



QORTI TA' L-APPELL

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta ta' l-4 ta' Dicembru, 2013

Appell Civili Numru. 1/2012

Victor Bezzina

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Victor Bezzina tat-3 ta' Jannar 2012 mid-decizjoni tal-Bord tal-Appell dwar l-Ippjanar tad-19 ta' Dicembru 2011 kontra r-rifjut tal-applikazzjoni PA 1730/03 'to sanction demolition of unsafe farmhouse and sanctioning of farmhouse as built';

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

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

Rat id-decizjoni tal-Bord li tghid hekk:

Ikkunsidra illi l-applikant issottometta applikazzjoni sabiex jissanzjona twaqqiegh ta' razzett kif ukoll sabiex jissanzjona l-bini ta' razzett iehor fi Triq San Gwann, Maghtab, limiti tan-Naxxar. Din it-talba giet michuda mill-Kummissjoni għall-Kontroll tal-Izvilupp fi stadju ta' rikonsiderazzjoni fil-5 ta' Mejju 2004 għas-segwenti ragunijiet:-

"1. The existing unsafe building on site has already been replaced by another newly constructed residential building on the same site boundary through PA392/94. In view of this, there is no justification on sound planning grounds, for the need to construct another new residential unit on this site. Accepting this would result in the creation of two residential units on this site, instead of the former single residential unit that existed on site. The proposed development therefore runs counter to Structure Plan policies SET 11 & SET 12.

2. The site lies outside the limits for development defined in the Temporary Provisions scheme for Maghtab l/o Naxxar, 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.

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.

4. 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.

5. The proposal is not essential to the needs of agriculture in that the applicant is not a registered full-time arable farmer tilling at least 20 tumoli of dry agricultural land or its equivalent in the vicinity of the site for at least two years prior to this application. The applicant does not therefore satisfy the criteria set out in paragraph 11.2(a) of the Structure Plan Explanatory Memorandum and so the proposal runs counter to Structure Plan policies AHF 5 and SET 11 and to the Malta Environment & Planning Authority's Policy and Design Guidance - Farmhouses and Agricultural Buildings.

6. The proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas. Accepting this proposed development would lead to urbanisation outside those areas specifically designated for urban uses in the Structure Plan - i.e.: existing and committed built up areas and primary development areas, and so also runs counter to the Structure Plan strategy to channel development into existing and committed urban areas to constrain further inroads into undeveloped land.";

Ra l-appell ipprezentat mill-Perit Norbert Gatt f'isem l-appellant fit-2 ta' Gunju 2004 kif ukoll ir-ragunijiet ipprezentati b'dokumenti annessi mill-istess Perit Norbert Gatt fit-12 ta' April 2005:-

"With reference to the above refusal on behalf of my client Mr. Victor Bezzina, please find enclosed payment of fee for appeal. I will be sending my comments for this appeal as soon as possible.";

"With reference to the above appeal, on behalf of my client Mr Victor Bezzina, I am herewith sending you my comments.

My client Victor Bezzina and his brother John Mary Bezzina, who held in common the property at Gharghur,

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as shown in red on attached plan Doc "A", have divided this property as per Notarial declaration signed between them in the presence of Notary Dr John Spiteri LLD.

This application consists of the sanctioning of the demolition of the old farmhouse and the construction of a new dwelling.

The old farmhouse used to be the sole residence of my client Victor Bezzina. I would like to point out that this farmhouse was in a very dangerous state as certified by Architect L. Montebello A&CE, a copy of the report is hereby attached as Dok "B". Even a Court Sentence, a copy of which is herewith attached, confirmed the dangerous state of the farmhouse.

As regards structure plan policy RC 02, there was never a change of use, as the old farmhouse and the new dwelling was and is being used for habitation.

Moreover the area, which the new dwelling occupies, is less than the area occupied by the old farmhouse.";

Ra r-risposta tal-Awtorita' maghmula mill-Perit Joseph Bezzina u datata 15 ta' Gunju 20005:-

"Policy Constraints:

Outside development Zone
Enforcement action noted on this site.

1.0 PROPOSAL

This application is requesting full development permission to sanction the demolition of an existing farmhouse and reconstruction of a farmhouse for residential purposes.

The building for sanctioning comprises of a basement and ground floor level and covers a footprint of approximately 165m². The building has a height of 3.5metres above the existing street level.

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The drawings that are being considered are red 2C, 2D, 2E and 2F.

