



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tas-26 ta' Gunju, 2014

Appell Civili Numru. 82/2013

Emanuel Formosa

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Emanuel Formosa tad-19 ta' Dicembru 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Novembru 2013 dwar PA 3309/05 'to sanction random rubble wall, gate and proposed reservoir and small pump room to existing agricultural building';

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:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fl-24 t' Ottubru 2006, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 3309/05 "Field in Triq Busewbien, Ta' Garrum, l/o San Pawl il-Bahar: To sanction random rubble wall, gate and proposed reservoir and small pump room to existing agricultural holding."

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

"1. The site consists of garigue environment and is thus not considered as agricultural land. 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....

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

B. In-nota tal-Perit Martin Farrugia ghall-Appellant, ipprezentata fil-5 ta' Dicembru 2006, senjatament il-tlett punti segwenti:

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"1. The rubble walls are built in traditional rubble and do not exceed 1.20m from existing soil levels. With regards to concrete capping, this was carried out to protect the rubble wall from deteriorating over time due to water ingress; however my client is ready to remove the concrete capping if decreed so by the Appeals Board.

2. the site is ... a registered agricultural holding and is presently in a 'rocky' state since the top soil has been washed away over the years. In fact from the external consultations carried out it has resulted that my client is a part-time farmer with a registered agricultural holding of 1 tumolo of dry and rock land.

3. we are not proposing a new agricultural development but rehabilitating an existing agricultural holding. Moreover the proposed reservoir is located totally under ground and is covered by 600mm thick top soil so in real terms there is no visual impact whatsoever. The proposed reservoir also complies with DNO regulations."

C. In-nota ta' Mario Scicluna ghall-Awtorita', ipprezentata fis-16 ta' Frar 2007, inter alia il-punti segwenti:

"5.2.1 The rubble walls as built are objectionable because they are not in accordance with the relevant policies and are not in line with the topography and landscape characteristics of the area.

5.2.2 Rubble walls are only permissible if they are constructed not higher than 1.2m along the whole length and constructed as a dry stone wall, built in loose, unhewn stones which stand by gravity and friction [sic.] without the use of mortar. In this particular case the layout of the existing wall ... is in such a way that the 1.2m height is only respected in certain areas, the rest is gradually higher till it reaches 1.8 m. Furthermore, ... concrete topping had been poured on top of the rubble wall and hence rendered the construction method in breach of the relevant policies.

5.2.3 The Authority wishes the Board to note the report made by the DC-EPD (Blue 13a) and which highlighted the fact that:

5.2.3.1 The land is not agricultural land and any parts covered with soil have been illegally covered and are subject to the stop and enforcement notice ECF 45/05.

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5.2.3.2 The application does not include the sanctioning of dumping material (as cited in the ECF) or the reclamation of land for agricultural purposes.

5.2.3.3 The proposal would inevitably imply the destruction of garigue/karstland which are in also protected.

5.2.3.4 The requested water reservoir and pump room are not considered as essential since there is no established agricultural holding on site.

5.2.4 The Authority also notes that the 1998 orthophoto do not show any sign of agricultural activity and evidence show that his has commenced after the first illegal dumping of material had been placed on site.”

D. Il-verbal tas-Seduta numru 28 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fl-14 ta' Novembru 2007, precizament il-punt segwenti:

“[L-Awtorita' tirrileva li] l-materjal li gie mitfugh illum gie mnehhi waqt li l-hitan tas-sejjieh illum hu[ma] parti mill-appell tar-rifjut u ghaldaqstant, l-applikazzjoni tal-Policy Circ. 2/96 u 2/98 illum supertata”

E. Il-verbal tal-access tas-Seduta numru 17 tal-Bord ta' l-Appell dwar l-Ippjanar, mizmuma fl-4 ta' Gunju 2008, senjatament il-punti segwenti:

“Il-Bord ikkostata li s-sit huwa mdawar b' hitan li jixbah il-hitan tas-sejjieh bis-siment [recte konkos] fil-wicc fuq [recte u] xatba tal-hadid miksiija bi strippi [recte kurrenti] ta' l-injam. L-art fejn hi ccirkondata bil-hitan divizorji [sic.], hija garigue [recte xaghri]. Il-hitan divizorji mhux necessarjament li huma ta' l-gholi stabbilit bil-ligi. Il-Bord jinnota illi l-hitan divizorji fejn izommu l-hamrija [sic.] fis-sit in kwistjoni m' humiex mibnijin.”

