



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-7 ta' Mejju, 2014

Appell Civili Numru. 78/2013

Nazzareno sive Rene Grixti

vs

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

I-kjamat in kawza Mark Bernard Battles

Il-Qorti,

Rat ir-rikors tal-appell ta' Mark Bernard Battles tas-17 ta' Decembru 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-28 ta' Novembru 2013 sabiex isiru modifiki interni, u jinbena sular sovrastanti inkluz kamra tal-bejt;

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Rat ir-risposta tal-Awtorita u t-third party objectors Rene Grixti li ssottomettew 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 ghall-Kontroll tal-Ambjent u l-Ippjanar, fis-26 ta' Settembru 2012, approvat l-applikazzjoni ghall-permess tal-izvilupp PA 1708/11 – "Bellini", 49, Triq Santa Margerita, Sliema: Proposed internal alteration to existing dwelling and proposed construction of an additional floor with overlying washroom.

B. In-nota tal-Avukat Dott. Ray Zammit u l-Perit Anthony V. Stivala ghall-Appellant, ipprezentata fit-22 t' Ottubru 2012, senjatament il-punti segwenti:

"We, the undersigned Dr Ray Zarnmit LLD and Perit Anthony Stivala are giving notice of appeal against the decision taken by the EPC in issuing Full Development Permission PA 1708111 on premises 'Bellini', 49 Triq Santa Margerita, Sliema. We are acting on behalf of Mr and Mrs Nazzareno Grixti, who live in the underlying ground floor maisonette 'Puccini', 48 Triq Santa Margerita, Sliema.

A ground floor plan of No 48 is being attached. The plan is practically identical to that of the overlying premises No 49.

As regards the DPA report, all it contains with reference to the objection lodged by my client, is a statement that the objection was lodged. The report makes no reference to the implications of the content of the letter of objection, viz, and I quote, that "The only bedroom we have receives light and ventilation from the internal yard linking both premises. Hence the above proposal will reduce substantially the light and ventilation to the said bedroom."

Both premises were built a relatively long time ago when probably the only existing building regulations were the sanitary ones, if that. It is obvious that the premises were built with two storeys in mind and identically planned maisonettes, the ground floor one (No 48) having the backyard as an outdoor space and the first floor one

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(No 49) having the roof area as its outdoor space. No other floors were envisaged at the time and both maisonettes were considered as equal in their accommodation. Since then regulations have been changed and the first floor maisonette is now allowed to expand upwards. However no opportunity exists for expansion of the ground floor maisonette. What is also surprising is that the proposal has been approved by the sanitary authorities. The ground floor maisonette is in no position to effect the alterations being envisaged for the first floor maisonette. By what stretch of the imagination can the sanitary authorities approve a third party proposal which greatly reduces the natural light and ventilation of the ground floor maisonette. One should not attach too much importance to the names of the rooms on the existing first floor plan submitted by applicant. According to Mr Nazzareno Grixti, who moved into No 48 at the same time as his brother, Emmanuel Grixti, moved into No 49, the ground floor rooms used as bathroom, kitchen, dining and bedroom (as indicated on plan being submitted, which has not changed since then) had an identical use to the respective rooms above them. The living room had another bedroom above it.

We appeal on the point that objector Mr Nazzareno Grixti was not informed of the date of the EPC Board meeting which was called to decide the issue after consulting the Sanitary Engineering Officer. Normally the objector is notified about each and every EPC meeting.

The EPC sent a letter dated 5 September 2012 in reply to a letter sent to MEPA by Perit Stivala dated 18 July 2012. The EPC letter stated that a decision had been taken following SEO's approval after reviewing representee's concern. To add insult to injury the letter also referred to the 'Concessions' of the EPD Act, laid out in MEPA circular 4112 which refers to LN 229112 and a copy was attached.

The EPC, together with the SEO, missed the point of Mr Grixti's concern completely. The internal yard common to both premises, Nos 48 and 49, measures 2.58m by 1.82m at both levels and is not placed in the position required by the Sanitary Regulations. According to the regulations this internal yard should measure 10ft by 6ft (3.05m by 1.83m) and the 10ft depth should be in front of the bedroom window.