2.0 THE SITE

The site for development is located outside the development zone of the Maghtab locality, within a distance of approximately 200m from the development boundary of this area. The site is also within a Rural Conservation Area, and is predominantly used for agricultural cultivation. The site is also close to an area known as 'Gebel San Pietru', which is an area of high landscape value.

The site formerly housed an existing farmhouses consisting of 9 rooms enclosing a central courtyard.

CASE HISTORY

Applications submitted on the Site

The following applications were previously submitted on the site and the applicant's property as outlined on the site plan submitted with this application (at red 2C):

PA1303/92 – request to construct a garage for agricultural use at the back of the former building on site. This request was refused on 14/01/03.

PA0392/94 – request to construct an alternative farmhouse to replace the existing unsafe farmhouse on site, as the existing building was certified as dangerous and irreparable. This request was granted development permission on 15/02/95.

PA6351/97 – request to construct a garage for agricultural purposes. This request was refused on 20/03/98.

PA3238/98 – request to construct an agricultural room 40m² in area and with a height of 11 courses. This request was refused on 28/09/98.

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GDO885/98 & PA3236/98 – requests to install a dish antenna on the new farmhouse. Both requests were not consented development permission.

PA5005/99 – request to demolish structurally unsafe farmhouse and re-erect new farmhouse on the same site. This request was refused on 10/04/00 as the construction of an alternative residence to the structurally unsafe farmhouse on site was already permitted through PA0392/94.

An enforcement notice ECF921/01 has been issued on the site due to the demolition and reconstruction of the existing farmhouse, without development consent.

3.2 DCC's Decision prior to Reconsideration Request

The proposed development was refused by DCC on 28/08/03 as per decision notice red 20 in the following DPAR red 12.

The existing unsafe building on site has already been replaced by another newly constructed residential building on the same site boundary through PA392/94. In view of this, there is no justification on sound planning grounds, for the need to construct another new residential unit on this site. Accepting this would result in the creation of two residential units on this site, instead of the former single residential unit that existed on site. The proposed development therefore runs counter to Structure Plan policies SET 11 & SET 12.

The site lies outside the limits for development defined in the Temporary Provisions scheme for Maghtab l/o Naxxar, 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.

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.

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.

The proposal is not essential to the needs of agriculture in that the applicant is not a registered full-time arable farmer tilling at least 20 tumoli of dry agricultural land or its equivalent in the vicinity of the site for at least two years prior to this application. The applicant does not therefore satisfy the criteria set out in paragraph 11.2 (a) of the Structure Plan Explanatory Memorandum and so the proposal runs counter to Structure Plan policies AHF 5 and SET 11 and to the Malta Environment & Planning Authority's Policy and Design Guidance - Farmhouses and Agricultural Buildings.

The proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas. Accepting this proposed development would lead to urbanization outside those areas specifically designated for urban uses in the Structure Plan - i.e. : existing and committed built up areas and primary development areas, and so also runs counter to the Structure Plan strategy to channel development into existing and committed urban areas to constrain further inroads into undeveloped land."

Request for Reconsideration

The architect has requested a reconsideration of the decision as per letter attached at Red 21. However no

arguments have been presented through this letter justifying the reconsideration request.

RECONSIDERATION ASSESSMENT

Policy context

The following policies are relevant for assessing this proposed development:

Structure Plan for the Maltese Islands (December 1990)

The strategic framework of the Structure Plan aims at using land and buildings efficiently and channeling urban development activity into existing and planned development areas, as defined by the Temporary Provision Schemes. Thus through policy SET 11, the structure plan states that urban development outside the development zone is prohibited. However, policy SET 12 reserves consideration to development outside such areas provided that a justification is presented on sound planning grounds verifying why the development cannot be located within areas zoned for development.

4.2 Policy & Design Guidance - Development Outside Built-up Areas (January 1995)

This policy and design guidance supports the Structure Plan's strategy to restrict the sprawl of urban development outside the development zone. However, this policy paper also recognizes that certain categories of development may be considered outside the development zone, and lists these as the following:

Primary Development Areas

Agricultural, Horticultural, and Fisheries Development

Changes of Use and Extensions to Existing Buildings

Obnoxious Industries

Quarry Developments

Social and Community Facilities (developments which cannot be located within scheme due to their extensive land requirement)

Tourism and Recreational Development (only upgrading and improvement of existing facilities).

