



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 3/2014

Fredu Portelli

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Fredu Portelli tat-12 ta' Frar 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014 dwar PA 2285/07 'sanctioning of excavation works and other works carried out prior to 30/11/2005 and sanctioning of renovations and heightening of rubble walls and construction of tool room';

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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:

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp fit-22 ta' Gunju 2010, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 2285/07 – Sit f' Tar-Raghad, Mgarr: Sanctioning of excavation works and other works carried out prior 30/11/2005, and sanctioning of renovations and heightening of rubble walls and construction of tool room.

Id-disa' ragunijiet ghar-rifjut kienu s-segwenti:

"1. The proposed sanctioning compromises the implementation of the objectives of the Structure Plan (policies ARC 1, ARC 2, ARC 3) and North West Malta Local Plan (policy NWCO 4) for all identified scheduled archaeological areas/sites/monuments. The relevant site falls within a scheduled Area of Archaeological Importance as published in Government Notice 764/98. The existing development caused and is causing unnecessary disturbance to archaeological sensitivity of the site - the development was constructed directly on the archaeological features. The existing development also led to the alteration of the archaeological landscape setting of the scheduled area. In accordance with the objectives of Structure Plan (policies ARC 2 & ARC 3), North West Malta Local Plan (policy NWCO 4) and Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) [policies 1.3D and 1.3E] it will be prohibited development that will adversely affect the monuments and the natural setting of the archeological site within the designated archaeological Class A and B areas.

2. The proposed sanctioning runs counter with the overall objectives set out by Structure Plan policy AHF 4 and AHF 5 and North West Malta Local Plan (policy NWAG 1) for soil conservation. The overall aim of North West Malta Local Plan (policy NWAG 1) for such designated Areas of Agricultural Value is to protect and

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conserve soil by prohibiting developments that result in the sub-division of land holdings. The development carried out on the relevant site led to the fragmentation of the pre-existent land-holding into an individual plot.

3. The erection of the tool room is not justified and conflicts with the overall aim of Structure Plan (policies AHF5 & RCO 2) since its erection failed to demonstrate its genuine use. Policy 2.4A of Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007)[criterion 1 (a)] allows the erection of agricultural storage rooms only when the respective applicants are registered as arable farmers with the Department of Agriculture and operating an officially registered arable farm that amounts to at least 5 tumoli [criterion 1(c)]. The applicant has not been identified as a registered arable farmer who works a registered arable farm. Therefore, the proposed sanctioning fails to satisfy the eligibility and essentiality criteria set out in Policy 2.4A of Policy and Design Guidance for agricultural buildings.

4. The proposed sanctioning cannot be considered as a bone fide, legitimate agricultural development, and is therefore objectionable as it seeks to circumvent Structure Plan policies SET 11 and SET 12 to introduce unacceptable development within the countryside. The proposed sanctioning will further urban formalise the countryside.

5. The proposed sanctioning runs counter with the overall objectives set out by Structure Plan policy AHF 4, North West Malta Local Plan (policy NWAG 1) and Policy and Design Guidance for agricultural buildings (policy 1.3D) for protection of the agricultural value of the site. The existing development led to the degradation of the agricultural value of the relevant site with excessive hard landscaping/paving, built structures and land engineering works: change in the topography of the site and erection of new external and internal boundary walls.

6. The development sought to be sanctioned resulted in the demolition of rubble walls and so runs counter to Legal Notice 160/97 - Rubble Walls and Rural Structures (Conservation and Maintenance) Regulations and, Legal Notice 169/04 - Rubble Walls and Rural Structures, Conservation and Maintenance Regulations (Amendment). Both regulations declare rubble walls and non-habitable structures as protected, in view of their contribution to the character of rural areas, and their vital importance in the conservation of the soil and of water.

7. The external boundary walls sought to be sanctioned are not in line with Article 5.3 of L.N. 160/97 (Rubble Walls and Rural Structures (Conservation and Maintenance Regulations)) as amended by L.N. 169/04 since they exceed 1.2m

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above soil level. Furthermore, the internal and external boundary walls were not constructed using the traditional method of construction.

