



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 8/2014

**Louis Galea**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Louis Galea tat-18 ta' Frar 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014 fejn giet michuda l-applikazzjoni 'to sanction changes to plans approved with PA 2037/99 including reconstruction of a tool shed and addition of a room at first floor and shifting of building and construction of 2 underground reservoirs f'sit gewwa tal-Milord, Bidnija';

## Kopja Informali ta' Sentenza

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:

Ikkonsidra:

B'applikazzjoni tal-14 ta' Novembru 2006, Full Development Permission PA 7162/06, l-appellant f'sit Tal-Milord, Bidnija, talab:

“To sanction changes to plans approved with PA 2037/99 including reconstruction of toolshed and addition of a room at first floor and shifting of building and construction of 2 underground reservoirs.”

L-applikazzjoni giet michuda b'rifjut tal-10 ta' Settembru 2010 ghar-ragunijiet

segwenti:

"1. The proposed development runs counter to Policy 2.6A (3) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the applicant is only eligible for a 15m<sup>2</sup> agricultural store since he holds between 5 to 10 tumoli of land.

2. The proposed development runs counter to paragraph 1d of Policy 2.4A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the proposed development is not utilized for the continuation to operate a satisfactory and effective arable land.

3. The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.

## Kopja Informali ta' Sentenza

4. 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."

Fl-Appell tieghu, l-Perit Anthony Fenech Vella ghall-appellant issottometta s-segwenti:

"F'isem il-klijent tieghi, Louis Galea, nixtieq naghmel Appell kontra r-rifjut li nhareg mill-Kummissjoni dwar Kontroll ta' l-Izvilupp, fl-10 ta' Settembru 2010 ghar-ragunijiet indikati.

L-ewwelnett, irid jigi ndikat li l-proposta tinkludi tlett partijiet; wahda ghal issanzjonar tal-bini mhux konformi mal-permess precedenti u, fit-tieni lok, talba ghal bini ta' kamra addizzjonali fit-tieni sular, fit-tielet lok bini ta' zewg igwiebi, lkoll b'mod indipendenti peress li wahda ma taffetwax lill ohra. Dan il-punt, qed jigi mqajjem fl-istadju inizjali ghaliex l-argumenti ghal gustifikazzjoni taghhom huma kollha differenti minn xulxin u ma nistghux, ghalhekk, naqblu mal-mod ta' kif l-Awtorita' tqeghed kollox fi xkora wahda u tirrifjuta ghalhekk kollox jekk ma taqbilx ma wahda minnhom biss.

In kwantu ghal bazi ta' kunsiderazzjoni, l-applikant Louis Galea ghandu rregistrat fuq il-biljett tar-raba tieghu (kopja annessa) 29.3Tum, konsistenti fi 15.6T Baghli u 12.5T Moxa u 1.2T Frott u ghalhekk jikkwalifika ghal kobor ta' 'agricultural store' akbar mill-15m<sup>2</sup> relattati ma kobor bejn 5-10 it-tmiem.

Il-qies ta' bini fl-ewwel sular hu, jekk jew hekk, l-istess bhal dak approvat bil-permess PA 2037/99 li nhareg fil-21 ta' Mejju 2002, bid-differenza biss li l-bini ezistenti, dilapidate ghal ahhar, ma nzammx izda twaqqa u rega beda inbena f'pozizzjoni differenti. MEPA targumenta li, la darba twaqqa il bini, intilef kull irbit ma dak li kien hemm. Pero', fil-kaz ta' PA 6199/08, li tinvolvi dar u mhux razzett jew bini konnes ma agrikoltura, MEPA, mhux talli halliet 'replacement' sostanzjali ta' bini ezistenti, izda approvat tkabbir mhux hazing u dan jinkludi l-uzu sfrenat ta' l-art mhux ghal uzu agrikolu.

Wara kollox, l-argument ta' dilapidazzjoni bhala raguni ghal demolizzjoni, kien dak li intuza biex, propju f'dawn il-granet, seta' inbeda jew ahjar, jasal fil-fazi konkluzziva, l-olokawst tar-rahall kollu qadim tal-lmsida bit-twaqqiegh ta' blokk shih li kien hemm quddiem l-Ghajn tal-Hasselin!!! Imiss lit-tnejn ta' warajh issa.