F. In-nota second statement ta' Mario Scicluna ghall-Awtorita', ipprezentata

fl-4 t'Ottubru 2010, inter alia tippuntwalizza l-punti segwenti:

"PA 1218/07

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To demolish existing building and construct two bungalows with pools and basement garages. The DPA in this case had resulted in a positive recommendation and the cited permit was a follow up of several previous permits on this site. The DPA lists the following permits issued on this site.

PA5295/01: Permit issued to Mr. Ronald Gaerty on the 11th July 2002 to demolish existing building and construct two villas with pool and basement garages (Bungalows).

PA 639/98: Outline Development permit issued to Mr. Ronald Gaerty on the 6th July 2001 to demolish existing building and construct two villas with pool and basement garage.

PA 0865/09

Minor amendments to two bungalows as approved in PA1218/07 and sanctioning of other minor amendments. According to the DPA: This is a Full Development Application for minor amendments to two bungalows as approved in PA 1218/07 & sanctioning of other minor amendments. The same DPA lists the following permits issued on this site.

PA 1218/07 - Renewal of Development Permission to demolish existing building and construct two bungalows with pools and basement garages - applicant Mr. Ronald Gaerty. Proposal was granted by DCC on 5th September, 2007.

PA 5295/01 - Full Development application to demolish existing building and construct two villas (bungalows) with pools and basement garages – applicant Mr. Ronald Gaerty. Proposal was granted by DCC on 9th May, 2002.

PA 639/98 - Outline Development application to demolish existing building and construct two villas with pools and basement garages - applicant Mr. Ronald Gaerty. Proposal was deferred by DCC on 31st July, 1998 following recommendation for refusal by Planning Directorate. Proposal was referred for reconsideration and upheld by Reconsideration Board on 9th April, 2001.

PA 5295/01

This cited permit refers to same site quoted above.

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The above clearly shows that none of the cited permits had identical planning considerations to the one under appeal since the pending appeals contains the following issues:

a. ECF 45/05 - No appeals lodged against this enforcement. This enforcement notice clearly shows that the existing material on site is illegal and does not constitute an agricultural land. In view that this application does not include the sanctioning of the illegally dumped material, the provisions of PA Circular 2/96 apply.

b. According to the Agricultural Department, appellant is a part time farmer tilling only this piece of land (circa 1 tumoli)

d. Photos 46A –D in file show the existing situation including walls higher than the permitted 1.2m and with concrete topping. The land surrounded by the illegal rubble walls is still predominantly rocky and certainly cannot be considered as of good agricultural value. The same photos shows that all of the surrounding land is rocky/garigue and there are no cultivated fields in the immediate vicinity of the site under appeal. The land under appeal has been surrounded by a rubble wall creating a plot-like parcel without any relationship to the natural topography of this sloping hillside.

e. The latest plan Red 32A refers to 'proposed' reservoir, pump room, reinstatement of soil whilst refers to 'existing' as regards to the walls. Hence, the walls 'as existing' were and are requested to be sanctioned 'as is'. The 4.5m gate is also considered as excessive, out of context and unjustified.

f. Reference is also made to the photos as found in the ECF 45/05 which show the illegal works as carried out from time to time.

Additionally, in view that the whole area is not good agricultural land but rather rocky/garigue and is protected by specific policy, its change of use into an agricultural piece of land is out of context and not permissible by the policies as cited in previous reports."

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G. In-nota risposta tal-Avukat Dott. Chris Cilia ghall-Appellant, ipprezentata fl-10 ta' Novembru 2010, precizament il-punti segwenti:

“F’ din it-Tieni Dikjarazzjoni l-Awtorita’ tidhol fid-dettal tal-permessi mahruqa fil-
vicinanze immedjati u li gew proprju indikati lil dan l-Onorabbli Bord mill-umli
appellant.

