MALTA

# QORTI TA' L-APPELL

**ONOR. IMHALLEF**
**MARK CHETCUTI**

Seduta tad-19 ta' Frar, 2014

Appell Civili Numru. 189/2012

**George u Noella Vella**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell tal-konjugi Vella tat-28 ta' Novembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 li cahdet l-applikazzjoni PA 1245/09 'kostruzzjoni ta' sitting/living room fil-pjan terran; tarag li jiehu ghas-sular ta' fuq, zewg kmamar tas-sodda u toilet fis-sular ta' fuq u kostruzzjoni ta' swimming pool';

Rat ir-risposta tal-Awtorita li ssottomettiet li d-decizjoni tat-Tribunal ghandha tigi konfermata u l-appell michud;

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

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

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fid-19 t’ Ottubru 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 1245/09 “5, Triq tal-Bakkari, Xewkija – Alterations and additions consisting in construction of sitting room/living room at ground floor; stairs leading to the first floor; two bathrooms and toilet at first floor and also construction of pool.”

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

“1. The proposed development runs counter to Development Control Guidance Development outside Built up areas in particular Paras 8.2 (ii) and (iv) in view that applicant has not provided sufficient proof that building was uses as a residence.

2. The proposed development would lead to the introduction of habitational use outside the development zone and thus would conflict with Structure Plan Policy SET 11 which does not permit urban development outside existing and committed built up areas. The proposal therefore also runs counter to SP Policy BEN 5.

3. There is no justification for the development of this site as required by Structure plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development cannot be located in an area designated for development or in an existing built up area.”

B. In-nota tal-Perit John Saliba ghall-Appellanti, ipprezentata fl-1 ta’ Novembru 2011, senjatament il-punti segwenti:

“The main issue regarding this appeal it to prove that this building was in fact used for habitation. A typed transcript of contract dated 18 August 1947 is attached. In this

contract Giuseppa Spiteri sold the premises to Ganni Pace. The Applicants George and Noella Vella then bought the property from the heirs of Ganni Pace. In this original contract of purchase the property being sold is described as a ‘lok ta’ djar’. In Maltese dar also means an habitable room and lok refers to a premises so this literally translates to a premises with habitable rooms or more precisely a house of residence.

From the attached internal photos of two rooms at ground floor it can be clerly seen that these were used for habitation. The dry stone walling is pointed in lime and then white washed. Yellow ochre has been used for rearing animals they would surely not have been pointed out and white washed.

Moreover the south facing arches fronting these rooms also indicate that these rooms were used for habitation. The recesses in the walls as indicated on the plans were used for storage of household items (armarji) and are not animal feeding troughs (imxatar). These recesses have chasings in the jambs where rudimentary doors were fixed. Animal feeding troughs would have been constructed differently in that a wall recessed feeding trough would have stone projections at the base where a removable stone slab could be slotted. All these indications prove that this premises was used for habitation.

Ma din in-nota giet annessa kopja ta’ kuntratt ta’ bejgh originali li sar quddiem in-NutarFrancesco Gauci fit-18 t’ Awissu 1947.

C. In-nota risponsiva ta’ Jonathan Borg ghall-Awtorita’, datata fil-5 ta’ Jannar 2012, inter alia l-punt segwenti:

“5.2 The Authority notes that the proposed alterations, extension and swimming pool (plus paved area) conform to the standards and benchmarks set by the policy document Policy PLP 20: Development Control Guidance - Developments Outside Built-up Areas (1995).

However an essential criteria for permitting such developments in ODZ according to section 8 [para. 8.2 (ii)] of the above mentioned policy document is that the applicant (in this case the appellant) must be able to demonstrate that the original building or use is implemented in accordance with a valid development permit, or that the development dates from a period before such permits were necessary.

The reason for such a criterion is to ensure that no new, unjustified dwellings are created in the ODZ.

