



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tat-2 ta' Lulju, 2014

Appell Civili Numru. 56/2011

**Mario Gauci**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' Mario Gauci tat-2 ta' Novembru 2011 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Ottubru 2011 PA 6437/01 'to sanction change of use from garage into office and display of advertising sign';

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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 :-

B'applikazzjoni pprezentata fis-6 ta' Dicembru 20011, Full Development Permission PA 6437/01 l-appellant, f'sit f'Burmarrad talab :-

“to sanction change of use from garage into office and display advertising sign”.

L-applikazzjoni giet michuda b'rifjut tal-24 ta' Mejju 2002 ghar-ragunijiet segwenti :-

“1. The site lies outside the limits for development defined in the Temporary Provisions scheme for St. Paul's Bay and so it is located in an area which it is proposed should remain undeveloped and open. The proposed development would run counter to this scheme and would represent unacceptable urban development in the countryside.

2. The proposed development conflicts with Structure Plan Policy SET11, 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. The proposed development also therefore runs counter to policy BEN5.

3. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development cannot be located in an area designated for development or in an existing built-up area.

4. The proposal runs counter to Circular PA 2/96 which states that “when exiting building development on a site is wholly or partly illegal the DCC will not consider a

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development permit application relating to new development on that site, unless the development is regularised.”

5. The development implies traffic impact due to the new activity being generated. The proposal would also imply parking onto a busy distributor road (that leading from Burmarrad to Bugibba/St. Paul's Bay), since no parking provision for the current use is being made as per Structure Plan Policy TA4. The proposal would thus interfere with the traffic flow and present a hazard to the safe use of the road by vehicles and pedestrians. The proposed change of use would therefore run counter to Structure Plan Policies TEM4 and TRA4.”;

Saret talba ghal reconsideration ipprezentata fil-11 ta' Gunju 2002, Red 15; izda r-rifjut gie kkonfermat ghall-istess ragunijiet fis-16 ta' Ottubru 2003 (Red 36).

Fl-appell tieghu l-Perit Edgar Caruana Montaldo ghall-appellant issottometta s-segwenti :-

“1. The site in question is located in a built-up area and the existing building is covered by the planning permits (PAPB 4243/90 – to erect shop/store). The application is for a change of use into an office. There is no building extension, just a change of use. Therefore Policies SET11 and SET12 are not relevant to this application.

2. With reference to Circular PA2/96, the application is to sanction the change of use.

3. The garage adjacent is to be used for parking of vehicles. The adjacent garage that belongs to my client is part of the same application that consisted of the construction of 2 garages and a stairwell between them.

4. The office being proposed is necessary for my client to run the business he has that is covered by all the necessary police permits. All my client is asking for is an office to run his business.”;

Fis-seduta tat-12 ta' Jannar 2005 quddiem il-Bord tal-Appell dwar l-Ippjanar saret talba ghal differiment billi giet ipprezentata applikazzjoni PA 1550/04 li ghadha pendenti, intiza bhala 'outline master plan', ghas-sit in ezami; u ohrajn fil-vicinanzei.

L-appell baqa' jigi sistematikament differit ghal din ir-raguni; sakemm fis-seduta mizmuma minn dan it-Tribunal fis-17 ta' Mejju 2011 l-Awtorita' tablet li dan l-appell jigi deciz, flimkien ma' l-appelli l-ohra relatati, billi l-applikazzjoni citata ma tincidix direttament fuq l-ezitu ta' dawn l-appelli. Barra l-appell prezenti, Appell Numru

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328/03 – hemm tlett appelli ohra relatati li huma applikazzjonijiet ta' l-istess persuna u huma kollha jirreferu ghal zviluppi fil-lokalita' ta' Burmarrad cioe' Appelli Numri 160/98, 326/03 u 330/03.

Ikkunsidra ulterjorament :-

B'din l-applikazzjoni, l-appellant talab 'to sanction change of use from garage into office and display of advertising sign'.

