



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Dicembru, 2014

Appell Civili Numru. 180/2012

Jean Paul Busuttil

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Jean Paul Busuttil tas-27 ta' Novembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 li cahdet l-appell ghal PA 2921/10 'to sanction as built farmhouse with basement level, ancillary facilities, paved areas, formation of wells and levelling of soils';

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 prezentata fit-30 ta' Gunju 2010 – Full Development Permission – PA 2921/10, l-appellant fil-fond Milorda, Triq il-Milord, Bidnija, Mosta talab “to sanction as built farmhouse with basement level, ancillary facilities, paved areas, formation of walls and leveling of soil”.

L-applikazzjoni giet michuda b'rifjut tat-28 ta' Novembru 2011 ghar-ragunijiet segwenti :-

“1. The proposed sanctioning of 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.

2. There is no justification for the sanctioning of development on 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 development can not be located in an area designated for development.

3. The proposed sanctioning runs counter to Structure Plan Policy RCO 4 which does not allow development that negatively affects the scenic value of the area, and to policy 1.3D (Protection of Landscape Features) of the Policy and Design Guidance: Agriculture, Farm Diversification, and Stables which seeks to conserve, maintain, and enhance important landscape features.

Kopja Informali ta' Sentenza

4. The proposed sanctioning runs counter to Policy CG04 in that the site does not qualify as uncommitted land in the form of infill site or land abutting a blank party-wall. Also, the existing dwelling unit exceeds the maximum allowable footprint of 150 sqm and the maximum allowable floorspace of 200sqm. In terms of design, the existing building does not aim to retain and enhance the existing character of the settlement.

5. The proposed sanctioning runs counter to the Development Control Policy - Swimming Pools Outside Development Zone (January 2000), in particular to paragraphs 5.1 (3) and (4) which specify that the area of the swimming pool should not exceed 50sqm and the extent of paving or hard surfacing should be limited to not more than 50% of the pool area.

6. The site is currently subject to Enforcement Notice ECF 337/10 for unauthorised development. The proposed sanctioning cannot be considered further unless all the illegal development on site is specifically included in the request for sanctioning or else removed, and this in terms of regulation 14 of Legal Notice 514 of 2010. The illegal development includes the construction of high boundary walls, entrance gate, and hard landscaping including passages and stairs.”;

Fl-appell tieghu, il-Prof. Ian Refalo ghall-appellant issottometta li l-Awtorita' applikat l-policies b'mod zbaljat meta kkunsidrat din l-applikazzjoni.

Fuq is-sit jezistu strutturi legittimi li jintuzaw bhala residenza. L-Awtorita' naqset li tapplika policies li kienu vigenti meta saret l-applikazzjoni u applikat policies li dahlu fis-sehh wara u dana bi hsara ghall-interessi tal-appellant.

L-Awtorita' naqset li taghti l-importanza dovuta ghall-partijiet fl-izvilupp li ghandhom uzu agrikolu jew ghat-trobbija tal-annimali; uzu rurali li mhux prekluz barra z-zona tal-izvilupp.

Hi s-sottomissjoni tal-appellant li b'applikazzjoni korretta tal-Policies rilevanti, l-applikazzjoni kellha tigi milqugha.

Il-Perit Dr. Edwin Mintoff ghall-appellant issottometta li d-Direttorat naqas li jinforma lill-Kummissjoni li l-appellant ghandu licenzja tad-Dipartiment tal-Agrikoltura biex

Kopja Informali ta' Sentenza

jiggestixxi din l-attivitá'. L-izvilupp propost m'ghandu jkollu l-ebda impatt negattiv fuq l-ambjent cirkostanti u l-landscape ser jigi protett.

L-Awtorita' fir-rapport taghha kkumentat inter alia kif gej :-

“5.2.1 Preliminary Plea

The Authority respectfully remarks that this Tribunal cannot hear and decide on the merits of this appeal as this application does not seek to sanction all the illegal developments on site, and hence the provisions of Article 14 (1) of L.N. 514 of 2010 are applicable.

