



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-2 ta' Lulju, 2014

Appell Civili Numru. 54/2011

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 'to sanction extension of garage and additions and alterations' PA6436/01;

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 :-

B'applikazzjoni ipprezentata fis-6 ta' Dicembru 2001, Full Development Permission, PA 6436/01, l-appellant f'sit f'Burmarrad Road, Burmarrad talab:-

“to sanction extension of garage and additions and alterations”.

L-applikazzjoni giet michuda fl-24 ta' Mejju 2002 (Red 15);

Saret talba ghal reconsideration ipprezentata fil-11 ta' Gunju 2002, (Red 16); izda r-rifjut gie kkonfermat fis-16 ta' Ottubru 2003 (Red 32) 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 SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

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 development also implies traffic impact due to the new industrial activity being generated. The proposal would also imply a direct vehicular access onto a busy distributor road (that leading from Burmarrad to Bugibba/St. Paul's Bay), which is not acceptable as per Paragraph 4.3 of the Development Control Policy and Guidance 2000. This, coupled with the traffic impact generated by the new industrial use, would 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 the Paragraphs 4.3 of the Development Control Policy and Guidance 2000 and to Structure Plan Policy TEM 4.

5. The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key Diagram). The proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

6. 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.

7. The proposal runs counter to Circular PA 2/96 which states that "when existing building development on a site is wholly or partly illegal the DCC will not consider a development permit application relating to new development on that site, unless the development is regularised."

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

"1. The site in question is located in a built-up area.

2. With reference to Circular PA 2/96, the application is to sanction works carried out.

3. Part of the garage can be used for the parking of vehicles. Therefore parking is not a problem.

4. The development consists of the extension of an existing garage that is covered by planning permits.";

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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-vicinanze.

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' talbet 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, PAB 330/03, hemm tlett appelli ohra relatati li huma applikazzjonijiet tal-istess persuna u huma kollha jirreferu ghal zviluppi fil-lokalita' ta' Burmarrad cioe' appell numru 160/98, 326/03 u 328/03.

Ikkunsidra ulterjorament :-

B'din l-applikazzjoni l-appellant talab "to sanction extension of garage and additions and alterations".

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

L-istruttura, ghalkemm mhux kollha, billi saru estensjonijiet, hi awtorizzata bil-permess, PA 2153/97 – "construction of ground floor garage, drive-in with overlying first and second floor dwellings".

Fir-rapport tad-Direktorat, ippreparat fil-kors tal-ipprocessar ta' din l-applikazzjoni gie dikjarat li bil-permess PA 2153/97 gie approvat garage u drive-in ta' 220 sq.m. ghal parking privat tar-residenzi sovrastanti – saret estensjoni ta' 840 sq.m. fuq in-naha ta' wara tal-garage approvat – li qed jintalab li tigi sanzjonata flimkien mal-uzu industrijali ta' spraying tal-vetturi. Is-sit jinsab f'Rural Conservation Area, skond il-Pjan ta' Struttura, barra z-zona tal-izvilupp, b'access mit-triq principali ta' Burmarrad.

L-Awtorita' tikkontendi li l-fatt li jezisti permess ghall-garage, ma jfissirx li l-estensjoni mitluba ghandha tigi awtomatikament accettata. Fl-area, barra z-zona tal-izvilupp hu partikolarment oggezzjonabbli l-uzu propost li hu ta' spraying ta' vetturi u showroom ghal karoZZi – attivita' li mhix permessa barra z-zona tal-izvilupp.

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L-iskala tal-izvilupp hi ukoll oggezzjonabbli billi hi eccessiva, tistona mal-karattru u d-dehra tal-istreetscape u ghandha impatt negattiv fuq l-area rurali cirkostanti.

L-oggezzjonijiet kollha tal-Awtorita' ghal din l-applikazzjoni huma relatati mal-lokalita' partikolari fejn jinsab s-sit u cioe' 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' jiggestixxi negozju ta' importazzjoni ta' vetturi kummercjali; ghandu open yard estensiva fejn jigu pparkjati dawn il-vetturi, ghandu garages fl-istess lokalita' li fihom isir xoghol ta' mechanic u spray painting fuq l-istess vetturi; ghandu vetturi kummercjali ipparkjati fuq is-saqaf tal-garages. Dwar dawn l-attivitajiet hargu enforcement orders; saru diversi applikazzjonijiet fil-maggior parti taghom "to sanction" li ghadhom ma gewx finalment decizi.

F'dan il-kuntest giet ipprezentata block plan Red 24A mill-Perit tal-appellant, li turi diversi siti li dwarhom hemm applikazzjonijiet pendenti u ohrajn decizi.

Hu normali 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 tirregolarizza 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 rilevanti l-kumment tal-Local Plan Unit - r-rapport sar f'Awwissu 2003 u jghid hekk :-

"Following public submissions to the NWLP consultation process, the revised draft of the plan will contain a policy to address the situation created at both the sites covered by these three applications (PA 6463/01, PA 6437/01 and PA 0426/03) and

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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 32).