## Kopja Informali ta' Sentenza

Ta min jigbed attenzjoni wkoll għall-approvazzjoni f'PA 1883/00, li jmiss ezattament mas-sit ta' l-appellant in kwistjoni ta' zvilupp kompletament mhux agrikolu meta ga kien hem fil-post 'policies' li jirrestringu tali zvilupp għal distanzi mhux imbeda mill-korp tal-bini. Ma nistghux għalhekk, nifhmu u naccettaw għaliex hem din id-differenza fit-trattament u tfettieg, kif nghidu bil-Malti, fuq qies ta' bini zgħar u li hu car li hu konness ma agrikoltura.

Dan l-istess argument hu validu anke għat-talaba tal-bini tal-kamra fit-tieni sular li pero', effettivament h qies addizzjonali fuq dak approvat li seta jsir fuq il-post. L-istil uzat hu wiehed prettament agrikolu u, allura ma naqblux mar-raguni No. 3 migjuba fir-rifjut.

Fl-ahharnett, ir-rifjut ta bini ta' 2 igwiebi, li jistghu dejjem jigu approvati b'DNO, hu kompletament kontradittorju għal protezzjoni tan-natura agrikola tal-post li l-MEPA indikat bhala l-argument bazi ta' kull raguni li gabet."

Fir-rapport tagħha l-Awtorita' kkummentat kif gej:

"5.1.3 Reference is made to the assessment as carried out in the DPAR and which included:

The proposed development is mainly assessed in relation with Policies 2.4A and 2.6A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables.

PA2037/99 grants permission to a ground floor level store having an external area of approximately 33m<sup>2</sup> and a 9m<sup>2</sup> tools room. These approved structures make a total of 42m<sup>2</sup> stores, (PA2037/99/36A).

Plans submitted in PA7162/06/13B/13C propose the:

- Sanctioning of the demolition and reconstruction of a tool shed;
- The addition of a room at first floor;
- The shifting of building and;
- The construction of 2 underground reservoirs.

## Kopja Informali ta' Sentenza

The ground floor store proposed to be sanctioned has an area of 33m<sup>2</sup>, while the adjacent store of approximately 9m<sup>2</sup> is proposed to be demolished and reconstructed, (Red 13B). Moreover, the first floor store proposed to be constructed has a total area of 22m<sup>2</sup>, (Red 13B). The proposed floor space proposed to be sanctioned and constructed has an area of approximately 64m<sup>2</sup>, (Red 13B). The construction of the underground reservoir adjacent to the ground floor level has an area of 11m<sup>2</sup> and the other underground reservoir has an area of approximately 23m<sup>2</sup>, (Red 13B).

The proposal is to sanction the shifting of the building, therefore the total demolition and reconstruction of the building. In this regard, these structures are considered as new structures, therefore this is being assessed in relation with Policy 2.4A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007). The Department of Agriculture verifies that the applicant has been registered as a part-time farmer since the 17/08/94 having a total of 12.3.9 tumoli of land, 6.1.7 tumoli of which is dry land, 5.5.7 tumoli of which is rock, and an orchard of 0.2.5 tumoli, (refer to PA6249/04/Doc14). In this regard, the applicant is eligible for a 15m<sup>2</sup> store since he holds between 5 to 10 tumoli of land.

The applicant already holds a 33m<sup>2</sup> store approved at PA2037/99/36A, the proposed construction runs counter to Policy 2.4A (2) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the applicant holds the 33m<sup>2</sup> store within his holdings.

Furthermore, the applicant holds 6.1.7 tumoli of which is dry land. In this regard, according to paragraph 3 of Policy 2.4A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), the applicant is eligible for a 15m<sup>2</sup> store, therefore the proposed extension of the 31m<sup>2</sup> stores run counter to Policy 2.4A (3) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007).