Din l-applikazzjoni ghalkemm 'to sanction' a differenza ta' kazijiet ohra tal-istess appellant, ma kienetx precedeuta b'applikazzjoni ohra li kienet giet michuda; sar l-izvilupp xorta wahda u wara saret applikazzjoni 'to sanction'.

L-istruttura 'per se' hi awtorizzata bil-permess tal-PAPB tas-27 ta' Jannar 1992 (Red 23F) f'isem Nathalie Mallia ta' Il-Horza, Triq Gdida fi Triq Istandar, Qawra – "to erect shop/store as per plans/elevations (PAPB 4243/90/1A) submitted with application dated 12.11.90 and amended, subject to general conditions (A) on form DC1/88. Height of the building should not exceed one floor."

Il-kelma garage fuq il-pjanta approvata giet kkancellata u sostitwita b' 'shop/store'.

Fir-rapport tad-Direttorat ippreparat fil-kors tal-ipprocessar tal-applikazzjoni inghatat importanza ghal fatt li l-applikant naqas li jindika din l-informazzjoni kif rikjesta fis-section 27 tal-applikazzjoni.

Fil-parti 'application history' tar-rapport jinghad "There was no indication of the original permit number of the existing building (no information has been given in Section 27 of the application form).

Fil-paragrafu 3.0 tal-istess rapport jinghad :-

"Moreover, the existing building does not seem to be covered by any development permission – no permit number has been quoted and none have been traced on site."

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Bir-rispett kollu, ghalkemm hu certament nuqqas da parti tal-applikant li jonqos milli jimla l-partijiet kollha tal-applikazzjoni, b'mod li ma jaghtix certa informazzjoni, mhux biss rilevanti izda essenzjali, dan il-fatt 'per se' ma jwassalx ghal konkluzjoni li permess ma jjezistix. Jekk jjezisti permess jew le hi kostatazzjoni ta' fatt, perfettament indipendenti minn nuqqas tal-applikant li jonqos li jindikaha fl-applikazzjoni.

L-oggezzjonijiet kollha tal-Awtorita' ghal din l-applikazzjoni huma relatati mal-Lokalita' partikolari fejn jinsab s-sit – cioe' f'Burmarrad li hi area barra z-zona tal-izvilupp li kellha tibqa' miftuha u mhux zviluppata; u billi l-izvilupp propost mhux konness ma' attivita' agrikola, li eccezzjonalment tista' tigi permessa f'din il-lokalita', il-proposta giet michuda.

Kif irrizulta fil-kors ta' smiegh ta' dan l-appell, l-appellant f'din il-lokalita' jggestixxi negozju ta' importazzjoni ta' vetturi kummercjali, ghandu open yard estensiva fejn jigu pparkjati dawn il-vetturi, ghandu garages fl-istess lokaita' li fihom isir xoghol ta' mechanic u ta' panel beating fuq l-istess vetturi, ghandu vetturi kummercjali pparkjati fuq is-saqaf tal-garages; dwar dawn l-attivitajiet hargu enforcement orders; saru diversi applikazzjonijiet fil-maggior parti taghhom 'to sanction' li ghadhom ma gewx finalment decizi.

F'dan il-kuntest giet prezentata Block plan Red 23A mill-perit tal-appellant, li turi d-diversi siti li dwarhom hemm applikazzjonijiet pendenti u ohrain decizi.

Hu naturali li f'dawn ic-cirkostanzi partikolari, is-sitwazzjoni kaotika li nholqot tirrikjedi li tigi regolarizzata b'mod holistiku u komprensiv. Kien ghalhekk li l-appell kien qed jigi differit, seduta wara seduta billi gie dikjarat li l-applikazzjoni PA 1550/04 kienet 'outline master plan application' intiza biex tirregola l-izvilupp kollu tal-appellant f'din il-lokalita'.

Effettivament pero' din l-applikazzjoni mhix master plan, kif fuq intiz billi fiha qed jintalab 'to demolish existing buildings and construct basement garages and overlying showrooms and offices.'