If the Sanitary Regulations existed at the time of construction, then both floors were not built in accordance with these regulations. If the said regulations did not exist at the time, then both floors were built legally. In both cases the objector is not interested in a 'concession' for the internal yard in the ground floor plan of his property as much as he is interested in the suitable parameters which both MEPA (through the EPC) and the SEO should apply to guarantee that this source of light and ventilation is not unduly reduced. MEPA has granted a permit to erect an

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additional storey at second floor level where the internal yard is left exactly the same size as at ground and first floor, i.e. MEP A has unduly reduced the source of light and ventilation when it had all the opportunity to mitigate the one-sided application.

This is an appeal against the discriminatory treatment being meted out by MEP A to the two parties involved in this case. The internal yard is being made worse than it is and the ground floor owner cannot do anything whilst the first floor owner is being allowed to build upwards in a block that should never have been allowed to go higher than two storeys in the first place, especially when considering the restricted 17m depth of the site.”

C. In-nota responsiva tal-Avukat Dott. Anthony DeGaetano ghall-Awtorita', ipprezentata fis-16 ta' Novembru 2012, precizament il-punti segwenti:

“Illi preliminarjament, l-appell qed isir fuq kwistjonijiet li gew decizi mhux mill-Awtorita', izda mis-Sanitary Engineering Officer, li hu ir-rapprezentant tas-CGMO, w ghaldaqstant appell minn decizjoni tas-SEO, li f'dan il-kaz iddecieda li l-izvilupp jghaddi (vide minuti 49 u 52 fil-PA 1708/11) u oppozizzjoni ghad-decizjoni tas-SEO, hu Bord iehor, cjoe il-General Services Board.

Ghaldaqstant, l-Awtorita' mhux ser tidhol fil-mertu f'dan l-istadju u titlob li l-istess Tribunal jiddeciedi li l-istess appell li sar quddiem it-Tribunal hu irritu u null stante dan it-Tribunal m'ghandux gurdizzjoni fuq dawn il-kwistjonijiet.”

D. In-nota ta' sottomissjonijiet tal-Avukat Dott. Vincent Galea u l-Perit Richard Borg ghall-Applikant, ipprezentata fit-23 ta' Novembru 2012, senjatament il-punti segwenti:

“1. Preliminarjament in-nuqqas ta' gurdizzjoni ta' dan it-Tribunalsabiex jiddeciedi dan l-appell. Dan peress li ghandu jirrizulta li l-appellant qiegħed jilmenta mid-decizjoni li ha s-Sanitary Engineering Officer. Dan il-punt gie decizdiversi drabi mill-Planning Appeals Board, fis-sens li fejn jidhlu ligijiet sanitarji, da nil-Bord ma ghandux gurdizzjoni biex jissindika tali decizjonijiet. Il-Bord addat huwa l-General Services Board. Illi ghalhekk , huwa umilment sottomess li dan it-Tribunal m'ghandux il-gurdizzjoni biex jbidel decizjonijiet tal-SEO. Dan il-punt wkoll gie deciz fil-kawza Pater Holding Co. Ltd. vs Il-Kummissjoni għall-Kontroll ta' l-Izvilupp u David Caruana kjamat fl-appell fl-4 ta' Novembru 1997 b'ordni tal-Bord, liema sentenza giet deciza mill-Onorabbli Qorti ta' l-Appell fil-5 ta' Ottubru 2001 (Dok. VG1).

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2. iii. Fir-rikors ta' l-appell taghhom, l-appellanti jilmentaw mill-fatt li “objector Mr. Nazzareno Grixti was not informed of the date of the EPC Board meeting which was called to decide the issue after consulting the Sanitary Engineering Officer.” Din l-istqarrija ma ghandhiex mis-sewwa. Dan il-fatt jista' jigi vverifikat mill-file relattiv, minfejn ghandu jirrizulta li l-appellant kien infurmat bis-seduta tat-30 ta' Mejju 2012 f'liema data imbaghad dik is-seduta giet differita ghas-27 ta' Gunju 2012.

