tantx hemm wisq aktar x'wiehed jghid fuq din ir-raguni ta' rifjut li verament ma ghandha l-ebda lok f'din l-applikazzjoni.”

Ma din in-nota gew annessi l-affidavits ta' Salvatore Gauci, Evangelista Vella u Alfred Roy Lock, kif ukoll kopji ta' estratti mir-registri elettorali tas-sena 1966 u 1987, in sostenn tad-dikjarazzjoni li Lawrence Vella minn dejjem kien jirrisjedi fil-font in ezami.

C. In-nota risponsiva ta' Mario Scicluna ghall-Awtorita', ipprezentata fid-29 ta' Marzu 2012, inter alia l-punti segwenti:

“5.2.3 As regards to the arguments of the appeal itself, the main issue of contention in this case is the proof of

residence and without uninterrupted use (as a residence) up to the date of application of the building subject to development. The appellant was asked multiple times to present proof of the residential use of the building during the DPA report and to 'submit link between the people who resided in these premises and the applicant' (see letters in PA file). This information had to be accompanied by the submission of a construction method statement prior to the completion of the DPAR. The information submitted by the appellant has proven unsatisfactory to formally establish and attest that the building was occupied constantly since its existence and no works method statement was presented.

As regards to the copy of the 1966 Electoral Register presented by appellant, the Authority states that one cannot conclude that the addresses quoted in this document specifically relates to the site relevant to this appeal or whether it refers to another similar structure within the area. The copies of the electoral registers (1987 & 1966), in particular that of the 1966 is listing eight buildings in 'Mizieb' out of which two quoted by appellant are identified as 'farmhouse.' In view that such information was not accompanied by the supporting site plans, no conclusive evidence can be drawn that any of the two farmhouses corresponds to the building under appeal. It is also worthwhile to note that there were several individuals residing in 'Mizieb' with the surname 'Vella' in that period.

5.2.4 With respect to the details on the present sewerage disposal facilities if existing or their creation as required by section 8.1 (ix) of Policy PLP 20, the appellant is stating 'dwar il-kwistjoni tas-servizzi, l-applikant isostni li l-pjanti prezentati minnu fil-fatt jipprovdu ghal dawn is-servizzi.' This affirmation primarily suggests that currently the building is not serviced by or connected to the main sewerage contrary to section 16 (services) of the application form in which it is stated that sewage facilities will remain as existing. Notwithstanding this discrepancy, none of the plans presented by the appellant show how the necessary utility services will be carried out.

5.2.5 The appellant is also making reference to the Environment Protection Directorate (EPD) within the Authority which had stated that there is no objection from an environmental point of view since the proposal only involves minor interventions to an already existing farmhouse to justify this development. Such a recommendation was given since there is no particular scheduling on site which would normally be considered an issue within their discretion. In fact, the EPD did not comment on the proposal per se but on the alien plants that were present on site. Hence, from a planning point of view, the provisions of Policy PLP 20 prevail together with the comments imparted by the Cultural Heritage Advisory Committee which is the external body composed of experts usually consulted for similar applications involving old rural structures subject to modifications, redevelopment, rehabilitation and extensions. This Committee did not consider the proposal favourably in view of the scale of the new extension which is considered excessive within ODZ and which is creating negative visual impact and several features which were introduced do not conform to the original character of the building (see documents 45 & 51 in PA file).

5.2.6 The appellant is stating that the aim of Policy PLP 20 is to safeguard the vernacular character of residential buildings. Whilst noting that this statement is correct in principle, it should also be mentioned that another main underlying aim of this policy is to rehabilitate such buildings and confine any extensions within the curtilage of the existing building and not at the expense of fresh land outside the existing built-up area. The policy also specifies that the scale and design of the extension should respect that of the original building and not detract from the character of the original composition. In this case, the proposed extension will entail the take-up of 68m² of undeveloped land forming part of the surrounding countryside which is recognized a valuable resource in the islands. Although the total footprint of the completed development would add up to 146m² which is less than the stipulated maximum allowable footprint of 150m² by

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policy, this massing is unacceptable by the policy standards cited above in a Rural Conservation Area.”