Fir-rapport tad-Direttorat gia citat, hu ferm relevanti l-kumment tal-Local Planning Unit – r-rapport sar f'Awissu 2003 li jghid hekk :-

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“Following public submissions to the NWLP Consultation process, the revised draft of the plan will contain a policy to address these situations created at both the sides covered by these three applications (PA 6463/01, PA 6437/01 and PA 6426/03 and also the wider area surrounded by these sites. The policy will NOT be aimed at simply sanctioning the existing state of affairs because this incremental expansion of development ODZ has created a traffic hazard, a visual intrusion and uncontrolled take up of agricultural land. The policy will seek to improve the situation by allowing certain development, only if comprehensive schemes supported by proper mitigation measures are submitted.”

L-applikazzjoni giet michuda fis-16 ta' Ottubru 2003 (Red 36). Il-motivazzjonijiet tar-rifjut huma kollha relatati mal-kostruzzjoni tas-sit u mhux mal-uzu mitlub. Billi kif irrizulta l-bini kien gie awtorizzat bil-permess tal-PAPB tas-27 ta' Jannar 1992 (Red 23F) r-ragunijiet moghtija fir-rifjut m'humiex applikabbli ghal kaz.

L-Awtorita' setghet oggezzjonat ghall-uzu propost – cioe' uzu kummercjali f'area rurali u barra z-zona tal-izvilupp – izda dan ma sarx almenu b'mod dirett u specifiku.

Il-partijiet naqsu li jaghmlu referenza ghall-Pjan Lokali li gie approvat fl-20 ta' Lulju 2006. Il-lokalita' ta' Burmarrad hi trattata fil-Kapitlu 18.3. Il-Mappa 45 u 45A tal-Pjan Lokali tindika l-area bhala “Area of Containment”, “Area of Mixed Uses” fejn jistghu jigu accettati proposti ta' zvilupp – kemm godda, kemm estensjonijiet u/jew bdil fl-uzu – purche dawn jissodisfaw l-kundizzjonijiet imposti fil-Policy NWSP26 (North West St. Paul's). In generali ghandu possibilment isir pjan komprensiv ghall-lokalita' kollha, li l-bini ma jeccedix sular wiehed u jkun ta' certu qisien li jsir ‘landscaped green belt’ kif indikat fil-Mappa 45A, b'wisa' minimu ta' 5m; li open yards ghal storage ta' vetturi kummercjali m'ghandhomx jkunu jidhru mit-toroq principali u li ghandha tinghalaq l-yard ghal vetturi kummercjali – faccata ta' site A, li terga' tigi ripristinata ghal uzu agrikolu.

Din il-Policy ghalhekk tipprovdi soluzzjoni adegwata kif is-sitwazzjoni kaotika u konfuzjonarja fil-lokalita' tista' tigi regolarizzata u ppjanata.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jilqa' l-istess u jirrevoka r-rifjut tas-16 ta' Ottubru 2003 – billi fir-ragunijiet hemm moghtija, ma ittiehidx kont tal-fatt li fuq l-istess sit, kien hareg permess PAPB 4243/90/1A fis-27 ta' Jannar 1992 – jiddirigi lill-appellant li japplika mill-gdid, mhux biss fuq is-sit mertu ta' dan l-appell – izda fuq is-siti l-ohra fil-vicin, li fuqhom jiggestixxi n-negozju tieghu, (dan mhux necessarjament b'applikazzjoni wahda), b'mod li jikkonforma mar-rekwisiti tal-Policy NWSP26 tan-North West Local Plan tal-20 ta' Lulju 2006.

### **Ikkunsidrat**

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkonsidra l-commitment li hemm fiz-zona u dan irendi l-gudikat monk;
2. La darba t-Tribunal sostna li skond il-policies vigenti l-izvilupp kien permissibbli messu applika l-policies l-istess Tribunal u akkorda l-permess u mhux stieden lil appellant jerga' jintavola applikazzjoni mill-gdid.