Policy & Design Guidance – Farmhouses and Agricultural Buildings (Feb. 1994)

Paragraph 1.2.1 of this policy paper states that applications for residential farmhouses may be considered subject that the applicant is a bona fide registered full time farmer/breeder, which is defined to be either:

A full-time registered farmer tilling at least 20 tumoli of dry land in the vicinity of the site for at least two years prior to the submission of the application (provided that irrigated land shall be considered as dry land of four times the actual area of irrigated land); or

A full time registered animal breeder running an animal farm in the vicinity of the site for at least two years prior to the application.

Furthermore, paragraph 1.4.1 of this policy paper adds that when considering applications for residential farmhouses, it is essential to establish whether the requirements of the agricultural enterprise make it essential for the farmer concerned to live nearby due to the animal rearing and agricultural processes requiring essential care at short notice. Paragraph 1.4.3 further confirms that permits shall only be allowed for residential farmhouses with particular regard to the type of farming carried out (e.g. livestock farming, greenhouses or other forms of intensive arable farming).

5.2 SUMMARY OF CONSULTATIONS

The following consultation responses were received for this application:

The Dept. of Agriculture (ed 15) – stated that the applicant is a registered part-time farmer, with 9.4.3 tumoli of land registered on his name, 8.2.8 of which is dry land, 0.2.3 is rock, and 05.2 is fruit.

Directorate's Comments

The proposed development involves the sanctioning of the demolition of an existing building and replacing it with the construction of a new residential building. The justification presented for this development is the fact that the previous building on site was unsafe and not in a sound structural condition.

However, as noted in the site history section of this report, through PA392/94 a former request to demolish the existing building and construct a new alternative building has been consented development permission. In fact, the building permitted through PA392/94 has been constructed on site, apart from the residential building applied for sanctioning through this current application. Thus, there is no justification for the construction of an additional residential building on this site as proposed through this application. Hence, accepting this proposal runs counter to Structure Plan policy SET 12.

Notwithstanding this, when considering the demolition and reconstruction of the existing building on its own merits, there is no form of policy guidance which enables consideration to such development. Although the policy and design guidance for development outside built-up areas enables consideration to development outside the development zone, this is only accounted for in the form of rehabilitation of existing buildings, and/or minor extensions and changes of use of existing buildings which are worthy of retention. Thus, even when considering minor extensions and changes of use of existing buildings, this may only be favourably considered when the existing building is structurally sound. The proposed development shall involve the contrary of this policy framework as the whole extent of the existing building fabric shall be removed, and replaced by a totally new construction.

Furthermore, when considering the agricultural status of the applicant as indicated in the previous application on this site (PA5005/99), there is no genuine need for the applicant to construct a residence on this particular site,

which is outside the development zone. The applicant is not a full-time farmer and his farming operations do not require that he lives within the closest vicinity to his agricultural holdings. Thus, accepting this proposed development would also run counter to the policy and design guidance "Farmhouses and Agricultural Buildings".

In view of the issues outlined in this discussion, the Planning Directorate does not favorably consider this proposed development as it would result in the creation of a new residential unit outside the development zone boundaries. Accepting this development would therefore run counter to the strategic framework of the Structure Plan and in particular to Structure Plan policy SET 11, which aims at concentrating urban development within areas designated for such development by the Temporary Provisions Schemes.

Recommendation

In view of the arguments presented hitherto in this report, the Planning Directorate recommends that his application Dismissed from this request for reconsideration.";

Il-Bord ra l-file PA 1730/03 li fuqu sar l-appell.

Ra ukoll l-files PA 5005/99 u PA 0392/94 fejn ghal dak li jirrigwarda l-file PA 5005/99 kien intalab permess sabiex jitwaqqa' r-razzett fi stat perikolanti u jinbena razzett floku bhala residenza ta' l-applikant. Illi din it-talba giet michuda mill-Kummissjoni ghall-Kontroll tal-Izvilupp billi primarjament kien inhareg permess qabel li igib in-numru PA 0392/94 sabiex jinbena razzett iehor ma' genb ir-razzett fi stat perikolanti u fuq ir-raba mqabbla lill-ahwa Jimmy u Victor Bezzina.

Illi fl-istess file PA 0392/94 hemm ittra tal-perit tal-applikant fejn stqarr li t-talba ghall-bini ta' razzett kienet gustifikata billi r-razzett fl-istess art li kien residenza tal-ahwa Jimmy u Victor Bezzina kien perikoluz biex tghix fih u in sostenn ta' dan ghalhekk kien inahreg permess PA 0392/94.