Moreover, the site inspection photos taken by the enforcement officer who inspected the site on 01/06/10. These indicate the internal use of the room in question, (refer to Minute 25). Site inspection photos attached at 25A-25C, indicate that these structures are not only used for agricultural purposes but also for domestic use. In this regard, this runs counter to paragraph 1d of Policy 2.4A of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the proposed development is not utilized for the continuation to operate a satisfactory and effective arable land.

## Kopja Informali ta' Sentenza

In view of the above comments, this application cannot be favourably considered by the Planning Directorate, and is therefore recommended for a refusal.

### Underground reservoirs

No official clearance from the Department of Agriculture and Malta Resources Authority was submitted regarding the construction of the two underground reservoirs. In this regard this runs counter to Policy 2.6A (1 and 6) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the clearance from the Department of Agriculture and Malta Resources Authority is to be submitted.

5.1.4 As regards to the arguments of the appeal itself, the Authority states that as regards to the issue of the existing ground floor rooms, the Authority reiterates that since their new construction did not follow the conditions as imposed in last permit, then their sanctioning has to follow present policies. Re the issue of the reservoirs, if appellant's arguments that these are even granted by the DNO, then a specific request through a DNO should be submitted and thus, the detailed assessment by the DNO personnel be carried out and if really permitted, a DNO can be issued.

5.1.5 Re the issue of the 1st floor room, reference is made to Policy 2.4A of the PDG – Agriculture, Farm Diversification and Stables, December 2007 which states that

The proposal is for a total external footprint as follows:

- (a) 15m<sup>2</sup> for qualifying arable land holding between 5 to 10 tumoli;
- (b) 20m<sup>2</sup> for qualifying arable land holding between 10 to 20 tumoli;
- (c) 40m<sup>2</sup> for qualifying arable land holding over 20 tumoli.

In this regard, since appellant had already been granted a total storage space of 42 sq.m., there is no justification for any additional storage space especially with a new room at 1st floor level of another 22 sq.m. floorspace. The resultant total storage floorspace would thus amount to 64 sq.m. which is clearly not permissible by the above policy.

5.1.6 Reference is also made to Photos Reds 25 in file which were taken by MEPA Enforcement Officers in 01.06.10 and which show the 'real' use of the existing structure. These photo show that whilst appellant is requesting the sanctioning of

## Kopja Informali ta' Sentenza

the existing structures as Agricultural Stores (only) and has even requested a new room at first floor level since the already approved 42 sq.m. of 'storage' is not enough, these photos show that much of the existing space is not in fact used as storage but is actually used for residential purposes. These photos show the real situation and justification of appellant and galvanizes the Authority's objection that no additional storage space is really necessary by applicant to till his nearby land.

5.1.7 Conclusively, the Authority states that whilst taking note of appellant's arguments in this request for appeal, the Authority notes that there are no sound planning justifications which could justify a breach to the above cited policies. Hence, reference is made to the reports as presented by the Directorate and to the DCC's decision which dismissed this request for development since the DCC Board had based their decision on the valid relevant policies applicable to this area. Reference is also made to the detailed reports as included in the file and to the submissions (verbal and written) which will be presented during the appeals sittings."

Fir-risposta tieghu tat-18 ta' Marzu 2011, l-Perit Anthony Fenech Vella ghall-appellant issottometta s-segwenti:

"With reference to the response by MEPA there are two issues which we contend are not being given the corret evaluation by MEPA.

The first being the claim that Mr. Galea is eligible only for a store not exceeding 15m<sup>2</sup> as he has only 5-10 Tumoli of Land registered in his name. As verifiable on the Agricultural Dept's own certification, way back in 2005, he had 29.5 Tumoli of land registered and, presently possibly has more. This would render him eligible to a larger store.

Secondly, we contend that the site is surrounded by urban type development, some of which has only been recently approved whilst a massive intervention was approved in PA 6199/08 as recently as 13th October 2008 and which involved a substantial demolition which is almost tenfold what is being requested here, apart from the fact that this clearly deals with a purely non agricultural use, although residence whereas that of Mr. Galea has to do only with it (vide the reservoirs and small size of the unit).