Filwaqt li m’hemmx dubbju li ebda kaz mhu precizament identiku ghal iehor, il-
konsiderazzjoni fundamentali u bazilari illi pero tibqa’ hija illi l-Awtorita’ hareg
permessi ohra – dawk proprju indikat mill-appellant – sabiex isir zvilupp (anke ferm
izjed estensiv minn dak ta’ l-appellant). Tali zvilupp kien jinkludi t-tqattiegh ta’ blat,
bini ta’ swimming pool u bini ta’ zewg villel bil-basement b’kollox, igifieri zvilupp ferm
izjed estensiv minn dak tal umli appellant.

Konsegwentement f’dawn ic-cirkostanzi ghandu japplika l-principju ta’ *cerimus
paribus ...* F’dan ir-rigward issir referenza ghas-segwenti decizjonijiet:

- ‘Michael Dingli vs il-Kummissjoni ghall-Kontroll ta’ l-Izvilupp’, (6/10/00)
- ‘Ignatius Attard vs il-Kummissjoni ghall-Kontroll ta’ l-Izvilupp’, (26/05/04)
- ‘Jimmy Vella vs il- Kummissjoni ghall-Kontroll ta’ l-Izvilupp’, (24/03/03);
- ‘Marie Louise Farrugia vs il-Kummissjoni ghall-Kontroll ta’ l-Izvilupp’, (24/02/03);
- ‘Michael Attard vs l-Awtorita’ ta’ l-Ippjanar’ (19/11/01);
- ‘Alex Montanaro noe vs il-Kummissjoni ghall-Kontroll ta’ l-Izvilupp’, (09/02/01)
- ‘Dr. Graham Busuttil LL.D. vs MEPA’
- ‘Formosa Gauci noe’ vs MEPA (App 4/2008)
- ‘Salvu Mallia vs il-Kummissjoni ghall-Kontroll ta’ l-Izvilupp’, (PAB 221/97)
- ‘Joseph Debono vs il-Kummissjoni ghall-Kontroll ta’ l-Izvilupp’, (PAB 111/98SMS)
u
- ‘Dione Bartolo vs il-Kummissjoni ghall-Kontroll ta’ l-Izvilupp’, (PAB 633/98).”

H. In-nota third statement ta’ Mario Scicluna ghall-Awtorita’, ipprezentata fis-26 ta’
Novembru 2010, inter alia il-punti segwenti:

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"one can immediately note that the cited permits which were referred to in the Authority's [second] statement were all related to a common structure and which had originally been approved due to an even older structure on same site.

The site under appeal is, on the other hand, affecting a large area which is requested to be transformed into agricultural land in an area which is protected for its present rock/garigue characteristics. ... reference is made to the same photos as submitted by appellant in the initial stages of this application in which it is clear that the site and all of its surrounding area are not agricultural land but bare rock with patches of garigue. Further photos found in same file and that of ECC 45/05 show how works had progressed with time (all illegal) and which included the erection of walls on the perimeter of this site and which are also covered with a concrete coping."

Man-nota gie anness ritratt mill-ajru fejn gew immarkati kemm is-sit mertu tal-appell odjern kif ukoll dak fil-vicinanze u indikat mill-Appellant permess ta' n-nota tal-konsulenti tieghu.

J. In-nota risposta tal-Avukat Dott. Chris Cilia ghall-Appellant, ipprezentata fit-3 ta' Jannar 2011, inter alia il-punti segwenti:

"In rigward tal-imsemmija applikazzjonijiet l-ohrajn illi gew milqugha ghall-bini ta' vilel bil-basement u swimming pool b'kollox illi l-MEPA qed targumenta illi kienu gustifikati ghaliex is-site kienet diga mibnija, jigi rilevat li filwaqt li in rigward tal-applikazzjoni odjerna l-MEPA qed tinsisti ghar-rifjut bl-argument principali jkun il-protezzjoni tal-garigue, fl-applikazzjonijiet imsemmija u l-permessi marhuga lis-Sur Gaerthy jidehr illi tali argument gie sorvolat ghaliex mhux biss inhargu l-permessi imma nhargu b'mod illi l-footprint ta' dak li kien committed kiber sostanzjalment u dank if evidenzjat bic-car mill-annessi aerial photos ta' din is-site li juru x'kien hemm mibni qabel u x'inbena wara li nhargu l-imsemmija permessi.

