



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-8 ta' Ottubru, 2014

Appell Civili Numru. 19/2014

Paul Scicluna

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Paul Scicluna tal-1 ta' April 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Marzu 2014 ghal PA 3611/05 'to sanction additional works';

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 tat-13 ta' Gunju, 2005 – Full Development Permission – PA 63611/05 fejn l-appellant, f' Triq Il-Kanun, Ghasri, talab:

“ To sanction additional works ”

Permezz ta' rifjut mahrug fit-18 ta' Gunju, 2009, l-Awtorita' dwar l-Ambjent u l-Ippjanar cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

"1. The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of policy Circulars 2/96 and 2/98. The illegal development consists of the building, the pool and landscaped areas.

2. Structure Plan Policy RCO4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan Policy RCO4.

3. The proposed development is incompatible with the environmental characteristics of the area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan policy BEN 2."

Permezz tal-appell tieghu l-Perit Mintoff ressaq l-aggravji tal-appellant kif gej:

Kopja Informali ta' Sentenza

"I am writing on behalf of my client, Mr. Paul Scicluna, to request the Appeals Board to reconsider the decision taken by the DCC on 15th June 2009 and 27th May 2009 of the above-mentioned application.

Please note that my client, his lawyer and myself would like to be present during the deliberation of this appeal.

The main reasons of refusal are the following:

- The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of policy Circulars 2/96 and 2/98. The illegal development consists of the building, the pool and the landscaped areas.
- Structural Plan Policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan Policy RCO 4.
- The proposed development is incompatible with the environmental characteristics of the area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan Policy BEN 2.

The purpose of this application is to sanction the works that are not being sanctioned by the application PA 2002/02.

The reason behind this refusal is in reality a technical issue since this was refused on the basis of another case which is being also deliberated by the appeals board.

The DCC advised that both applications namely the above and that bearing reference PA 2002/02 should be considered simultaneously."

Permezz tar-rapport taghha l-Awtorita' ressqet il-kummenti taghha kif gej:

"DIRECTORATE'S COMMENTS ON GROUNDS FOR APPEAL

Kopja Informali ta' Sentenza

The proposed development is not acceptable since it does not include all the unauthorised development on site. In addition, the site is situated outside the limits to development of Ghasri and therefore ODZ policies apply.

The current application seeks to sanction unauthorised works that are subject of one reason for refusal in application PA2002/02, which is currently at appeals stage (PAB 195/03). Thus, the application which seeks to sanction the whole of the unauthorised development is PA2002/02. However, both PA2002/02 and the current application PA3611/05 are not indicating properly all the infringements on site and therefore in the two applications the provisions of Circular PA2/96 apply.

The Planning Appeals Board minutes of sitting held on 2 April 2008 (PAB195/03 – blue 24) indicate that the appeal is awaiting a decision on this application in view of its relevance to the reason for refusal related to Circular PA2/96.

However, the proposed works indicated on drawing 1B cannot be assessed without considering the other infringements on site. Thus, even if it were the case that the proposed works indicated on drawing 1B result to be sanctionable, the eventual decision would compromise the final decision on the whole of the development. Since illegal development exists on site and it is not being sanctioned, the provisions of Circular PA2/96 must apply.

With regards to the details of the proposed development, the location of the proposed pump room is not acceptable. It is situated away from the building and therefore leads to the loss of land within the open space at the rear of the site. According to the Policy for Swimming Pools ODZ (2000), the ancillary facilities to the swimming pool shall not lead to the loss of land and well designed to protect the surroundings. Pump rooms shall be completely underground.

In addition, the design of the boundary wall is not appropriate in a rural area. Proposed elevation on drawing 1B and photos 5A indicate that the boundary wall overlooking the street is not in rubble and higher than 1.2 metres as required by L.N. 160/97. In view of the above, the proposal goes against the provisions of Structure Plan Policies RCO 4 and BEN 2.

The proposal does not include details of the proposed sanctioning of the cave and cellar, but it is evident that the proposed cellar is being linked with the residential unit. Considering that the caves and cellar have separate access from the alley on the western side of the site, the proposal would lead to further extension in the floor space of the residential unit."

Kopja Informali ta' Sentenza

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba, full development application, ghas-sanzjonar ta' zvilupp illegali fuq is-sit mertu ta' dan l-appell.

Skond l-Awtorita', is-sit mertu ta' dan l-appell jinsab ODZ, u jiffirma parti minn Rural Conservation Area fil-limiti ta' l-Ghasri. Is-sit ghandu area ta' 2000 m.k. u qiegheed 'in open countryside'.

Din l-applikazzjoni giet rifjutata peress li:

- Il-proposta tikser il-policy BEN 2 tal-pjan ta' struttura peress li hija inkompatibbli mal-ambjent rurali li fih jinsab is-sit in ezami;
- L-izvilupp propost li jinsab gewwa Rural Conservation Area imur kontra l-policies RCO 4 tal-pjan ta' struttura; u
- Il-proposta tikser il-PA Circulars 2/96 u 2/98.