6199/08 - Demolish part dwelling and reconstruct - 13 Oct 2008

763/01 - Construct residential farmhouse -15 Feb 2008

## Kopja Informali ta' Sentenza

3163/06 - Demolish part dwelling and reconstruct - 11 Jun 2006

1883/00 - Sanction pool tool room & tennis court - 26 Aug 2003

2105/99 - Sanction alterations - 8 May 2002

71880/96 - Erect wall & agric store - 19 Jul 2000

3041/96 - Add basement, alter Ground + pool - 30 Jun 1998

3626/93 - Add garage - 28 Oct 1994

In view of both of these parameters, we kindly exhort the Board to take cognisance of the reality of the neighbourhood, including the rest of the Bidnija zone, we exhort an overturning of the refusal.”

L-Awtorita' fis-second statement taghha kkummentat kif gej:

"The Authority has noted all the arguments as presented in the last submissions and states that as regards to the cited permits:

PA 6199/08 - Part demolition of existing dwelling and reconstruction of same. According to the DPA:

The proposed alterations and additions refer to the following:

- Alterations to the configuration of the building;
- Construction of an ecological pool;
- Alterations to the surrounding outdoor paving (replacement of the existing concrete surfacing) and construction of timber deck

There was a positive recommendation by the Directorate and a permit was approved by the DCC on 13.10.09

PA 763/01 - Construction of residential farmhouse.



## Kopja Informali ta' Sentenza

This permit was not a request for an agricultural store as is the case under appeal but for a residence due to the particular needs of applicant. In fact, in its decision the PAB stated that:

Illi jidher pacifiku illi jinghad illi l-appellant huwa bidwi u rahhal full-time u jahdem madwar 50 tomna raba' u jippossedi licenzja ghat-trobbija ta' kwazi 22,000 broiler.

PA 3163/06 - Sanctioning of A/C units and alterations.

Location is in Iklin

PA 1883/00 - Sanctioning of pool and tools room, pump house and tennis courts.

Location is in Mosta

Development consists of additions to a residence. Permit decided on 26.08.03

PA 2105/99 - To sanction minor alterations to approved plans including arched loggia/terrace, amendments to facade and proposed shifting of pool position laterally.

According to the DPA, the works consisted of To sanction alterations and extensions to existing detached dwelling covered with Development Permits PA 4807/93 and PA 6526/96.

In its sentence, the Board stated that:

u huwa tal-fehma illi billi l-ispazju li zdiend mar-residenza huwa minimu fil-livell tal-basement filwaqt illi, fil-pjan terran tkabbar it-terrazzin u mhux il-bini nnifsu, illi dan huwa accettabbli.

PA 7180/96 - To sanction boundary wall and construct an agricultural store The actual sentence of the PAB stated that:

Il-Bord huwa tal-fehma li l-applikazzjoni ghandha tigi accettata in parte - sentajament ghar-rigward tal-boundary wall u dana stante illi l-appellant ghandu kull dritt li jdawwar is-sit tieghu bil-hitan tas-sejjeigh kif fil-fatt ghamel.

PA 3041/96 - To add a basement garage, carry out alterations to existing ground floor, and construct a swimming-pool.

## Kopja Informali ta' Sentenza

In its sentence, the Board stated that:

Innota li l-appellanta kellha permess g'jall-iwvilupp i'lda hija ddipartiet mill-pjanti approvati.

Hence the site was legally committed and the requested works in this application were limited to additions. Sentnece was delivered on 30.06.98

PA 3626/93 - Addition of garage.

Decision taken in 28.10.94, thus, such a request was assessed and decided under totally different planning regime from the policies governing ODZ which are applicable today.

Conclusively, the Authority states that none of the above had identical planning considerations to the case under appeal. Furthermore, no new arguments were raise to justify a departure from the original permit which had granted a rehabilitation of the old room and no arguments were presented to justify the total requested storage space of 64 sq.m. vis-à-vis the present Agri policy and in view that the consultations which were carried out with the Agri Dept. And which resulted (as per letter dated 3rd January 2005) that applicant tills 6.1.7 tumoli of dry land, 5.5.7 tumoli rock and 0.2.5 tumoli fruit (it is to be reminded that the 'rock' area is not eligible for storage space).