8. The proposed sanctioning run counter with the overall objectives set out by Structure Plan (policies AHF 5 & RCO 2) and North West Malta Local Plan (policy NWAG 1) for the agricultural industry. The relevant site was transformed from a relatively pristine land into an urban/formal landscaped garden. Thus, the landscaping works sought for sanctioning constitute an unjustified urban type of development at the expense of other agricultural uses as designated by the Structure Plan (policies AHF 5 & RCO 2) and North West Malta Local Plan (policy NWAG 1). Therefore, the request to sanction the development carried out on site run counter with the overall objectives set out by Structure Plan (policies AHF 5 & RCO 2) and North West Malta Local Plan (policy NWAG 1) for the agricultural industry.

9. The proposed sanctioning conflicts with the aim of the Structure Plan (policies RCO 2 & RCO 4) since the erected internal and external boundary walls and the proposed landscaped areas are visually intrusive on the surrounding landscape. The internal and external boundary walls as reconstructed are not aesthetically compatible with the rural environment and thus run counters to Structure Plan Policy RCO 4, RCO 8 and AHF 5."

B. In-nota tal-Perit Robert Grech għall-Appellant, ipprezentata fil-21 ta' Lulju 2010, senjatament il-punti segwenti:

"The following works will be carried out in the coming weeks:

- All rubble walls will be lowered to the requested 1.2m above soil level.
- Tool room will be removed.

In this respect, the development which is being brought to be sanctioned is the construction of rubble walls in line with the NWMLP and the Policy Design Guidance on Agriculture, Farm Diversification and Stables (2007), on previously abandoned arable land. Considering also this, and that on site as indicated on the plans submitted, other rubble walls existed prior to 1957, this proposal does not constitute parcelling of land, as this terracing of the field was already there.

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On the contrary this sanctionable development is in line with Structure Plan Policy AHF 4 and AHF 5 and the NWMLP with respect to soil conservation. This in view that the failed rubble walls seen in the 1957 aerial photos had lost much of their integrity while site was abandoned and soil cover was being lost every year.

Thus reasons for refusal 2 to 9 do not apply any more.

Finally, I refer to the refusal reason 1.

As already provided in our previous communication, my client has bought this site in 2005, when the previous owner had already done excavation works for the building of rubble walls. Considering that this work had already been done by others, and any disturbance that has occurred cannot be un-done, a fine is applied to the contravener (the previous owner), and the development is sanctioned. This was the case for PA 160.3, and PA 7636/06 and many others."

C. In-nota risponsiva ta' Mario Scicluna għall-Awtorita', ipprezentata fis-16 ta' Settembru 2010, inter alia s-seba' punti segwenti:

"5.1.3 While it is appreciated that even at such a late stage in this application, appellant has finally renounced the retention of the room and high walls, the merits of this application is not limited to these two issues. This can be understood by the Board when it analysis the photos / internal and external consultation's conclusions / the drawings on which the DCC had based their decisions as well as to the detailed assessment as carried out by the Directorate through its DPA report which explains in detail the main issues of this application and all of the objections raised against the existing situation.

5.1.4 The crux of the matter is that the whole area is a scheduled Class A Archaeology and the adjacent open space still show that no such rubble walls exists in this particular area. The aerial photos of past years (Reds 63) clearly show that the few rubble walls that had existed were all constructed parallel to the lane so that these could create patches of cultivated land and prevent soil from being drained by rain water into the lower levels of this valley. On the contrary, Red 49, Aerial Photo 2008 show the boundary walls had been constructed at 90 deg. to the lane and against the topographic contours of this valley side. This photo clearly shows that the main intention of the boundary wall is only to delineate appellant's property and without any consideration to the scheduling of the area or to the nearby character of this particular ODZ area which has no similar boundary walls in any of the nearby

fields. This has created a 'plot' configuration and the internal interventions within this site further proves that the whole development is more akin to a garden development than an agricultural use.

5.1.5 The Authority has conducted fresh inspections and resulted that the following developments are align to such scheduled areas and are not permissible by the policies cited above.

5.1.6 In this appeal, appellant has also suggested that a fine is imposed on the previous owner and so a permit be issued. The Authority disagrees with this notion since enforcement notices are issued against the site and hence, whenever a land or property is sold, the new owner becomes legally responsible for the illegality that such property may contain. In this case while ECF 39/04 was issued against Mr. Alfred Portelli, the same ECF is still legally active against all subsequent owners who chose to purchase such a property. Furthermore, a fine is imposed on developments which were carried out without a permit but could later be sanctioned through the relevant policies. In this particular case, the development as shown for sanctioning in plan 1C and plan 34A (i.e. as decided upon by the DCC) cannot be sanctioned due to a) the particular constraints of this scheduled site, b) the visual impact on this valley side and c) appellant is not registered as a farmer as necessary by the PDG – Agriculture, Farm Diversification and Stables, December 2007. Furthermore, the PAB can only decide on the plans and facts as already presented to the DCC Board and no fresh plans / modified development can be presented and decided upon by the PAB. Any alterations to plans which applicants wish to make in order to render their application acceptable can only be presented prior to the DCC decision and not at appeal stage. In this regard, appellant cannot submit any plans which now show a different height of the rubble wall and which do not show the existing (illegal) room.