The application in concern is seeking to sanction the farmhouse as built with basement level, ancillary facilities, paved areas, formation of walls and levelling of soil. In spite of these illegalities identified by the appellant; Enforcement Notice 337/11 issued on site revealed other illegalities that are not included in this application in the form of high boundary walls (not built in accordance with L.N. 160/97 for rubble walls ODZ), access gates and other paving. Although throughout the processing stages of the application revised plans were submitted, such plans still did not include the boundary walls and their height, the entrance gate, and the hard surfaces including passages and stairs.

Since the appellant failed to include all illegalities present on site as part of the proposal for sanctioning, Regulation 14 of L.N. 514/10 applies and the Authority cannot further consider any applications unless all illegal development is sanctioned or removed.

5.2.2 Introductory Comments

The appellant, in his introductory appeal submissions, is accusing the Authority of failing to process correctly the proposed development because it did not consider several important factors.

The Authority will demonstrate that such an accusation is false and misleading and that the Planning Directorate was thorough in its preparation of the DPA Report and that the decision taken by the EPC Board merits to be confirmed.

5.2.3 History of the Development present on Site

As stipulated in para. 3.1, the only application submitted to the Authority on the site in concern is PB 3139/82. This permit was issued on the 3rd May, 1983 for the addition of three small rooms and one garage to an existing store. The total size of the approved footprint is approximately 160m². The existing 'farmhouse' being presented for sanctioning has no relation to that approved in terms of scale, massing, appearance or even location to the obvious detriment of a large amount of surrounding agricultural land which has been replaced by a pond, a swimming pool, a 'girna'-type structure, kennels, sheep pens, filter rooms and other structures.

Whilst as the appellant stated in application form (Doc 1 in PA File) that the existing development has a floorspace of circa 800m², the entirety of the landscaping, paving, structures, and other urbanization involved around the site has radically altered the entire surroundings which amount to a total area of about 6200m². Subsequently since the submission of this application, Enforcement Action was issued on site in ECF 337/10 to reflect the drastic alterations carried out on site from the approved plans in PB 3139/82.

5.2.4 Re: Argument made by Appellant in relation to his agricultural status and that of the agricultural nature of the site

The appellant is bringing to the attention of the Tribunal the fact that he has a licence to operate agricultural units and should therefore been titled to potential developments connected to this industry. Furthermore, the appellant is accusing the Authority of failing to note that on site there were already legitimate built structures which were used for habitation.

These comments are misleading since the question is not whether there was a permit for a farmhouse on this site or not but whether the existing development can be justified on planning grounds. The Authority notes that albeit the 1983 permit was for extensions to an existing building, the aerial photos suggest that such 'existing building' never existed. Nevertheless, the Authority recognise that a permit has been issued on site for a farmhouse with a comprehensive footprint area of about 160sq.m; all located at ground level.

The aerial imagery show that the current farmhouse was built in the late-1980s/early 1990s; with the vast hard landscaping, extensive paving and ancillary

facilities around the site taking place between 1994 and 2008 (photos in Doc 38 in PA File).

Although the appellant is stating that the proposal several parts of the proposal are agricultural in nature, the existing development when viewed holistically is clearly not a farm or a farmhouse but a luxury dwelling. Yet the issue here is not if the current building is a luxury dwelling or not, since dwellings are permitted in Category 2 Settlements but if this dwelling respects current policies or not.

Policy CG04 of the Central Malta Local Plan does permit dwellings (including farmhouses/farmer's dwellings) in Category 2 Settlements but these are limited to a maximum footprint of 150sq.m and floorspace of 200sq.m. The building under review in this appeal has a footprint of circa 500sq.m and floorspace of about 800sq.m. This means that the existing dwelling is too much excessive to be considered suitable according to the established policy. Furthermore the appearance of the building does not reflect the character of the rural settlement.