Oltre dan, filwaqt li fl-applikazzjoni odjerna qed jigi argumentat mill-MEPA bl-ikbar insistenza illi l-garigue ghandu jigi protett u m'ghandux ikun peress illi titpogga hamrija fuqu, fil-permessi mahruqa lis-Sur Gaerthy fuq imsemmija jidher illi l-MEPA ma ddejqet xejn illi l-istess garigue mhux biss jigi mghotti bil-hamrija izda addirittura jigi stuprat bit-thaffir ta' basement u ta' swimming pool."

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Man-nota gew annessi erba' dokumenti biex isostnu l-argument li fil-passat l-ghalqa kienet tinhadem (fejn kien hemm hamrija agrikola), u li l-illegalitajiet (il-kopertina tal-konkos u l-hitan tas-sejjieh li jaqbzu l-1.2 metri), gew regolarizzati.

K. In-nota fourth statement ta' Mario Scicluna ghall-Awtorita', ipprezentata fis-7 ta' Lulju 2011, inter alia il-punti segwenti:

"it is evident that whilst the majority of the illegal dumping has been removed, the parts of concrete coping which were removed from over the new walls was not disposed off ... but was deposited 'outside' the site as shown in photos.

As regards to the height of the wall, one photo shows that parts of the wall are still 170 -180mm high as shown in photo.

Another photo show that the lower part of the site has mature vegetation which shows that inert material / soil is still on site and this in contrast to photos in the ECF file which show this area as original garigue form. Aerial photos of site up to 2004 still shown no evidence that this site was in fact used as agricultural land and no boundary walls are visible on site. The adjacent land as visible in many photos clearly show the state of the site under appeal prior to appellant's interventions which were carried out without any permit and even in breach of the enforcement notice (i.e. the construction of the perimeter wall).

Same photos show that the existing 'rubble' wall is not as per LN in view that it still contains franka stone stabs as a 'dry wall' configuration and in certain parts (as seen in a particular photo) concrete coping is still visible (both that which has been broken to pieces but left on the wall and also, in some parts, concrete coping is still not removed).

As regards to ECF 45/05, this enforcement cannot be closed off [sic.] since whilst it only lists the dumping of inert material and 'stones' without permit on this site, the original photos in this ECF file show that no boundary walls had been erected at that stage. Hence, the walls were constructed after the issue of the ECF and hence, in clear breach of the official MEPA order to 'stop all works and reinstate the site to its original state'. The enforcement officer has confirmed all of the above information."

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Man-nota gew annessi seba' ritratt (ikoll bid-data tas-28 ta' Gunju 2011) in sostenn ta' dak li gie rrapurtat mill-Awtorita' permezz ta din in-nota.

L. In-nota ta' sottomissjonijiet ulterjuri tal-Avukat Dott. Chris Cilia ghall-Appellant, ipprezentata fis-26 t' Ottubru 2011.

M. Ir-rikors tal-Avukat Dott. Anthony DeGaetano ghall-Awtorita', ipprezentata fis-17 ta' Novembru 2011.

Ra wkoll id-decizjoni ta' dan it-Tribunal diverzament ippresedut tat-29 ta' Novembru 2011;

Ra wkoll is-sentenza tal-Qorti ta' l-Appell tad-29 ta' Novembru 2012 li hassret id-decizjoni tat-Tribunal tad-29 ta' Novembru 2011 u rremettiet l-atti lura li dan it-Tribunal sabiex l-appell jerga' jinstema' mill-gdid; it-Tribunal ghalhekk irid jezamina mill-gdid il-permessi li gew ikkowati mill-appellant li jirreferu ghall-vicinanze tas-sit;

Ra l-verbal tat-30 ta' April 2013 fejn it-Tribunal zamm access fis-sit mertu mertu ta' dan l-appell. Waqt l-access gie kkostatat li din hija art fejn sar parcelling taghha. L-art giet imdawwra b'hitan li huma combination ta' gebel, knatan u tahlita ta' materjali. Kien hemm mat-triq gholi ta' hajt bix-xatba tal-injam u pilastri tal-gebel tal-kantun. Jidher bic-car li kienet parcelling ta' art li kienet hafna ikbar u li l-art kienet intrinsikament fl-istat naturali taghha hija art garigue u mhux art li hija mahduma;

