



**QORTI TA' L-APPELL
ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tas-26 ta' Marzu, 2014
Appell Civili Numru. 40/2013

Joseph **Debrincat**

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joseph Debrincat tat-22 ta' Mejju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013 fejn il-Qorti rrevokat ir-rifjut ta' applikazzjoni PA 4357/06 mill-Awtorita tal-25 ta' April 2012 u ordnat li l-applikazzjoni terga' tigi kunsidrata wara li jsir studju ambjentali skond l-Avviz Legali 114/2007. L-applikazzjoni tikkoncerna 'restoration of cattle farm';

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:

B'applikazzjoni pprezentata fil-11 ta' Lulju 2006, Outline development permission PA 4357/06, l-appellant, f'sit f'Tal-Kemmuni Limiti tal-Gharb, talab:

“To relocate a cattle farm”

L-applikazzjoni giet michuda fit-28 ta' April 2011; saret talba ghal reconsideration izda r-rifjut gie kkonfermat fil-25 ta' April 2012 ghar-ragunijiet segwenti:

"1. Gozo and Comino Local Plan Policy GZ-RLCN-1 sets out that “apart from the normal restrictions on development in rural areas, there shall be a strong presumption against the creation of new built structures (including cultivation and animal husbandry related structures) in AHLs”. The site is located within an Area of High Landscape Sensitivity (AHLs) and the proposal, thus, conflicts with this policy.

2. The proposed development falls within an Area of High Landscape Sensitivity and therefore does not satisfy the criteria as set out in Policy 2.3C (New or Relocated Livestock Farms) in the Policy and Design Guidance on Agriculture, Farm Diversification and Stables. The proposal runs counter to criterion 4 which states that new or relocated farms should not be located within a scheduled, designated or protected area or site of ecological, scientific, cultural, archaeological or landscape value.

3. The proposal does not satisfy the criteria as set out in Policy 2.3C (New or Relocated Livestock Farms) in the Policy and Design Guidance on Agriculture, Farm Diversification and Stables since the site is not located within an Intensive Agricultural Area and it has not been demonstrated that applicant has considered locating the farm in one of the areas identified for Intensive Agricultural Area and did not demonstrate why the farm cannot be located in such an area.

4. Structure Plan Policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan Policy RCO4.

5. Structure Plan Policy RCO 8 sets out that in Rural Conservation Areas, individual cultivators will be required to illustrate to the Authority how any planned agricultural development will not harm the ecological, archaeological, and scenic value of the Area. The proposal creates a negative visual impact on surrounding areas and therefore the proposal conflicts with Structure Plan Policy RCO8.

6. The proposal is located within an area which is not characterised by trees. Moreover the proposed landscaping scheme will not adequately screen the proposed development and thus does not comply with Structure Plan Policy BEN17 which requires appropriate landscaping of development.

7. Regulation 14 of Legal Notice 514/10 (superseding Circular PA2/96) states that "when existing development on a site is wholly or partly illegal the

Kopja Informali ta' Sentenza

Authority shall refuse a development application relating to new development on that site .. ", The illegalities consist in a reservoir and room larger than permitted through the General Development Order and a structure at the South Western periphery of the site, all not sought to be sanctioned."

L-applikazzjoni kienet ga giet michuda b'rifjut tal-4 ta' Settembru 2007 – Red 45, saret talba ghal reconsideration, u ghalkemm r-rapport irrakkomanda rifjut, l-applikazzjoni giet milqugha fis-6 ta' Marzu 2008.

Kif jirrizulta mill-Minuti tal-MEPA Board tas-17 ta' April 2008 Red 66, gie deciz li d-DCC kienet ultra vires, fid-decizzjoni taghha, billi ma sarx screening ghall-Environmental Impact Assessment (EIA). Il-Parir Legali – minuta 1488 kien fis-sens li japplika l-Artikolu 39A, tal-Kap 356, cjoe r-revoka tal-permess billi kien hemm 'error on the face of record', l-ipprocessar tal-applikazzjoni jirreverti ghal punt qabel din tigi determinata. Il-perit Saviour Micallef ikkontesta din il-pozizzjoni ta' l-Awtorita', Red 72, u appella minnha b'Appell ipprezentat fid-18 ta' Gunju 2008, li gie rtirat fis-seduta tas-6 ta' Frar 2009, Red 82. Gie pprezentat Project Description Statement.

