



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Dicembru, 2014

Appell Civili Numru. 6/2014

Joseph Borg

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joseph Borg tas-17 ta' Frar 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014 li cahad applikazzjoni PA 3915/07 'sanctioning of perimeter wall and shifting of garage permitted by PA 208/91';

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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 tat-13 ta' Gunju, 2007, – Full Development Permission – PA/03915/07 fejn l-appellant, f' sit f' il-Qaghadi, l/o Naxxar, talab:

“Sanctioning of perimeter wall alterations and shifting of garage permitted by PA 208/91”.

Permezz ta' rifjut taz-19 ta' Lulju, 2011 l-Awtorita' cahdet it-talba ghall-hrug ta' permess relattiv ghar-ragunijiet segwenti:

“1. The site is located within the Scheduled Buffer Zone for a class A Late Neolithic temple and a Class B Paleochristian Hypogeum, therefore the proposed development infringes the Structure Plan Policy ARC 2 which states that for such sites, no development is to be allowed which would adversely affect the natural setting of these monuments or sites and a minimum buffer zone of at least 100m around the periphery of the site will be established in which no development will be allowed.

2. The proposed sanctioning runs counter to Policy NWCO4 of the North West Malta Local Plan which specifies that in the case of Class A archaeological sites, no development will be permitted which would adversely affect the monument or site or its natural setting and that a buffer zone of at least 100m around the periphery of the site will be established in which no such development will be allowed.

3. This also counters Policies AHF 1, AHF 5 and RCO 4 of the Structure Plan for the Maltese Islands (December 1990), since only the development of structures

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essential to agriculture outside the development zone are acceptable and prohibits developments which will affect the scenic value of an area.

4. The proposed boundary walls also runs counter to the L.N. 160 of 1997 (Rubble walls and rural structures) since the boundary walls are not constructed in or faced with whole rubble stone (sejjieh), making use of traditional methods.”

Ghan-nom tal-appellant, l-Perit Spiteri ressaq is-segwent i aggravji:

“Further to refusal of application in caption dated 19th July 2011 and published in the press on 30th July 2011, please note that I have been instructed by my client to file an appeal against said refusal - this for the following reasons:

Area is covered by application PA 208/91 which had already been approved. A copy of approved plans covered by said permit has been submitted to MEPA PA 208/91 covers a boundary wall of more than 10 courses and a garage measuring 30.6m² and roofed over 10 courses. Note that when enforcement action was taken on 13th October 2008 the only room not removed was the one being applied for sanctioning. Entry into the site was blocked using concrete blocks and the same situation persists to today. Consequently, the site is not being frequented and lies derelict.

It is important to note that action was actually primarily taken because of the use of the site. In fact, minutes 22 to 27 outlined in the case officer's report dated 30th August 2010 clearly show that this is the case. Furthermore, it is important to stress that the approved boundary wall (some 10 courses in height) actually took up a much larger area than that actually surrounded. The site is located within a quarry area and therefore part of the site covered by P A 208/91 was already partially excavated. The boundary wall surrounded the lower part of the site and therefore the surrounding wall proved much lower than otherwise approved by PA 208/91. Consequently, what is being sanctioned vis-a-vis construction of a wall and to which the proposed garage abuts actually acts as a buttressing wall since the upper area of the site is some 3m higher than the area where direct action was actually taken.

3. What was actually approved in P A 208/91 was the construction of a garage. Consequently, the sanctioning application covered in caption calls for the shifting of existing approved structure. This is confirmed by the very simple fact that direct action on the said garage was not taken whilst a number of other structures were actually removed. If MEP A was so sure that the property was not covered by a

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permit, it would simply have removed it when taking direct action in October 2008. Since such an action was not taken, then this clearly shows that development is actually permitted.

4. A separate issue raised by the case officer is the proximity of the site to historical important buildings. This is recognised, but it is important to note that other permits have been issued in the strict environs of the site and which were located much closer than the site in caption. Kindly find attached relevant site plan indicating permits. The following developments were actually approved in the vicinity of the site:

PA No.	Description	Approved on
PA 5461/03	Reservoir pump room, alterations to wall to enable access as previously existing	23/08/2005
PA 0643/05	Additions and alterations to existing dwelling	04/01/2006
PA 2332/05	Additions and alterations	25/03/2009

Furthermore, the issue of these adjacent permits indicate that the claims raised that the proposed sanctioning could not be approved since it falls within the Scheduled Buffer Zone for a Class A Late Neolithic temple and a Class B

Paleochristian Hypogeum, consequently contravening Structure Plan-Policy Arc 2 does not hold water. Similarly it can be stated that the arguments raised concerning the North West Malta Local Plan Policy NWCO 4 fail to hold water. These adjacent developments were actually permitted to third parties.

5. Reference is here made to LN 160 of 1997. Kindly note that, referring to GDO 1399100 and Enforcement Notice 0046/00 the same method of construction vis-a-vis the rubble wall was approved in the afore-mentioned application. In fact, ECF 0046/00 was removed since in the MEP A inspector's view, the wall erected constituted a rubble wall in accordance to LN 160 of 1997. Kindly find attached photos of this wall. Note that what is sauce for the goose should be sauce for the gander and therefore the case officer should interpret that the wall erected falls within LN 160 of 1997.

6. Given that the site is already committed through permit number PA 208191, Policy NWC04 of the NWLP as well as Policies AHF1, AHF5, RC04 and ARC2 of the Structure Plan for the Maltese Islands should not apply, particularly since (a) other applications in the vicinity of the application in caption have been approved and (b) the site has already been committed by an earlier permit and what is being applied for are minor alterations within the already approved structure as well as the relocation of the approved garage as outlined in permit PA 208/91.”

L-Awtorita' kkumentat inter alia illi:

“No New Arguments in the Appeal Request

1. The Malta Environment and Planning Authority hereby presents a copy of the latest DPA Report. Since the arguments raised in the appeal submission have already been submitted by the appellant during the processing of this application and the Environment and Planning Commission has already taken cognisance of such, the Malta Environment and Planning Authority has no further comments to add at this stage of this appeal in relation to the merits of this appeal other than those already mentioned in the DPA report.

2. The Authority thus states that the attached detailed technical report addresses the arguments as submitted by the appellant in this request for appeal.

3. However, with regards to the mentioned approved permits PA 5461/03, PA 643/05 and PA 2332/05, the Environment and Planning Review Tribunal may wish to note that:

- PA 5461/03 Granted by DCC on 23/08/2005 – Pump room and reservoir acceptable and justified in view of applicant's holdings
- PA 643/05 Granted by DCC on 04/01/2006 – Alterations of a pre-67 dwelling (within the existing enclosed footprint) and works on rubble walls
- PA 2332/05 Granted by DCC on 25/03/2009 – Alterations and additions. Approved by board in view of latest plans limited works to area as already approved on site

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4. Furthermore, on same site, it has transpired that site is served with ECF 1423/96 which had led to Direct Action, but is still not closed due to pending Direct Action Bills. Hence, no further assessment can be carried out until ECF 1423/96 is full closed and rendered inoperative.