In this regard, the Authority reiterates that in line with its previous reports, this request for appeal is not justified by the relevant planning polices and states that the EPC's decision was warranted and hence respectfully requests the Tribunal to dismiss this request for appeal."

Ikkunsidra ulterjorment:

L-appellant qed jipproponi 'sanctioning' ta' varji modifiki li saru minnu mill-Permess PA 2037/99.

Dan effettivament sar bl-applikazzjoni PA 6249/04 - PAB 40/06 - u gie segwit b'din l-applikazzjoni PA 7162/06 fejn l-appellant qed jitlob sanctioning

## Kopja Informali ta' Sentenza

1. ta' rikostruzzjoni ta' tool shed
2. zieda ta' karma fl-ewwel sular
3. spustar/tibdil ta' sit fejn sar l-izvilupp
4. l-kostruzzjoni ta' zewg 'underground reservoirs'

Il-ground floor li qed jintalab li jigi 'sanctioned' ghandu area ta' 33m<sup>2</sup>, u l-istore adjacenti, li qed jintalab li jigi demolit u rekostitwit ghandu area ta' 9m<sup>2</sup> (Red 13B). L-istore propost fl-ewwel sular ghandu area ta' 22m<sup>2</sup>; biex l-area kollha tal-izvilupp tkun ta' 64m<sup>2</sup>. L-underground reservoirs ghandhom l-areas ta' 11m<sup>2</sup> u 23m<sup>2</sup> rispettivament.

Is-sit jinsab barra z-zona tal-izvilupp tal-Mosta fil-lokalita' tal-Bidnija maghrufa bhala 'Tal-Milord'. Dwar dan is-sit saru l-applikazzjonijiet segwenti:

PA 7504/95 To construct 1 storey dwelling. L-applikazzjoni giet michuda

PA 2037/99 To rehabilitate dilapidated animal rooms and convert part to agricultural stores. L-applikazzjoni, originarjament giet michuda, izda giet milquha wara reconsideration fl-10 ta' April 2002

PA 6249/04 To amend approved permit as a result of high level degradation of existing walls and construct reservoirs.

L-applikazzjoni giet michuda

ECF 1097/05 Harget enforcement notice billi sar zvilupp mhux konformi mal-pjanti approvati fil-permess.

PA 7162/06 L-applikazzjoni prezenti fejn qed jintalab sanctioning tal-illegalitajiet

Fir-rapport taghha l-Awtorita' ghamlet referenza ghal Policies segwenti:

AHF 1; AHF 5; RCO 2; RCO 4; u RCO 8 tal-Pjan ta' Struttura u

Policy 2.4A, 2.6A, tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007) u Policy PLP 20.

## Kopja Informali ta' Sentenza

L-izvilupp approvat bil-permess PA 2037/99 kien jikkonsist fi ground floor store b'area ta' 33m<sup>2</sup> circa, u karna ghall-ghodda ta' 9m<sup>2</sup> - b'kollox area ta' 42m<sup>2</sup> ghall-stores.

Bl-applikazzjoni prezenti qed jintalab sanctioning ta' zvilupp ta' area ta' 64m<sup>2</sup>, apparti l-underground reservoirs li ghandhom area ta' 11m<sup>2</sup> u 23m<sup>2</sup> rispettivament.

Billi l-proposta tinkludi 'sanctioning of shifting of the building' dan iffisser li l-bini ezistenti fuq is-sit originali tnehha kollu; ghalhekk l-istrutturi mertu ta'din l-applikazzjoni huma strutturi godda, u bhala tali jinhtieg li jigu kkunsidrati fil-kuntest tal-Policy 2.4A tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007).

Id-Dipartiment tal-Agricoltura (PA 6249/04 Dok 14) ikkonferma li l-appellant ilu registrat mad-Dipartiment bhala part time farmer mis-17 ta' Awwissu 1994, li ghandu 12.3.9 tumoli ta' raba', li minnhom 6.1.7 tumoli huma bghali, 5.5.7 tumoli blat, u gjardina ta' 0.2.5 tumoli. Skond il-policy ghalhekk l-applikant hu eligibbli ghal store ta' 15m<sup>2</sup> billi jahdem bejn 5 u 10 tumoli ta' raba'. Billi bil-permess originali PA 2037/99, l-appellant nghata permess ghal store ta' 33m<sup>2</sup> (pjanta 36A), l-proposta prezenti hi in kontravvenzjoni tal-Policy 2.4A(2) u (3) tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007).