L-argumenti li tqajmu mill-partijiet fil-kors tas-smiegh ta' dan l-appell jistghu jigu migburin fil-qosor kif gej:

Fl-appell tieghu l-appellant jissottometti li l-applikazzjoni kienet giet rifjutata minhabba kwistjoni teknika u dan peress li hemm kas iehor fuq l-istess sit li bhalissa qed jigi kkunsidrat mit-Tribunal.

Fir-rapport taghha l-Awtorita' tikkonferma ir-reasons for refusal u zzid inter alia li:

- L-izvilupp propost mhux accettabbli peress li ma' jinkluzix l-izvilupp kollu ezistenti fuq is-sit in ezami;
- L-applikazzjoni in ezami saret minhabba wiehed mir-reasons for refusal li kienu nghataw fir-rifjut tal-permess PA 2002/02 li bhalissa hemm appell fuqu (PAB 195/03) u cioe li l-izvilupp illegali mhux indikat kollu fl-applikazzjoni originali. Jirrizulta li lanqas f' din l-applikazzjoni ma' gie muri l-izvilupp illegali kollu u ghalhekk fiz-zewg kazi tapplika is-Circular 2/96;
- L-appellant mas-sottomettiex pjanti li juru kif ser jitnaqqas il-paving u jizdied il-landscaping;
- Id-disinn proposed mhux qed juza elementi karatteristici ta' bini rurali u tradizzjonali u z-zieda fl-ewwel sular tkompli tgharraq is-sitwazzjoni;

Kopja Informali ta' Sentenza

- Mill-aspett ta' ppjanar hemm ukoll l-oggezzjoni tal-Awtorita' ghas-segwent:
- Il-pozizzjoni tal-pump room;
- Il-caves li jidher li huma kkonnettjati mad-dar;
- Il-boundary wall.

Fis-seduta tat-30 ta' Settembru, 2009 kien gie deciz li dan l-appell ghandu jinstema' mal-appell PAB 195/03 li kien diga qed jinstema quddiem it-Tribunal. Fil-kas tal-applikazzjoni in ezami din giet michuda mid-DCC ghal ragunijiet simili ghal dawk tal-ewwel applikazzjoni u partikolarment ghaliex l-irregolaritajiet ezistenti fuq is-sit ma' kienux tnehnew u t-talba ma' kienitx tinkludi l-irregolaritajiet kollha.

F'ittra li kien kiteb l-appellant fil-kors tas-smieh tal-appell PAB 195/03 fil-11 ta' Frar, 2004, l-appellant kien ammetta li, kif kien gie rilevat mill-Awtorita', dak l-izvilupp illegali li ma'kienx jidher fil-pjanti fil-fatt kien jezisti fuq is-sit u ghalhekk kellha ssir applikazzjoni tat-tip DNO biex dan jigi sanzjonat. Fis-seduta tal-15 ta' Gunju, 2005 l-appellant kien informa lit-Tribunal li kien pprezenta applikazzjoni gdida (PA 3611/06) peress li kien hemm numru ta' irregolaritajiet fl-izvilupp li ma' gewx koperti fl-applikazzjoni in ezami u li ma' kienux jistghu jigu ssanati permezz ta' DNO. Din l-applikazzjoni fil-fatt kienet giet rifjutat mid-DCC u ghalhekk kien sar appell li huwa dak in ezami.

Kif jirrizulta mill-premess, mhux kontestat mill-partijiet li fuq is-sit in exami jezistu irregolaritajiet li mhumiex koperti minn applikazzjoni ghas-sanzjonar tagghom. Tant u hekk li kwazi kull seduta li nzammat fuq l-appell originali kienet dedikata ghal diskussjoni dwar kif ser ssir it-talba ghas-sanzjonar tal-irregolaritajiet kollha. Dan it-Tribunal ihoss li dan l-appell kien imissu ilu li gie deciz speċjalment meta wiehed jikkunsidra li fl-ittra tieghu tal-11 ta' Frar, 2004, l-appellant qed jammetta li ghandu numru ta' irregolaritajiet li ma' kienux inkluzi fl-applikazzjoni originali.

F'dawn il-kazi jigifieri meta jkun jezistu irregolaritajiet fuq is-sit in kwistjoni, l-applikant, skond il-PA Circulars 2/96 (illum l-Artikolu 14(1) tal-LN 514/10), huwa obligat li jew inehhi l-istess qabel ma' japplika jew inkella jinkludi talba ghas-sanzjonar tagghom fl-applikazzjoni.

L-applikant naqas ghal snin shah milli jittratta b'mod konvincenti din il-problema dwar l-illegalitajiet fuq is-sit in ezami.

Jirrizulta in oltre li fis-seduta tat-12 ta' Lulju, 2011, l-Awtorita' infurmat lit-Tribunal li kienet saret applikazzjoni gdida fuq is-sit in ezami (PA 2999/10) li kienet tkopri l-izvilupp kollu.