Site located within a Scheduled Area

5. Moreover, it is to be noted that the site under this appeal is located within the Buffer Zone of Neolithic Temples and Paleochristian Hypogea as per GN 829/98 with a Class A Degree of Protection.

6. Article 70 (1) and Schedule 6 (2) of Act X of 2010 (Environment and Development Planning Act) unequivocally state that no development may be regularised in scheduled property."

Conclusions and Reservations

7. Consequently, the appeal as presented should be dismissed as per reasons illustrated in the refusal letter dated 19 July 2011.

8. Without prejudice to the above, the Malta Environment and Planning Authority reserves its right to reply further on the merits of the appeal, if it would become necessary."

Fid-DPR report li kien anness mar-rapport tal-Awtorita' il-case officer jghid, inter alia, s-segwenti:

4.6 CONSULTATIONS

Department of Agriculture: Applicant is not registered as a farmer. The last registration of the same site was on a third party and this land was 'quitted to government' on 1/11/93, (refer to Doc 12).

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Parks, Afforestation and Rural Conservation Department: This Department cannot recommend the sanctioning of this development. The boundary walls are 8 courses high and the agricultural stores are extensive considering the site area, (refer to Doc 17/18).

Enforcement Unit: Site was inspected several times, and no one was ever found on site. However, from the part that is marked as a field on submitted block plan, and which is at a higher level, it could be stated that the block plan show all the structures on site. As regards to the use of the site, it was noted that on some inspections, heavy machinery was present on site, (refer to Minute 22).

Site inspected on 25/05/08 and met applicant Mr. Joseph Borg. At time of inspection it resulted that on lower part of site, surrounded by wall, there was a number of small machinery and parts, a car, a small excavator and a dumper. Photos taken are being attached, (refer to Minutes 27-27G).

From a site inspection carried out, it resulted that site has been cleared and not being used, because direct action was carried out on 13/10/08 and concrete blocks were placed in front of gate to block access. Photos of site attached at Documents 33-33A, (refer to Minutes 33-33A).

The only structure that was not removed is indicated as an agricultural store on plan 1F. The pesticide & chemical store, pipes & pump store and the corrugated cover for hail bails have been removed, (refer to Minute 36).

The site was inspected on 11/06/10 by the enforcement officer and no one was found on site and in this circumstances photos were taken from above wall dividing the site. Photos are attached, (refer to Minute 63).

Cultural Heritage Advisory Committee (CHAC): The site is located within the Scheduled Buffer Zone for a class A Late Neolithic temple and a Class B Paleochristian Hypogeum. The scheduling affecting the site (GN829/98) is in line with structure plan policy ARC 2. In the case of the Class A temple remains, policy ARC 2 clearly states that for such sites, no development is to be allowed which would adversely affect the natural setting of these monuments or sites. A minimum buffer zone of at least 100m around the periphery of the site will be established in which no development will be allowed. The site for which the sanctioning is being requested is only located at a distance of 36 meters from the scheduled temple remains. There is thus a clear infringement of Structure Plan policy ARC 2 as well as Structure Plan policy ARC 3 which clearly specifies that 'applications for planning permission for development affecting ancient monuments and important archaeological areas and sites, including areas and sites having such potential, will normally be refused if there is an overriding case for preservation'. Moreover Proposal also runs counter to policy NWCO4 of the North West Malta Local Plan

which specifies that in the case of Class A archaeological sites, no development will be permitted which would adversely affect the monument or site or its natural setting and that a buffer zone of at least 100 m around the periphery of the site will be established in which no such development will be allowed.

Finally it should be noted that the site itself consists of an ancient quarry (views D and G submitted by architect at red 1B refers) which merits protection. In this regard, the proposed additions to the existing structures and boundary walls are considered to constitute unacceptable development within the scheduled buffer zone of a Class A archaeological site, particularly when one considers that the site is located outside of the development zone. It is thus being recommended that the proposed sanctioning be refused and the site be reverted back to its original state, (refer to Doc 23).

DISCUSSION

Sanctioning of perimeter wall alterations and shifting of garage as permitted by PA208/91

PA3915/07 proposes the sanctioning of the shifting of the 30.6m² garage approved at PA208/91/1A. The location of the garage was shifted to the middle of the site in question, adjacent to a constructed wall. The garage has a height of 5m, and is constructed in weathered stone and the external apertures are built of wood, (Red 58A). The gate approved at PA208/91 is closed and is relocated in another location. The new gate has a width of 5.6m and a height of 2.5m and it is to be covered with wood panels, (Red 58A). Moreover, another wall is proposed to be opened to provide access into the site in question, (Red 58B). The walls surrounding the site have a height of approximately 2.5m, (Red 58A).

The site is located within the Scheduled Buffer Zone for a class A Late Neolithic temple and a Class B Paleochristian Hypogeum, therefore according to the Cultural Heritage Advisory Committee (CHAC) the scheduling affecting the site (GN829/98) is in line with structure plan policy ARC 2. In the case of the Class A temple remains, policy ARC 2 clearly states that for such sites, no development is to be allowed which would adversely affect the natural setting of these monuments or sites. A minimum buffer zone of at least 100m around the periphery of the site will be established in which no development will be allowed. The site for which the sanctioning is being requested is only located at a distance of 36 meters from the scheduled temple remains. There is thus a clear infringement of Structure Plan policy ARC 2 as well as Structure Plan policy ARC 3 which clearly specifies that 'applications for planning permission for development affecting ancient monuments

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and important archaeological areas and sites, including areas and sites having such potential, will normally be refused if there is an overriding case for preservation'.

Moreover proposal also runs counter to Policy NWCO4 of the North West Malta Local Plan which specifies that in the case of Class A archaeological sites, no development will be permitted which would adversely affect the monument or site or its natural setting and that a buffer zone of at least 100m around the periphery of the site will be established in which no such development will be allowed. In this regard, the proposed additions to the existing structures and boundary walls are considered to constitute unacceptable development within the scheduled buffer zone of a Class A archaeological site, particularly when one considers that site is located outside of the development zone. It is thus being recommended that the proposed sanctioning be refused and site be reverted back to its original state, (refer to Doc 23).

Moreover, this also counters Policies AHF 1, AHF 5 and RCO 4 of the Structure Plan for the Maltese Islands (December 1990), since only the development of structures essential to agriculture outside the development zone are acceptable and prohibits developments which will affect the scenic value of an area.