In order to achieve this aim, the EPC requested the appellant to provide evidence of residence by way of pre-1967 electoral register and one of a  more recent date. The reason why the EPC requested evidence from a pre-1967 electoral register is that albeit the legality of the building per se is not questioned as it is visible in the 1967 aerial photograph, its use as a residence is not clear. Therefore the Authority required the pre-1967 electoral register in order to determine whether the building visible in the 1967 aerial photograph was until that time used as a dwelling and a post-1967 register to determine whether such use was continued.

Such evidence would be proof that no new dwelling would be created. The appellant failed to provide such proof and therefore the requested extensions are unwarranted and unjustified; and therefore run counter to para. 8.2(iv) of section 8 of the PLP 20.

The appellant only provided a contract dating to 1947 which makes a vague reference to a dwelling on site (together with a reference to an animal pen). However this on its own is not conclusive evidence that it was used as a residence. Furthermore if such use has been discontinued, then the status of the existing building as a dwelling in terms of planning is lost and any request for a residential unit on site must be considered as new.

A building in the ODZ that has once been used as a dwelling does not automatically entitle the owner to have

a residence on site as this will defeat the Structure Plan aim of channeling urban activities away from the ODZ. Otherwise it would be almost carte blanche for development in the countryside wherever an old disused structure exists. In order to consider the rehabilitation of such buildings for dwellings, the residential activity on site must have been carried over till the recent past.’’

D. Il-verbal tal-access fuq il-post tas-Seduta numru 31, mizmuma fit-12 t’ April 2012, precizament il-punti segwenti:

“L-Appellant qed jipproponi li kostruzzjoni antika u fi stat ta’ kwazi dilapidazzjoni, jaghmel alterazzjonijiet konsistenti f’ sitting room, living room, bathrooms fil-first floor u [… pixxina]. Il-bini taccedi ghalih minn sqaq u hemm zewg kostruzzjonijiet ohra antiki li wkoll huma fi stat prekarju, bnadi bla soqfa ecc., Jista’ jkun illi originarajment kienu jintuzaw bhala grupp ta’ residenzi. L-appellant qed jipproponi li din il-kostruzzjoni antika u fi stat hazin hafna ta’ kostruzzjoni, jaghmel dawn il-benefikati biex tintuza bhala residenza.

L-Awtorita’ qed toggezzjona billi qed tghid illi ma ngabux provi sufficjenti biex jigi kkonfermat illi l-bini kien jintuza’ ghal skopijiet residenzjali.”

E. In-nota tal-Perit John Saliba ghall-Appellanti,ipprezentata fis-16 t’ Ottubru 2012, fejn gie anness affidavit ta’ Mario Pace fejn gie dikjarat li hu jiftakar li zijuh Ganni Pace kien jirrisjedi fil-font in ezami sa’ almenu s-sena 1974, meta mietitlu l-ewwel mara. Wara din id-data kien rega’ izzewweg u mar joghqod band’ ohra.

Ikkunsidra ulterjorment:

Il-mertu ta’ dan l-appell jirrigwarda proposta sabiex f’ font li jinsab gewwa z-zona tal-izvilupp (ODZ) tax-Xewkija, jitwaqqghu zewgt ikmamar fuq wara’, tinbena pixxina u sitting/living room, tarag li jaghti ghall-ewwel sular, zewg kmamar tal-banju kif ukoll toilet.

Ir-raguni ghar-rifjut jistriehu fuq il-fatt li l-proposta in ezami hi in kontravenzjoni tal-paragrafu 8.2 tal-policy paper PLP 20 ghax ma’ gietx sottomessa l-ebda prova cara li dan il-font kien jintuza bhala residenza. Di konsegwenza, it-talba odjerna tirrizulta f’kunflitt mal-policies SET 11, SET 12 u BEN 5 tal-Pjan ta’ Struttura li inter alia ma’ jipperemettux il-proliferazzjoni ta’ djar fl-ODZ meta dawn jistghu jinbnew f’ zoni li huma aktar idoneji ghall-uzu ta’ residenzi.

