



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 10/2013

Daniel Zammit

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Daniel Zammit tal-25 ta' Marzu 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013 li cahad l-applikazzjoni PA 719/10 'proposed construction of stables (for keeping of horses), manure clamp related to the stables, water reservoir and construction of rubble boundary wall and timber gate';

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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 tal-Ambjent u l-Ippjanar, fit-2 ta' Mejju 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 719/10 – Site at Ta' Fantin, Bahrija, Rabat: Proposed construction of stables (for keeping of horses), manure clamp related to the stables, water reservoir, and construction of rubble boundary wall and timber gate.

Iz-zewg ragunijiet ghar-rifjut kienu s-segweni:

"1. Site is located within a Level 3 Area of Ecological Importance and Area of High Landscape Value thus proposal runs counter to paragraph 1(d) of Policy 4.3B which requires that the proposed development is not located within a scheduled, listed, designated or protected area or site. The proposal cannot be considered as improving the site in caption and thus the proposed development is also running counter to paragraph 1(f) of Policy 4.3B: Construction of New Stables of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007). In this regard, proposal also conflicts with North West Local Plan policy and Structure Plan policy RCO 4. Proposal also runs counter to Policies 1.3D: Protection of Landscape Features, 1.3G: Protected Species and their Habitats and 1.3H: Protected Areas, of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007).

2. The proposed development is located at a distance of more than 310 meters from the development zone boundary thus criteria in paragraph 1(e) of Policy 4.3B: Construction of New Stables of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007) is not being met. "

B. In-nota tal-Perit Tancred Mifsud ghall-Appellant, ipprezentata fit-18 ta' Mejju 2011, senjatament il-punti segweni:

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“Please note that the DCC in its meeting confirmed the following:

"File deferred for site inspection to assess the site, given that the distance issued has been addressed and the commitments of farm buildings around the site have been noted."

I have submitted a block plan with the DPAr reply (survey) of proposed development showing the distance to the development boundaries (less than 300 metres) thus complying to policy 4.3B of design and guidance on agriculture, farm diversification and stables, and the DCC had accepted and noted this distance (refer to DCC Minute).

With reference to reason for refusal 1, please note that the site in question is not protected and that part of the site is located within agricultural area (refer to notes to committee 4.3) Proposed development is being proposed on the site zoned as agricultural area, (although none of the site is being cultivated since present conditions do not permit such activity.

Also, as stated in DPAr NTC, the proposed development is located adjacent to a farm complex, besides other structures and development approved by MEPA.

I have submitted a photographic survey taken on site showing that although part of the site is zoned as agriculture, it is evident from the photos, that the same site is more of a dumping site, then an agricultural site, and photos show the existing building commitment in the area adjacent to the development.

EPRT should note that the following permits have been issued by the same MEPA within a 800 mt radius:

PA 5001/02

PA 5235/09

PA 7791/06

PA 1531/09

PA 4847/02

PA 4303/04

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PA 6575/07."

C. In-nota risponsiva ta' Mario Scicluna għall-Awtorita', ipprezentata waqt is-Seduta numru 95 mizmuma fis-7 ta' Dicembru 2011, inter alia s-seba' punti segwenti:

"12. It is to be noted that in actually, the DCC did not confirm anything in view that the site inspection never took place. In fact, in the following minute (min 34 in the PA File) the EPC concluded to place file on agenda.

13. On this same note, with regards to reason for refusal no. 2 which relates to the paragraph 1(e) of the Policy 4.3B, the proposal is actually located at a distance of more than 300 metres from the development zone.

14. Thus reason for refusal no. 2 is justified.

15. With regards to reason for refusal no. 1 in view that site under appeal is located within a Level 3 Area of Ecological Importance and Area of High Landscape Value proposal thus runs counter to paragraph 1(d) of Policy 4.3B which requires that the proposed development is not located within a scheduled, listed, designated or protected area or site.

16. Proposal under appeal cannot be considered as an improvement of the site in caption and thus the proposed development also runs counter to paragraph 1(f) same policy.

17. With regards to the permits cited by the appellant in his appeal submission, it is to be noted that the Malta Environment and Planning Authority has reviewed all files cited and wishes to state that none of the proposals relate to stables, as the proposal under appeal.

18. It is to be noted that the cited permits are agricultural related activities which need to be located in particular areas such as reservoirs, extension to chicken farm and extension to an old farmhouse. On the other hand, the stables under appeal could easily be located in an area which is not scheduled and respects the criteria for stables, Policy 4.3B – Construction of New Stables of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables."