Kopja Informali ta' Sentenza

Dan baqa' jintqal mill-Awtorita' wkoll fit-tliet seduti ta' wara. L-appellant qatt ma' ikkumenta fuq dan, il-partijiet qatt m'ghamlu sottomissjonijiet dwar l-applikazzjoni citata.

Kif jirrizulta mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, il-proposta in ezami tikser numru ta' policies tal-Pjan Strutturali kif ukoll tal-Artikolu 14(1) tal-LN 514/10, u ghalhekk dan l-appell ma jirrizultax fondat.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut mahrug mill-Awtorita' tal-applikazzjoni PA 3611/05, " To sanction additional works ", tat-18 ta' Gunju, 2009

Ikkunsidrat

L-aggravji tal-appellant li huma kollha fuq kwistjonijiet ta' ligi deciza mit-Tribunal huma s-segwenti:

1. Ghalkemm it-Tribunal qal li l-proposta tmur kontra numru ta' policies tal-pjan strutturali, ma identifkax dawn il-policies li ma jippermettiex tali zvilupp;
2. Id-decizjoni hi bbazata fuq applikazzjoni hazina tal- PA circular 2/96 li japplika biss ghal kazi li jikkoncernaw zvilupp gdid u mhux bhal kaz in ezami ghal sanzjoni ta' irregolaritajiet biss.

It-tieni aggravju

Hu car illi din l-applikazzjoni kienet tirrigwarda biss sanzjoni ta' xogholijiet addizzjonali. Apparti kull konsiderazzjoni ohra, harsa lejn id-decizjoni turi illi t-Tribunal fil-parti decisiva irrefera ghal artikolu 14(1) tal-Avviz Legal ital-514/2010 liema artikolu mhux applikabbli ghal kaz kemm ghax ma kienx in vigore meta saret l-applikazzjoni ta' sanar u essendo kwistjoni ta' procedura, il-procedura applikabbli hi dik in vigore meta saret l-applikazzjoni cioe l-PA circular 2/96.

Kopja Informali ta' Sentenza

Jekk pero kif jidher li ghamel it-Tribunal qed jekwipara l-artikolu 14(1) tal-Avviz Legali 514/2010 mal-PA circular 2/96 dan ipoggi l-kwistjoni f'dawl iehor. Il-Qorti zzid f'dan il-kuntest li hi marbuta mal-aggravju migjub quddiemha li f'dan il-kaz hu car u jghid biss li PA circular 2/96 mhix applikabbli ghax issemmi zvilupp gdid mentri dan mhux kaz ta' zvilupp gdid.

Il-Qorti tirreferi ghal dak li ntqal fuq l-istess aggravju rigward l-artikolu 14 tal-Avviz Legali 514/2010 fl-appell 20/2014 PA 5455/09 fl-istess ismijiet u billi dan l-artikolu hu replika tal-artikolu 3(1) tac-cirkolari PA 2/96, l-istess ragunament kwindi japplika mutatis mutandis u ghal din ir-raguni l-aggravju mhux misthoqq. L-artikolu 3 tac-cirkolari 2/96 ighid hekk:

3 REGULARISING UNAUTHORISED DEVELOPMENT

3.1 When existing development on a site is wholly or partly illegal (that is, it is not covered by a development permit), the DCC will not consider a development permit application relating to new development on that site, unless the illegal development is regularised.

3.2 The illegal development may either be regularised through a specific application solely for that purpose or through an application which includes it as well as new development. However, in the latter case, it must be made clear in the application what development is covered (both in the description on the application form and in the drawings and plans), in order that the Planning Authority is sure that the unauthorised development does form part of the application.

Dan l-artikolu hu kwazi identiku ghal-artikolu 14(1) u 14(2) tal-Avviz Legali 514/2010 billi f'dan il-kaz ex admissis jirrizultaw irregolaritajiet mhux inkluzi fit-talba hu gustifikat l-applikazzjoni tal-PA circular 2/96.

L-ewwel aggravju

Dan l-aggravju jolqot il-mertu u din il-Qorti ma tistax tidhol fih minhabba li ma intlaqax it-tieni aggravju. Hu minnu illi t-Tribunal ikkunsidra l-mertu pero fic-cirkostanzi la darba t-Tribunal ikkonstata illi l-applikazzjoni ma kinitx tolqot l-irregolaritajiet kollha u ghalhekk l-applikazzjoni kellha tigi michuda fuq bazi procedurali, messu waqaf hemm kif qed taghmel din il-Qorti. Jista' jkun illi l-appellant ghandu ragun li jilmenta mill-manjiera kif gie deciz il-mertu izda la

Kopja Informali ta' Sentenza

darba l-appell gie stronkat fuq procedura, l-aggravju fuq il-mertu ma jistax jigi kunsidrat min din il-Qorti.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Paul Scicluna, tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-ippjanar tat-13 ta' Marzu 2014. Spejjez ghall-appellant.

< Sentenza Finali >

-----TMIEM-----