L-aggravji ta’-Appellanti huma bbazati fuq il-premessa li kuntratt ta’ bejgh tas-sena 1947 kien jaghmel riferenza ghal-“lok ta’ djar” fuq is-sit in ezami u li n-natura tal-kostruzzjoni tal-binja per se, jaghti l-wiehed x’ jifhem li din kienet tintuza esklussivament bhala residenza u mhux bhala bini iehor kwalsiasi marbut ma’ attivita’ agrikola (bhal per ezempju mahzen, etc.).

L-Awtorita’ ddikjarat li di principju, hi kkunsidrat din il-proposta bhala wahda li tikkonforma mar-rekwiziti kollha tal-policy paper PLP 20 li jirrigwardaw residenzi fl-ODZ. Fil fatt kif jidher mir-ritratti mill-ajru, fuq is-sit in kwistjoni diga’ kien jezisti xi zvilupp almenu sa’ mis-sena 1968, madankollu sabiex zgur ma tkunx qed tiggustifikata residenza gdida, il-Kummissjoni talbet lill-Appellant sabiex jissottometti prova mir-registru elettorali bhala konferma li l-font kien jintuza bhala residenza sa almenu mis-sena 1967.

Giet prezentata biss bhala prova, kopja ta’ kuntratt ta’ bejgh tal-1947 li l-Awtorita’ kkunsidrat insufficjenti li l-binja kienet tintuza bhala residenza jew li tali uzu kien kostanti f’ iz-zmien. Ghalhekk cahdet it-talba odjerna in linja mal-policy 8.2 (ii) et seq. tal-istess policy paper. Jigi rilevat li l-kuntratt ta’ bejgh jaghmel riferenza ghal:

“lok ta’ djar b’ mandretta mieghu unita ta’ circa hames kejliet, fix-Xewkija, Gozo, fin-numru wiehed (No. 1) ta’ Triq Bakkari […] imiss fil-punent mat-triq, fil-lvant ma’ beni [sic.] ta’ Gianni Spiteri, u fit-tramuntana mat-triq”

Jidher li din id-deskrizzjoni tikkoncidi perfettament mal-font in kwistjoni – li kif jirrizulta, jinsab fil bidu ta’ Triq tal-

Baqqari, fuq kantuniera bejn zewg toroq – u kif seta' jigi kkostatat minn dan it-Tribunal waqt access fuq il-post (u kkonfermat bl-affidavit ipprezentat), hemm bizzejjed evidenza li jaghti l-wiehed x' jifhem li f' xi zmien il-bini in kwistjoni kien jintuza bhala residenza.

Mill-banda l-ohra pero', precizament biswit dan l-istess bini u fl-inkrocju ta' dawn iz-zewg toroq, hemm binjiet ohra ugwalment abbandunati, u ta' qisien pressappoco daqs il-font in ezami. Terga tghid, wahda minn dawn il-binjiet hi ferm aktar imponenti minn dik in kwistjoni u li jista' jaghti l-kaz li fl-antik, din tal-ahhar kienet isservi ta' residenza principali mentri l-binjiet kollha l-ohra ta' madwarha kienu jservu ta' “mandretti”, binjiet sekondarji, etc. Jista' jkun ukoll, li precizament biswit dawn li-istess “mandretti” kien hemm xi djar zghar ghall-lavranti jew gabillotti.

Ghalhekk, jista' jaghti l-kaz li l-binjiet mertu tal-appell odjern li t-Tribunal kellhu l-opportunita' li jezamina - u li jidhru li f' xi zmien kienu mghammra bhala “residenzi” - fil-fatt kienu jintuzaw b' bhala tali. F' ic-cirkostanzi pero', prevja prova inkonfutabbli li s-sit in kwistjoni ir-residenza principali tal-imsemmijja “lok ta' djar” fiz-zona, ser jibqa id-dubbju. Anke minn affidavit (ipprezentat wara li l-appell kien thalla ghad-decizjoni u ghalhekk ma' setax isir kontro-ezami xieraq), jidher li wara' s-sena 1974, il-font kien gie abbandunat, u semmaj wiehed jista' jikkonferma l-uzu ta' residenza (f' kwalsiasi perjodu zmien) li hu zgur hu li dan l-uzu gie nterrott, u di konsegwenza intilfu wkoll id-drittijiet kweziti marbutin mieghu.