5.2.5 Ancillary Facilities around the Site

Besides the construction of a farmhouse, the site has been extensively formalised by inclusion of various structures in the form of a kennel (15m²), a workshop/store (30m²), two sheep pens (64m² and 97m²), a large pond (138m²), a pond filter/pump room (42m²), and a basement used to park a maximum of three cars and underground swimming pool. In addition to these interventions, hard-surfaced landscapes were created for circulation between these facilities.

Category 2 Settlements are recognised pockets of dwellings in the ODZ. Large, expansive formal open spaces do not fall within the list of acceptable development in such areas as these do not maintain or respect the rural characteristics of the area and are therefore not acceptable. Similarly the agricultural oriented buildings within the site, namely the agricultural store and animal pens cannot be considered or assessed from an agricultural point of view since their setting is completely in a domestic context.

In addition to the above mentioned developments, the appellant is also seeking to sanction the construction of a pool (100m²) which exceeds by far the maximum allowable 50m² in terms of PA Circular 1/00 for Swimming Pools ODZ. It must be highlighted that these structures have been constructed illegally and have

Kopja Informali ta' Sentenza

completely altered the visual composition of a site which until 1978 was fully dedicated to agricultural purposes.

5.2.6 Re: Appellant's argument that the Authority failed to apply the pertinent policies applicable at the time of the application

The Authority is not sure what the appellant meant by this assertion given that there was no change in the policies that are applicable to this application from those established at the moment this application was filed and when assessed. The only change is that related to illegal development since the provisions of PA Circular 2/96 and 2/98 were transposed in Article 14 of LN 514/10; however the merits of this article remained in substance unchanged.

Nonetheless, it has already been confirmed time and time again by various decisions of the Planning Appeals Board, Environment and Planning Review Tribunal and the Court of Appeals, that decisions are to be based on the policies and legislation in vigore at the time of the decision and not when an application has been submitted. The Authority would like to make reference to such a decision (amongst others) when in PA1597/05 (PAB 77/07), the Planning Appeals Board stated:

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.

This principle has been confirmed in other instances. A case in point is the Court of Appeal decision of 24th April 1996 for Angelo Farrugia vs. Planning Authority, whereby the Court of Appeal stated that all applications are to be considered according to present plans and policies, irrespective of the date of submission of the application. This was also supported in several other subsequent decisions including those of: Pater Holding Company Ltd. vs. DCC (11th September 1998), John Scerri vs. Planning Authority (28th May 1997), Emmanuel Mifsud vs. DCC (31st May 1996), and Michael Axisa vs. MEPA (20th August 2003).

Ikkunsidra ulterjorament :-

L-appellant qed jipproponi li jissanzjona farmhouse flimkien mal-facilitajiet ancillari li nbnew fil-vicinanze.

Kopja Informali ta' Sentenza

Il-farmhouse tokkupa area ta' 500 m.sq. u tikkonsisti f'zewg binjiet originarjament separati li sussegwentement gew ikkomunikati permezz ta' kuitur centrali. Il-facilitajiet ancillari huma varji, cioe' kennel ta' 15 m.sq.; workshop u store ta' 30m.sq.; zewg sheep pens ta' 64 m.sq. u 97 m.sq. rispettivament; pond ta' 138 m.sq.; pond filter/ pump room ta' 42 m.sq.; swimming pool ta' 100 m.sq. bid-deck; basement ghall-parking ta' 3 karozzi u underground swimming pool. Il-passaggi bejn il-varji facilitajiet huma pavimentati.

Skond l-Artikolu 69 tal-Att X tal-2010 Kap. 504; precedentement bl-Artikolu 33 tal-Kap. 356; applikazzjonijiet ghal zvilupp jigu principalment ikkunsidrati fil-kuntest tal-plans and policies; jigu ukoll kkunsidrati jekk l-Awtorita' jidhrilha rilevanti kunsiderazzjonijiet materjali fosthom dawk ambjentali, estetici u sanitarji.

Is-sit in kwistjoni jinsab barra z-zona tal-izvilupp, fi Triq il-Bdiewa, Bidnija limiti tal-Mosta.