Furthermore, the proposed boundary walls also runs counter to the L.N. 160 of 1997 (Rubble walls and rural structures) since the boundary walls are not constructed in or faced with whole rubble stone (sejjieh), making use of traditional methods.

In view of the above, the structures/boundary walls are to be removed and the site is to be retained in its original state.”

L-affidavit anness mas-sottomissjoni tad-Third Part Objector jghid is-segwenti:

“1. Jiena noqghod f'Villa tal-Qadi, Triq l-Imdawra, Burmarrad.

2. Jiena peress li noqghod vicin is-sit li ghalih qed jintalab permess ta' vilupp

bl-applikazzjoni numru PA 3915/07 naf personalment x'qed jigri kemm fis-sit li ghalih qed jintalab li jinhareg il-permess kif ukoll fl-inhawi.

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3. Wara li fl-1996 inhareg enforcement notice numru 1423/96 jiena bqajt insegwi dak li qed jigri fis-sit jew fl-inhawi tieghu. Minkejja li gie bbazat id-dhul ghas-sit in kwistjoni dan is-sit baqa' jintuza biex minnu jew fih issir attivita' kummercjali. Gieli dahlu xi affarijiet fih biex jistorjawhom permezz ta' crane. Fuq barra qed isiru tiswijiet ta' vetturi kbar, hafna drabi meta jaghmlu hekk ihammgu fuq barra biz-zejt li jhallu, u jidhirli li fis-sit izommu xi ghodda li jintuzaw metam is-sidien tas-sit jaghmlu tiswijiet fuq ingenji jew vetturi quddiem is-sit. Kopji tar-ritratti li juru dawn il-vetturi jew ingenji huma annessi bhala sett ta' ritratti li hu mkbmarkat bl-ittra "RG1". Is-sitm jintuza' wkoll bhala bazi ghall-operat li s-sidien tas-sit jaghmlu fuq barra. Is-sidien jimpurtaw ingenji u vetturi kbar minn barra minn malta u meta jgibuhom dawn il-vetturi jkun jehtigilhom hafna xoghol ta' tiswija biex ikunu jistghu jintuzaw. Wara li s-sidien isewwu dawn il-vetturi jew jikruhom jew ibighuhom, u hafna drabi ihalluhom barra is-sit ghall-bejgh.

4. Il-klijenti tas-sidien tas-sit jigu hdejn is-sit biex jiltaqghu mas-sidien jew biex jaraw il-vetturi jew ingneji barra quddiem is-sit jew ghal xi xoghol iehor. Fil-fatt kif jidher mir-ritratti hemm in-numru tat-telefon tas-sidien fuq il-hajt. Ghalhekk ghaddejja attivita' kummercjali fis-sit.

5. Ricentement ghall-habta ta' Jannar 2012, innutajt ukoll illi s-sidien tas-sit bnew karma u saqqfuha bil-pjanci taz-zingu. Dan jidher fir-ritratti immarkati bhala Dok RG2. ritratt f'dan is-sett juri ukoll kmm ihallu zejt jiskula fl-art bi hsara ghall-ambjent.

6. Qed nesebixxi ukoll ritratti li juru dak li kien isisr qabel ma saret direct action mill-MEPA, biex tipprova twaaqaf l-illegalita' fis-sit. Dan is-sett ta' ritratti huwa mmarkat bhala Dok RG3."

Fit-tieni nota tieghu, l-Avv. Dr Robert Tufigno ghan-nom tat-Third party Objector, Dr Bradley Gatt, jghid is-segwenti:

"Qed nikteb ghan-nom ta' Dr. Bradley Gatt, oggezzjonant ghall-applikazzjoni fuq imsemmija.

Ghan-nom tal-lkijent tieghi qed naqbel mar-risposta ppresentata mill-Awtorita' ghall-appell tal-appellant.

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A skans ta' ripetizzjoni ssir referenza ghall-korrispondenza li hemm fl-inkartament tal-applikazzjoni il-klijent tiegħi kien gja pprezenta quddiem il-Kummissjoni waqt li din kienet qed tikkunsidra l-applikazzjoni in kwistjoni.

Fil-qosor jerga' jinghad:

1. Is-sit huwa barra z-zona tal-izvilupp u skedat. Il-proposta tal-appellant hija inaccettabbli ghax thassar jew taffetwa hazing hafna is-sit. L-izvilupp propost mhux agrikolu u lanqas ma hu kompatibbli mas-sit u l-inhawi.
2. Is-sit huwa f'zona ta' konservazzjoni rurali u ta' importanza arkejologika. B'ebda mod ma jista' l-izvilupp jigi approvat ghax imur kontra diversi policies applikabbli ghall-kaz iccitat mill-Awtorita' fir-risposta taghha.
3. Is-sit hu milqut minn Avviz biex tieqaf u ta' Twettiq ECF 1423/96 li minnu kien sar appell li gie rifjutat (PAB 704/96KE)
4. Is-sit ghadu sa luum jigi uzat ghal skopijiet li mhux permessi u minghajr ebda permess ta' zvilupp. Dan jista' jigi waqt is-smiegh. Ghalhekk huma applikabbli bic-cirkolari PA 2/96 u PA 2/98. L-applikazzjoni se quo mhux qed tittenta tissana tali uzu, li del resto hu inkompatibbli mal-lokalita'."

Fin-nota tal-Avv. Dr. Michael Sciriha ghan-nom tal-appellant, huwa jghid is-segwenti:

"1. Il-Fatti

Illi l-proposta ta' sanzjonar hija ta' necessita' ghall-attivita' tal-esponent u ghandha tigi serjament konsiderata u accettata;

Illi l-area in kwestjoni, propjeta tal-appellant, hija dig a ' koperta' u kommessa bil-permess bin-numru PA 208/91 a bazi ta' liema l-appellant seta' jibni hajt madwar l-istess area, ta' ghaxar filati, u garage ta' 30.6 metru kwadru liema inbnew £1-1991 u liema l-appellant kien juza' semplicement biex jipparkja l-vetturi u l-makkinarji tax-xoghol tieghu;

Illi a kawza tal-Enforcement Order tal-2007, l-appellant m' ghadx ghandu access ghall-yard in kwestjoni, b'konsegwenza li sahansitra kellu jaghlaq il-kumpanija tieghu u ilu minn dak iz-zmien ma jopera mill-imsemmija yard;

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Illi dak li l-appellant qed jitlob minn dana t-Tribunal huwa sempliciment ic-caqliq tal-istruttura ghal post iehor fil-Yard, hekk kif diga' approvata bil-permess PA 208/91 u xejn iktar;