Irid jinghad ukoll li dan it-Tribunal ma' jsibx komfort fil-fatt li kemm il-darba jinhareg permess ghal-residenza fuq dan il-post, dan ser ikun kawza ta' proliferazzjoni ta' residenzi ohra fiz-zona, ghaliex potenzjalment, f' kull wahda minn dawk il-binjiet biswit is-sit in ezami (kif rilevat supra), ser tkun tista' tintalab residenza. B' hekk, il-“lok ta' djar b' mandretti maghhom” li fl-antik setghu kienu jappartjenu lill-propjetarju wiehed, illum ser jinqasmu f' fondi aktar zghar, fejn fuq kull wahda minnhom tista' tintalab residenza. Konferma ta' dan hu l-fatt li t-talba odjerna hi inter alia ghal-estensjoni massicca tal-bini prezenti – cjoe'

sular shih u gdid sovrastanti dak originali, u dan apparti t-talba ghal pixxina, landscaping, etc. Ghaldaqstant, billi r-riabilitazzjoni ta’ dan il-font (f’ residenza) ser jinnecessita’ fil-kostruzzjoni ta’ numru ta’ kmamar konsiderevoli fuq dawk li diga’ jezistu, it-talba odjerna ma’ timmeritax kunsiderazzjoni favorevoli.

Izda anke jekk ghal-grazzja tal-argument, jista’ jigi sorvolat dan il-punt u semmaj il-premessa li dan il-bini kien minn dejjem jintuza bhala “residenza”, ma ngiebet l-ebda prova mir-registru elettorali kif tablet l-Awtorita’. Kuntratt ta’ bejgh li jipprova li fl-1947 kien jintuza bhala residenza u affidavit li xi had kien joqghod hemmhekk sa’ s-sena 1974 mhumiex prova cara ta’ dan. Jista’ jaghti l-kaz per ezempju, li minn dakinhar l-hawn, l-uzu ta’ residenza spicca jew gie interrott b’ uzi ohra; jew inkella li min kien “joqghod” f’ dan il-post kellhu r-residenza vera w propja x’ imkien iehor.

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 1245/09 mahrug mill-Kummissjoni ghall-Kontroll ta’ l-Izvilupp, fid-19 t’ Ottubru 2011.

**Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:
1. It-Tribunal applika hazin il-ligi meta ddikjara li hi mehtiega l-prova sbiex jigi riabilitat il-fond li min kien jirresjedi fil-fond kien registrat bhala votant f’dak il-fond jew li ssir il-prova li l-fond kien uzat bhala r-residenza principali almenu mis-sena 1967. il-grad ta’ prova imposta hu skorrett ghax ma jirrizultax mill-policy applikabbli li hi l-PLP 20 Development Control Guidance – Development Outside Built-up Areas (1995). L-interpretazzjoni li nghatat ghal paragrafu 8.2 tal-policy hu skorrett ghax il-ligi ma tesigix din il-prova. Il-ligi trid biss il-prova li l-fond kien jintuza bhala residenza qabel giet introdotta l-htiega ta’ permess ghal tali uzu. Ghalkemm il-prova tar-registru elettorali hi l-aqwa prova izda mhix l-uniku mezz ta’ prova