L-appellant gie infurmat minn Alex Camilleri ghal Director of Environment Protection (EPD) b'ittra tal-11 ta' Frar 2011, Blue 97, li billi rrizutla li l-izvilupp propost ser ikollu diversi impatti negattivi, l-applikazzjoni ma kienitx ser tigi kkonsiderata favorevolment.

Il-MEPA Board, b'vot li ttiehed fit-28 ta' April 2011 Red 98, iddecieda – minuta 13047 – li l-applikazzjoni ghandha tirriverti ghall-pre-decision stage, u l-applikant ghandu jaghmel EIA.

Billi l-applikant ma qabilx ma din il-pozizzjoni l-applikazzjoni giet michuda mill-EPC fl-24 ta' April 2012.

Fl-appell tieghu, l-Perit Saviour Micallef ghall-appellant issottometta kif gej:-

“THE PROPOSAL

Applicant is a registered full time dairy farmer -vide attached declaration by Agricultural Dept document SM 1

Applicant's present farm is located at Dun Alwig Mizzi Street, Gharb in an inhabited area next to village square.

Applicant also cultivates 170 tumuli of land in the same village of Gharb and San Lawrenz for production of fodder to maintain his farm- vide also document SM1.

Proposal consists of an outline development application for the relocation of applicant's cattle farm currently located in an inhabited area next to village square.

Hence the relocation is in line ~the SP policy AHF 9 which states that

"Encouragement will be given to the relocation of livestock units which are unsuitable in existing and committed urban areas because of noise, smell, or other impacts, to suitable locations in the countryside. "

Indeed the relocation has been recommended by the local council - vide attached document SM 2.

THE PROPOSED RELOCATION SITE

The site consists of plot of land at tal-Kemmuni, at Ta' Cini lane, Gharb Gozo.

It is circa 1.4 m above the level of the street having direct access from the street. and is easily provided with all necessary services.

Site is located more than 200 m away from the D.Z.

The site is shown free from any constraints on Gharb LP Map 14.3 -E - Safeguard Areas rural context- vide attached document SM 3.

It is surrounded by 3 fireworks factories approved by MEPA - vide document SM- 3

CASE HISTORY

This outline development permit was originally refused by the DCC on the 4th Sept 2007

During the reconsideration, we submitted fresh plans reducing the height of the farm structures from 9 m to 4.75 m.

At reconsideration stage, DCC further requested fresh plans with the farm level lowered down to street level and with the landscaping areas kept at the original higher level (note that site is circa 1.4 m above street). These plans were submitted and the DCC approved the development on the 6th March 2008 after it was convinced that the lowering of the site level together with the lowered structure height resulted in a visually mitigated and acceptable proposal.

After this decision, it resulted that the application was not sent for EIA screening and hence DCC's decision was ultra vires in view of error on the face of record.

MEPA board later decided that the application is to be taken to pre-decision stage and applicant is to submit an EIA.

Following our later submission of plans with a reduced development, the PDAT team confirmed that the scaled down development no longer required an EIA and the application reappeared in front of the EPC with the resultant final refusal.

DISCUSSION

The directorate argued that: "The main issue with the proposed farm location is that the area is not committed with other animal husbandry units and it is not desirable to introduce this use on this site as it would introduce a large building within an Area of High Landscape value as designated by the GCLP (Map 13.1 -B) -, Vide DPAR report dated 26th March 2012 - Section titled "Re-Assessment of Proposal" - par 2.

In the last but one paragraph of same section the directorate continued "When assessed against policy 2.3 C of the Policy and Design guidance for Agriculture, Farm Diversification and Stables, the proposal satisfies most of the eligibility criteria that the applicant is a recognized farmer and the relevant entities submitted their no objection to the proposal. ... The proposal is however not compliant with criteria 4(a) of the policy which also prohibits the development of new/relocated farms within a sensitive area".

Regarding the first part of the objection, whilst it is true that there are no other farms, it is very strange how MEPA has completely disregarded the commitment of the 3 fireworks factories. Whilst our site is located totally outside the ecologically sensitive areas as shown on LP Map 14.3- E and at the very edge of the of the AHLV area as shown on LP Map 13.1 - B, the fireworks factories approved by MEPA are located within the level 3 and level 2 ecological areas and not at the edge but well within the AHLV area. Moreover it is a fact that a cattle farm is much more compatible with the country side than a fireworks factory. As well explained by the GOZITANO Agricultural Society of Gozo in attached document SM4, the tilling of large areas of agricultural land by applicant to maintain his farm is in itself a positive contribution to the rural environment. We cannot understand how MEPA approved the incompatible fireworks factories in the ecological sensitive areas whilst at the same time it refused the more compatible farm outside the ecological areas.