Illi l-Awtorita tul il-proceduri quddiem dana t-Tribunal qatt ma tenniet u bl-ebda mod m' allegat li ghandha xi dubju dwar il-validita 0 meno tal-fuq imsemmi permess;

Illi in effetti meta hareg l-Enforcement Order kienu biss dawk l-istrutturi li waqghu 'il barra mill-parametri tal-permess li twaqqghu u mhux dik li kienet diga' koperta bil-permess fuq imsemmi;

Dwar l-Istructure Plan Policy ARC 2 u l-Policy NWC04 of the North West Malta Local Plan

Illi fid-decizjoni taghha l-Awtorita tenniet hekk:

"The site is located within the Scheduled Buffer Zone for a class A Late Neolithic Temple and a Class B Paleochristian Hypogeum, therefore the proposed development infringes the Structure Plan Policy ARC 2 which states that for such sites, no development is to be allowed which would adversely affect the natural setting of these monuments or sites and a minimum buffer zone of at least 100m around the periphery of the site will be established in which no development will be allowed"

"The proposed sanctioning runs counter to Policy NWC04 of the North West Malta Local Plan which specifies that in the case of Class A archaeological sites, no development will be permitted which would adversely affect the monument or site or its natural setting and that a buffer zone of at least 100m around the periphery of the site will be established in which no such development will be allowed. "

Illi kif diga' gie sostenut qabel, is-sanzjonar li qed jitlob l-appellant mhix ghal zvilupp gdid, izda ghal caqliq ta' struttura diga' approvata u kommissa b'permess u ghalhekk dan l-argument ma jregix.

Illi anke jekk ghas-sahha tal-argument, il-permess originali ma kellux jinghata, sezzjoni 14.5.6 tal-Approved Plan tan-North West Malta Local Plan ittenn li

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"existing buildings within the buffer zone should be relocated where possible or landscape screening provided in order to enhance the setting of the site or monument"

Ghalhekk, jekk it-Tribunal ihoss li l-applikazzjoni ghal sanzjonar rn' ghandhiex tigi akkolta u rnill-qugha u rna kellix tinghata fl-ewwel lok, allura l-appellant ghandu jigi relokati ghall-banda ohra.

3. Trattament Ugwali u Nuqqas ta' Diskriminazzjoni

Illi minghajr pregudizzju ghas-suespost, l-appellant jixtieq igib a konjizzjoni ta' dan it-Tribunal il-pernessi bin-nurnri 5461/03, 0643/05 u 2332/05 f'liema applikazzjonijiet fl-istess zona gew ikkunsidrati u akkolti rnill-Awtorita '. L-esponenti jinvoka d-dritt ta' trattament ugwali u n-nuqqas ta' diskriminazzjoni u dan anke in vista ta' gurisprudenza u sentenzi rnoghtija rnill-Qorti tal-Appell; senjatarment fl-ismijiet Joseph Muscat v l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar deciza fit-18 ta' Mejju 2005, fejn il-Qorti tenniet illi:

"Fil-fatt gie reienui gudizzjarjament illi l-applikazzjonijiet simili jirrikjedu irattanien identiku. Id-decizjonijiet f'dan ir-rigtoard, u i-konsiderazzjonijiet li jwasslu ghal dawn id-decizjonijiet necesariamenti jinhtieg li ikunu konsistenti. L-inkonsistenza ghandha bhala konsegwenza, ii-kontestazzjoni gustifikata, id-diskriminazzjoni, l-inegwaljanza, u mill-aspett soggetti tal-applikant l-ingustizzja. "

L-istess gie konfernat fid-decizjoni tal-Bord ta' l-Appell fl-ismijiet Salvo Mallia v Kummissjoni ghall-Kontroll ta' l-Izvilupp (PAB 221/97, PA 4213/96):

"Ir-regola ta' ceribus paribus maghdud mal-commitment massicc li hemm favur l-applikazzjoni odjerna ma thalli ebda triq lill-Bord hlief li japplika f'dan l-appell dak li gie applikat mili-Kummissjoni stess fid-dioerei binjiet",

Kif ukoll fid-decizjoni fl-ismijiet Dione Bartolo kontra l-Kummissjoni ghall-Kontroll ta' l-Izvilupp (PAB 633/98, PA 0131/98):

"Dak li thalla isir fil-kaz ta' wiehed ghandu jithalla jsir fil-kaz ta' kulhadd",

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Illi ghalhekk dak li thallas li jsir fil-kaz ta' wiehed ghandu jsir minn applicant iehor:

Tant ghandu x'jissottometti l-esponent f'dan l-istadju.”

Permezz tat-Tieni Statement taghha l-Awtorita' kkummentat inter alia illi:

“1.0 COMMENTS ON APPELLANT’S ARGUMENTS

1.1 Following the submission of the initial report by the Authority; the appellant submitted additional comments in letter received on 1st October 2012 (Doc 96) which included the presentation of three affidavits.

1.2 The Authority has the following comments to make:

1.2.1 Events/illegalities that took place on site

In comments submitted, the appellant is stating that the property is already covered by permit PA 208/91 to construct 10 courses boundary wall and a 30.6m² garage. Notwithstanding this the development constructed on site was not in accordance to approved plans and Enforcement Notice ECF 1423/96 was issued. When a Direct Action was taken on site in October 2008 (removal of heavy plant machinery and other scrap metal from site + demolition of two rooms, removal of steel corrugated tent and blocking entrances to site with concrete blocks) the structure proposed for sanctioning was retained. Action on site was primarily carried out due to the use of the site.

Furthermore, the approved boundary wall (10 courses) actually took up a much larger area than that actually surrounded. The site is located within a quarry area and the boundary wall surrounded the lower part of the site and is therefore much lower than that approved in PA 208/91. Consequently, what is being sanctioned vis-à-vis construction of a wall and to which the proposed garage abuts actually acts as a buttressing wall since the upper area of the site is some 3m higher than the area where Direct Action was actually taken.

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The Authority agrees that a garage was approved at PA208/91/1A although no copy was submitted by appellant and file was not traced. However proposal involves the shifting of the location of the garage to the middle of the site in question, adjacent to a constructed wall is not accepted. This 30m² area garage has a height of 5m, and is constructed in weathered stone and the external apertures are built of wood, (Doc 58A). The gate approved at PA 208/91 has been closed and is relocated in another location. The new gate has a width of 5.6m and a height of 2.5m and it is to be covered with wood panels, (Doc 58A). Moreover, another wall is proposed to be opened to provide access into the site in question, (Doc 58B). The walls surrounding the site have a height of approximately 2.5m, (Doc 58A).