D. Il-verbal tal-access fuq il-post tas-Seduta numru 65, mizmuma fil-5 t' Ottubru 2012, precizament il-punti segwenti:

“L-Appellant wera lit-Tribunal il-fond in kwistjoni li jikkonsisti f'zewgt ikmamar u kamra oħra zghira antiki hafna li jinsabu fil-Mizieb fil-limiti tal-Mellieha. L-appellant ddikjara li jixtieq li jigi awtorizzat jkabbar u jirringa li hemm billi għandu zewgt irfal u l-ispazju prezenti m'huwix sufficjenti għal esigjenzi tal-familja tiegħu.

L-oggezzjoni tal-Awtorita' hija li tali estenzjoni m'hijix permessibbli f'din iz-zona partikolarment sensitiva”

E. Il-verbal tas-Seduta numru 74, mizmuma fl-1 ta' Novembru 2012, senjatament il-punti segwenti:

“[...] l-Appellant għandu xahrejn zmien sabiex jipprezenta nota dwar l-operat tiegħu partikolarment kemm tumoli ta' raba jahdem u informazzjoni dwar il-meter tal-ilma bin-notifika lill-Awtorita' li jkollha l-istess terminu biex tirispondi.”

F. In-nota tal-Avukat Dott.ssa Joanne Vella Cuschieri għall-Appellant, ipprezentata fl-14 ta' Dicembru 2012. Ma din in-nota gew annessi dokumenti in sostenn tal-argument li fuq is-sit hemm is-servizz tad-dawl u ilma għall-uzu residenzjali; u li parti zghira mill-produzzjoni li tohrog mill-egħlieqi mahduma mill-Appellant.

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex fuq font konsistenti minn serje ta' kmamar fil-kampanja u li allegatament jintuzaw bhala residenza (i.e. existing farmhouse), tibnena estensjoni li tkopri firxa ta' madwar 68 metri kwadri. Il-font jinsab barra z-zona tal-izvilupp

(ODZ) tal-Mizieb fil-limiti tal-Mellieha, f' arja karatterizzata minn tahlita ta' xaghri u ghelieqi.

Il-bini ezistenti jkopru firxa ta' madwar 78 metri kwadri u gja' jidher fis-survey sheets tal-1967. Ghalhekk, mhux kontestat li l-kmamar ilhom li nbnew, madankollu l-Awtorita' sabet oggezzjoni ghal-fatt, li skond hi, l-uzu residenzjali kien f' xi zmien interrott. It-talba hi fis-sens li l-izvilupp komplessiv (kemm il-darba tintlaqa it-talba odjerna) ghandu jammonta ghal 146 mertu kwadri, cjo' in linja mal-massimu tal-150 metri kwadri kif permess mil-policy, Development Control Guidance, Developments Outside Built Up Areas (PLP 20).

Ir-raguni ghar-rifjut jistrieu fuq il-premessa li peress li hawn si tratta minn estensjoni ta' binja gewwa zona rurali, u billi ma nghatat l-ebda evidenza li l-font kien precedentement jintuza bhala residenza, kif ukoll il-fatt li l-iskala tal-izvilupp propost huwa eccessivi u ma jirrispettax l-ambjent tal-madwar, it-talba hi in kontravvenzjoni tas-subinczi (ii) u (v) tas-section 8.2 tal-PLP 20 sucitata, kif ukoll tal-paragrafu 7.6 u l-policies RCO 2, SET 11 u BEN 5 tal-Pjan ta' Struttura.