fejn il-prova tar-registru elettorali ma tistax issir. Il-provi urew illi l-fond kien residenza qabel l-1967 u mhux fond adebit ghal skop iehor senjatament dak konness mil-agrikolura. In oltre la darba stabbilit dan, kull argument li l-fond ma baqax jintuza bhala residenza jew l-ipotesi li min kien joqghod f'dan il-post kellu r-residenza vera u propja band ohra imorru kontra dak li trid il-ligi. Fattwalment il-fond jezisti u jista' jintuza bhala residenza fl-istat li hu bla alterazzjoni strutturali salv refurbishing;
2. It-Tribunal kien skorrett li jirraguna li jekk fond jieqaf jintuza bhala residenza trid xi permess biex jerga' jintuza bhala tali. L-artikolu 67(2) tal-Kap. 504 hu applikazzjoni kuntrarja ghal dan l-argument billi hemm esenzjoni minn bzonn ta' permess f'kaz ta' kontinwazzjoni jew ripresa ta' uzu. Hu t-tibdil ta' uzu li jirrikjedi permess;
3. It-Tribunal gibed konkluzjoni hazina mid-dicitura ta' mandretta kif uzata fil-kuntratt tal-1947 billi qal li prevja l-prova inkonfutabbli li s-sit in kwistjoni kien ir-residenza principali tal-lok ta' djar fiz-zona jibqa' d-dubbju dwar l-uzu. Dan ma setghax jargumentah meta hu stess stabilixxa li jidhru li f'xi zmien il-binjiet tal-appell odjern kienu mghamra bhala residenzi.

**L-ewwel u t-tielet aggravji**

Il-Qorti ser tezamina dan l-aggravju ghax hu punt ta' ligi li fuqu giet determinata din l-applikazzjoni. It-Tribunal ighid car u tond illi ir-rifjut mill-Awtorita ta' din l-applikazzjoni kienet principalment ghaliex l-applikant ma gabx il-prova rikjesta fil-policy PLP 20 taht l-artikolu 8(2)(ii) li jghid hekk:
The applicant must be able to demonstrate that the original building or use is implemented in accordance with a valid development permit, or that the development dates from a period before such permits were necessary.

Il-konsegwenza ta' dan in-nuqqas gab mieghu l-kontravenzjoni ta' policies ohra cioe l-proliferazzjoni ta' djar fl-ODZ meta dawn jistghu jinbnew f'zoni idoneji ghal uzu ta' residenzi.

Il-Qorti taghmilha cara li mhix ser tezamina la l-apprezzament tal-provi maghmula mit-Tribunal u anqas l-

interpretazzjoni ta’ policies. Pero hu kompitu tal-Qorti li tikkunsidra jekk it-Tribunal applikax normi regolatorji ta’ procedura f’dak li hu grad u piz ta’ provi prodotti u jekk l-interpretazzjoni moghtija lil policy ghal grad u piz tal-prova tmurx kontra l-kliem car tal-ligi fejn allura l-Qorti hi obbligata li tintervjeni qua kwistjonijiet ta’ ligi decizi mit-Tribunal.

It-Tribunal jasl ghal konkluzjoni illi l-kuntratt esebit mill-appellanti tal-provenjenza tas-sit in kwistjoni maghruf bhala lok ta’ djar b’mandretta mieghu hu dak mertu ta’ din l-applikazzjoni u li l-provi, fosthom affidavit, u l-access maghmul mit-Tribunal taw wiehed x’jifhem li f’xi zmien il-bini in kwistjoni kien jintuza bhala residenza. Imbaghad it-Tribunal qajjem zewg dubbji f’dak li deher kien accertament ta’ fatt ippruvat. Qal li biswit il-binja hemm binjiet ohra tal-istess daqs u ohra ferm aktar imponenti u jasal ghal konkluzjoni li din tal-ahhar setghet isservi ta’ residenza principali u l-binjiet l-ohra bhala mandretti cioe binjiet sekondarji. Wara din l-enuncjazzjoni pero t-Tribunal jerga’ jaghti x’jifhem li qed ibiddel fehmtu billi jghid li l-binjiet mertu tal-appell kienu f’xi zmien mghammra bhala residenzi u jintuzaw bhala tali pero ma saritx il-prova <u>inkonfutabbli</u> li s-sit in kwistjoni kienet ir-residenza <u>principali</u> tal-lok ta’ djar fiz-zona.