With regards to the illegalities, an ECF 1423/96 had been initiated and issued which states that following: "Ghandek zvilupp minghajr permess." This Direct Action is still not closed due to pending Direct Action Bills. Hence, no further assessment can be carried out until ECF 1423/96 is full closed and rendered inoperative.

Letters (Docs 28 & 60) were also submitted by third parties, objecting to the proposal, since the proposed development does not in any manner fall to be categorized as being agricultural in nature and if permitted, would only serve to encourage, enhance and support the conduct of the unlawful activities currently being undertaken from the site in question. The stores would only serve as garages from which to lease, repair, spray and scarp heavy vehicles and the extended boundary wall is being a poor attempt to hide these activities.

1.2.2 Structure Plan Policy ARC 2 & NWLP Policy NWCO 4

The appellant is stating that the sanctioning is not for a new development but to shift the structure which is already approved with a permit and thus policy ARC 2 and NWLP policy NWCO 4 does not apply. He added that this application should not have been accepted in the first place and thus appellant have to be relocated elsewhere.

The site for which the sanctioning is being requested is only located at a distance of 36 meters from the scheduled temple remains. Thus there is a clear infringement of Structure Plan policy ARC 2 as well as Structure Plan policy ARC 3 which clearly specifies that 'applications for planning permission for development affecting ancient monuments and important archaeological areas and sites, including areas and sites having such potential, will normally be refused if there is an overriding case for preservation'. The Authority disagrees that only new developments can breach these policies.

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In fact this objection was also supported by the Cultural Heritage Advisory Committee (CHAC) whom are the experts on this subject whereby they added that the proposal runs counter to policy NWCO4 of the North West Malta Local Plan. These specify that in the case of Class A archaeological sites, no development will be permitted which would adversely affect the monument or site or its natural setting and that a buffer zone of at least 100metres around the periphery of the site will be established in which no such development will be allowed. They also remarked that the site itself consists of an ancient quarry (views D and G submitted by architect at red 1B refers) which merits protection.

In this regard, the proposed additions to the existing structures and boundary walls are considered to constitute unacceptable development within the scheduled buffer zone of a Class A archaeological site, particularly when one considers that site is located outside of the development zone. Thus the CHAC recommended that the proposed sanctioning be refused and site be reverted back to its original state, (refer to Doc 23).

1.2.3 Claim of Cerimus Paribus

PA 4213/96: To erect second floor offices overlying existing first floor at Triq Gharram, Zebbug (Malta) Appeal Upheld on 2/8/99. Site is within scheme and therefore has no connotation to the case under appeal since the proposed development is ODZ.

PA 131/98: To erect receding floor plan overlying existing second floor at Triq Il-Marfa, Triq Il-Marfa, Mellieha. Appeal Upheld on 31/5/00. Site is within scheme and therefore has no connotation to the case under appeal since the proposed development is ODZ.

PA 5461/03: Reservoir pump room, alterations to wall to enable access as previously existing at, Il-Qaghadi, l/o Naxxar. Permit issued on 29/9/05. Permit was issued prior to Local Plan designation of area and therefore relation to the case under appeal is not valid.

PA 643/05: Additions and alterations to existing dwelling (rural) at Hillock Farmhouse, Tal-Qadi, Limiti Ta', Naxxar. Permit issued on 25/1/06. Permit issued on 29/9/05. Permit was issued prior to Local Plan designation of area and therefore relation to the case under appeal is not valid.

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PA 2332/05: Additions and alterations to an existing rural dwelling at Mdawra Road, Il- Qaghadi, l/o Naxxar. DCC approved on 25/3/09.

The appellant has quoted permits where development proposals have been considered by the Authority. The relevance of these permits to the case in concern is indecisive vis-à-vis this development especially in view that no comparative analysis of the cases to the development at hand was made by the appellant to back his argument. In fact, these cases only involved addition to existing building within scheme, alterations to existing rural dwellings, and a construction of a reservoir pump room which are subject to different policies than this proposal (boundary wall and agricultural stores in ODZ).

Furthermore only permit PA 2332/05 was issued after the Local Plan came in force, however this relate to additions and alteration to an existing rural dwelling. This clearly shows that the actual site considerations differed from the site under appeal. Furthermore, the Authority makes reference to several Planning Board's decisions in which the Board constantly emphasis that decisions taken in the past and which were decided through different planning policies are not to be considered as being relevant for requests which breach present policies and such applications should only be assessed through present plans and policies according to law.

Il-Pjan Lokali kien specifkament mahsub sabiex jaghti direzzjoni ta' kif zoni differenti ghandhom ikomplu jigu zviluppati. Kieku wiehed kellu jinjora l-pjan lokali u johrog permessi abbazi biss ta' xi tip ta' committment dan ikun ifisser illi l-ghanijiet tal-Pjan Lokali ma jkunu jistu qatt jintlahqu u l-ezercizzju kollu tal-pjanijiet lokali jkun sar ghal xejn. PA 5727/05 - RT 04.02.09 – PAB 161/07 - Fenech Victor – Attard – Scheme.

Il-Bord ikkunsidra wkoll illi permessi mahruqa taht policies differenti minn daww tal-lum ma jistawx awtomatikament iservu ta' precedent sabiex illum jinjargu permessi li jmorru kontra l-policies in vigore fil-prezent. - PA 1154/05 - RT 29.07.09 – PAB 205/06 - Agius Bernard – Paola – UCA

Il-permess PA 0511/05 inhareg qabel ma gie fis-sehh il-Pjan Lokali u ghalhekk ma jistax jitqies bhala precedent; il-permess PA 0056/05 ukoll inhareg qabel ma gie fis-sehh il-Pjan Lokali u ghalhekk ma jistax jitqies bhala precedent. PA 4290/04 – RT 14.04.10 – PAB 61/06 - Vella Clint – Mosta – UCA

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Il-Bord ikkunsidra l-argumenti kollha mqajjma miz-zewg partijiet u jinnota illi hemm numru ta' decizjonijiet tal-Qorti ta' l-Appell li jstabilixu illi, decizjonijiet fuq applikazzjonijiet ghal permessi tal-bini, ghandhom jittiehdu mhux fuq il-policies fiz-zmien meta tkun saret l-applikazzjoni izda fuq il-policies in vigour meta tkun qed tittiehed id-decizjoni. PA 1597/05 – RT 14.04.10 – PAB 77/07 – Cassar Mark – Siggiewi – ODZ.

1.2.4 Final Comments

It is pertinent to point out that various enforcement actions have been made and a Direct Action was carried out on site; in which the latter is still not closed due to pending Direct Action Bills. Therefore no further assessment can be carried out until ECF 1423/96 is fully closed and rendered inoperative.