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D. In-nota ta' sottomissjonijiet tal-Perit Tancred Mifsud għall-Appellant, ipprezentata fis-17 ta' Frar 2012, inter alia l-punti segwenti:

"With reference to the report drafted by MEPA to reply on the contents of the request for appeals, please note that the MEPA is still contesting the interpretation of Policy 4.3B in relation to the development is located within 300 metres from the development zone boundary but at least 100 metres away from adjacent dwellings or an inhabited area or an area which is intended for residential, residential institutions, hotels, education, assembly or leisure buildings, or tourism development".

The policy clearly specifies "The proposed development", therefore the total site is to be considered since development will be carried out on all the site. This is confirmed by the same MEPA at DCC stage since the DCC confirmed the following:

"File deferred for site inspection to assess the site, given that the distance issued has been addressed and the commitments of farm buildings around the site have been noted."

I am attaching a block plan showing that the proposed development is just within the 300m radius, therefore policy 4.3B (e) is satisfied.

[...]

The proposed development includes the construction of a boundary wall, therefore this confirms that the proposed development complies with policy 4.3B.

With reference to the zoning of the area, the MEPA zoned the area as "Level 3 Area of ecological importance".

The scope of this zoning was evaluated on a very large stretch of land covering all the north west coast as per GN 63/96.

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Various developments have been approved within the large stretch of land scheduled as Zone 3 in GN 63/96.

Below is a list of some of the approved permits within the zone in question:

7791/06

5001/02

5000/02

4303/04

5602/08

6292/06

6271/07

6759/04

4166/07

897/03

6575/07 (adjacent to applicant's site)

1531/09 (adjacent to applicant's site)

3613/04 (in a level 1 zone)

6573/03 (in a level 1 zone)

3175/08

5236/09

4847/02

GN 444/95 states the following:

"(iv) In accordance with clause 15.39 of the explanatory Memorandum of the Structure Plan, the following are to apply in Level 3 zone:

a) No, residential, industrial, commercial or tourism development

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b) No infrastructural or public utility works

c) Small scale physical development can be considered providing the adjacent AEIs and SSIs are protected, and this is demonstrated by a suitable environment impact assessment and is consistent with other policies."

From the above, the government notice allows for small scale development as illustrated above since the proposal will improve the existing site conditions and is also compatible with existing commitments in close proximity.

The proposed development that is being proposed on the site is on a parcel of land non cultivated since present conditions do not permit such activity due to natural conditions of the site since natural rubble stone is dispersed on site.

Also, as stated in the DAPr NTC, the proposed development is located adjacent to a farm complex, besides other structures and development approved by MEPA.

Finally I would like to refer to a court sentence Joseph Tonna vs. MEPA (appelli Civili No. 6/2010."

E. In-nota second statement ta' Mario Scicluna ghall-Awtorita', ipprezentata fis-16 t' April 2012, inter alia l-punti segwenti:

"1.1 The Tribunal may wish to note that the arguments being raised by appellant in the second statement have already been addressed in the first report compiled by the Authority. Contrary to what is being stated by the appellant, the distance issue has not been resolved, so much so that the EPC board have specifically noted that the distance of the proposed development from the nearest development zone boundary is more than 310m (exceeds the distance limit of 300 stipulated by policy 4.3B). Additionally, the Authority's first report dated 29th November 2011 included a representation by means of three images each showing a distance of 440.39m, 356.23m and 351.54m respectively measured from the proposed development to three different points on the nearest development zone boundary.

1.2 In order to justify the development irrespective of its location within the boundaries of a designated area of Ecological Importance level 3 as per GN 63/96, the appellant has quoted a number of applications which were already reviewed in the authority's first report dated 29th November 2011. Although all the applications

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quoted by the appellant are located at Bahrija, NONE of the applications quoted by appellant concern the construction or sanctioning of stables.

PA 7791/06: Alterations and extension to a farmhouse.

PA 5001/02: Wholly underground water reservoir.

PA 5000/02: 36m² water reservoir.

PA 4303/04: Part sanction and alterations to existing farmhouse.

PA 5602/08: Reconstruction of rubble walls. Demolition of room, franka walls and removal of concrete passageway.

PA 6292/06: To construct a reservoir and pump room.

PA 6271/07: To construct reservoir and sanction rubble boundary wall and gate.

PA 6759/04: Sanctioning of rubble wall, excavation of reservoir and landscaping and construction of store.

PA 4166/07: To remove pool structure and proposed internal alterations to existing farmhouse.