### **L-ewwel aggravju**

Dan l-aggravju ma fih ebda mertu ghaliex qatt ma tqajjem quddiem it-Tribunal fl-aggravji mressqa mill-istess appellant. L-appell kien jikkoncentra fuq il-fatt illi l-garage in kwistjoni kien gia kopert b'permess PAPB 4243/90 to erect shop/store u kull ma kien qed jintalab hu change of use u ghalhekk l-oggezzjonijiet tal-Awtorita ma kienux applikabbli ghal kaz. Dan gie rikonoxxut mit-Tribunal u in fatti irrevoka c-cahda ghal hrug tal-permess mill-Awtorita, minghajr pero ma ta' direzzjoni cara ta' x'kellu jsir konsegwenza ta' tali decizjoni. Din ser tigi trattata fit-tieni aggravju.

Ghalhekk dan l-aggravju qed jigi michud.

### **It-tieni aggravju**

L-appellant isostni illi la darba t-Tribunal stieden lil appellant jerga' japplika mill-gdid skond il-pjan lokali tal-2006 ghal lokalita ta' Burmarrad fejn iz-zona hi indikata bhala area of containment u area of mixed uses, allura t-Tribunal messu hu approva t-talba a bazi ta' dan.

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Il-Qorti tqis illi t-Tribunal ma qalx li a bazi tal-pjan lokali, it-talba kif maghmula setghet tigi approvata izda in vista tal-fatt illi dan l-izvilupp kien jiffirma parti minn zviluppi ohra soggetti ghal appelli quddiem it-Tribunal ukoll decizi fl-istess jum, kif qed jigu decizi l-istess appelli quddiem din il-Qorti mid-decizjonijiet tat-Tribunal, allura l-appellant kellu jidderigi ruhu biex japplika b'mod holistiku ghall-izvilupp kollu in linea mal-pjan lokali. Sa hawn l-aggravju tal-appellant kellu jigi michud.

Pero din il-Qorti ma tistax tieqaf hawn peress illi t-Tribunal ma cahadx l-appell, ghax sostna illi l-izvilupp li tieghu kienet qed tintalab sanzjoni kien gia kopert b'permess kuntrarjament ghal argument tal-Awtorita li wassalha ghad-decizjoni ta' rifjut u a bazi ta' hekk l-appell kellu jigi milqugh u r-rifjut revokat. Pero qari tad-decizjoni turi illi l-permess li bih kien kopert is-sit kien ghal garage b'uzu bhala store/shop mentri t-talba prezenti kienet ghas-sanzjoni ta' bdil ta' uzu minn garage ghal ufficju. L-istess Tribunal fil-fatt ikkunsidra li l-Awtorita setghet oggezzjonat ghal uzu propost bhala wiehed kummercjali f'zona rurali u barra z-zona ta' zvilupp izda mhux ghar-ragunijiet moghtija.

Hu ghalhekk gust l-aggravju tal-appellant ghalkemm mhux car u specifiku daqs hemm wiehed jixtieq illi t-Tribunal messu iddecieda hu jekk l-izvilupp kienx jimmeritah permess jew le u mhux semplicement jilqa' l-appell u jistieden lil appellant jerga' japplika mill-gdid. Din il-Qorti izzid illi t-Tribunal seta' kieku ried baghat l-atti lura lil Awtorita biex tikkonsidra mill-gdid l-applikazzjoni a bazi ta' dak deciz mit-Tribunal biex b'hekk jigi salvagwardat id-dritt tad-doppio esame. Invece t-Tribunal laqa' appell bla ma ta rimedju fuq l-applikazzjoni li kellu d-dmir jezamina u jiddeciedi fuqha.

Ghalhekk dan l-aggravju qed jigi milqugh fis-sens hawn deciz.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' l-appell ta' Mario Gauci in linea ma' dak deciz fit-tieni aggravju mressaq minnu, u tirrevoka d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent



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u l-Ippjanar tat-13 ta' Ottubru 2011, u tiffinivja l-atti lura lit-Tribunal biex jerga' jiddeciedi l-appell. Spejjez ghall-Awtorita.

**< Sentenza Finali >**

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