Fis-sottomissjonijiet taghha, l-Awtorita' tirrileva li ghar-rigward tal-uzu residenzjali, ma giex iccarat kif is-servizzi (dawl u ilma kif ukoll id-drenagg) ser jigu kkumnikati mal-binja, minghajr ma ssir hsara ulterjuri fuq l-ambjent. Jigi rilevat ukoll li precedentement, kienet giet intavolata applikazzjoni (PA 6546/95) sabiex tinbena fossa (sewage gallery) izda din kienet giet irtirata. L-aggravji ta'-Appellant huma bbazati fuq il-fatt li l-font kien jintuza sa dawn l-ahhar snin bhala residenza; li l-binja ilha tezisti minn qabel is-sena 1967 u li almenu sa s-sena 1992 kienet tintuza bhala dar. Konferma ta' dan huma diversi affidavits ta' persuni li jghixu jew li kienu jghixu biswit is-sit, kif ukoll kopji ta' estratti mir-registru elettorali fiz-zmien rilattiv.

Jirrileva wkoll li t-talba tieghu tkopri arja ta' mhux aktar minn 146 metri kwadri (bhalissa hemm 78 metri kwadri), u dan perfettament in linja mal-policy PLP 20 (citata fir-raguni ghar-rifjut), li ma tippermettix zvilupp fl-ODZ li

jaqbez il-150 metri kwadri. In oltre jispjega li hu kien lest jikkonforma ma kwalsiasi rekvizit li titolbu l-Awtorita' sabiex id-dar meta titlesta, tkun mohbija sew fl-ambjent naturali, u b' hekk, kemm jista' jkun, l-izviupp jigi mitagat. Fil-fatt jirrileva li kemm l-Environment Protection Directorate (EPD) kif ukoll in-Natural Heritage Advisory Committee (NHAC) fi hdan l-istess Awtorita' ma sabux oggezzjoni ghall-proposta tieghu.

Jidher li mhux kontestat li l-unika oggezzjoni ghal-proposta giet mil-Cultural Heritage Advisory Committee (CHAC), izda anke hawnhekk, l-Appellant jiddikjara li kien lest jirregola l-proposta tieghu sabiex ikun konformi mar-rekwizit tas-CHAC.

L-Awtorita' pero', zammet ferm l-oggezzjoni taghha u rilevat li in kwantu l-prova tal-uzu residenzjali u l-mod li d-dar setghet tigi provduta bis-servizzi essenzjali, kienet ghal diversi drabi talbet lill-Appellant jipprovdi din l-informazzjoni; izda waqt li kien ghadu ghadejj l-iprocessar tal-applikazzjoni, tali sottomissjonijiet qatt ma waslu. In oltre, tirrileva li skond l-estratti tar-registri elettorali sottomessi mill-Appellant, f' dik l-arja zghira tal-Mizieb hemm alemu tmien persuni bl-istess kunjon u li jirrisjedu gewwa font (jew fonti) indikati semplicement bhala 'farmhouse'. Zgur li skond l-Awtorita', tali sottomissjoni mhix sufficjenti sabiex tipprova li wahda minn dawk il-'farmhouses' verament si tratta mill-font in ezami.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet - u jekk ghal-mument jigu sorvolati l-argumenti li jirrigwardaw il-kwistjoni tal-footprint (policy PLP 20) u l-mitigazzjoni tal-impatt ambjentali - jibqghu l-argumenti tal-prova tar-residenza u l-operat agrikolu li jiggestixxi l-Appellant. Ta' min jinghad li skond il-policy PLP 20, il-prova tal-operat agrikolu mhix tassattiva ghar-rigward ta' residenza fil-kampanja, madankollu l-Appellant iddikjara li hu kien jahdem l-ghelieqi u li tali residenza kienet ser tghinu jiggestixxi l-operat tieghu ahjar.

Fil-fatt, skond l-ahhar sottomissjoni tal-istess Appellant, gie ddikjarat li s-servizzi tad-dawl u l-ilma huma registrati

bhala 'residential' u li l-produzzjoni li tohrog mill-ghelieqi li jahdem huma f' isem missieru Saviour Gauci. Spjega li peress li missieru hu ragel anzjan, il-produzzjoni llum waqet f' idejh. Ghalhekk, allavolja giet ipprezentata kopja t' ircevuta mahruga mis-Central Cooperative Society bid-data tal-11 ta' Lulju 2012 (li tammonta ghal Euro 1040.11) f' isem Saviour Gauci, madankollu dik l-produzzjoni tohrog minnu u mill-ghelieqi tieghu stess.