iv. Kuntrarjament ghal dak li jinghad fir-rikors ta' l-appell, specifikament fir-raba u fis-seba' paragrafu rispettivament “Both premises were built a relatively long time ago when probably the only existing building regulations were the sanitary ones, if that” u “If the Sanitary Regulations existed at the time of construction, then both floors were not built in accordance with these regulations”, jinghad li l-ligijiet sanitarji saru fis-sena 1854 u minn dejjem iddettaw li residenza ta' zewg sulari ghandu jkollha back court-yard ta' tlett (3) metri tul il-wisa kollha tal-binja.

v. L-appellanti, fir-rikors ta' l-appell taghhom, jissottomettu lil-alterazzjoni proposti u l-kostruzzjoni relattiva qatt ma kellhom jiguapprovati u ghaldaqstant qed jitolbu li l-permess mahrug jigi revokat minhabba l-fatt li l-kejl rikjest mill-ligi ghar-rigward tal-bitha (back-yard) ma humiex in konformita mal-ligijiet sanitarji u ta' kostruzzjoni. L-appellat jissottometti li huwa importanti li jgii nnotat li l-bitha propjeta ta' l-appellanti m'hijiex inkonformita mal-kejl hawn fuq imsemmi minhabba intervent illegali u irregolari ta' l-istess appellant meta huma qabdu u bnew karma fil-bitha. L-appellat ma ghandhux ghalfejn jigi penalizzat minhabba xi haga li ghamel l-appelolant l-ghaiex allura jkun l-istess appellant li jsofri l-pregudizzju (cjoe li jigi revokat l-permess moghti) minhabba att pozittiv u volut li wettqu l-istess appellanti.

vi. L-appellanti jallegaw wkoll li l-permess moghti sejjer jnaqqas id-dawl u l-ventilazzjoni ghall-propjeta taghhom. Jinghad biss li s-shaft (internal yard) li ghalih jaghmlu referenza l-appellanti qatt ma kien mahsub biex jintuza bhala sors ta' dawl u ventilazzjoni. Dan kien gie kostruwit bhala service shaft. Id-dawl u ventilazzjoni li hemm fil-fond ta' l-appellanti u li gejgin mill-bitha (back-yard) qatt ma gew imnaqqsa l-ghaliex l-izvilupp addizzjonali gew recessed in konformita mal-ligijiet sanitarji. Oltre dan, u b'referenza ghal da nil-punt hawn imsemmi, u biss ghal kompletzza ta' l-argument hawn espost, l-artikolu 97(n)(vi) tal-Kodici tal-Ligijiet tal-Puizija (Kap. 10) jipprovdi li:

“if owing to the configuration of the site on which the house is to be constructed, the yard cannot be of the prescribed length or width, the Superintendent of Public Health may permit a smaller length or width provided, in his opinion, such smaller length or width, having regard to the particular circumstances of the place, is sufficient to secure such light and ventilation as is required for the wholesome condition of the house.”

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E. In-nota tal- Perit Anthony V. Stivala ghall-Appellant, ipprezentata fit-22 t'Ottubru 2012, precizament il-punti segwenti:

"1. [...] This Appeal had to be made since it concerns a point of common sense not the sanitary laws directly. One cannot appeal to the Appeals Board after a decision by the GSB (but only to the courts, according to separate case quoted by applicant, attached to his reply). The SEO is a member of the GSB; so the GSB as such is not an impartial tribunal which observes the rules of natural justice. It is only in the past year or two that applicants and appellants have been allowed to attend GSB Board meetings. In fact the SEO did not even request the submission of the third party ground floor plan when the application was submitted by the first floor owner. And in any case the appellant had not been notified with the decision of the SEO so that he was not in a position to appeal as indicated in Section 102 of the Code of Police Laws.

The application is submitted to MEP A and as such the appellant's redress is in front of the MEPA Appeals Board - all the more so when the SEO decisions have not been communicated to the appellant.

2. Appellant insists that he was not informed of the sitting so he could not have known about second decision taken by the SEO to whom the file was referred by the EPC, together with a sketch plan of the ground floor provided by Perit Stivala. So he was not in position to appeal to the GSB if he was not aware of this. The chairperson of the Board referred the file to the SEO but no date was indicated. And surely appellant was not notified with the decision.