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Ra li l-ahwa Jimmy u Victor Bezzina ghamlu skrittura bejniethom li taqra' kif gej:-

"Permess tal-prezenti skrittura, Victor u John Mary sive Jimmy ahwa Bezzina, ulied Emanuel u Petrina nee' Sammut, imwioldin Gharghur u joqoghdu l-Maghtab (Id 361351M u 180757M), jippermettu u jiddikjaraw:

Illi huma jipposjedu flimkien u indivizament bejniethom b'titolu ta' qbiela bicca raba li fuqha hemm mibnija zewg rziezet, fi Triq San Gwann, Maghtab, limiti tan-Naxxar.

Illi huma ma jixtiequx li jzommu aktar in komuni bejniethom din ir-raba u l-irziezet fuqha.

Illi huma ftehm u li Victor ghandu jiehu r-razzett li hemm ma' Triq San Gwann, Maghtab, limiti tan-Naxxar, b'nofs ir-raba mieghu; filwaqt li Jimmy Bezzina ghandu jiehu r-razzett li hemm il-gewwa mit-triq, b'nofs ir-raba mieghu.

Il-partijiet qeghdin jiftehmu li ghandhom jqabbd u perit biex jaghmel il-qasma tar-raba.";

Illi fl-applikazzjoni PA 5005/99 l-applikant ta' bhala indirizz tieghu dak tar-razzett li kien fi stat perikolanti.

Illi din l-applikazzjoni saret f'Settembru 1999 jigifieri wara l-iskrittura citata aktar 'l fuq fejn saret il-qasma bejn l-ahwa.

Illi t-talba ta' rikonsiderazzjoni ghar-rifjut ta' applikazzjoni PA 5005/99 giet irtirata.

Illi wara saret l-applikazzjoni PA 1730/03 sabiex jigi sanzjonat it-waqiegh tar-razzett parikolanti u l-issanzjonar tar-razzett perikolanti u l-issanzjonar ta' bini ta' razzett flok l-istess razzett perikolanti u din l-applikazzjoni giet michuda fil-5 ta' Mejju 2004 u sar appell odjern.

Illi l-Bord zamm access fuq is-sit fit-12 ta' Dicembru 2007.

Sema' lill-partijiet u nnota ukoll li ghalkemm il-Perit Stephen Farrugia fis- seduta tat-2 ta' April 2008 quddiem il-Bord kien informa lill-Bord illi huwa behsiebu jipprezenta applikazzjoni ohra iktar komprensiva, baqa' inadempjenti u l-appellant stqarr li ma ghandux provi ohra iktar x'jitressqu fis-seduta tal-Bord mizmuma fil-21 ta' Ottubru 2009.

Illi l-Bord ikkunsidra:-

Illi la darba kien inahareg permess PA 0392/94 sabiex jinbena razzett li jissostitwixxi r-razzett residenza tal-ahwa Bezzina li kien fi stat perikolanti, ma jifhmux kif l-iskrittura bejn l-ahwa datata 11 ta' Gunju 1999 msemija iktar 'l fuq dwar il-qasma bejn l-ahwa ma ssemma xejn li Victor Bezzina qed jaccetta razzett li kien fi stat perikolanti ghal kuntrarju tar-razzett li kien assenjat lil huh Jimmy li kien fi stat tajjeb, mibni ftit snin qabel.

Illi l-Bord innota ukoll li l-binja li taghha qed tintalab li tigi sanzjonata hija ta' forma ferm differenti minn kif kienet qabel.

Illi l-Bord huwa tal-fehma illi l-qasma msemija fl-iskrittura datata 11 ta' Gunju 1999 mhi xejn ghajr biex tiggustifika t-talba f'applikazzjoni PA 5005/99 li giet michuda.

Illi l-odjern appell imur oltre stante li l-applikant ha l-ligi f'idejh u waqqa' r-razzett perikolanti u bena iehor floku minghajr ma kellu permess.