The Authority reiterates that the proposed development is not acceptable since this counter Policy NWCO 04 of the North West Local Plan, Policies ARC 2 and ARC 3 of the Structure Plan for the Maltese Islands (December 1990), to Policy 2.4A New or Extensions to Agricultural stores of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables and to the L.N. 160 of 1997.";

Ikkunsidra ulterjorment:

Wara li kkonsidra il-premess u minn ezami tal-pjanti, ritratti u dokumenti li hemm fil-files PAB 657/11 u PA 3915/07, it-Tribunal jikkumenta kif gej:

Il-mertu ta' dan l-appell jirrigwarda full development application ghas-sanzjonar ta' tibdil li sar f' perimeter wall u l-ispustar ta' garage li kien gie approvat bil-permess PA 208/91 u li gie mibni lejn ic-centru tas-sit.

Is-sit mertu ta' dan l-appell jinsab ODZ, f' Il-Qaghadi, fil-limiti ta' Burmarrad.

Skond l-Awtorita':

- Il-fetha li kienet giet approvata bil-permess originali issa hija maghluqa u infethet wahda gdida. L-gholi tal-hajt huwa ta' 2.5 metri.
- Is-sit jinsab gewwa z-zona tan-National Parks u gewwa Area of Archeological Importance (Class A);

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- Fuq is-sit kien sar Direct Action b' eżekuzzjoni tal-enforcement notice ECF 1423/96 li għadu pendenti stante li għadhom ma' thallsux l-ispejjes dovuti mill-appellant għal din l-azzjoni;

L-applikazzjoni giet rifjutata peress li:

- Is-sit jinsab gewwa Scheduled Buffer Zone għal Class A u Class B Archeological Sites u għalhekk il-proposta tmur kontra l-policy ARC 2 tal-pjan ta' struttura u l-policy NWCO4 tan-North West Local Plan peress li ma jistax isir żvilupp fil-vicinanze ta' Archeological Site meta dan jkun jikkawza impatti negattivi li jista jkollu tali żvilupp;
- Il-proposta tikser il-policies AHF1, AHF 5 u RCO 4 tal-iStructure Plan; u
- Il-boundary wall mhux mibni skond il-L.N. 160 tal-1997.

L-appellant qed jappella peress li huwa jidhirlu li:

- L-iżvilupp huwa kopert bil-permess PA208/91. Kopja tal-pjanti approvati b' dan il-permess gew sottomessi;
- Dan il-permess ikopri boundary wall ta' iżjed minn 10 filati u garage ta' 30.6 m.k. u msaqqaf fuq għaxar filati. In fatti meta kien sar id-direct action, l-unika haga li ma' kienitx tnehhiet kienet il-kamra li qed jintalab is-sanzjonar tagħha bl-applikazzjoni in ezami;
- Id-Direct Action kien sar primarjament minhabba l-uzu;
- Il-bini tal-garage kien diga approvat bil-permess PA208/91 u in fatti l-applikazzjoni in ezami qed titlob biss li l-pozizzjoni tal-garage fuq is-sit tinbidel;
- Kieku l-Awtorita' kienet certa li l-garage mhux kopert bil-permess kienet tnehhieh ukoll;
- Inghataw permessi oħra fil-vicinanze tas-sit in ezami. Giet sottomessa pjanta li turi l-pozizzjoni fejn inhargu l-permessi PA5461/03, PA643/05, PA2332/05; u
- Il-boundary wall huwa mibni skond il-L.N. 160 tal-1997.

L-Awtorita' tirrispondi billi tikkwota d-DPA report u dan peress li l-appellant ma' zied xejn fl-appell tiegħu minn dak li kien argumenta waqt l-ipprocessar tal-applikazzjoni. F' dan ir-rapport, apparti mill-argumenti li wasslu biex jigu determinati r-reasons for refusal, il-case officer jghid ukoll, inter alia, s-segwenti:

- Skond id-Dipartiment tal-Agrikultura l-appellant mhux registrat bhala farmer u wkoll li l-art in ezami kienet zmien ilu registrata f' isem terzi li minn dak iz-zmien cedew l-art lura lill-Gvern;

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- Skond is-CHAC, is-sit huwa skedat (GN829/98) ai termini tal-policy ARC 2 tal-pjan ta' struttura. Waqt li l-buffer zone f' siti bhal dawn ghandha tkun ta' 100 metru, f' dan il-kas id-distanza mis-sit in ezami ghall-fdalijiet arkeologici li huma skedati hija ta' 36 metri. Is-sit in ezami nnifsu huwa barriera antika li ghandha tigi ppreservata. Ghal dawn ir-ragunijiet is-CHAC huwa kontra dan l-izvilupp.

Fl-ewwel rapport taghha fil-fazi tal-appell, apparti milli tikkwota id-DPA report, l-Awtorita' zzid is-segwenti:

- It-tliet permessi li jikkwota l-appellant bhala li inghataw fil-vicinanze tas-sit in ezami kienu totalment differenti, f' termini ta' ppjanar, mill-applikazzjoni in ezami tant li:
 - Il-permess PA 5461/03 hareg ghal pump room u reservoir, zvilupp li huwa permissibbli f' dawn ic-cirkostanzi;
 - PA 643/05 inghata ghal alterazzjoni gewwa residenza u xogholijiet fuq hitan tas-sejjieh; u
 - PA 2332/05 li kien gie accettat wara li l-pjanti inbidlu biex l-izvilupp jkun limitat ghall-area approvata;
- L-enforcement (ECF 1423/96) fuq is-sit in ezami ghandu fis-sehh peress li ma' thallsux l-ispejjes;
- Is-sit huwa skedat (GN 829/98);
- L-Art. 70, Skeda 6 (2) tal-Att X, tal-2010, jghid li ma' jstax isir zvilupp gewwa zona skedata b' dan il-mod.

Mill-premess jirrizulta li l-argumenti principali li jgib l-appellant biex jikkonvinci li l-izvilupp li qed jitlob is-sanzjonar tieghu haqqu permess huma tnejn u cioe' li:

- Fuq is-sit in ezami kien hareg permess ghall-izvilupp (PA208/91) u l-izvilupp kopert b' dan il-permess huwa simili ghal dak li qed jitlob li jissanzjona l-appellant; u
- Fil-vicinanze tas-sit hemm numru ta' zviluppi li huma wkoll ODZ u li ghandhom il-permess.

Dawn mhumiex argumenti validi f' termini ta' ppjanar speċjalment in vista tal-fatt li minn meta hareg il-permess originali u mill-anqas tnejn mit-tliet permessi li l-appellant jghid li hargu fil-vicinanze tas-sit in ezami, il-policies tal-ippjanar f' pajjizna nbidlu drastikament. Huwa fatt stabbilit li l-plans and policies applikabbli meta ssir decizjoni fuq kwistjoni ta' ppjanar huma daww vigenti fid-data meta ssir din d-decizjoni. Dan huwa principju accettat u li jigi applikat kuljum kemm mill-Awtorita' u kif ukoll minn dan it-Tribunal.