5.1.7 It is to be emphasised that the height of the rubble wall and the existing room formed part of the core of contention by the Directorate and the DCC. All the plans as submitted by applicant during the processing of this application shows high boundary walls and a tool room. Their sanctioning is also part of the official proposal as published and read in the site notice. If appellant has now decided to reduce the height of the boundary walls and remove the tool room from site and from the drawings, then a fresh application is to be submitted wherein only the remaining illegal works would be shown in the plans and official proposal and which could thus lead to lesser objections due to a reduced development. The Authority reiterates that in this appeal, the PAB can only decide on the plans as presented in front of the DCC and hence the Planning Appeals Board can only either approve all that is shown in these drawings or dismiss this application in toto. This procedure is similar adopted within scheme where applications requested more floors than permissible by the Local Plans cannot, at Appeals stage be changed to a lower

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height so that a permit could still be issued. In such circumstances the PAB always instructed appellants to submit a fresh application with a lower height which is more in line with the LP policies.

5.1.8 Appellant has also cited two permits which are claimed to have identical planning considerations and hence, the Authority has the following comments for the Board's attention.

PA 1603/03 – Xaghra - To sanction excavation of site and foundations and construct six dwellings units and underlying garages.

Area: Within Scheme.

Site: Internal Development.

Scheduling: Buffer zone to an important archaeological area.

PA 7636/06 – Xaghra - To sanction excavation works carried out in permission PA3138/01.

Same site as cited PA 1603/03.

This Appeal- Mgarr

Area: ODZ

Site: ODZ – Scheduled Class A Archeology

Scheduling: Heritage Conservation Unit: Documents 26' to 26A

However as can be determined from fig 1, the boundary wall has been built immediately over the entrance to one of the tombs.

Note. The excavation works in the cited development were in fact already permitted in Permit PA3138/01 (from which the proposed dwellings have access) The problem which led to the subsequent applications which are cited by appellant is that Condition 25 of the first permit was not observed. This circumstance differs from the case under appeal since it is not only the excavation works that are objected to in this application but also the resultant development which was constructed above ground level.

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The objections in this appeal are several and the Planning Appeals Board has to decide in toto on the existing development and one cannot isolate a particular development, eg. boundary walls, and quote other permits where boundary walls were approved. This is because boundary walls per se are not prohibited in ODZ but are still prohibited in this particular case due to the particular constraints of this particular area. The same applies for excavation works. Excavation works could be accepted in certain ODZ areas but not in this particular area. Even tool rooms could be accepted in other ODZ areas (if these fully meet the necessary criteria) but still, such a tool room as shown in the plans cannot be accepted in this particular area.

5.1.9 In addition to the above, the Authority has conducted fresh site inspections so as to verify the actual situation and resulted that the development as constructed (illegally) has created an urban style garden area which is border by a wall which does not follow the natural contours of the area but solely appellant's property. Inside, additional walls and structures have been constructed which are also alien to the natural environment and are not according to the permitted construction methodology which could be considered in ODZ. Hard landscaping areas have also been created and which have thus reduced the agricultural potential of the proposed development. The outside walls have also been constructed not according to the permitted rubble wall methodology as specified in the LN or Rubble Walls. Furthermore, the official proposal and the submitted plans seek the sanctioning of the external walls, however, the photos below clearly show that the 'existing' walls were not constructed as 'rubble walls' but were constructed with small pieces of franka slabs which created strait / regular pattern instead of using real rubble material as permitted by the Legal Notice and as found naturally in our countryside (flat franka topping is also included in the existing 'rubble walls'). In view of the above, and since the submitted plans show walls which are truly rubble and not 'as existing', the provisions of PA Circular 2/96 apply."