Il-Bord jaqbel mar-ragunijiet tar-rifjut kif moghtija mill-Kummissjoni ghall-Kontroll tal-Izvilupp, jichad l-appell.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Il-Bord ghamel applikazzjoni hazina tal-ligi meta qal kif wara l-permess PA 391/04 biex jinbena razzett li jissostitwixxi r-razzett tal-ahwa Bezzina li kien fi stat perikolanti, fl-iskrittura tal-qasma bejn l-ahwa tal-1999 ma

jissema xejn li Victor Bezzina qed jaccetta razzett fi stat perikolanti u li r-razzett li nghata lil huh kien fi stat tajjeb mibni ftit snin qabel. Jirrizulta illi l-applikazzjoni in kwistjoni saret wara d-divizjoni u fejn l-applikant li kien jirresjedi f'din il-proprjeta talab l-izvilupp in kwistjoni. Dan kien dak li kellu jara t-Tribunal cioe l-legalita tad-divizjoni u l-applikazzjoni fuq il-mertu taghha;

2. Il-Bord injora decizjoni fl-ismijiet Victor u John Mary Bezzina vs Kummissarju tal-Artijiet 943/93FGC fejn il-Kummissarju kellu jese gwixxi xoghol rimedjali u fin-nuqqas dawn kellhom isiru mill-istess ahwa Bezzina. It-Tribunal u l-Awtorita kienu marbutin li jikkunsidraw it-talba taht il-Policy and Design Guidance – Development Outside Built-Up Areas 1995 li hareg qabel is-sentenza;

3. Ghalkemm l-applikant mhux full time farmer pero ghandu raba vicin ta' aktar minn 14-il tomna u ilu jahdimhom snin twal u ghalhekk l-istruktura plan policy AHG 5 SET 11 u Policy and Design Guidance Farmhouses and Agriculture Buildings gew applikati hazin;

4. Dwar policy SET 12 dan hu kaz car li la darba r-residenza tal-appellant kienet fi stat dilapidat kellu jinghata konsiderazzjoni ghal development outside ODZ fejn tinghata gustifikazzjoni ghaliex dan l-izvilupp ma setax isehh f'zona ta' zvilupp. Kien inkorrett it-Tribunal meta qal li l-izvilupp jipproponi l-kuntrarju tal-policy cioe l-binja ser tigi mnehhija u tigi sostitwita b'binja gdida.

L-ewwel aggravju

Din il-Qorti hi perplessa ferm bir-ragunament tal-Bord li wassalha ghad-decizjoni taghha. Kif tajjeb qal l-appellant fl-appell quddiem il-Bord li l-qasma bejn l-ahwa kienet soggett ta' skrittura datata 11 ta' Gunju 1999 u li s-sit soggett ghal din l-applikazzjoni kienet ir-residenza tieghu. Dak li kellu jaghmel it-Tribunal hu li jara, f'termini ta' ppjanar x'effetti kellu o meno dan il-ftehim fuq din l-applikazzjoni semmai b'referenza ghal iter kollu dwar is-sit in kwistjoni sa mill-ewwel applikazzjoni li saret. Minflok il-Bord indirizza din il-kwistjoni ghax dan kien l-aggravju wara kollox, dahal f'dibattitu b'tema legali civili dwar l-intenzjoni wara l-ftehim, u in-nuqqas ta' kjarezza li rraviza

fih. Dawn mhumiex kwistjonijiet ta' ippjanar u ma jghinux ghas-soluzzjoni tal-problema.

Il-Qorti talbet il-produzzjoni tal-permessi kollha moghtija jew rifjutati u jirrizulta illi l-permess 392/94 inhareg fuq razzet il-gewwa minn dan li hemm l-applikazzjoni dwaru tant li harsa lejn is-site plans rilevanti fiz-zewg applikazzjonijiet jikkonfermaw dan. Jirrizulta bhala fatt illi fl-ewwel applikazzjoni l-ahwa Bezzina ddikjaraw li jirrisjedu fir-razzett soggett ghal dik l-applikazzjoni li kien fi stat hazin u li inghata l-permess biex jerga' jigi konstruit. Jirrizulta illi fl-1995 inghatat decizjoni tal-Prim'Awla dwar l-obbligu tal-Kummissarju tal-Artijiet li jirringa r-razzett. Pero ma hemmx indikazzjoni dwar liema sit inghatat is-sentenza cioe jekk hux dak kolpit b'din l-applikazzjoni jew dik fl-applikazzjoni 392/94. Hu minnu li applikazzjoni simili ghal din wara l-ftehim tal-1999 gie rifjutat u jidher li r-razzett mertu ta' din l-applikazzjoni xorta twaqqa' u rega' nbena u ntalab is-sanzjonar b'din l-applikazzjoni, pero jibqa' l-fatt inkonfutabbli li l-applikazzjoni trid tigi kunsidrata fuq il-mertu taghha mill-ottika tal-ligi ta' ppjanar. Aktar minnhekk il-Bord kellu jiddeciedi l-appell in linea mill-aggravji mressqa liema aggravji gew dettaljati b'ittra tal-20 ta' April 2005 a fol. 75 tal-process.