Maghdud ma’ dan l-argument it-Tribunal izid li ma ngabitx prova li wara l-1974 (cioe d-data fejn ix-xhud Mario Pace iddikjara li jaf li l-awtur tal-applikanti l-ahhar ghex fil-binja) il-fond baqa’ jintuza bhala residenza anzi jikkonkludi li l-fond gie abbandunat u kwindi intilfu d-drittijiet kweziti ta’ residenza u dawk marbutin mieghu. Kif intqal, din il-Qorti mhix ser tezamina l-fatti pero ser tezamina jekk it-Tribunal segwiex il-principji bazici tal-ligi tal-procedura ghal dak li jikkoncerna l-grad tal-prova rikjesta biex allegazjoni tigi stabilita bhala fatt ippruvat u dan a tenur ta’ dak li jistabilixxi l-istess policy.

Hu minnu illi t-Tribunal, skond it-Tieni Skeda, jirregola hu l-proceduri tieghu, sakemm l-Att ma jipprovdix ad hoc. Pero dan il-poter qed jittiehed li ghandu jigi applikat fil-formalitajiet ta’ kif it-Tribunal imexxi u jikkonduci l-

andament tal-process quddiemu. It-Tribunal ghandu funzjoni kwazi gudizjarja u bhala tali ghandu d-dover li jaddotta dawk il-principji bazici regolaturi li jorbtu lil Qrati fis-smigh u gbir tal-provi, il-grad tal-prova, il-mod kif isir l-apprezzament tal-provi, il-kunsiderazzjonijiet li ghandhom jigu espress b'mod car u konkret u l-konkluzjonijiet ibbazati fuq il-fatti accertati abbinati mill-ligijiet u policies applikabbli ghal kaz. Ma' dawn jinghaqdu l-principji bazici tal-gustizzja naturali applikabbli indiskriminament ma' kull parti.

Peress li dan hu kamp amministrattiv u sa certu punt b'aspetti civili, it-Tribunal hu mistenni li l-grad tal-prova ghal allegazzjoni biex tigi stabbilita bhala fatt ppruvat ghndu jkun dak fuq bilanc ta' probabilita. Allegazzjoni mhux opposta u mhux messa f'dubju minn fatturi ohra ghandha tinghata l-importanza misthoqqha.

It-Tribunal zbalja meta accertat li xi darba l-fond in kwistjoni kien residenza jippretendi li bhala mizura l-prova 'inkonfutabbli' li kellha tigi mressqa li din kienet residenza principali minn lok ta' djar uzata bhala residenzi. It-Tribunal zbalja fil-ligi ghax il-grad ta' prova ma tridx tkun bhal kamp kriminali 'inkonfutabbli', qisu 'beyond reasonable doubt' kif jesigi l-kamp kriminali izda biss li t-Tribunal ried ikun moralment konvint li l-fatti urew li l-allegazzjoni kienet giet ppruvata u ma kienx hemm provi ohra li jitfghu f'dubju serju dik il-prova. Sa hemm kellu u ghandu jasal it-Tribunal fid-determinazzjoni tal-aspett fattwali kollu tal-vertenza li jkollu quddiemu. Dan ma ghamlux u tali grad ta' prova fil-qies ta' 'inkonfutabbli' poggiet lil applikant fi zvantagg li l-ligi procedurali komuni fis-sostantiv ma tesigix fil-kamp amministrattiv u civili.

In oltre fl-istess nifs it-Tribunal wasl ghal konkluzjoni illi l-fond wara l-1974 waqaf jintuza bhala residenza u l-interruzzjoni kienet ghalhekk tifisser it-telf ta' dritt kwezit marbut mieghu. La darba l-kwistjoni kienet giet maghsura ghal dak li hu l-import tal-artikolu 8(2)(ii) tal-PLP20, it-Tribunal ma spjegax b'mod konvincenti ghaliex l-interruzzjoni setghet effettwat l-applikazzjoni ta' dan l-artikolu. Imkien ma jinghad li l-applikazzjoni ta' dan l-

artikolu tiddependi mill-prova ta’ nuqqas ta’ interruzzjoni tal-binja bhala residenza. L-artikolu jesigi l-prova mill-applikant li s-sit kien jipprecedi fl-uzu tieghu zmien qabel ma kien hemm bzonn permessi tal-bini cioe qabel l-1967. It-Tribunal irid jiggustifika fuq bazi legali u mhux biss opinjoni mhux fondata li l-uzu irid ikun ininterrott ghall-applikazzjoni tal-artikolu 8(2)(ii). Dan ma ghamlux anzi esprima opinjoni bla ebda gustifikazzjoni.