MEPA's concern, about the impact on the landscape is also very inconsistent. The DCC approved the development on the 6th March 2008 after it was convinced that the lowering of the site level together with the lowered structure height resulted in a visually mitigated and acceptable proposal. And then the EPC refused the downsized development because of visual impacts.

As stated in document SM 4, applicant is the only remaining dairy farmer operating in the Gharb San Lawrenz area. He lives in Gharb, his holding of 170 tumuli are in Gharb area and it is easily understood how important for him that his farm remains also located in Gharb. Both for economic and environmental reasons. Unfortunately the LP failed to identify an area for Intensive Agricultural Activity in this area, despite the fact that the area was historically renowned for milk production and farming. We hope that this will not result in the last remaining farmer in the area having to abandon his operations.

Finally we do not believe that the fact that the existing reservoir and room which were possibly constructed not-exactly according to approved GDO permit should justify a refusal. In any case this is an outline permit and the existing structures will be demolished if the proposed development is ultimately approved.”

L-Awtorita' fir-rapport taghha kkummentat kif gej:

"5.2.1 Introduction

This outline application was initially approved by the DCC at reconsideration stage overturning in the process a recommendation for refusal by the Planning Directorate.

Following the decision, the Environment Protection Directorate (EPD) remarked that the development exceeds the EIA thresholds (the EIA study was not requested since the proposal was not being favourably considered). Hence, the DCC approved the development without having the necessary EIA process established. In view of this, procedures for the revocation of permit were initiated.

The MEPA Board decided that a Project Description Statement (PDS) was to be submitted to establish the need or otherwise for an EIA, before a decision on the revocation is taken (see document Red 91 in PA file). The PDS was submitted and assessed by the EPD who informed the applicant that it results that a number of significant impacts were identified which cannot be realistically mitigated. In view of this, the MEPA Board then decided that the application is to be sent back to pre-decision stage and that an EIA is compiled. Following this decision, the architect submitted revised site plan and drawings reducing the size of the development.

The scaled-down proposal was assessed and found that although it does not address the environmental impacts that were identified during the EIA screening and therefore the proposal remains unacceptable from an environmental point of view. However it was also concluded that the development no longer qualifies for an EIA as it has been scaled down.

5.2.2 Site Location

The proposed development relates to the relocation of a farm located ODZ but abutting the inhabited area of Gharb. The Structure Plan encourages the relocation of livestock farms which are unsuitable in existing urban areas, however the relocation must be proposed in a suitable location, as stipulated by policy AHF 9.

The appellant is not correct to state that the site is not subject to any environmental constraint since it is located in an area designated as an Area of High Landscape Sensitivity (AHLS) as indicated in Map 13.1(B) of the Gozo and Comino Local Plan (GCLP).

The main issue with the proposed farm location is that it is not desirable to introduce this use on this site. Policy 2.3C (4a) of the Policy and Design Guidance – Agriculture, Farm Diversification and Stables (P&DG Agriculture) states that no new or relocated livestock farms are to be permitted within designated and protected areas that have a landscape value. A similar prohibition is set by policy GZ-RLCN-1 of the GCLP.

5.2.3 Visual impact

The issue of visual impact is in this case a primary concern since the site is located in an Area of High Landscape Value.

The proposal consists of a medium sized dairy farm development with a height limited to less than 5 metres. However the considerable length of the farm would create a new large building within the countryside. The visual impacts of the new farm are further emphasized by the narrow configuration of the site, hence amendments in the farm layout to minimise the building massing, and any improvement to the landscaping scheme cannot be achieved in view of the site constraints.

Further to the above, the proposed landscaping scheme, which consists of a single row of olive trees along the whole length of the farm and some additional landscaping on the back part of the site, is deemed deficient. The linear row of trees proposed alongside the farm presents a formal type of landscaping which is not considered appropriate within the rural landscape, especially when the area is not characterised by trees making the proposed development even more conspicuous. Considering that the site is in an Area of High Landscape Sensitivity and that the proposed development would be highly visible from surrounding areas and thus it would detract from the visual amenity of the area, the proposal is in conflict with Structure Plan Policies RCO4 and RCO8. The proposal thus also conflicts with Structure Plan Policy BEN17, which requires proper landscaping of development.

5.2.4 Site is not designated as Intensive Agricultural Area

Policy 2.3C (5) of the P&DG Agriculture states that it is preferable for new or relocated livestock farms to take place within an Intensive Agricultural Area designated by the local plan.