Sfortunatament il-Bord naqas bl-ikrah li jadempixxi dan l-obbligu nonostante li ngiebu argumenti mill-partijiet mill-punto di vista ta' ppjanar. Il-Bord illimita ruhu meta wasal ghal mertu tal-applikazzjoni billi jghid li jaqbel mar-ragunijiet ta' rifjut moghtija mill-Awtorita. Dan ihalli vojta u incertezza fil-gudikat li jpoggi dubju serju ezattament fuqhiex gie deciz dan l-appell mil-Bord. Il-Qorti tifhem li l-Bord ghandu jkollu s-setgha li jippuntwalizza fatti u jinterpretahom anki jekk forsi ma jkunux strettament necessariji ghas-soluzzjoni tal-vertenza izda ma jistax kif jidher li ghamel f'dan il-kaz jaghti interpretazzjoni dwar fatti li strettament ma jghinux fis-soluzzjoni tal-applikazzjoni mill-lat ta' ippjanar u jaghti lilhom l-importanza u hsieb principali li wasslitu ghad-decizjoni. Il-Bord kellu l-obbligu li jara t-termini tal-appell u jiddeciedi dwar l-aggravji mressqa. Il-Bord ma jadempix l-obbligu tieghu billi jghid biss li jaqbel mal-argumenti tal-Awtorita.

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Irid jaghti ragunijiet tieghu ghaliex l-appell tal-applikant ma setghax jintlaqa' f'termini ta' ligijiet u policies ta' ppjanar. Decizjoni trid tkun ben motivata u f'dan il-kaz ma hemm ebda motivazzjoni cara li tohrog fuq bazi ta' ppjanar ghaliex gie michud l-appell.

Ghalhekk dan l-aggravju qed jigi milqugh fis-sens illi t-Tribunal ma ndirizzax sew l-aggravju tal-appellant dwar il-portata o meno tad-divizjoni bejn l-ahwa Bezzina relattivament ghal dak li jikkoncerna ligijiet ta' ppjanar.

It-tieni aggravju

Dak li japplika ghall-ewwel aggravju japplika ghal dan l-aggravju wkoll billi l-aggravji tal-appell quddiem it-Tribunal indirizzaw din il-kwistjoni u l-Bord kellu l-obbligu li jezaminah u jaccettah jew jirrigettah ghal ragunijiet li kellu jaghti u mhux kif ghamel f'dan il-kaz injora l-kwistjoni kompletament.

Ghalhekk anki dan l-aggravju qed jigi milqugh fis-sens biss deciz minn din il-Qorti.

It-tielet u r-raba aggravji

Il-Qorti tqis li la darba qed tilqa' l-appell minhabba n-nuqqas tal-Bord li jindirizza sew l-appell imressaq quddiem u ma ddecidiex l-aggravji tal-appellant u anqas rrefera u ddecieda dwar dak li suppost kien applikabbli ghal kaz bhala kwistjoni ta' ppjanar mertu ghas-sit in kwistjoni, ma hemmx lok li tiddeciedi dwar dawn l-aggravji. Ghalhekk qed tastjeni milli tindirizzahom sabiex il-Bord jerga' jitratta l-kaz in linea mal-applikazzjoni maghmula fit-termini maghmula, jindirizza u jiddeciedi l-aggravji cari li saru mill-applikant quddiemu minghajr ma jigu mizjuda aggravji ohra, u dan b'referenza ghal ligijiet ta' ppjanar applikabbli.

Decide

Ghalhekk il-Qorti in konformita ma' dak deciz aktar il-fuq, qed tilqa' l-appell ta' Victor Bezzina, tirrevoka d-decizjoni

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tal-Bord tal-Appell dwar l-Ippjanar tad-19 ta' Dicembru 2011, tirrinvija l-atti lura lit-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar biex jerga' jiddeciedi l-kaz. Spejjez ghall-Awtorita.

< Sentenza Finali >

-----TMIEM-----