F' ic-cirkostanzi pero' jidher li hemm inkonsistenza bejn dawn l-istqarrijiet u l-kopji tad-dokumenti li gew prezentati – propju in sostenn ta' dawn l-istess dikjarazzjonijiet. Ghalkemm qed jinghad li-arloggi tad-dawl u l-ilma huma registrati bhala 'residential' madankollu il-kopja tal-estratt mill-internet turi car li r-“residential water” hu ndikat bhala “dome[stic]” filwaqt li r-“residential elec[tricity]” hu muri bhala “uninha[bited]”.

In oltre, ghalkemm saret dikjarazzjoni li l-produzzjoni tal-ghelieqi ssir mill-Appellant f'isem missieru, u c-certifikati tal-parcels of land (ghelieqi) mahruga mill-Ministeru ghar-Rizorsi u l-Affarijiet Rurali (MARRA) jikkonfermaw li lkoll huma f' isem l-Appellant, madankollu dan it-Tribunal isiba bi tqila jifhem kif l-Appellant, wara' li jkun skarigga ruhhu u hadem dawn il-bcejjec raba, imbgħad ibiegh il-produzzjoni (li jahsad hu stess) f' isem missieru - li guarda caso llum huwa persuna anzjana u li m'ghadux jahdem ir-raba – minflok direttament f'ismu.

F' ic-cirkostanzi ghalhekk, mhux car jekk kif sottomess, il-produzzjoni li ssir f' isem Saviour Gauci verament tigix mill-istess art tal-Appellant odjern. In oltre, il-fatt li l-binja ghandha arlogg tal-ilma indikat bhala domestic u arlogg tal-dawl bhala uninhabited (allavolja t-tnejn huma ta' natura residential) ikompli jqajjem dubbju serju kemm fil-fatt dan il-font baqa jintuza bhala residenza vera w propja. Dan apparti l-fatt li fl-assenza ta' servizz tad-dawl, ma giex ippruvat kemm huwa fattibbli li jigi provdut tali servizz mingħarj ma jsir intervent ulterjuri fuq l-ambjent cirkostanti.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 6625/07 kif mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fis-26 ta' Jannar 2012

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal applika hazin il-policy PLP 20 applikabbli ghal kaz meta impona kondizzjonijiet li ma jezistux fil-policy biex issib l-applikazzjoni taggħa u dawn kienu li t-Tribunal qal li trid issir prova ta' residenza mhux interrotta u li jrid ikun hemm prova fattibbli li jista' jitwahal servizz ta' dawl minghajr intervent ulterjuri fl-ambjent. L-artikolu 8.2 ma jimponix dawn il-kundizzjonijiet għall-applikabilita tal-policy PLP 20;
2. Ghalkemm it-Tribunal jammetti li l-prova tal-operat agrikolu mhix tassativa bhala gustifikazzjoni għal applikazzjoni, pero mbagħad din kienet wahda mir-ragunijiet li fuqha t-Tribunal ibbaza d-decizjoni tiegħu kontra l-approvazzjoni tal-applikazzjoni.

L-ewwel aggravju

Dan hu punt ta' ligi li jisthoqq jigi kunsidrat għal dak li qed jigi allegat hu applikazzjoni hazina tal-provvedimenti tal-policy PLP 20 u mhux semplicement interpretazzjoni tal-istess. Il-policy PLP 20 hi intiza fost affarijiet ohra sabiex tippermetti estensjoni limitata għal bini li jinsab f'ODZ taht certi kundizzjonijiet. L-eligibilita għal tali permess irid jirrizulta jew minn prova li l-bini hu già munit b'permess jew li l-izvilupp jappartjeni għal perjodu qabel il-bzonn ta' permess (ara para. 8.2(ii)). Dawn huma l-parametri li fuqhom trid taħdem l-Awtorita. L-artikolu 8.1(iii) sa (ix) li jridu jigu sodisfatti u fil-bqija tal-artikolu 8.2, imkien ma wiehed isib illi l-ligi tirrikjedi li l-uzu bhala residenza kien u baqa' jezisti sad-data tal-applikazzjoni. Hi l-fehma tal-Qorti li tghid li dak li l-ligi ma tghidx ma jistax jigi attribwit għaliha la mill-Awtorita u anqas mit-Tribunal. Hu car illi jekk applikant qed jitlob estensjoni ta' residenza u mhux