Mr Nazzareno Grixti, his wife Adelaide and his son Ivan, were present at the EPC meeting and they confirm that they did not hear any reference to the deferral date being announced by the chairperson of the EPC. As was said in the appeal, as far as is known, it is common practice by MEP A to notify objectors of EPC sittings.

2. v. Whole paragraph (lines 1 to 11): Dr Galea has mis-read the main point of contention made in the appeal. Appellant's point of contention was the internal yard, never the backyard. The whole paragraph is therefore irrelevant.

vi. Lines 1 to 4: A cursory look at the plan of the existing ground floor and the first floor plan will tell any architect worth his salt that an internal open space measuring 2.5 8m by 1.82m, situated in a two-storey building, erected at least over eighty years ago, is an internal yard not a shaft (or service shaft). This internal yard was manifestly incorporated into the two overlying maisonettes at the time of construction mainly in order to provide light and ventilation to the ground floor and

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first floor bedrooms (irrespective of the lettering describing the alleged use of the rooms appearing in the existing first floor plan submitted by applicant). These four lines are thus frivolous.

Line 5, etc: Any mention of backyard is completely irrelevant, as already explained.

Lines 10 to 15 in italics: Ironically Dr Galea justifies appellant's appeal with this quote. He uses this quote to justify the retention of the size of the existing internal yard at the additional second floor level applicant has been allowed to build. Appellant, on the other hand, uses it to prove that the so called 'shaft' Dr Galea refers to is indeed an internal yard. Therefore in the proposed additional levels permitted to be built by MEP A, this internal yard should have been enlarged, not left as it is, by Sanitary Law. Even at first floor level, which is appellant's property, it is MEP A practice to grant the permit on condition that applicant revises plans to regularise the 'illegality', i.e. the shorter internal yard; MEPA never sanctions an irregularity, when an application is made. This point is very important because it also justifies why the appeal had to be made against MEPA and not against the SEO's decision through the GSB, since here MEPA breaks its own policies. Surely the SEO is bound to follow MEPA's policies. The proposed alterations to the first floor should never have been permitted, considering the size of the internal yard at both ground and first floor level, which constituted an irregularity. If the applicant considers applicant's premises small or 'badly configured' how much smaller and 'badly configured' is appellant's property?"

F. In-nota tal-Avukat Dott. Ray Zammit ghall-Appellant, ipprezentata fis-26 ta' Settembru 2013, senjatament il-punti segwenti:

"After my clients lodged an objection to the proposed development, the Sanitary Engineering Officer had asked for a detailed plan of my client's property alongside a confirmation by their architect that the structure existed prior to 1967. Strangely enough my clients were never informed about this request. It is also evident that my clients could not have known about this request. My clients thus did not comply within the prescribed ten days; and as a result the permit was issued without consideration being given to the said plan and to the consequences that would have been raised in view of the submission of the required documents. In fact such documents would have emphasized my client's main reason for the objection."

G. In-nota ta' sottomissjonijiet tal-Avukat Dott. Vincent Galea u l-Perit Richard Borg ghall-Applikant, ipprezentata fil-25 t' Ottubru 2013, precizament il-punti segwenti:

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“2. Diga inghad li dan it-Tribunal ma ghandux il-gurisdizzjoni sabiex jiddeciedi dan l-appell u dan peress li l-appellant qieghed jilmenta mid-decizjoni li ha s-Sanitary Engineering Officer. Dan il-punt gie deciz diversi drabi mill-Planning Appeals Board, fis-sens li fejn jidhlu ligijiet sanitarji, dan it-Tribunal ma ghandux gurisdizzjoni biex jissindika tali decizjonijiet. Il-Bord addat huwa l-General Services Board. Illi ghalhekk, huwa umilment sottomess li dan it-Tribunal ma ghandux il-gurisdizzjoni biex jbidel decizjonijiet tal-SEO. Dan il-punt wkoll gie deciz fil-kawza Pater Holdings Co. Ltd. Vs il-Kummissjoni ghall-Kontroll ta' l-Izvilupp u David Caruana kjamat fl-appell fl-4 ta' Novembru 1997 b'ordni tal-Bord, liema sentenza giet deciza mill-Onorabli Qorti ta' l-Appell fil-5 ta' Ottubru 2001.