Irrizulta, in oltre, mir-ritratti li ngibdu mill-enforcement officer fl-1 ta' Gunju 2010, li l-uzu li qed isir mill-istrutturi hu wiehed domestiku u residenzjali – ritratti 25A – 25C.

Dan l-uzu hu inkontravvenzjoni tal-Policy 2.4A para 1d tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables, kif ukoll diversi Policies tal-Pjan ta' Struttura.

Dwar l-underground reservoirs, kif korrettement irrilevat l-Awtorita', dan hu zvilupp li jirrikjedi l-awtorizzazzjoni tad-Dipartiment ta' l-Agricoltura u mill-Malta Resources Authority. L-appellant naqas li jissottometti 'clearance' tad-Dipartiment u l-Awtorita' tar-Risorsi, u ghalhekk l-proposta hi inkontravvenzjoni tal-Policy 2.6A, 1 u 6 tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables.

Ezaminata fid-dettal l-proposta tal-appellant, l-motivazzjonijiet tar-rifjut u l-aggravji tal-appell, fil-kuntest tal-Policies tal-Ippjanar rilevanti, l-appell ma jimmeritax konsiderazzjoni favorevoli.

## Kopja Informali ta' Sentenza

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess, u jikkonferma r-rifjut tal-10 ta' Settembru 2010 għall-applikazzjoni PA 7162/06.

### Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ma kkunsidrax is-sottomissjoni tal-appellant li l-kuncett ta' commitment ta' sit u zona ma jistax jigi injorat u applikazzjoni għandha tigi kunsidrata anki in vista ta' permessi mahruġa f'siti vicini;
2. It-Tribunal zbalja fil-fatt meta hu qal li l-appellant għandu ben 5 u 10 tomniet raba registrati fuq ismu u għalhekk jikkwalifika għal store ta' 15-il metru kwadru skond policy 2.4A(2) u (3) meta jirrizulta li l-appellanti għandu 29.3 tomna raba f'idejh;
3. It-Tribunal zbalja fl-applikazzjoni tal-policy 2.4(1)(d) għax accetta bhala prova s-sottomissjoni tal-Awtorita li minn ritratti mehuda jidher li xi strutturi huma uzati għal skop domestiku wkoll. Il-ligi tirrikjedi biss bzonn 'for the continuing and effective operation of arable farm unit'. Il-fatt li l-appellant għandu 30 tomna jagħmel evidenti l-bzonn tal-istrutturi tenut kont li l-istess strutturi huma komparabilment zghar;
4. In-nuqqas ta' clearance mid-Dipartiment tal-Agrikoltura u l-Malta Resources Authority għal gwiebi taht l-art ma għandhix tittiehed bhala bazi ta' rifjut peress illi l-gwiebi huma intizi għal bzonn tat-tisqija u in oltre saru taht l-art biex jiproteġu l-istess art.

### L-ewwel aggravju

Minghajr ebda konsiderazzjoni li din il-Qorti għandha tagħmel jekk l-aggravju fil-mertu jisthoqqlux jigi milqugh, it-Tribunal kien affacjat b'ilment car li inhargu permessi ohra fil-vicin u ohrajn li permezz tagħhom l-Awtorita messha kkunsidrat l-applikazzjoni fid-dawl ta' dak li jezisti fiz-zona u mhux semplicement b'harsa stretta lejn il-policies.

## Kopja Informali ta' Sentenza

Kemm l-appellant u l-Awtorita ghamlu sottomissjonijiet fid-dettal fuq dan il-punt li hi kwistjoni ta' sustanza li kellha tigi kunsidrata u deciza b'motivazzjoni adegwata kemm favur jew kontra dan l-aggravju.