Daqstant iehor it-Tribunal ma spjegax ghalfejn hu interpreta dak li kien car fil-kuntratt tal-1947. Il-kuntratt tkellem fuq lok ta’ djar, cioe koncentrazzjoni ta’ aktar minn sit wiehed ghal uzu ta’ abitazzjoni u mandretta, mentri t-Tribunal ghogbu jitfa’ dubju fuq kliem car u argumenta li kien hemm binja wahda principali u l-ohrajn kienu mandretti cioe biniet sekondarji. Apparti d-definizzjoni hazina tal-kelma mandretta, imkien fil-kuntratt ma jinghad li l-lok ta’ djar kien jikkonsisti in parti f’mandretti izda li flimkien mal-lok ta’ djar kien hemm mandretta inkluza. In oltre l-istess Tribunal jaghmel kostatazzjonijiet gratwiti fis-sens li jghid li ‘jista jkun’ li biswit il-mandretti kien hemm djar zghar ghal lavranti jew gabillotti.

It-Tribunal in oltre imur lil hinn mill-ligi cioe l-policy PLP 20 billi jzid illi jekk jinhareg permess ghal dan il-fond ser ikun hemm proliferazzjoni ta’ residenzi minhabba l-potenzalita li l-binjiet fil-vicinanzi wkoll jintalbu li jigu riabilitati f’residenzi. It-Tribunal ma setghax ihares b’mod generiku lejn sitwazzjonijiet ipotetici izda kellu fuq kollox ihares len l-izvilupp abbinat mal-policy li tahtu kien qed jintalab li jsir u jekk l-izvilupp kienx jikkwalifika ghal permess taht dik il-policy u l-ispirtu taghha semmai anki b’kunsiderazzjoni ghal xi policies ohra applikabbli. Pero zgur ma setghax it-Tribunal jaqbad argument ipotetiku biex jiggustifika rifjut.

F’dan is-sens it-Tribunal zbalja kemm fl-applikazzjoni tal-kliem tal-policy relevanti u l-grad tal-prova li esiga ghal konferma tal-allegazzjoni bhala fatt. Dan irendi l-gudikat legalment insostenibbli u pregudizzivoli biex issir gustizzja skond il-ligi.

Ghalhekk dan l-aggravju qed jigi milqugh.

**It-tieni aggravju**

Dan l-aggravju hu allacjat mal-aggravju dwar l-element tal-kontinwita tar-residenza sal-applikazzjoni ghal zvilupp. Billi l-aggravju mressaq mill-appellant jimpingi fuq l-argumentazzjoni li ghad irid jaghmel it-Tribunal dwar il-bzonn ta' residenza kontinwa ghal prova tal-artikolu 8(2)(ii) tal-PLP 20 u kif l-interruzzjoni tista' taffettwa l-bzonn o meno ta' applikazzjoni ta' zvilupp separat, din il-Qorti tqis li jkun prematur li l-Qorti tippronuncja ruhha dwaru qabel mal-partijiet ikollhom l-opportunita li jivventilaw l-argumenti taghhom quddiem it-Tribunal, biex ikun hemm il-possibilita tad-doppio ezami. Kwindi l-Qorti ser tastjeni f'dan l-istadju li tippronuncja ruhha fuq dan l-aggravju billi l-ewwel aggravju qed jigi milqugh.

**Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell tal-konjugi Vella fis-sens kunsidrat u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012, u tirrinvija l-atti quddiem it-Tribunal biex jerga' jiddeciedi mill-gdid dan l-appell.

Spejjez ghall-Awtorita.

**< Sentenza Finali >**

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