Ra l-PA files PA1218/07, PA 865/09, PA 5295/01;

Illi f'dawn il-proceduri u fis-sentenza tal-Qorti tal-Appell sar enfazi fuq il-htiega li dan it-Tribunal jikkunsidra sottomissjonijiet dwar il-commitment tas-sit mertu ta' dan l-appell. It-Tribunal ghalhekk ezamina l-permessi kollha citati hawn fuq mill-appellant u wasal ghal konklużjoni li dawn it-tlett permess, mhumiex rilevanti ghal dan l-appell ghalix m'humiex sitwat fl-inhawi immedjati tas-sit mertu ta' dan l-appell. Dan seta' jigi facilment konstat mit-Tribunal waqt l-access fejn it-Tribunal ra d-distakk li hemm bejn is-sit mertu ta' dan l-appell u l-bini ezistenti iehor li ghamel riferenza ghalihom l-appellant f'wahda min-noti tieghu. Dan wahda diga' huwa fattur determinanti biex jeskludi l-applikazzjoni tal-policy tal-commitment li hija marbuta ma' zvilupp fid-dintorni ta' dak mertu ta' dan l-appell u mhux zvilupp li huwa sitwat 'l boghod mill-izvilupp mertu ta' dan l-appell u dan sabiex jigi evitat 'domino effect'. Altrimenti jekk wiehed joqghod iggebbed il-commitment kif qed jittenta jaghmel l-appellant allura

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wiehed jista' jasal ghall-konkluzzjoni li Malta kollha hija committed bl-izvilupp u ghandu jinhareg permess kullimkien;

Fejn tidhol l-applikazzjoni tal-hekk imsejha policy tal-commitment, dan it-Tribunal jixtieq jinnota li din il-policy hija supplimentari ghall-policies li jissemmew fl-artikolu 69 u hija ma tistax tiehu s-soppravent fuq dawk il-policies. Fi kliem iehor jekk jezisti pjan ta' zvilupp jew jekk tezisti policy ta' ppjanar, l-hekk imsejha policy tal-commitment qatt ma tista' tipprevali fuqhom peress li dawn il-pjani u policies huma gerarkikament superjuri ghall-hekk imsejha policy tal-commitment. L-hekk imsejha policy ta' commitment ghandu jkollha applikazzjoni biss meta l-pjanijiet u l-policies ma jipprovdi xejn u fin-nuqqas japplika l-commitment dejjem jekk dan ikun applikabbli skond ic-cirkustanzi ta' kull kaz;

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda is-sanar ta' hitan tas-sejjieh u xatba kif ukoll permess sabiex tinbena giebja u pump room zghira fl-istess propjeta'.

Is-sit jinsab xi mijja w erbghin metru l-bogħod miz-zona tal-izvilupp u kien gie milqut b'enforcement notice ECF 45/05 - dumping on garigue without permit. In oltre, gew proposti hitan tas-sejjieh u xatba li jissuperaw l-gholi massimu permess mill-policies (Policy and Design Guidance), kif ukoll l-Avviz Legali 160 tal-1997 u b'emendi tal-Avviz Legali 169 tal-2004, et seq.

Ir-raguni tar-rifjut huma primarjament bbazati fuq il-fatt li skond il-policies RCO 4 u RCO 8 tal-Pjan ta' Struttura, billi l-art mhix agrikola, allura tali zvilupp mhux idoneju ghall-harsien ta' Rural Conservation Area.

Fost l-aggravji tieghu, l-Appellant isostni li l-propjeta' mertu tal-appell odjern hi fil-fatt registrata bhala art agrikola, u li kwalsiasi bixra ta' xaghri minhabba in-nuqqas ta' hamrija tirrizulta biss minhabba l-fatt li peress l-art kienet mitluqa ghal xi zmien, il-hamrija kienet ingarret mix-xita. Ikompli billi jzid li galadarba l-art hi agrikola, allura tali proposta hi konsistenti mar-riabilitazzjoni ta' ghalqa abbandunata, u peress li l-giebja ser tithaffer taht l-art, mhix ser tkun ta' intruzjoni viziva.