Skond ic-Central Malta Local Plan, is-sit jinsab f'area disinjata bhala Category 2 Rural Settlement, Policy CG04.

Is-sit hu certu distanza 'l boghod minn numru ta' residenzi li jiformaw parti mir-Rural Settlement, b'karattru definittivament rurali, mentri l-area cirkostanti tintuza' ghal skopijiet agrikoli.

Ghalkemm fuq is-sit jezisti zvilupp ezistenti, ma jirrizultax li dan hu kopert bil-permess ghall-izvilupp.

Kien inghata permess fit-3 ta' Mejju 1983 mill-PAPB fl-applikazzjoni PB 3139/82 ghal zieda ta' tlett ikmamar u garage ma' residenza ezistenti.

Pero' irrizulta, sussegwentement, il-mertu ta' ECF 377/10 li l-farmhouse approvata ma kienitx nbriet fuq is-sit precis kif indikat fil-pjanti approvati. Apparti dan saru diversi strutturi ohra fosthom skavar biex sar basement, zidiet ta' kmamar u alterazzjonijiet fl-ewwel sular, nbena fish pond, struttura forma ta' girna, swimming pool, land landscaping u boundary walls godda mhux skond il-Policies.

Kopja Informali ta' Sentenza

Skond il-Policy CG04 ta' Central Malta Local Plan 2006, bini f'Category 2 Rural Settlement ghandu possibilment jigi prezervat; konsolidat u riabilitat; dejjem biex jigi protett il-karattru rurali.

Skond il-Pjan Lokali, residenzi f'dawn il-lokalitajiet, m'ghandhomx ikollhom footprint akbar minn 150 m.sq., ma jkollhomx anqas minn 120 m.sq. u mhux aktar minn 200 m.sq. total floorspace mkejjel minn barra. L-izvilupp mertu ta' dan l-appell ghandu footprint ta' cirka 500 sq.m. u floor space ta' 800 sq.m. cirka; skond l-applikazzjoni (Dok 1 fil-PA file). Fil-fatt l-area totali hi ta' 6200 m.sq. cirka.

Skond din il-Policy ghalhekk l-izvilupp hu eccessiv u in oltre fl-apparenza ma jaqbilx mal-karattru ta' rural settlement.

Dwar l-area tas-swimming pool, din hi regolata bic-cirkolari PA 1/2000 – Swimming Pools Outside Development Zone. Section 5 ta' din ic-cirkolari telenka sitt kundizzjonijiet fejn dawn il-proposti jistghu jigu accettati; fosthom hemm il-kundizzjoni numru 4 li tispecifica l-area accettabbli.

L-area ta' swimming pool skond din ic-cirkolari ghandha tkun mhux aktar minn 50 m.sq. ghall-unit residenzjali individwali; u mhux aktar min 70 m.sq. ghall-'multiple residential units'. Is-swimming pool li l-appellant qed jipproponi li jissanzjona ghandu area ta' 100 m.sq.

Dwar l-illegalitajiet fuq is-sit (is-sitt raguni tar-rifjut), ghalkemm l-applikazzjoni hi 'to sanction farmhouse as built' irrizulta li fuq is-sit hemm diversi illegalitajiet ohra li m'humiex inkluzi fl-applikazzjoni fosthom; hitan tas-sejjieh gholjin mhux mibnija skond l-Avviz Legali 160 tal-1997 dwar hitan tas-sejjieh barra z-zona tal-izvilupp, gates li jipprovdu access ghall-propjeta' u pavimentar.

Billi dawn ma gewx indikati fl-ahhar pjanti riveduti japplikaw ghal kas ic-cirkolarijiet PA 2/96 u PA 2/98 illum inkorporati fl-Artikolu 14 (1) tal-Avviz Legali 514 tal-2010. Skond dan ir-regolament, meta l-izvilupp ezistenti fuq is-sit, ikun kollu jew in parti illegali, l-Awtorita' tichad l-applikazzjoni sakemm l-izvilupp illegali ma jkunx inkluz fit-talba tas-sanzjonar u li l-izvilupp illegali ma jkunx in kontravvenzjoni tal-policies vigenti.