The appellant argues that he should not be penalised on this matter given that the local plan failed to designate Intensive Agricultural Areas in Gharb. On this matter the Authority notes that designations are given where suitable. The local plan did not 'fail' to designate Intensive Agricultural Areas in Gharb, it was simply concluded that such designations do not make sense in this locality given that the area was not committed by established farms.

Further to the above, the policy also caters when no Intensive Agricultural Area has been designated in the Local Plan. In such cases "the Authority will give preference to the re-use or conversion of disused or abandoned livestock farm buildings or other suitable agricultural buildings for such

purpose. Applicants proposing the construction of new buildings for a new or relocated livestock farm unit shall demonstrate, to the satisfaction of the Authority, that:

- the proposed development cannot be located within an Intensive
 - Agricultural Area as designated in the Local Plan; and
- there are no disused or abandoned agricultural buildings, particularly livestock farm buildings, suitable for re-use or conversion."

The appellant only justified why the proposal cannot be located within an Intensive Agricultural Area by stating that ideally his farm is located near his arable land. However this is not deemed satisfactory justification to the Authority since distances are not really a barrier to set up farms in Gozo. In addition the appellant did not attempt to demonstrate that disused or abandoned buildings were sought to be converted into a farm.

5.2.5 Re: Issue of fireworks factories in the vicinity

The appellant takes the Authority to task for having in his opinion failed to take into consideration that the area is committed by three fireworks factories.

The Authority notes that all permits for these fireworks factories have been granted before the coming into act of the local plans. Furthermore the Authority refused a further fireworks factory in the same area in PA5058/09 exactly because the local plan prohibits such development in the area. The fact that there are legitimate developments in the vicinity that are not suitable any more given the importance of the area does not mean that further unsuitable development should be likewise granted, otherwise the scope of the local plan is never achieved. Several decisions by the Planning Appeals Board and the Environment and Planning Review Tribunal have clarified on this matter (see for example the decisions in PAB321/06 [PA1367/05] and PAB 61/06 [PA 4290/04])."

Fin-nota tieghu, l-Avukat Dottor Joseph Grech ghall-appellant issottometta li dan it-Tribunal ghandu jiddecidi jekk il-kejl superficjali tal-proposta prezenti jirrikjedix EIA, u li billi d-DCC fir-reconsideration ddecieda li dan ma kienx necessarju, l-appell ghandu jigi milqugh u l-appellant jinghata l-permess.

Il-veterinarju Dottor Anthony Gruppetta li xehed fis-seduta tal-11 ta' Ottubru 2012, ikkonferma li l-appellant ghandu l-uniku farm fil-lokalita' tal-Gharb, li f'din l-attivita' kienu jahdmu missieru u nannuh, li d-Dipartiment jaqbel li din l-attivita' ma tibqghax issir vicin il-pjazza tal-Gharb, kif issir fil-prezent, u li ghaddew sitt snin minn mindu applika, u jekk ikollu jerga' japplika jirrikjedi aktar zmien.

L-Avukat Dottor Anthony De Gaentao, ghall-Awtorita', fl-ahhar nota tieghu ssottometta li l-kaz ghandu jigi deciz fil-mertu a bazi tar-ragunijiet ta' rifjut moghtija mill-Awtorita';

Ikkunsidra ulterjorment:

Kopja Informali ta' Sentenza

L-appellant qed jipproponi r-rilokazzjoni ta' razzett ghal baqar li fil-prezent jinsba vicin l-abitat, fl-Gharb; ghal sit li jinsab f'Tal Kemmuni, Ta' Cini Lane, Gharb. Is-sit propost hu barra z-zona tal-izvilupp, u jkopri area ta' 7962 sq.m.; u jinsab fit-Triq li mill-Gharb tasal ghall-Kapella ta' San Dimitri.

L-appellant barra li jopera r-razzett jahdem 170 tumoli ta' raba'. L-iter travaljat ta' din l-applikazzjoni diga gie rilevat supra. Jinghad semplicement f'dan l-istadju li l-applikazzjoni orignarjament giet michuda, u ghalhekk ma sar l-ebda studju ambjentali, pero' fi stadju ta' reconsideration, l-applikazzjoni giet milqugha, biex tigi susegwentement revokata billi ma setghatx tigi approvata jekk qabel ma jsirx studju ambjentali.

L-appellant insista, li billi l-proposta originali giet drastikament ridotta, dan l-istudju ambjentali ma kienx mehtieg.