Waqf il-mori tal-appell, gie rilevat (permezz ta' diversi ritratti mill-ajru, sottomissjonijiet tal-Awtorita' kif ukoll il-verbal tal-access fuq is-sit, etc. kif indikat supra), li f' certu postijiet, il-hitan tas-sejjieh jissuperaw il-1.2 metru permessi mill-

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policies (1.8 metri f'certu bnadi), filwaqt li tqeghdet ukoll kopertina tal-konkos (concrete capping). In oltre, l-enforcement notice li kienet inharget minhabba d-depozitu tal-hamrija fuq art xaghri, qatt ma kienet giet ikkuntestata.

Fil fatt, skond l-Awtorita', ma jirrizultax li kienx hemm xi attivita' agrikola. Tali attivita' bdiet wara li kienet inharget l-enforcement notice fil-25 ta' Jannar 2005. L-Appellant gie registrat bhala bidwi biss fl-1 t' April tal-istess sena, cioe' ftit aktar minn xahrejn wara li nhareg l-istess avviz. Jigi rilevat ukoll li l-applikazzjoni mertu tal-appell odjern giet intavolata xahrejn ohra wara din id-data, jigifieri fl-1 ta' Gunju 2005.

Fl-argumenti tieghu, l-Appellant jikkwota diversi permessi mahruqa mill-Awtorita' – kif diga gew indikat supra - izda l-ebda wahda minnhom ma tirrigwarda ghalqa f' Rural Conservation Area, milqut b' enforcement notice.

Il-PA file 865/09, il-permess li gie approvat huwa ta' minor amendments ghall-permess PA1218/07. Dan il-permess inhareg minn dan it-Tribunal diversament kostitwit wara li l-appellant accetta li jirriduci l-izvilupp skond ma talbitu jaghmel l-Awtorita'. L-ewwel permess fuq dan is-sit inhareg fit-2 ta' Lulju 1980;

Il-PA file 1218/07 huwa dwar 'request for minor amendments to approved permit' f'sit fi Ta' Garrun, Zebbiegh. Izda l-'minor amendment' ma gietx approvata (ara Blue 42 datata 20 ta' Frar 2009);

Il-PA 5295/01 huwa dwar twaqqiegh ta' bini ezistenti u mhux zvilupp fuq art vergni. Ghalhekk m'hemmx paragun bejn dawn iz-zewg files;

In oltre, anke jekk ghall-grazzja tal-argument, jigi sorvolat il fatt li skond il-policies, peress li l-Appellant jahdem tumolo wiehed biss ta' raba (guarda caso l-istess art mertu tal-appell de quo), u anke jekk jigi sorvolat ukoll il-punt tal-idonjeta' agrikola tal-istess raba' li hi ferm kkontesta mill-Awtorita', l-Appellant mhux intitolat ghall-bini ta' giebja u pump room. (Policy and Design Guidance – Agriculture, Farm Diversification and Stables, tal-2007.)

Ghar rigward ta' d-depositu tal-hamrija u l-enforcement notice sussegwenti, jigi nutat li peress li ECF 045/05 kontra l-istess Appellant illum giet deciza u marret in gudikata, l-istess avviz ta' twettieq ma jistax illum jigi kkuntestat mill-gdid. Anke permezz tad-dicitura tal-istess avviz - dumping on garigue without permit – jidher

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car li skond l-Awtorita', l-art in ezami hi xaghri u ghalhekk zvilupp ulterjuri f' forma ta' hitan tas-sejjieh godda ma jistawx jigu permessi.

L-istess Awtorita' permezz tan-nota fourth statement irrilevat li tali strutturi ma kienux jeziztu dakinhar meta kien inhareg l-enforcement notice, u anke jekk ghall-grazzja tal-argument jigi sorvolat il-fatt li l-Appellant kompla bl-izvilupp in kontravvenzjoni ta' avviz ta' twettieq, permezz ta' l-applikazzjoni odjerna, l-Appellant qed jerga' indirettament jikkontesta din id-decizjoni billi jittenta s-sanar tat-tfiegh ta' hamrija (din id-darba bhala existing agricultural holding); agir oggezzjonabbli ferm, li jrendi l-applikazzjoni u l-appell manifestament infondati u li jirrazzenta' l-imposizzjoni tas-sanzjoni fit-termini tal-Artikolu 14 tat-tieni skeda tal-Att X ta' l-2010, Kap. 504.