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L-Awtorita' kienet konvincenti fl-ispjegazzjoni li tat ghal ghoti ta' tnejn mitt-tliet permessi li ikkwota l-appellant bhala ezempji ta' dak li huwa allega li kienu precedent favur li jinhareg dan il-permess. Ghalhekk dawn mhumieq relevanti ghal kas in ezami u fi kwalunkwe kas inghataw numru ta' snin ilu.

L-Awtorita' ma' kienitx totalment konvincenti fl-ispjegazzjoni li tat ghal ghoti tal-permess PA 2332/05 li ikkwota l-appellant. Apparti minn hekk l-argumenti li gabet l-Awtorita' biex tiggustifika dan il-permess ma' tantx jaghmlu sens f' termini ta' ippjanar.

Hija hasra li l-Awtorita' spiss issib ruhha darha mal-hajt ghaliex ma' tkunx tista tiddefendi certi permessi li inghataw fil-passat.

Ghalkepp l-argument ta' commitment mhux wiehed validu f' termini ta' ippjanar, sa certu punt dan it-Tribunal jissimpatizza mal-appellant meta dan jghid li jezistu numru ta' zviluppi fil-vicinanze tas-sit li huma wkoll ODZ u li huma bil-permess.

Anki jekk jirrizulta li m'hemmx gustifikazzjoni ghall-ghoti tal-permessi li ikkwota l-appellant, dan it-Tribunal ihoss li dan m'ghandux jitqies bhala precedent sufficienti ghas-semplici raguni li fi kwalunkwe kas l-Awtorita' tista iggib hafna ezempji ta' applikazzjonijiet biex isir zvilupp simili li gew rifjutati u kull wiehed minn dawn jikkostitwixxi precedent il-kontra.

Jidher ukoll li apparti mill-argument li ghmel l-appellant li bil-permessi li nhargu fil-vicinanze qed jinholoq precedent jargumenta wkoll li issa z-zona hija kommessa ghall-izvilupp. Kif qal f' numru ta' decizjonijiet simili, dan it-Tribunal ihoss li ghandu jirriveva dan li gej fuq l-issues ta' meta jinholoq precedent u x-inhu commitment f' termini ta' ippjanar.

“... l-kuncett ta' commitment f' terminu ta' ippjanar ghandu japplika biss f' kazi eccezzjonali u ghandu jigi uzat b' kawtela kbira u dan ghaliex id-dixxiplina teknika u xjentifika ta' land use planning giet stabbilita f' pajjizi zviluppanti u avvanzati appuntu biex permezz ta' pjani strategici fit-tul u management ghaqli jitraxxu u addirittura jigu mmregga lura proliferazzjoni ta' zvilupp u land uses oħrajn li jkunu qed ikollhom effetti mhux desiderabbli fit-territorju li fuqu jkunu japplikaw u li jkunu qed jixxerdu propju bis-sahha tal-argument li zviluppi u uzi simili diga jezistu fil-madwar. Ghalhekk, by definition, land use plans u policies li jkollhom is-sahha ta' ligi ghandhom generalment japplikaw irrISPETTIVAMENT minn kwalunkwe indikazzjoni ta'

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commitment li jista jkun hemm u dan sakemm mal-commitment ma' jkunx ta' entita massicca kif spjegat hawn taht. Jekk ma' jsirx dan, l-ebda sistema ta' land use planning ma' tista qatt tahdem.

Fil-fehma kunsidrata ta' dan it-Tribunal, biex sistema ta' ippjanar tahdem kif suppost u fl-interess publiku, il-kazi fejn jista legittimament, f' sens tekniku, jintuza il-principju ta' commitment huwa meta il-maggoranza kbira ta' permessi potenzjali ta' xi tip partikolari li jkunu jistghu jinghataw jkunu fil-fatt inhargu.

Li qed jinghad hawn fuq ma' jnaqqas bl-ebda mod id-dritt li jista' jkollu l-applikant li jiprocedi kontra l-Awtorita' civilment jekk ihoss li hu kien haqqu jiehu permess ghalix fil-passat kien inghata permess simili ghat-talba tieghu. Id-differenza hi li din il-kawza civili ma' tistax issir bhala parti mill-process tal-ippjanar.”

Dan it-Tribunal huwa tal-fehma li jekk dawn il-kwistjonijiet ta' x' jikkostitwixxi precedent u x'nhu commitment, f' termini ta' ippjanar, ma' tittehdux fil-perspettiva gusta taghhom jista jigi zmien meta' l-ebda parti minn dawn il-gzejjer ma' tigi salvata minn zvilupp urbanizzanti ta' kull tip li ftit ftit jeqred il-kampanja kollha u dan b'dannu ghall-generazzjonijiet kollha li ghad iridu jigu u kontra wiehed mill-principji fundamentali li ghalih l-iStructure Plan inkiteb u gie addottat bhala l-ligi bazika tal-ippjanar ta' pajjizna.

Fi kwalunkwe kas, kif kellu okkazzjoni jghid f' bosta sentenzi ta' dan it-tip li ta dan it-Tribunal, l-argument ta' commitment mhux wiehed li ghandu jsir f' termini ta' ppjanar meta wiehed ikun qed jikkonsidra applikazzjonijiet ghal zvilupp u speccjalment meta l-izvilupp ikun ODZ. Se mai dan it-tip ta' argument ghandu jsir bhala parti minn talba formali biex issir modifikazzjoni fil-pjan lokali (Local Plan Review) liema talba ghandha tipprecedi kull applikazzjoni fiz-zona in kwistjoni. Ma' jirrizultax li l-appellant ghamel talba ta' dan it-tip f' dan il-kas

Ghalhekk, f' dan l-appell tibqa l-problema fundamentali f' termini ta' ppjanar, li skond l-Awtorita', l-izvilupp li qed jintalab is-sanzjonar tieghu jikser il-policy ARC 2 tal-pjan ta' struttura u l-policy NWCO4 tan-North West Local Plan peress ma jistax isir zvilupp fil-vicinanze ta' Archeological Site meta dan ikun jikkawza impatti negattivi li jista jkollu tali zvilupp. In fatti dan l-appell illum hu regolat mill-Kap 504. It-talba ghas-sanzjonar ma' tistax tigi kkunsidrata peress li ai termini tal-Art 70 u Skeda 6 tal-Att X tal-2010 (Kap 504), dan ma' jistax isir f' art li tkun skedata. L-appellant ma' jsemmi xejn fuq dan hlief li fil-vicinanze inghataw numru ta' permessi tal-izvilupp u li snin ilu kien hareg permess fuq is-sit in ezami. Kif diga ntqal supra, huwa fatt stabbilit li l-plans and policies applikabbli meta ssir decizjoni fuq kwistjoni ta' ppjanar

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huma dawk vigenti fid-data meta ssir din d-decizjoni. Dan huwa principju accettat u li jigi applikat kuljum kemm mill-Awtorita' u kif ukoll minn dan it-Tribunal.