3. Illi dak li qieghed jilmenta minnu l-appellant f'dan l-istadju u f'dan il-foro ma huwiex legalment sostenibbli. Jekk irid, l-istess appellant ghandu fora ohra fejn jista' jressaq il-lanjanzi tieghu izda zgur li mhux, dejjem bid-dovut rispett, quddiem dan it-Tribunal. Hija l-Qorti Civili li ghandha tiddeciedi jekk gewx lezi jew le d-drittijiet tal-appellant mis-Sanitary Engineering Officer jew inkella jekk kienx hemm xi ksur ta' principju ta' gustizzja naturali u mhux dan it-Tribunal.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell minn terzi jirrigwarda permess sabiex f' font konsistenti minn maisonette fl-ewwel sular li jinsab fiz-zona edifikabbli ta' tas-Siema, isiru xi modifiki interni u jinbena sular sovrastanti, inkluz kamra tal-bejt.

L-Appellant jirrisjedi fil-maisonette terran sottostanti dan in ezami, u l-aggravji tieghu jistrieht fuq il-premessa li bl-izvilupp propost sejjer jitlef kemm id-dawl kif ukoll l-arja li prezentement igawdi minn bitha interna li sservi z-zewg propjeta'. Jirrileva li minn dejjem, l-unika kamra tas-sodda li huwa ghandu, kienet thares fuq din il-bitha interna. Olter minn hekk, din inbriet fl-antik, meta l-ligijiet sanitarji kienu ferm differenti minn dawk in vigore. Jirrileva li fil-fatt, li kieku llum kellha ssir talba ghal bitha bhal din (cjoe'ta' dimensjonijiet hekk ristretti u li sservi habitable room), zgur li l-Awtorita' kienet tirrifjuta l-applikazzjoni. Madankollu, nonostante l-fatt li llum l-imsemija bitha interna hi wahda li mill-aspett sanitarju hi substandard, l-Awtorita' approvat sular addizzjonali bil-konsegwenza li kemm id-dawl kif ukoll l-arja ser jigu eskluzi ulterjorment. Fl-ahharnett, l-Appellant jiddikjara li l-Awtorita' naqset li tikkunsidra s-sottomissjonijiet tieghu u li ma kienx infurmat bid-decizjoni.

Ghar-rigward ta' l-aggravju li l-Awtorita' ma kkunsidratx is-sottomissjonijiet tal-Appellant, jigi rilevati li dan mhux minnu. Fil-fatt, skond il-minuta 39 fil-file tal-applikazzjoni li l-Kummissjoni kienet ghamlet din l-osservazzjoni:

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“To SEO:

Please note correspondence and sketch plan at Doc 38 relating to sanitary issues in conjunction with ground floor premises. Kindly state whether this impinges on sanitary approval of proposed development.”

Tibqa' ghalhekk il-kwistjoni tal-bitha interna, kif sucitat.

Kemm l-Awtorita' kif ukoll l-Applikant zammew ferm l-oggezzjoni taghhom u rilewaw li din hi kwistjoni purament ta' sanita' u li dan it-Tribunal mgħandux għuridizzjoni jiddecidi fuqha. Skond l-Artikolu 41(1) tal-Att X ta' l-2010 - Kap.504, dan it-Tribunal għandu għuridizzjoni jisma' u jiddeciedi appelli magħmula mill-Applikant jew minn min iħossu aggravat fuq kull decizjoni (tal-Awtorita') dwar il-kontroll tal-izvilupp u l-protezzjoni ambjentali, inkluż it-tweqqif ta' kontrolli fuq l-istess.