Kif tajjed irrileva l-appellant, skond l-Pjan ta' Struttura AHF9, proposti simili ghandhom jigu kkonsidrati favorevolment, billi f'areas residenzjali jikkostitwixxu nkonvenjent serju, bl-irwejjah storbju u impatti negattivi ohra, u ghalhekk hu rakkomandabbli li dawn l-attivitajiet jkunu trasferiti f'siti fil-kampanja.

Fil-principju ghalhekk l-proposta tal-appellant li ma jibqghax jopera l-farm vicin l-pjazza tal-Gharb hi wahda pozittiva; pero' hu daqstant importanti, li s-sit alternattiv ikun adattat.

Skond l-Awtorita', s-sit propost mhux accettabbli skond il-Policies, billi jinsab f'Area of High Landscape Sensitivity.

Ghalkemm l-proposta originali giet ridotta, billi s-sit ghandu konfigurazzjoni partikolari, cjoe dejjaq u ghat-tul, l-izvilupp propost ghandu impatt vizwali negattiv; u ghalhekk hu in kontravenzjoni tal-Structure Plan Policy RCO 4.

Kif gie rilevat mill-Awtorita', skond l-policy, l-applikant ghandu jissoddisfa l-Awtorita' li l-izvilupp ma jsitax jsir f'Intensive Agricultural Area disinjata fil-Pjani Lokali; u li ma jezistu l-ebda Strutturi agrikoli abandonati li jistghu jkunu utilizzati ghal dan l-iskop.

L-appellant issottometta in oltre, li billi fil-vicinanzi nghataw permessi ghal tlett kmamar tan-nar, is-sit propost ghandu jkun accettabbli. Dwar dan l-Awtorita' irrilevat li dawn il-permessi hargu qabel il-pubblikazzjoni tal-Pjan Lokali li sar f'Awwissu 2006; dan apparti l-fatt li applikazzjoni ohra ghal karma tan-nar, PA 5658/09 giet michuda ghall-istess raguni, cjoe' d-disinjazzjoni taz-zona, bhala wahda of High Landscape Sensitivity.

Indubbjament l-izvilupp propost, f'din il-lokalita' partikolari, ghandu jkollu certi impatti fuq l-ambjent, u hu ghahekk necessarju, li qabel ma tittiehed decizjoni dwar l-proposta, jinhtieg li jsir studju tekniku u dettaljat propju biex jindirizza b'mod professjonali dawn il-kwistjonijiet.

Kopja Informali ta' Sentenza

Il-fatt din kienet d-divergenza principali bejn il-partijiet. L-Awtorita' waslet ghall-konkluzjoni, wara li l-appellant ipprezenta l-Project Description Statement li kien hemm bzonn li jsir EIA, Environment Impact Assessment; l-appellant mill-banda l-ohra jikkontendi li dan mhux necessarju billi l-proposta originali giet ridotta.

Skond l-Avviz legali 114 ta' l-2007, Skeda 1a, Livestock,

“6.2.2 Category 11 Projects:

6.2.2.1 Developments with a site area of more than 7500 sq.m.”

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“6.2.2.2 A new cow rearing establishment or extention with more than 150 milk cows or 200 beef cows at any one time”

jirrikjedu studju ambjentali, EPS Environment Planning Statement

L-argument tal-appellant, li billi l-izvilupp propost gie ridott, mhux mehtieg studju ambjentali mhux korrett; billi s-sit fis-site plan hu indikat fl-intier tieghu cjoe 7962 sq.m., u ghalhekk jikkwalifika biex qabel tittiehed decizjoni fuq il-proposta' jsir studju ambjentali. B'analogija ma zvilupp ta' Villa, ghalkemm hu rekvizist li s-sit ma jinbeniex fl-intier tieghu, s-sit jieqies fl-intier tieghu, f'termini ta' lppjanar.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jilqa' l-istess, fis-sens li qed jigi revokat r-rifjut tal-25 ta' April 2012, ghall-applikazzjoni PA 4357/06, u l-applikazzjoni terga tigi kkunsidrata wara li l-appellant jipprezenta studju ambjentali, skond ma jipprovdi l-Avviz Legali 114 ta' 2007 citat supra.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal interpreta hazin ir-regoli li jiggvernaw il-kaz tar-relocation ta' farm ghax peress li s-sit tal-farm iccekken ma baqghax il-htiega ta' studju ambjentali kif jirrizulta mill-istess osservazzjonijiet tat-Tribunal. Konsegwentement la darba gie revokat ir-rifjut tal-Awtorita kellu jinhareg il-permess, u mhux li l-applikazzjoni terga' tigi kunsidrata;
2. L-applikazzjoni kienet gia deciza fil-mertu fis-6 ta' Marzu 2008 u ghalhekk din tikkostitwixxi res judicata u ne bis in idem la darba ma hux necessarju studju ambjentali.