In konkluzjoni, kif jirrizulta mill-fatti li hargu fil-kors tas-smieh ta' dan l-appell, billi jirrizulta li l-proposta in ezami tikser numru ta' policies tal-pjan ta' struttura u l-policy NWCO4 tan-North West Local Plan u anki peress li l-proposta tmur kontra l-provedimenti tal-Art 70 u Skeda 6 tal-Att X tal-2010, dan l-appell ma jirrizultax fondat u ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma ir-rifjut tal-applikazzjoni PA/03915/07, "Sanctioning of perimeter wall alterations and shifting of garage permitted by PA 208/91", taz-19 ta' Lulju, 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jikkonsidra l-effetti tal-permess PA 208/91 favur l-applikant li bih seta' jibni hajt madwar is-sit ta' ghaxar filati u garage ta' 30.6 metri kwadri li fil-fatt inbnew fl-1991 u qal li dan mhux argument validu f'termini ta' ppjanar billi t-talba kienet ghal full development permit ghal sanzjonar ta' tibdil f'perimeter wall u spustar ta' garage. L-appellant isostni illi meta sar direct action u gie prekluz l-access ghall-applikant l-unika haga li ma tnehhietx kienet il-kamra li taghha qed jintalab sanzjonar. Id-direct action sar biss minhabba l-uzu tas-sit ghax il-garage qed jintalab biss spustar tieghu u hu kopert bil-permess PA 208/91 u l-boundary wall hu mibni skond ma jipprovdi l-Avviz Legali 160/1997;
2. It-Tribunal ma ikkunsidrax il-kwistjoni tal-commitment imqajjem mill-appellant u dan jikkostitwixxi punt ta' ligi applikabbli u d-decizjoni ghandha tigi revokata.

L-ewwel aggravju

L-appellant ma ghandux ragun f'dak li qed jallega. It-Tribunal ikkunsidra illi l-appellant kellu permess mahrug favurh 208/91. Pero jidher car anki mix-xiehda tar-rapprezentant tal-Awtorita u pjanti esibiti minnu quddiem din il-Qorti, illi xejn ma sar kif kien approvat fil-

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permess. Dan wassal ghat-talba tas-sanzjonar. Mhux argument validu tal-appellant illi jsostni illi fl-enforcement li sar, il-kamra li qed jintalab sanzjonar taghha ma twaqqghetx ghax l-Awtorita kienet konsapevoli tal-permess. Il-kamra ma twaqqghetx ghax kien hemm talba ghal sanzjonar.

It-Tribunal ikkonsidra illi l-peremss 208/91 ma giex attwat u ghalhekk hu ikkonkluda gustament illi dan il-permess ma jistax ikollu rilevanza f'termini ta' ippjanar. Il-Qorti tqis illi mhux qed jintalab konferma tal-permess 208/91 jew li l-enforcement u direct action kienu ingustifikati izda li l-applikant ghandu illegalita fis-sit li jrid jirrattifika. Dan kien l-intendiment tat-Tribunal fl-osservazzjonijiet li ghamel. La darba fuq bazi ta' kwistjonijiet teknici u ta' ippjanar, it-Tribunal irrizultalu li dak li kien qed jintalab sanzjonar tieghu kien fil-fatt tibdil minn dak originarjament approvat, kellu jittiehed kont jekk tali sanzjonar ta' illegalitajiet setghux jigu approvati skond il-ligijiet, pjanijiet u policies ezistenti. Fil-fehma tal-Qorti din kienet konsiderazzjoni logika u legali ta' kif kellu jikkonsidra l-kwistjoni t-Tribunal tenut kont li l-permess 208/91 tilef ir-rilevanza tieghu ghal dak li kien qed jintalab permezz ta' din l-applikazzjoni.

It-Tribunal, u dwar dan l-appellant hu kompletament sieket, semma' illi t-talba gas-sanzjoni ma setghetx tigi approvata ghaliex l-izvilupp fuq is-sit jinsab f'scheduled buffer zone fil-vicinanze ta' sit arkeologiku Class A u B fejn zvilupp ma jistax isir entro certi limiti minnhom cioe fil-buffer zone. Aktar minn hekk pero t-Tribunal, kif argumentat l-Awtorita, ikkonsidra li skond l-artikolu 70 u l-Iskeda 6 tal-Kap. 504 ebda sanzjoni ma tista' issir f'art skedata. Dan l-ahhar argument wahdu igib fix-xejn it-talba tal-appellant billi l-ligi stess tipprekludi bla eccezzjoni t-talba ta' sanzjonar. Is-skiet tal-appellant fuq din il-kwistjoni hu elokwenti. Peress illi huma l-ligijiet, pjanijiet u policies ezistenti fiz-zmien tad-decizjoni li huma applikabbli, il-kwistjoni kellha tieqaf hemm.

Ghalhekk il-Qorti tqis illi t-Tribunal agixxa sew meta ikkonsidra r-rilevanza tal-permess 208/91 fil-kuntest tal-applikazzjoni prezenti u applika l-ligijiet appoziti ghal dak mitlub.

It-tieni aggravju

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Hemm ftit x'jingham ghal dan l-aggravju. Fl-ewwel lok in vista ta' dak li inghad fl-ewwel aggravju, ebda kwistjoni ta' commitment ma kellha tigi approvata stante l-fattispecie tal-kaz u l-ligi applikabbli li kienet cara u ma thalli ebda diskrezzjoni f'idejn it-Tribunal beix jiddeciedi mod iehor. Pero t-Tribunal, kuntrarjament ghal dak li allega l-appellant iddedika parti sostanzjali mid-decizjoni ghall-aggravju tal-commitment u ghal permessi imsemmija mill-partijiet u anki wasal ghal konsiderazzjonijiet u konkluzzjonijiet tieghu. Dan l-aggravju ma fihx mertu ghax bhala fatt mhux minnu dak allegat pero kif issostni din il-Qorti, il-kwistjoni tal-commitment f'dan il-kaz lanqas kienet rilevanti tenut kont tal-fattispecie u ligi rilevanti.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Joseph Borg u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Jannar 2014.

Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

-----TMIEM-----