bdil ta' uzu jew konverzjoni irid igib prova li s-sit kien jintuza bhala residenza jew ghax munita b'permess ta' zvilupp ezistenti jew ghax l-izvilupp kien ezistenti qabel id-dhul fis-sehh tal-ligijiet ta' ppjanar cioe qabel l-1967. Pero mkien fil-PLP 20 ma jissemma l-bzonn li jigi ppruvat li s-sit kien baqa' jintuza bla intervazzjoni bhala residenza sad-data tal-applikazzjoni. Dan ma jirrizultax mill-ligi u anqas jista' jassumih it-Tribunal u tali kundizzjoni ma tistax tigi applikata bhala parti mill-PLP 20 meta ma tezistix. Jekk il-fond ma kienx abitat fiz-zmien tal-applikazzjoni tista' tittiehed bhala fattur fl-evalwazzjoni globali tal-applikazzjoni mehuda in kunsiderazzjoni fatturi ohra li jimmitaw kontra li s-sit qatt intuza bhala residenza izda mhix kif ghamel it-Tribunal li bbaza parti mir-rifjut fuq il-konsiderazzjoni li hemm dubju jekk il-fond baqax jintuza bhala residenta vera u proprja.

It-tieni parti tal-aggravju mhux misthoqq ghaliex ghalkemm jirrizulta li kien hemm arlogg tad-dawl residenzjali izda 'uninhabited' it-Tribunal zied li xorta ma hemmx prova fattibbli li jista jigi provdut servizz minghajr intervent ulterjuri fuq l-ambjent. Dan hu konsonini mal-artikolu 8.1(ix) li jitkellem fuq is-servizzi li ma jkollhomx impatt negattiv fuq l-ambjent tal-madwar bi 'trenching' jew 'overhead tables'. L-Awtorita kienet ilmentat li l-applikant ma ressaqx provi cari dwar il-komunikazzjoni li ser issir ta' dawl u ilma mal-binja inkluz bla hsara ghall-ambjent. Dan il-punt ta' fatt ta' natura ambjentali hu prerogativa tat-Tribunal li jezaminah u jiddeciedi fuqu skond il-policy PLP 20 u hi kwistjoni mhux sindakabbli mill-Qorti.

Dan l-aggravju ghalhekk qed jigi milqugh in parte.

It-tieni aggravju

Dan l-aggravju wkoll jinvolvi punt ta' ligi u hu ben fondat. La darba t-Tribunal irrikonoxxa illi l-operat agrikolu mhux tassativ ghall-approvazzjoni ta' applikazzjoni taht il-PLP 20 allura ma kellux ghalfejn jiddedika parti kbira mid-decizjoni tieghu ghall-operat tal-applikant fis-sit in kwistjoni u jaghtiha importanza bhala raguni ta' rifjut, billi l-operat tal-

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applikant mhix ta' relevanza bhala kondizzjoni ghall-applikazzjoni tal-policy PLP 20.

Ghalhekk dan l-aggravju ukoll qed jigi milqugh, ghax decizjoni bbazata in parti fuq kriterji mhux gustifikati mill-policy PLP 20 tpoggi f'dubju serju c-certezza legali tal-istess decisjoni.

Decide

Ghalhekk ghar-ragunijiet moghtija, il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Carmel Gauci in linea ma' dak deciz, tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-2 ta' Mejju 2013, u tirmetti l-atti lura lit-Tribunal biex jerga' jiddeciedi l-appell skond il-ligi u skond l-aggravji u argumenti mressqa mill-partijiet. Spejjez ghall-Awtorita.

< Sentenza Finali >

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