Gie konsistentement ritenut li kwistjonijiet ta' sanita' ma jaqghux fil-kompetenza tat-Tribunal: huma ta' esklussivita' tal-GSB u finalment tal-Qorti. Madankollu għar-rigward tal-kwistjoni tal-Avviz Legali 229 tal-2012 sollevata mill-Kummissjoni, irid jigi osservat li skond ic-Cirkolari 4 tal-2012 – Procedure for concession related to Schedule 8, Category B of the EDP Act, ir-raguni li għaliha dahal fis-seħh dan l-Avviz Legali, huwa espressament sabiex f' sitwazzjonijiet fejn saru xi infringements, l-Awtorita' tkun tista' tagħti koncessjoni sabiex inter alia, il-font ma jintlaqatx b'avviz biex tieqaf u ta' tweqqif.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, dan it-Tribunal hu tal-fehma kkunsidrata li qabel xejn, hawn si tratta minn kwistjoni ta' bonvicinat (good neighbourliness), kif indikat permezz tal-polcjes BEN 1 et seq. tal-Pjan ta' Struttura. Il-punt ta' sanita' hu wiehed sekondarju. Kienet tkun kwistjoni purament sanitarja li kieku il-font kien jappartjeni biss lill-Applikant, jew li kieku l-partijiet qablu li jitolbu l-koncessjoni skond l-Avviz Legali 229 sucitat. Izda anke f' dak il-kaz, koncessjoni minhabba infringements tirrikjedi li l-izvilupp ikun inbena - u mhux li għadu jrid isir.

Ma jistax jigi injorat il-fatt li kemm il-darba l-Avviz Legali 229 tal-2012 jista' jigi applikat għas-sit ezistenti – fil-kaz in ezami, iz-zewg sulari prezenti – din kienet kienet tkun kwistjoni sanitarja, fejn dan l-istess Tribunal ma kienx ikollu għuridizzjoni sabiex jiddeciedi fuqha. Madankollu, peress li il-parti tal-bini mertu tal-appell odjern għada trid tinbena, dan l-Avviz Legali ma japplikax; u l-Kummissjoni kien imissha indirizzat lill-Applikant sabiex jirrevdi l-proposta b' dana li ma sservix ta' hsara lill-Appellant. Il-Kummissjoni kien imissha innegożjat tip ta' disinn fejn is-sulari addizzjonali li qed jibtalbu, jinbnew b' mod (cjo'e' jkunu iritrati bizzejjed) sabiex il-bitha ma tkomplex tinhonoq.

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Dan kollu qed jinghad biss fl-ispirtu tal-policies BEN 1, BEN 2 u SET 1 tal-Pjan ta' Struttura; li ghandhom bhala wiehed mill-ghanijiet, li built-up areas u zoni urbani jigu zviluppati (ulterjorment) minghajr ma jkun hemm impatti negattivi fuq uzi u l-ambjenti adjacenti. Billi jirrizulta li fil-kaz in ezami, l-izvilupp kif approvat ser ikun ta' hsara lill-terzi, l-appell odjern jimmerita kunsiderazzjoni favorevoli.

Ghalhekk, in vista tal-kunsiderazzjonijiet kollha hawn fuq maghmula, dan il-Tribunal qed jiddisponi minn dan l-appell billi jilqa' l-istess limitament u jirrevoka il-permess ghall-PA 1708/11 kif mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar fis-26 ta' Settembru 2012, u jordna lill-Applikant sabiex fi zmien tletin (30) gurnata, jipprezenta pjanti riveduti li jirriflettu dak li qed jigi deciz illum; u cjoe' li fis-sulari l-godda, id-dawl tal-bitha jkun ikbar.

Wara li l-Awtorita' tkun soddisfatta li l-pjanti sottomessi jirrispekkjaw din id-decizjoni, ghandha f' zmien ragjonevoli tibghathom ghall-approvazzjoni tat-Tribunal, b' dana li wara li tircevi l-approvazzjoni, tohrog f' zmien tletin (30) gurnata il-permess mitlub mill-Applikant ai termini tal-Artikolu 41(14) tal-Att X tal-2010 (Kap. 504), biz-zieda tal-kundizzjonijiet normalment imposti f' permessi simili.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Il-kwistjoni kienet wahda purament sanitarja u konsegwentement it-Tribunal ma kellux gurdizzjoni u kompetenza jiddeciedi fuq l-ilmenti ta' Rene Grixti;
2. It-Tribunal iddecieda l-kwistjoni tal-gurdizzjoni flimkien mal-mertu meta l-intendiment kien li tigi deciza l-eccezzjoni tal-gurdizzjoni tant li l-provi kienu limitati ghal din l-eccezzjoni nonostante dak li jidher li jghid il-verbal tat-9 ta' April 2013;
3. Ghalkemm it-Tribunal jikunsidra li l-parti tal-bini mertu tal-appell ghad irid jinbena, jirrizulta illi l-izvilupp kien gia lest fis-sens li gia kien jezisti binja ta' tlett sulari skond il-premessi tal-Awtorita.

