



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tat-12 ta' Novembru, 2014

Appell Civili Numru. 27/2014

Silvio Camilleri

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Silvio Camilleri tad-19 ta' Mejju 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' April 2014 fl-applikazzjoni PA 5353/03;

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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-18 ta' Frar 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 5353/03 – Site at Triq Jean de la Vallette, Naxxar: Alterations to approved plans at basement level, variance to number of garages and stores. No changes to upper floor levels.

L-unika raguni ghar-rifjut kienet is-segwenti:

"1. The additional garages would have a deleterious impact on the character and amenity of this schemed villa area by virtue of additional traffic generation in an area whose character is one of low intensity development. It therefore constitutes bad neighbour development and so conflicts with Structure Plan policy BEN 1 which seeks to protect the amenity of existing uses."

B. In-nota tal-Perit Dott. Edwin Mintoff ghall-Appellant, ipprezentata fis-16 ta' Marzu 2011, senjatament il-punti segwenti:

"[...] this application was already approved in principle by the previous DCC board in an earlier sitting, the only condition being that the approval would be subject to a 'Fire and Ventilation Report'.

The newly constituted board found no objection to the report, but reiterated that following due consultation the decision taken by the previous board had no bearing whatsoever.

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Moreover the proposal meets structure plan policies in full and indeed the previous permit, designating certain areas o 'stores', particularly since these do not have to be domestic in nature, is completely incompatible with the designation of villa developments.

It is completely inconceivable as to how the commission could allow storage developments in villa areas rather than domestic garages, particularly where there is a strong demand for such an activity within this area."

C. In-nota responsiva ta' Mario Scicluna ghall-Awtorita', ipprezentata fl-20 ta' Gunju 2011, inter alia l-punti segwenti:

"5.1.3 The initial assessment had recommended a negative recommendation and a refusal notice was issued on 20.02.04 for reasons relating to Structure Plan policy BEN 1 and issues re ramps and size of forecourt at basement levels.

5.1.4 A request for reconsideration was submitted and the DPARR had also forwarded a negative recommendation for same reasons. When case was discussed in the first DCC meeting the Board had stated that although in principle there seemed to be no objection, the Board still requested that applicant submits fresh plans to address reasons for refusal. Eventually, plans Reds 51 were submitted and which were also endorsed by the engineer who catered for the necessary ventilation report. NTC were compiled by the Directorate and in view of the previous DCC minute in which the Board expressed a possible overturning, revised conditions were prepared for the Board's consideration.

5.1.5 However, when this case was again discussed by the newly appointed EPC Board on 19.01.11, the Board declared that:

'EPC Meeting held on 20th January, 2011

Dismissed 3-2

Justification for refusal: The additional garages would have a deleterious impact on the character and amenity of this schemed villa area by virtue of additional traffic generation in an area whose character is one of low density development, thus constituting bad neighbour development and conflicting with Structure Plan Policy BEN1.'

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5.1.6 The above is a summary which led to the refusal at reconsideration stage and which confirmed the first refusal notice which also refused the additional garages due to conflict with Structure Plan policy BEN 1.

5.1.7 As regards to the technical merits themselves, the main objection to the proposed additional garages in this villa area is that the additional garages (15 garages approved vis-à-vis the 39 garages proposed) of 24 more garages would inevitably create much additional traffic in such a low density area (area is designated as a villa area). The Tribunal is requested to assess approved plans Reds 1F and 1E of last permit PA 4043/00 vis-à-vis latest plans Reds 51A and 51B in this file under appeal.

5.1.8 In this regard, the Authority agrees fully with the EPC's decision in that a total of 39 garages located on one site in a villa area would inevitably create bad neighbourliness in such a low density area which has a primary role of providing a particular character to its residents. Furthermore, the Authority disagrees that the impact of additional garages is the same as, or less than, the previously approved domestic stores since a domestic store would not create as much traffic and impact as that of a garage. Additionally, the already approved garages, in many instances, consisted of large garages which would cater for more than one car and which implied that the number of owners would not be so much as that of the new layout which has more one-car garages and hence, now, there would be more individuals using the basement garages. This would also justify the Board's concern that so much garages would entail much more traffic impact and nuisance to the neighbourhood."