Sfortunatament it-Tribunal hu stranament sieket fuq dan l-aggravju u billi tali aggravju hu wiehed ta' natura sostantiva li messu gie kunsidrat, din il-Qorti ma jibqala ebda opzjoni hlief li tilqa' l-aggravju fis-sens indikat cioe li ma giex kunsidrat mit-Tribunal. Il-gustizzja trid tidher li qed issir u anki jekk ghal grazzja tal-argument seta' kien hemm ragunijiet ohra li setghu waslu ghar-rifjut, l-appellant ghandu d-dritt li jkollu risposta cara ghaliex l-ilment tieghu mid-decizjoni qed jigu michud.

Ghalhekk il-Qorti qed tilqa' dan l-aggravju.

### **It-tieni aggravju**

Dan l-aggravju wkoll jimmeritah jigi akkolt mhux ghax qed jinghad li fil-fatt l-appellant ghandu f'idejh aktar minn 29 tomna raba izda ghaliex fl-ittra tal-appell tal-applikant gie esebit dokument tad-Dipartiment tal-Agricoltura mill-appellant li juri li fl-2005 l-appellant kellu 29.3 tomniet raba. It-Tribunal ma semmiex dan id-dokument u r-rilevanza tieghu, u minflok strah fuq dokument mressaq fl-2004. Dan il-punt ta' fatt hu rilevanti ghax minnu jiddependi l-kobor permissibbli tal-istrutturi u t-Tribunal naqas li jaghti gustifikazzjoni ghaliex strah fuq dokument u mhux iehor. Billi dan in-nuqqas irendi incert il-gudikat sa fejn jirrigwarda din il-kontestazzjoni, qed jigi milqugh l-aggravju.

### **It-tielet aggravju**

Dan l-aggravju ma ghandux mis-sewwa peress illi fl-ewwel lok hu punt ta' fatt dwar il-piz li t-Tribunal jaghti tal-prova aktar minn ohra. Fi kwistjonijiet simili din il-Qorti ma tindahalx. Jekk it-Tribunal ikkonstata mir-ritratti esebiti li xi kmamar kienu qed jigu utilizzati ghal skop domestiku, din hi prova valutabbli mit-Tribunal u ma jidhirx li hemm provi kuntrarji li juru

## Kopja Informali ta' Sentenza

assolutament il-kuntrarju fejn allura wiehed jista' jargumenta li jezisti zball ta' kostatazzjoni ta' fatt da parti tat-Tribunal. Dan kien apprezzament ta' prova li hu fl-ambitu tal-poteri tat-Tribunal. In kwantu ghal dak li jstipula l-policy fil-paragrafu 2.4A(1)(d) tad-Design Guidance on Agriculture, Farm Diversification and Stables, it-Tribunal interpreta l-paragrafu (d) fis-sens illi l-applikant irid jipprova li l-uzu hu relatat direttament mal-agrikoltra u fil-fehma tieghu, dan ma giex pruvat billi l-utilizzazzjoni ta' parti mill-binjiet ghal uzu domestiku jmur kontra l-ispirtu tal-policy. Din hi interpretazzjoni ta' policy li wkoll tidhol fil-parametri tad-diskrezzjoni tat-Tribunal u mhix sindakabpli. Hawn ukoll ma jezistux l-estremi tal-kjarezza tali tal-ligi li ma tippermettix interpretazzjoni.

Ghalhekk l-aggravju qed jigi michud.

### **Ir-raba aggravju**

Dan l-aggravju ma jisthoqqlux konsiderazzjoni. Il-policy hi cara li tesigi l-approvazzjoni tad-Dipartment tal-Agricoltura u tal-MRA biex jintalbu li jsiru gwiebi. Billi dawn il-konsiderazzjonijiet essenzjali kienu neqsin, ebda argument ma jista' jingieb biex jigu injorati r-regolamenti 2.6A(1) u (6) tal-policy fuq imsemmija.

Ghalhekk dan l-aggravju qed jigi michud.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Louis Galea in linea ma' dak deciz, tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014, u tirrinviija l-atti quddiem it-Tribunal biex l-appel jigi deciz skond il-ligi. Spejjez ghall-Awtorita.

**< Sentenza Finali >**

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