Il-motivazzjonijiet tar-rifjut huma kollha relatati mal-lokalita' tas-sit, cioe' li tali attivita' kummercjali – partikolarment fuq din l-iskala ma ghandhiex tigi awtorizzata f'zona rurali u barra z-zona tal-izvilupp. Minn dan l-aspett, partikolarment fit-2003, meta l-applikazzjoni giet michuda, il-motivazzjonijiet tar-rifjut huma korretti u perfettament attinenti ghall-kas.

Il-partijiet naqsu li jaghmlu referenza ghall-Pjan Lokali li gie approvat fl-20 ta' Lulju 2006.

Il-lokalita' ta' Burmarrad hi trattata fil-Kapitolu 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 – purché dawn jissodisfaw l-kundizzjonijiet impost fil-Policy NWSP26 (North West St. Paul's Bay). In generali, ghandu possibilment isir pjan komprensiv ghall-lokalita' kolha, li l-bini ma jeccedix sular wiehed; u jkun ta' certu qisien; li jsir landscaped green belt ta' 5m; li open yards ghal storage ta' vetturi kummercjali m'ghandhomx ikunu jidhru mit-toroq principali; u li tinghalaq l-yard ghall-vetturi kummercjali faccata ta' 'Site A' li terga tigi ripristinata ghall-uzu agrikolu.

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

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut tas-26 ta' Ottubru 2003, PA 6436/01 billi s-sanzjonar ta' l-estensjoni tal-garage mitluba, f'dik l-iskala u f'dik il-lokalita' ma kienux permessibbli, pero' in vista ta' dak li jipprovdi l-Pjan Lokali, jidderigi lill-appellant, li japplika mill-gdid, mhux biss fuq is-sit mertu ta' dan l-appell, izda ukoll fuq is-siti l-ohra fil-vicin li fuqhom jiggestixxi n-negozju tieghu (dan mhux necessarjament b'applikazzjoni

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wahda) – b'mod li jikkonforma mar-rekwisiti tal-Policy NWSP26 ta' 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 jimmeritatx konsiderazzjoni ghas-sempli raguni li ebda allegazzjoni ta' commitment fiz-zona ma tista' qatt teghleb il-pjanijiet u policies li kienu applikabbli ghas-sit in ezami. It-Tribunal ikkonsidra illi fiz-zmien meta giet michuda l-applikazzjoni fl-2003, tali zvilupp u attivita konnessa ma ghandhiex tigi awtorizzata f'zona rurali u bara z-zona ta' zvilupp u kwindi kienu in vjolazzjoni ta' Structure Plan Policy SET 11 u RCO 2 u mhemmx eccezzjoni skond l-istess pian fejn tali attivita hi permessa. Hu minnu illi t-Tribunal ikkonceda illi bil-pjan lokali tal-2006 din iz-zona cioe ta' Burmarrad giet indikata bhala area of containment u area of mixed uses u certi proposti ta' zvilupp huma accettabbli pero basta jigu sodisfatti l-kriterji fil-policy NWSP 26. It-Tribunal qies mis-sustanza tal-proposta illi l-proposta kif mitluba ma kinitx sodisfacenti u semma' eżempju wiehed cioe li tinghalaq il-yard ghal vetturi kummercjali faccata ta' site 'A' u terga' tigi riprestinata ghal uzu agrikolu. Il-Qorti tqis li din l-applikazzjoni giet deciza ma' ohrajn konnessi ma' din l-applikazzjoni ghax tirrigwarda zviluppi fuq l-istess sit u ghalhekk it-Tribunal seta' jindirizza l-kwistjoni b'mod komprensiv u mhux spezzettat tenut kont tal-policies li kienu applikabbli u dawk li dahlu in vigore fil-mori tal-proceduri, li fil-fehma tat-Tribunal xorta ma kienux jissodisfaw il-proposta tal-appellant.

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Kwindi l-kwistjoni ta' commitment gustament ma setghetx tinghata l-importanza lil xtaq l-appellant li del resto lanqas hu ma ssostanza b'mod konstruttiv f'dan l-appell u illimita ruhu li jsemmiha biss.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju wkoll qed jigi michud ghaliex it-Tribunal ma qalx illi l-izvilupp kien permissibbli bil-policies vigenti. Li kieku qal hekk is-sanzjoni kien ikun permess. It-Tribunal irrefera ghal appellil ohra decizi konnessi mal-istess zvilupp u qal li wara l-pjan lokali tal-2006 li stabilixxa z-zona bhala area of containment, u area of mixed uses, l-applikant seta' japplika mill-gdid qua permess gdid basta jottempera ruhu mal-rekwiziti tal-policy NWSP 26 tan-North West Local Plan tal-2006. Dan hu ferm differenti minn dak allegat mill-appellant u l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Mario Gauci u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Ottubru 2011. Bi-ispejjez kontra l-appellant.

< Sentenza Finali >

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