D. Il-verbal tal-access fuq il-post tas-Seduta numru 49 mizmuma fl-1 ta' Lulju 2011, precizament il-punti segwenti:

"It-Tribunal gie muri is-sit li ghandu dehra ta' qisu gnien organizzat. Il-proposta hija 'sanctioning of excavation works and other works carried out prior to 30/11/2005, and sanctioning of renovations, restoring and heightening of rubble walls and construction of tool room'.

Gie rilevat minn Mario Scicluna li l-hajt tas-sejjieh huwa tul ta' bniedem u anke fih il-konkrit fih li m'huwiex permess. Hemm hitan tas-sejjieh ohrajn li gew mwaqqa' u saret excavation go katakomba u twittija tal-art biex saru turgien u anke l-access twitta biex sar passagg biex minnu wiehed jista' jaccedi ghas-sit. Hemm dumping wkoll. Gew murija diversi illegalita' ohra fuq is-sit."

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Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex f' sit li jisab fl-Imgarr, jigi ssanat xoghol ta' thammil li sar qabel l-ahhar ta' Novembru tas-sena 2005, kif ukoll restawr u zieda fl-gholi ta' hitan tas-sejjieh, u l-kostruzzjoni ta' kamra ghall-ghodda.

Skond il-Pjan Lokali (NWLP), is-sit jifforma parti minn open space gap; art protetta minhabba l-valur agrikolu taghha u skedata bhala Class A Archaeological Site. Is-sit gie milqut b' avviz biex tieqaf u ta' twettieq ECF 39/04 li jaqra kif gej:

“Ghandek zvilupp minghajr permess li jikkonsisti thammil u iffurmar ta' trinek u dan meta is-sit in kwistjoni tinsab f' arja ta' importanza arkeologika.”

Sussegwentement, membri tal-Enforcement Planning Unit fi hdan l-Awtorita' kienu spezzjonaw is-sit f' April tas-sena 2007 u sabu li x-xoghlijiet issoktaw illegalment. Giet depozitata hamrija addizzjonali, gholew il-hitan tas-sejjieh u nbriet kamra.

Ir-raguni ghar-rifjut jistghu jigu riassunti kif gej:

- Zona skedata:

Peress li hawn si tratta minn zvilupp gewwa zona t' importanza arkejologika, skedata skond l-Avviz tal-Gvern 764 tal-1998, l-izvilupp li qed jintalab is-sanar tieghu hu in kontravvenzjoni tal-policy NWCO 4 tal-Pjan Lokali sucitat, tal-policies ARC 1, ARC 2 u ARC 3 tal-Pjan ta' Struttura, kif ukoll tal-policies 1.3D u 1.3E tal-Policy and Design Guidance, Agriculture, Farm Diversification and Stables.

- Telf ta' hamrija agrikola:

Il-qsim ulterjuri (sub-division) tal-font jirrizulta f' frammentazzjoni tal-ghalqa originala bil-konsegwenza li anke minhabba x-xoghol pajsaggistiku (hard landscaping) estensiv, l-art giet degradata u qed tintilef hamrija tajba ghall-agrikoltura. It-talba hi ghalhekk f' kunflitt mal-policy NWAG 1 tal-istess Pjan Lokali, tal-policies AHF 4 u AHF 5 tal-Pjan ta' Struttura sucitat, kif ukoll tal-policy 1.3D tal-Policy and Design Guidance for Agricultural Buildings, li lkoll ghandhom bhala ghan, il-preservazzjoni tal-hamrija.

- Kostruzzjoni ta' tool room mhix gjustifikata:

Peress li l-Appellant mhux registrat bhala bidwi (u li jahdem almenu hames tomniet raba'), il-bini ta' kamra ghall-ghodda mhix gjustifikata. Il-proposta hi ghalhekk in kontravvenzjoni tal-policies AHF 5 u RCO 2 tal-Pjan ta' Struttura sucitat, kif ukoll tas-subinciz 1(c) tal-policy 2.4 A tal-Policy and Design Guidance, Agriculture, Farm Diversification and Stables. Minn dan isegwi li l-attivitá' agrikola mitluba mhix wahda bona fide u li l-izvilupp in ezami huwa f'kunflitt mal-policies SET 11 u SET 12 tal-istess Pjan Lokali.

- Hitan tas-sejjieh li nbnew mhux skond is-sengha:

Apparti l-hitan tas-sejjieh originali li twaqqghu minghajr permess, dawk li nbnew huma oghla minn 1.2 metri u ma nbnewx skond is-sengha. It-talba ghalhekk, tmur kontra l-Avvizi Legali 160 tal-1997 u 169 tal-2004 kif ukoll tal-policies RCO 2, RCO 4, RCO 8 u AHF 5 tal-Pjan ta' Struttura.