PA 897/03: Fully underground water reservoir for agricultural purposes.

PA 6575/07: Demolition of an existing chicken farm and construction of chicken farm, manure clamp, cesspit and storages.

PA 1531/09: Fixing of wind turbine over proposed farm covered by PA 6575/07.

PA 3613/04: Restoration of field for vine cultivation including construction of boundary walls and fixing of timber gate.

PA 6573/03: Land reclamation of part of field by topping up with soil to match existing soil level (site was previously used as a field) and to include sanctioning as works have already started.

PA 3175/08: To construct pump room and reservoir, to border site in rubble wall 1.2 m high and re-backfill site with appropriate soil for the planting of trees.

PA 5236/09: Proposed water reservoir.

PA 4847/02: Chicken farm extension including part sanctioning.

The appellant is stating that since the proposed development is a small scale development, Structure Plan Memorandum Clause 15.39 permits this development within scheduled areas and this is confirmed by the existence of other developments within this area which is scheduled by GN 63/96 (Area of Ecological Importance) and GN 444/95 (Wied Bahrija Buffer Zone). The Authority is

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contending that the rationale of the policy is straightforward in that the stabling of horses cannot be considered as a small type of development and this is confirmed by the above quoted permits submitted in the appellant's report which were issued for small developments (i.e. reservoirs & rubble walls and alterations to existing dwellings) mostly related to agricultural practice and not for stables. The PDG on Agriculture, Farm Diversification and Stables (2007) similar to the other policies that stemmed from the Structure Plan is the blue print for development in ODZ and formally defines the basic planning principles which govern the current planning regime.

Policy 4.3B section 1(d) of this policy guidance clearly states that permission will NOT be granted for the construction of new buildings or structures ODZ for the stabling of horses, except:

(1) in those circumstances where all of the following criteria are met:

(d) the proposed development is not located within a scheduled, listed, designated or protected area or site and the land is not of ecological, scientific, landscape, cultural or archaeological value;

In this respect, development which is of an urban nature, is not related to agriculture, is considered a form of leisure activity and is not of an environmental benefit is not permitted within ODZ. Hence, the stabling of horses is not a permitted development within such areas and should be located within other areas which are not protected as is the case under appeal and in a location which is at a distance from the development zone as per policy.

1.3 The Tribunal is also being notified of a recent EPRT decision delivered 29th March 2012 which reconfirmed the refusal issued by the DCC on a similar development PA 6044/07 – PAB 209/10 for the 'Construction of horse stables' within Ta' Namura, Bahrija, Rabat, in which two of the reasons for refusal of this application are comparable to the reasons for refusal of the case under appeal.

1.4 As regards to the Court of Appeal sentence as cited by appellant, such an argument is not valid to the case under appeal since the notion of commitment in this particular case has not been proven by appellant since to date, no PA permit for new stables in this specific area has been produced to date so as to enable the Authority to comment on its specific planning consideration."

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Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex jinbnew stallel, demmiela u giebja, kif ukoll sabiex jittella recinzjoni tas-sejeh u titwahhal xatba; gewwa font li jinsab il-barra miz-zona tal-izvilupp (ODZ), fil-Bahrija, ir-Rabat.

Skond il-Pjan Lokali (NWLP), is-zona fejn jinsab is-sit mertu tal-appell de quo hi ddesinjata bhala area of high landscape value kif ukoll bhala level 3 – area of ecological importance.

Ir-raguni ghar-rifjut huma bbazat fuq il-fatt li billi l-font jisab gewwa zona skedata u peress li l-proposta mhix intiza sabiex tammeljora z-zona, it-talba odjerna hi in kontravenzjoni tal-paragrafi 1(d) u 1 (f) tal-policy 4.3 B, u specifikatament tal-policies 1.3 D, 1.3 G u 1.3H tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables. Di konsegwenza, il-proposta hi wkoll f' kunflitt mal-policy RCO 4 tal-Pjan ta' Struttura.

In oltre, peress li s-sit jinsab f' distanza ta' aktar minn 310 metri mill-limitu tal-izviupp, il-proposta tmur ukoll kontra l-paragrafu 1(e) tal-policy 4.3 sucitata.