D. Il-verbal tas-Seduta numru 40, mizmuma fl-10 ta' Mejju 2012, senjatament il-punti segwenti:

"Dr DeGaetano informa lit-Tribunal li l-izvilupp propost, skond l-enforcement officer Robert Attard diga tlesta u ghalhekk l-applikazzjoni ghandha tkun 'to sanction'."

E. Il-verbal tas-Seduta numru 69, mizmuma fit-18 t' Ottubru 2012, precizament il-punti segwenti:

"Meta ssejjah l-appell deher l-Avukat Dr. Massimo Vella ghall-appellant li ddikjara li hemm possibilita' li l-appellant jipprezenta applikazzjoni sanatorja."

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Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda proposta sabiex f' font li jinsab fiz-zona edifikabbli tan-Naxxar, isiru xi tibdiliet fil-livell sotterran, cjoé' li jizdied in-numru ta' garaxxijiet u mhazen minn kif originarjament kienu gew approvati.

Originarjament kienu gew approvati erba w ghoxrin garaxx. Illum qed jintalbu hmistax-il garaxx ohra - b' kollox, disa w tletin garaxx, cjoé' zieda ta' sittin fil-mijja (60%).

Ir-raguni ghar-rifjut hi bbazata fuq l-argument ta' intensifikazzjoni fl-izvilupp; cjoé' li biz-zieda ta' aktar garaxxijiet ser jinholoq traffiku veicolari addizzjonali bil-konsegwenza li l-amenities prezenti taz-zona ser jigu affettwati b' mod hazin. Il-proposta hi ghalhekk in kontravvenzjoni tal-policy BEN 1 tal-Pjan ta' Struttura.

L-aggravji tal-Appellant jistrieu fuq il-fatt li in principju, l-applikazzjoni kienet gja' giet approvata mill-Kummissjoni precedenti, bil-premessa li jigi pprezentat fire and ventilation report. Madankollu, il-membri tal-Kummissjoni nbidlu u dawk godda hadu posizzjoni differenti, partikolarment f' dak li jirrigwarda l-imhazen domestici (jew meno).

L-Awtorita' zammet ferm l-oggezzjoni taghha u rilevat li kuntrarju ghal dak dikjarat mill-Appellant, il-Kummissjoni kienet originarjament sabet oggezzjoni bid-disinn tar-rampi u l-forecourts, tant li talbet lill-istess perit sabiex jirrivedihom. Oltre minn dan, l-Awtorita' tirrileva li apparti l-fatt li illum qed titntalab zieda ta' sittin fil-mijja fin-numru ta' garaxxijiet, irird ukoll jittiehed kont tal-fatt li hafna minn dawn jakkomodaw zewg karozzi, u ghalhekk iz-zieda fin-numru ta' veikoli fiz-zona ser ikun hafna izjed milli jidher mad-daqqa t' ghajn.

Fl-ahharnett, jigi osservat ukoll li skond ma ddikjarat l-Awtorita' fis-seduta tal-10 ta' Mejju 2012, l-izvilupp propost gja' tlesta u allura l-applikazzjoni hi wahda inkorretta. Kien imissha saret minflok, applikazzjoni sanatorja. Dan l-istat ta' fatt ma giex ikkontestat mill-Appellant, tant li ex admissis, fis-seduta segwenti tat-18 t' Ottubru 2012, iddikjara li kien qed jikkunsidra jintavola applikazzjoni sanatorja.

F' dawn ic-cirkostanzi, kien jinhtieg li ssir applikazzjoni gdida, konformi mar-rekwiziti tal-Artikolu 14 tal-Avviz Legali 514 tal-2010. Il-partijiet rilevanti ta' dan l-Artikolu li jappartjenu ghal-kaz in ezami, huma s-segwenti:

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“(1). Minghajr pregudizzju għall-artikolu 70 u għas-Sitt Skeda li tinsab mal-Att, meta zvilupp ezistenti fuq is-sit ikun għal kollox jew biss f’parti illegali, l-Awtorita’ għandha tirrifjuta applikazzjoni għall-izvilupp li jkollha x’taqsam ma’ zvilupp gdid fuq dak is-sit, kemm-il darba li l-izvilupp illegali jkun inkluz għal sanzjonar u l-izvilupp illegali jkun konformi mal-policies attwali.