Kopja Informali ta' Sentenza

L-aggravji tal-appellant ser jigu kunsidrati flimkien peress illi huma kollha dipendenti mill-ezitu tal-ewwel parti tal-ewwel aggravju. L-appellant jikkontendi illi l-izvilupp gie ridimensjonat b'tali mod illi l-farm ma kienx ser jikkupa spazju ta' aktar minn 7,500 metri kwadri. Ghalhekk tali zvilupp kien ezentat minn studju ambjentali. It-Tribunal zbalja din il-kwistjoni billi interpreta hazin ir-regoli pertinenti ghal zviluppi simili.

Jinghad qabel xejn illi hi l-mansjoni esklussiva tat-Tribunal li jinterpreta policies u tali mansjoni mhix sindakabbli mill-Qorti sakemm l-interpretazzjoni tmur kontra l-kliem car tal-policy jew hi tant assurda li ma tirriflettix l-ispirtu jew il-kelma tal-policy.

Il-policy in kwistjoni hi l-Policy and Design Guidance on Agriculture, Farm Diversification and Stables u l-Avviz Legali 114 tal-2007 Skeda 1A 'Livestock' li jghid kif gej:

“6.2.2 Category 11 Projects:

6.2.2.1 Developments with a site area of more than 7500 sq.m.”

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“6.2.2.2 A new cow rearing establishment or extension with more than 150 milk cows or 200 beef cows at any one time”

jirrikjedu studju ambjentali, EPS Environment Planning Statement

L-Awtorita kienet irrifjutat il-permess fl-2012 fuq fatturi ta' planning billi s-sit kien jinsab f'area of high landscape value u billi s-sit ma kienx sitwat f'zona ta' intensive agriculture activity. Madankollu kienet osservat li billi s-sit kien gie ridimensjonat mill-applikant ma kienx hemm aktar il-htiega ta' studju ambjentali.

It-Tribunal invece ssoferma ruhu fuq il-bzonn ta' studju ambjentali bhala pre rekwizit biex tigi valutata l-proposta.

L-appellant jikkontendi li l-izvilupp kien gie ridott ghal anqas min 7,500 metri kwadri. It-Tribunal ikkunsidra dan l-argument u interpreta l-Avviz Legali fil-parti relevant tieghu bhala l-qies mhux tal-parti li ser jinbena izda tas-sit kollu. Hu gab l-ezempju ta' villa li ghalkemm ma tinbeniex fuq is-sit kollu izda xorta wahda irid jittiehed kont tas-sit kollu f'termini ta' ippjanar.

Kopja Informali ta' Sentenza

Din l-interpretazzjoni mhix wahda li tmur kontra l-kliem car tal-ligi u anqas hi wahda assurda. L-Avviz Legali fil-paragrafu 6.2.2.1. jtkellem biss fuq zvilupp b'site area ta' aktar minn 7,500 metri kwadri. It-Tribunal ikkonstata, u dan mhux michud mill-appellant, illi s-site area hi ta' 7,962 metri kwadri u ghalhekk hi soggetta li jsir studju ambjentali.

Din hi l-interpretazzjoni tat-Tribunal ghal regolament li jirrigwarda applikazzjoni ta' policy u li din il-Qorti ma tqis li ghandha jedd li tissindaka billi taqa' fil-parametri tad-diskrezzjoni moghtija lit-Tribunal dment li tali diskrezzjoni hi wzata b'mod ragonevoli. Il-Qorti ma tqis li t-Tribunal issorpassa l-limiti tad-diskrezzjoni tieghu.

Ghalhekk l-aggravju tal-appellant qed jigi michud.

La darba d-decizjoni tat-Tribunal kienet fil-qies li taghti l-ligi, l-aggravji l-ohra tal-appellant ma fihomx mertu billi jiddependu biss minn ezitu favorevoli kontra l-interpretazzjoni moghtija mit-Tribunal. It-triq tat-Tribunal, la darba sab li kien jehtieg studju ambjentali, kien li jibghat lura l-applikazzjoni lil Awtorita biex tissindakah wara r-rizultat ta' tali studju.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Joseph Debrincat u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-2 ta' Mejju 2013.

Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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