L-aggravji ta'-Appellant huma bbazati fuq il-premessa li d-Direttorat kien propens li jirrikmanda l-permess minhabba l-commitments li hemm fiz-zona - tant li kien ippropona li jsir access fuq il-font sabiex jigi kkonfermat dan (minuta 33 fil-file tal-applikazzjoni). Jiccita wkoll sensiela ta' permessi li nhargu ghall-zvilupp allegatament simili ghal dan in ezami. In oltre, jargumenta li mhux minnu li l-font jinsab boghod oltre l-limitu ta' 310 metri kif rifjesti mill-policies indikati supra.

Jispjega wkoll kid skond is-subinciz (c) tal-klawsola 15.39 tal-Explanatory Memorandum tal-Pjan ta' Struttura, f' zoni bhal dawn - u galadarba jista jigi zgurat li jkun hemm harsien tal-ambjent, u prevja li jsir studju ambjentali - jista' jigi permess zvilupp zghir bhal dan li qed jintalab permess ghalih.

L-Awtorita' zammet ferm l-oggezzjoni taghha ghal-proposta u tispjega li qabel xejn, l-access fuq il-post qatt ma sar. Dan anzi jikkonferma l-fatt li l-proposta qatt ma kienet wahda accettabbli. Tissokta wkoll sabiex tispjega li l-permessi citati mill-Appellant bhala kazistika, jirrigwardaw zvilupp relatat ma' attivita' li hi strettament ta' natura agrikola – bhalma huma gwiebi, pump rooms, wind turbine, land reclamation, dwieli, irziezet (ghat-trobbija tat-tigieg, etc.), residenzi ghal-bdiewa u estensjonijiet

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ma dawn. L-ebda wiehed mill-permessi citati ma' jirrigwarda stallel – u tenet kont tal-fatt li l-attivita' tat-trobbija taz-zwiemel hi wahda ta' delizzju (u ghalhekk mhix strettament relatata mal-agrikoltura), jsegwi li ma jistax isir paragon bejn dawk il-permessi u dan odjern.

Tirrileva wkoll li d-distanza tal-font in ezami mill-limitu tal-izvilupp, tvarja minn madwar 350 ghal 440 metri – altro che qeda fil-limitu ta' 310 metri impost mill-policies kif fuq kollox gie dikjarat mill-Appellant.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, jigi rilevat li l-policy 4.3 B indikata supra tahmel riferenza ghall-diversi rekviziti li kwalsiasi proposta trid tirrispetta sabiex tista' titqies bhala idoneja ma' zvilupp fl-ODZ. Il-policy hi cara fuq dan; li t-talba trid tottempera ruhha mar-rekviziti kollha – u mhux ftit jew mal-maggoranza taghhom. Billi jirrizulta li fil-kaz in ezami, uhud minn dawn ir-rekviziti mhux qed jigi rispettati - notevolment is-subincizi 1(e) u 1 (d) li jirrigwardaw propju, zoni skedati jew protetti u d-distanza limitu kif surilevata – din il-proposta ma timmeritax kunsiderazzjoni favorevoli.

In oltre, ghar-rigward il-klawsola 15.39 tal-Explanatory Memorandum indikata supra, dan it-Tribunal ghandu dubbju serju kemm fil-fatt din it-talba tista' tiqies bhala 'small scale physical development' (hawn si tratta minn attivita' konsistenti mat-trobbija taz-zwiemel), u di konsegwenza, anke semmaj dan ma kienx il-kaz, ma thejja l-ebda studju tal-impatti ambjentali (Environmental Impact Assessment) li jissostanzja tali l-argument.

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 719/10 kif mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-ippjanar, fit-2 ta' Mejju 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkunsidra ghal kollox uhud mill-aggravji tal-appellant cioe (a) li s-sit mhux protett u qieghed f'zona agrikola, (b) u li l-art infisha hi zdingata u mhix idonea biex tintuza ghal skop agrikolu, liema aggravji kienu ta' importanza tali li setghu inducew lit-Tribunal jiddeciedi mod iehor;

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2. It-Tribunal naqas li jiehu kont tal-commitment fiz-zona oltre l-policies rilevanti ghal kaz, obligazzjoni emanenti mill-artikolu 41 u 69 tal-Kap. 504. In oltre inkorra zball ta' ligi meta ddikjara fl-isfond ta' permessi ohra illi l-attivitá tat-trobbija ta' zwiemel hi wahda ta' delizzju (u ghalhekk mhix strettament relatata mal-agrikoltura) u ghalhekk mhix komparabbli mal-premessi citati li kienu jirrigwardaw zviluppi agrikoli. Isegwi li jekk din l-attivitá mhix agrikola tista' ssir f'zona ta' zvilupp u jekk it-Tribunal qed ighid li tista' tkun relatata imma mhux necessarjament mal-agrikoltura, allura d-distinzjoni biex jigi rifjutat il-permess hi legalment zbaljata ghax jekk hemm cirkostanzi li tista' tkun relatata ma' attivita agrikola, hi permissibbli fiz-zona ta' zvilupp. Din l-interpretazzjoni tmur kontra l-policy fejn stalel huma permissibbli barra zona ta' zvilupp entro certa distanza mill-izvilupp. B'zieda ma' dan kollu ebda distinzjoni ma tezisti fil-ligi bejn attivita agrikola u delizzju kif ghamel it-Tribunal u in oltre whud mill-permessi kienu jirrigwardaw swimming pools;