L-ewwel aggravju

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Dan l-aggravju ma fihx mis-sewwa. Il-process sanitarju u dak tal-planning huma zewg processi separati u distinti u l-Awtorita u t-Tribunal ma ghandhomx il-kompetenza li jissindakaw materji decizi mis-sanita fejn hemm rimedji appoziti x'jistghu jittiehdu minn min ihossu aggravat b'decizjoni sanitarja (ara **Pater Holding Co. Ltd. Vs Kummissjoni ghall-Kuntroll tal-Izvilupp et**, App Civ 05/10/2001).

F'dan il-kaz pero t-Tribunal ma ndahalx fid-decizjoni tas-sanitary engineering officer li qies li l-izvilupp bhala accettabli mill-punto di vista tal-aspett sanitarju. It-Tribunal, ghandu skond il-ligi, id-dritt li jissindaka jekk l-izvilupp, nonostante li jissodisfa l-aspett sanitarju tal-progett propost, hux qed jikser xi policy fil-konfront ta' terzi b'mod generali u anki b'mod specifiku kif inhu dan il-kaz. Harsa lejn id-decizjoni juri illi t-Tribunal kien preokkupat illi l-binja fit-tieni sular li kienet issa ser ticcirkonda l-bitha interna, kuntrarjament ghall-istat fattwali qabel l-izvilupp propost, kienet ser tpoggi oneru fuq l-appellat Grixti li jirrisjedi fil-pjan terran, li jiggustifika l-applikazzjoni tal-policy BEN 1, BEN 2 u SET 1 tal-pjan ta' struttura li jitrattaw good neighbourliness u illi f'dan il-kaz il-buonvicinat kien qed jigi kompromess serjament fil-konfront tal-appellat Grixti.

Din id-decizjoni ma kinitx wahda mehuda fuq ragunijiet sanitarji jew intromissjoni fl-operat tas-sanitary eningeering officer izda kwistjoni ta' planning li t-Tribunal kellu d-dritt anzi d-dover li jikkunsidra u jiddeciedi dwaru.

Ghalhekk l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju wkoll ma fihx mertu. Il-verbali tat-Tribunal, bhal dawk tal-Qorti huma rabta bejn il-partijiet u t-Tribunal, ta' dak deciz jew miftiehem. F'dan il-kaz, il-verbal tad-9 ta' April 2013 kien car nonostante dak li seta fehem l-appellant odjern. Del resto d-decizjoni tat-Tribunal inghatat seba' xhur wara u jekk l-appellant hass li kien hemm malintiz jew nuqqas

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ta' kjarezza f'dak miftiehem u dekretat, seta' talab direzzjoni lit-Tribunal. Il-Qorti ma ghandhiex hi tinterspreta dak li jirrizulta car mill-verbal.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan ukoll hu aggravju mhux mibni fuq is-sew. Hu car illi t-Tribunal ikkonstata li qabel l-izvilupp in kwistjoni t-tieni sular kien jikkonsisti biss minn washroom fuq parti mill-ewwel sular proprjeta tal-appellant. Bl-izvilupp kien qed jigi propost il-bini shih tal-arja tat-tieni sular u washroom fuqu. Dan, bhala fatt, fil-fehma tat-Tribunal, kien ser johnoq aktar id-dawl u arja fil-bitha interna tal-appellat Grixti li jghix fil-pjan terran u fejn il-kmamar jaffaccjaw kollha fuq din il-bitha interna. Dan hu dak li ried jispjega t-Tribunal u mhux kif allegat illi t-Tribunal ma apprezzax li l-binja kienet gia tlestiet. It-Tribunal fl-ebda hin ma allega li kien hemm xi binja illegali izda l-izvilupp il-gdid kien ser jicirkonda t-tieni sular li jaffaccja ghal fuq il-bitha interna. Ma hemm ebda zball li jimmerita jigi censurat.

Ghalhekk dan l-aggravju qed jigi michud ukoll.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Mark Bernard Battles u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-28 ta' Novembru 2013. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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