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 3309/05 mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fl-24 t' Ottubru 2006.

Ikkunsidrat

L-aggravju tal-appellant hu principalment illi t-Tribunal naqas li jaghti kaz tal-commitment fiz-zona senjatament ta' villa bi swimming pool vicin is-sit. It-Tribunal ikkunsidra biss id-distanzi fil-kaz tal-villa u s-sit in kwistjoni li kien argument bla bazi billi n-natura taz-zona hi l-istess u li fatturi ta' commitment ma jirbahx fuq policy.

Il-Qorti tqis illi dan l-aggravju mhux fondat. Fl-ewwel lok jinghad illi dan il-process kien intbaghat lit-Tribunal mill-Qorti tal-Appell peress illi fis-sentenza taghha tad-29 ta' Novembru 2012 il-Qorti kienet qalet illi l-kwistjoni sollevata ta' commitemnt ma kinitx giet ikkonsiderata mit-Tribunal.

Harsa anki superficiali lejn id-decizjoni odjerna u qed tigi appellata juri illi din id-darba t-Tribunal investiga u kkunsidra l-kwistjoni tal-commitemnt b'referenza ghal diversi permessi msejha 'simili' sottomessi mill-appellant. Di piu l-istess Tribunal anki acceda fuq is-sit biex jikkonstata fattwalment is-sit u zona (ara verbal tat-Tribunal tat-30 ta' April 2013).

Kopja Informali ta' Sentenza

Il-Qorti mhix ser tirrepeti dak li kkonsidra t-Tribunal in relazzjoni ghal premessi citati mill-appellant li skond hu kienu jikkostitwixxu commitment. Qari tad-decizjoni tat-Tribunal hi aktar milli spjegattiva. It-Tribunal hass fuq bazi ta' fatt u ta' planning illi dawn il-premessi ma kienux simili ghal kaz in ezami. Mhux komputu ta' din il-Qorti illi tirrikonsidra kwistjonijiet ta' fatt decizi mit-Tribunal sakemm dawn ma jkunux zbaljati jew inezistenti u kienu l-pern tad-decizjoni tat-Tribunal. Dak li l-appellant qed jistieden lil Qorti taghmel mhux korrezzjoni ta' zball ta' fatt izda interpretazzjoni differenti li johrog mill-fatti. Dan mhux permess u din il-Qorti mhix ser tigi indotta tkun Qorti tal-Appell fuq l-interpretazzjoni tal-fatti. It-Tribunal in oltre ikkunsidra l-fattispecie ta' kull permess ikkwotat u mhux minnu kif qal l-appellant illi t-Tribunal ikkonsidra biss id-distanzi bejn il-premessi citati u s-sit in kwistjoni. Id-distanza kienet biss ta' rilevanza f'permess wiehed.

In oltre kif gia kellha okkazzjoni f'diversi decizjonijiet, din il-Qorti taghmel distinzjoni bejn is-sahha ta' pjan jew policy u kwistjonijiet ta' sustanza bhal ma hu 'commitment' fost affarijiet ohra. Il-Qorti taqbel perfettament ma' dak li qal it-Tribunal illi ebda kwistjoni ta' commitment ma tista' tmur kontra dak esplicitament promulgat fi pjan jew policy u kwistjonijiet ta' sustanza ghandhom importanza fejn il-pjan jew il-policy hi siekta jew thalli element ta' diskrezzjoni. F'dan il-kaz ir-ragunijiet ta' rifjut cioe l-policies RCO 4 u RCO 8 tal-pjan ta' struttura ma jippermettix zvilupp fejn l-art mhix agrikola, essendo dan mhux idoneju ghal harsien ta' rural conservation area. Dan l-argument principali kien wiehed fost ohrajn imqajma mit-Tribunal in sostenn tar-rifjut. L-appellant hu sieket fuq il-fatti u l-pregudizji mqajma fuq bazi ta' pjan ta' struttura u policies u kwindi din il-Qorti tqis illi l-aggravju mqajjem mill-appellant ma jista' jkollu ebda fundament fil-ligi.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Emanuel Formosa u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-lppjanar tad-29 ta' Novembru 2013. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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