L-aggravji tal-Appellant jistrieħu fuq il-fatt li l-hitan tas-sejjieh inbnew ferm qabel is-sena 1957 u ghalhekk il-parcelling of land kif allegat mill-Awtorita', mhux minnu. Jissokta l-argument tieghu sabieħ jispjega li hafna mill-hamrija intilfet meta l-art kienet giet abbandunata u li fil-frattemp, kienu ggarfu bosta minn dawn il-hitan tas-sejjieh. In oltre, jispjega li l-art kienet thammlet u l-hamrija spustjata mill-propjetarju precedenti, u li hu kien lest li jwaqqa l-kamra tal-ghodda u li jbaxxi l-hitan tas-sejjieh kollha sa' 1.2 metri.

Ghar-rigward tal-hamrija skavata u mwittija mis-sid precedenti, l-Appellant jiddikjara li wara kollox, qed jigu rispettati l-policies AHF 4 u AHF 5 tal-Pjan ta' Struttura li jimmilitaw favur soil conservation.

L-Awtorita' zammet ferm l-oggezzjoni tagħha u qabel xejn iddikjarat li ghalkemm l-Appellant kien intrabat li jwaqqa l-kamra ghall-ghodda u jirregola ruhhu in kwantu l-gholi tal-hitan tas-sejjieh, il-kwistjonijiet l-ohra li wasslu ghar-rifjut ma kienux qed jigi indirizzati; cjoe' li hawn si tratta minn zona skedata bhala Class A – Archaeology u li f'ic-cirkostanzi, l-intervent qed jisfregja zona sensitiva.

Kif tajjeb tirrileva l-Awtorita', minn titwila lejn ir-ritratti mill-ajru (reds 63 u 49), jirrizulta li originarjament kien hemm ferm inqas hitan tas-sejjieh - u ghalhekk huwa minnu li dawk li nbnew maz-zmien (cjoe' minghajr permess) kienu qed jirrizultaw f'frammentazzjoni tal-ghalqa. Jifher ukoll li sahansitra nbnew hitan tas-sejjieh

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kartabun ma dawk originali, u ghalhekk ma jistax jinghad li l-firxa tal-hitan tas-sejjieh li hemm illum, tirispekkja l-kunfigurazzjoni originali tas-sit.

Gew citati wkoll zewg permessi (PA 160/03 u PA 7636/06) allegatament simili għall-kaz in ezami, fejn l-Awtorita' immultat dawk l-applikanti minhabba x-xogħlijiet li kienu għamlu minghajr permess. L-Appellant jikkontendi li peress li fil-kaz odjern, ix-xogħol illegali sar minn haddiehor – u minhabba t-thammil, l-art ma tistax terga' tigi ripristinat - l-Awtorita' kien imissha immultat lill-propjetarju precedenti u laqgħet it-talba sanatorja in ezami.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, għalkemm illum l-Appellant qed jiddikjara li hu kien lest iwaqqa l-kamra tal-ghodda u jbaxxi l-gholi tal-hitan tas-sejjieh, jibqa' l-fatt li saru hafna xogħlijiet fuq is-sit (minghajr permess) li jrendu l-ghalqa bħal speci ta' gnien urbanizzanti – bil-konsegwenza li intilef l-aspett rurali li originarjament kellu l-post. Dan apparti l-fatt li z-zona li wahda skedata u għalhekk japplika l-artikolu 70 tal-Att X tal-2010, Kap. 504.

Madankollu, kemm il-darba tigi sorvolata din l-ecezzjoni, jirrizulta li sabiex jigi regolarizzat, il-font jinhtiegu intervent li hu hafna aktar oneruz mis-smplici tnehhija tal-zvilupp illegali, kif propost mill-Appellant odjern. Dan qed jinghad apparti l-fatt li hafna mill-hsara li saret mhix riversibbli. Bizejjed li jinghad li kif gie kkostatat minn dan it-Tribunal waqt access li hejja fuq il-post, tqattgħet parti minn katakomba (jew qabar ta' zmien il-qedem) u gie mwitti bħal passagg dejjaq li jwassal għas-sit. Addirittura gie mitfugh wkoll skart varju.