3. It-Tribunal applika hazin il-policy 4.3B Construction of New Stables tal-2001 fejn (a) iddikjara li l-attivitá tat-trobbija taz-zwiemel mhix strettament agrikola u allura mhux permissibbli barra z-zona ta' zvilupp, (b) fejn sostna li l-izvilupp jinsab oltre l-limitu ta' 310 metri impost fil-policy peress li l-policy tirrikjedi biss li l-iktar parti vicina tkun entro d-distanza ta' 310 metri;

4. It-Tribunal zbalja meta ma laqax l-aggravju tal-appellant li l-kwistjoni tad-distanza miz-zona ta' zvilupp kienet sorvolata mid-DCC bhala raguni ta rifjut skond minuta tat-30 ta' Novembru 2010.

L-ewwel aggravju

Dan l-aggravju ma fihx mertu. It-Tribunal indirizza l-kwistjoni tan-natura tas-sit. Ikkonkluda li skond il-pjan lokali NWLP iz-zona fejn jinsab is-sit hi area of high landscape value u level 3 area of ecological importance. Dan il-fattur jimmilita kontra l-applikazzjoni tal-policy 4.3B tal-Policy and Design Guidance tal-2007 peress illi tmur kontra paragrafu 1(d) tal-istess policy cioe li s-sit ma ghandux ikun qiegħed f'scheduled, listed, designated or protected area. Anki jekk għal grazzja tal-argument wiehed kellu jikkunsidra l-istat fattwali tas-sit jibqa' l-fatt inkontestat, kif esprima ruhu t-Tribunal illi z-zona hi wahda protetta skond il-ligi u l-proposta tmur kontra din il-protezzjoni. Kwindi l-aggravju mressaq ma jreggix ghax ma ngiebet ebda prova li fil-fatt iz-zona ma taqax fin-North West Local Plan u ghalhekk kien isegwi l-bazi tar-ragunament tat-Tribunal gie stabbilit fuq fatt erroneju.

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Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju hu maqsum f'diversi partijiet relatati ma' xulxin. Il-kwistjoni tal-commitment giet trattata mit-Tribunal u kwindi bhala tali din il-kwistjoni ma tistax terga' tinfetah quddiem din il-Qorti bhala punt ta' ligi applikabbli. It-Tribunal kien car meta wasal ghal konkluzjoni li ma setghax ikun hemm paragon ta' commitment meta l-permessi citati kienu jirrigwardaw zviluppi konnessi mal-agrikoltura mentri l-izvilupp in kwistjoni kienet tirrigwarda stalel taz-zwiemel. L-argumenti li ppruvaw jingiebu mill-appellant biex jippruvaw illi t-Tribunal zbalja fil-hsieb tieghu dwar din il-kwistjoni huma mehudin barra mill-kuntest tad-decizjoni tat-Tribunal. Meta t-Tribunal ghamel distinzjoni bejn l-applikazzjoni odjerna u l-permessi citati kull ma ried jiccara kien illi l-izviluppi l-ohra kienu jsegwu attivita agrikola mentri din l-applikazzjoni hi aktar relatata ma' ezercizzju ta' delizzju (trobbija ta' zwiemel) u ma kinitx simili ghall-izviluppi konnessi mal-agrikoltura citati mill-appellant u kwindi ebda paragon ta' 'like with like' ma seta' jsir. Fl-ebda hin it-Tribunal ma qal kif allegat illi tali zvilupp kellu jsir mhux f'ODZ izda f'zona ta' zvilupp. Anzi t-Tribunal kien car illi dan l-izvilupp kien jimmerita konsiderazzjoni taht il-policy 4.3 tal-2007 pero ma kinitx approvabbli ghax il-kriterji kollha hemm imposti ma gewx sodisfatti senjatament dik dwar iz-zoning u d-distanza minn zona ta' zvilupp ezistenti. In oltre din il-Qorti ma tistax, kif qed jippretendi l-appellant li l-Qorti tissindaka jekk stalel u trobbija ta' zwiemel hix aktar kompatibbli ma' delizzju jew operat agrikolu ghax din hi kwistjoni ta' natura teknika li din il-Qorti ma tindahalx fiha.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju ikompli fuq it-tieni wiehed. It-Tribunal ma qalx illi l-attivita tat-trobbija taz-zwiemel mhix strettament agrikola u allura mhux permissibbli f'zona ta'zvilupp. Fit-tieni aggravju dan gie spjegat mill-Qorti u ma hemmx lok ta' ripetizzjoni. Fit-tieni lok it-Tribunal ma