(3). Meta sanzjonar ta’ zvilupp illegali jiġi mitlub f’ applikazzjoni għal zvilupp, id-deskrizzjoni tal-proposta u ddisinni għandhom jindikaw b’mod car l-izvilupp li għandu jiġi sanzjonat sabiex jiġi zgurat li l-izvilupp illegali jifforma parti mill-applikazzjoni ta’ zvilupp.”

Għalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq magħmula, 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 għall-PA 5353/03 kif mahrug mill-Kummissjoni għall-Kontroll tal-Ambjent u l-ippjanar, fit-18 ta’ Frar 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Id-decizjoni hi affetta minn zball insanabbli billi t-Tribunal jirreferi fil-parti dispozittiva tad-decizjoni għat-18 ta’ Frar 2011 bhala d-data tad-decizjoni tal-Awtorita li kienet qed tigi konfermata mit-Tribunal mentri d-data tad-decizjoni tal-Awtorita kienet 20 ta’ Jannar 2011;
2. It-Tribunal naqas li jitratta aggravju fis-sens li darba li d-DCC kienet hadet decizjoni l-EPL li ddecieditha ma setghetx tbiddel id-decizjoni. In oltre elenkat biss l-argumenti tal-partijiet mhux kkunsidrathom.

L-ewwel aggravju

L-Awtorita ssostni li dan hu zball tal-pinna li jista’ jinbidel. Sfortunatament dan l-izball kien u għadu jidher fl-atti quddiem din il-Qorti. It-Tribunal ripetutament, fil-korp u fil-parti decisiva

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tad-decizjoni jirreferi ghad-decizjoni mertu ta' din l-applikazzjoni bhala 18 ta' Frar 2011 mentri jidher car illi ma nghatat ebda decizjoni f'dik id-data mertu ghal din l-applikazzjoni.

Fl-appell **George Attard vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar** deciz fis-26 ta' Gunju 2012 intqal hekk:

Illi dwar l-ewwel aggravju ma hemmx dubju li fid-decide tal-istess decizjoni tat-Tribunal hemm zball meta jinghad li qed jigi kkonfermat ir-rifjut ghall-PA 2778/06 mahrug mill-Kummissjoni ghall-Kontroll ta' L-izvilupp fis-26 ta' Gunju 2008 meta fil-verita' tali rifjut kien datat 26 ta' Mejju 2008. Dan ifisser li l-istess Tribunal fil-verita' meta kkonferma rifjut ta' permess tal-Kummissjoni f'data ndikata kien qed jizbalja ghaliex fid-data ndikata ma' kien hemm ebda rifjut tal-applikazzjoni u allura t-Tribunal ma setax jikkonferma xi haga li ma kienitx tezisti. Dan huwa naturalment zball, izda dan l-izball ma gie bl-ebda mod irrangat mill-istess Tribunal, tant li l-ebda wahda mill-partijiet ma agixxa lil l-istess Tribunal sabiex jirringa l-istess, u din il-Qorti issa lanqas tista' hija tirringa jew tibdel dak li gie effettivament imnizzel fid-decizjoni tat-Tribunal u la darba dan huwa fid-decide tal-istess decizjoni dan irendi l-istess decizjoni tat-Tribunal nulla u bla effett ghall-finijiet u effetti kollha tal-Ligi. Veru li dan huwa zball sfortunat kif sostniet l-Awtorita' appellata, izda minn naha taghha hija ma ghamlet xejn sabiex tirringa dak l-izball (jekk tista' taghmel) u d-data tar-rifjut tal-permess li minnu sar appell hija bla dubju data importanti u vitali u fuq kollox il-mertu tal-appell innifsu. B'hekk dan l-aggravju qed jigi milqugh.

Din il-Qorti taqbel ma' dan l-insenjament ghax ma tistax logikament tichad jew tilqa' appell minn decizjoni tat-Tribunal ibbazata fuq decizjoni li d-data taghha hi zgur mhix dik relattiva ghal kaz. Dan johloq incertezza, konfuzjoni u nuqqas ta' precizjoni fis-sustanza ta' dak li effettivament qed jigi deciz.

Decide

Ghalhekk il-Qorti qed tilqa' l-ewwel aggravju tal-appellant, tiddikjara d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' April 2014 bhala nulla, u tirrinviija l-atti lura quddiem it-Tribunal biex jerga' jiddeciedi l-appell mill-gdid. Spejjez fic-cirkostanzi jibqghu bla taxxa.

< Sentenza Finali >

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