Fl-ahharnett irird jinghad ukoll li mhux bizejjed li jitbaxxew il-hitan tas-sejjieh, għax is-sisisen ta' dawn inbnew fuq hitan tal-kantun, u jidher ukoll li sar xi xogħol bil-gagazza (cjoe' twittijja tal-konkos).

Għalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq magħmula, 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 għall-PA 2285/07 kif mahrug mill-Kummissjoni għall-Kontroll ta' l-lzvilupp fit-22 ta' Gunju 2010.

Ikkunsidrat

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L-aggravju tal-appellant hu fis-sens illi l-oggezzjoni principali tal-awtoritajiet kienet a reigward ta' kamra tal-ghodda u l-gholi tal-hitan tas-sejjeigh li l-appellant accetta li jwaqqa' fl-ewwel kaz u jbaxxi l-gholi fit-tieni kaz. It-Tribunal minflok qabad u cahad l-appell minghajr direttiva dwar is-sit billi naqas li jindirizza l-istat fattwali tas-sit fejn il-hitan kienu ilhom hemm mill-1958 u t-Tribunal seta' ta direttivi rimedjali ghal parti mill-izvilupp, u b'hekk id-decizjoni hi inkompleta.

Il-Qorti tqis illi l-aggravji mressqa mill-appellant ma jimmeritawx ezitu favorevoli ghaliex, kuntrarjament ghal dak allegat minnu, il-lanjanzi tieghu gew indirizzati kollha mit-Tribunal u din il-Qorti ma thoss li ghandha tirrepetihom. In oltre mhux minnu illi l-oggezzjoni kienet tirrigwarda biss l-gholi tal-hitan u l-kamra tal-ghodda. Qari tad-decizjoni juri mod iehor. La darba l-lanjanzi gew indirizzati u fuq bazi ta' planning considerations u l-policies rilevanti msemmija mill-istess Tribunal, bl-ebda mod kontradetti mill-appellant, din il-Qorti ma ghandhiex il-poter tissindaka l-operat u l-gudikat tat-Tribunal.

L-appell tal-appellant jistrih primarjament fuq sies wiehed cioe li t-Tribunal messu almenu ippermetta l-istat ta' fatt, koncernanti hitan ta' sejjeigh, kif kienu qabel saru l-interventi kollha ta' natura illegali anki jekk uhud saru min sid precedenti u li dan ma jimmetigax l-illegalita billi l-illegalita jssegwi lis-sit mhux lil min ikun ghamlu u jippersisti nonostante l-bdil tas-sid jew okkupant.

It-Tribunal dahal f'dan l-aspett u apparti n-natura sensittiva u ta' importanza taz-zona, qal illi x-xogholijiet li saru fuq is-sit oltre dawk li l-applikant kien propens li jnehhi rendew l-ghalqa qisu gnien urbanizzanti fejn intilef l-aspett rurali li kellu l-post. Zied li biex jigi regolarizzat hemm bzonn ta' hafna aktar interventi oneruzi minn semplici ta' tnehhija tal-izvilupp illegali ghax saret hafna hsara irriversibbli senjatament fuq oqbra tal-qedem u illi l-hitan li tghollew saru fuq hitan tal-kantun u twittija bil-konkos. Hu ghal dan ir-raguni illi l-appell ta' Fredu Portelli ma jistax jintlaqa' fis-sens minnu mitlub peress illi hemm non si tratta ta' kaz fejn tnehhija ta' ftit gebel ser jerga' jirripristina s-sit izda hemm bzonn ta' intervent li jmur oltre t-talba kif maghmula, cioe sanzjonar, li t-Tribunal hu marbut li jiddeciedi.

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It-Tribunal ma naqas fl-obbligu tieghu u ddecieda l-appell fil-parametri tal-applikazzjoni maghmula u l-aggravji dedotti. Mhux minnu li t-Tribunal naqas li jiddeciedi skond dak mitlub anzi mar oltre billi dahal fl-aspetti kollha ta' planning in konnessjoni mal-izvilupp illegali li hemm fis-sit. Mhux komputu tat-Tribunal li jaghti direttivi kif ghandu jsir ix-xoghol rimedjali. Dan hu mertu ta' applikazzjoni li trid issir mill-applikant biex irendi s-sit fl-istat originali tieghu li ma kienx pero l-iskop ta' din l-applikazzjoni.

Decide

Ghalhekk in vista tal-konsiderazzjonijiet maghmula, il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Fredu Portelli u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tat-30 ta' Jannar 2014. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

-----TMIEM-----