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dahal f'ebda distinzjoni jekk hux parti jew l-izvilupp kollu li kellu jkun entro d-distanza rikjesta mill-ligi. Qal biss li mill-accertamenti li t-Tribunal qies bhala dawk affidabbli, illi l-fond jinsab bejn 350 u 440 metri l-bogħod miz-zona ta' zvilupp li jeccedi l-limitu ta' 310 metri impost bil-ligi. Anki jekk għal grazzja tal-argument l-intenzjoni wara d-dikjarazzjoni tat-Tribunal illi l-izvilupp kollu irid ikun entro l-limitu, din hi kwistjoni ta' interpretazzjoni ta' policy u mhux applikazzjoni b' illi l-kundizzjoni 1(a) tal-policy 4.3B tghid biss illi s-sit irid ikun f'distanza ta' bejn 100 u 310 metri bogħod mill-linja ta' zvilupp. Dan ir-regolament ihalli għall-interpretazzjoni mill-Awtorita dwar jekk id-distanza tkoprix is-sit kollu jew l-aktar parti vicina taz-zona ta' zvilupp.

Għalhekk dan l-aggravju qed jigi michud.

Ir-raba aggravju

Dan hu aggravju dwar interpretazzjoni ta' minuta tad-DCC tat-30 ta' Novembru 2010 li pero tidher li hi indirizzata kemm fir-rapport inizjali tal-Awtorita kontra l-izvilupp u l-quddiem waqt it-trattazzjoni tal-appell. Il-kwistjoni tibqa' pero jekk il-minuta tad-DCC tat xi dritt lil applikant kontra l-uzu tal-argument tad-distanza bhala raguni ta' rifjut.

It-Tribunal qies il-kwistjoni bhala wahda fejn l-applikant ma kienx akkwista ebda dritt għax il-fatti juru mod iehor. Din il-Qorti tqis li t-Tribunal seta' stharreg din il-kwistjoni biex jagħti raguni sodisfacenti għal gudizju tiegħu fuq din il-kwistjoni pero anki jekk l-appellant għandu ragun jilmenta li l-kwistjoni ma gietx indirizzata, jibqa' l-fatt indisputat illi din ma kinitx l-unika raguni ta' rifjut u billi r-raguni l-oħra tar-rifjut cioe z-zoning ma giex newtralizzat u billi l-kundizzjonijiet kollha tal-policy 4.3 iridu jigu ottemperati, l-izvilupp u l-appell xorta kienu ser ikollhom ezitu negattiv. Għalhekk l-aggravju f'dan l-istadju hu wiehed aktar akkademiku milli effettiv jew prattiku. Madankollu din il-Qorti tikkonsidra l-aggravju tal-appellant bhala invalidu u dan għar-raguni illi l-minuta 33 tad-DCC esebita fl-atti tghid biss 'site deferred for inspection to assess the site, given that the distance issue has been addressed and the commitments of farm buildings around the site have been noted'. Apparti li access ma jidhirx li sar, il-fatt li l-kwistjoni tad-distanza giet indirizzata ma jfissirx li giet solvuta favorevolment għal parti jew oħra. Dan ma hu indikat minn ebda parti ta' dan il-verbal. Li tindirizza problema

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jfisser li tiehu konjizzjoni taghha u tpoggiha fil-perspettiva gusta taghha sabiex issolviha. Ma jfissirx b'daqshekk li giet solvuta, u kif giet solvuta.

Kwindi l-aggravju tal-appellant ma jistax jintlaqa' avolja kif inghad, lanqas ezitu favorevoli ma kien ser ibiddel il-portata tad-decizjoni tat-Tribunal.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Daniel Zammit u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-15 ta' Marzu 2013.

Spejjez kontra l-appellant.

< Sentenza Finali >

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