Kopja Informali ta' Sentenza

Skond is-subincis (3) tal-istess regolament il-pjanti ghandhom jindikaw b'mod car l-izvilupp li qed jigi sanzjonat biex jigi assikurat li l-izvilupp illegali ikun jiffirma parti mill-applikazzjoni tal-izvilupp.

L-appellant jilmenta mill-fatt li l-Awtorita' naqset li tapplika l-policies vigenti meta saret l-applikazzjoni bi hsara ghall-appellant billi ittiehed kont ta' policies li saru wara li giet ipprezentata l-applikazzjoni.

Fil-fatt din l-applikazzjoni giet prezentata fit-30 ta' Gunju 2010 u giet determinata fit-23 ta' Novembru 2011.

Effettivament dwar policies, ma kien hemm l-ebda tibdil f'dan iz-zmien kif allegat mill-appellant; bl-eccezzjoni li dwar l-izvilupp illegali c-cirkolari 2/96 u 2/98 gew inkorporati fl-Artikolu 14 tal-Avviz Legali 514 tal-2010; pero' fis-sustanza ma sar l-ebda tibdil.

Hu principju illum stabbilit li l-Awtorita' tikkunsidra il-plans u l-policies in vigore meta tigi determinata l-applikazzjoni. Issir referenza ghas-sentenza tal-Qorti tal-Appell tal-24 ta' April 1994 fil-kawza fl-ismijiet: 'Angelo Farrugia vs l-Awtorita' tal-Ippjanar' u dik tal-istess Qorti tal-31 ta' Mejju 1996 fil-kawza fl-ismijiet : 'Emanuel Mifsud vs il-Kummissjoni ghall-Kontroll tal-Izvilupp'.

Ezaminata fid-dettal il-proposta tal-appellant, fil-kuntest tal-pjanijiet u tal-policies ta' ipplanar rilevanti, l-appell ma jimmeritax kunsiderazzjoni favorevoli.

It-Tribunal ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut tat-23 ta' Novembru 2011 tal-applikazzjoni PA 2921/10 f'isem l-appellant.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal injora l-commitment fiz-zona u permessi ghal zviluppi simili u iktar estensivi mahruqa. In oltre t-Tribunal injora li l-appellant ghandu attivita agrikola fis-sit. It-Tribunal

Kopja Informali ta' Sentenza

skarta l-aggravju ghax qal li l-izvilupp qiegħed f'certa distanza mir-residenzi msemmija li jiffurmaw rural settlement. Jekk dan hu l-kriterju u jittiehed il-knisja bhala c-centru, allura hemm residenzi aktar il-bogħod mis-sit in kwistjoni. Hu minnu li z-zona hi klassifikata bhala rural settlement izda l-izviluppi fiz-zona juru mod iehor cioe li ma jottemperawx ma' din il-klassifikazzjoni ghax jikkomprenđu vilel u terraced houses mentri l-izvilupp tal-applikant hu wieħed rurali;

2. Hu sottomess illi l-bini tallum hlief għal parti zghira sar qabel l-1993. Hu minnu illi fl-1983 gie approvat zvilupp pero ma sarx kif kellu jsir. It-Tribunal kellu japplika l-artikolu 91 u Skeda 8 tal-Kap. 504 għal kaz u skond l-artikolu 91(2) jsir sanzjonar biss biex ikopri l-izvilupp wara l-1992. It-Tribunal skarta l-argumenti tal-appellant ghax deħrlu li kien hemm bini li sar qabel l-1993 mhux kopert bil-policies vigenti meta kellu jara l-commitment, il-bini ezistenti qabel l-1993, jidentifika x'sar wara u x'kien sanabbli għal dan il-bini tenut kont tal-commitment. L-avviz ta' twettiq ma setax ikopri dak li sar qabel l-1993. In oltre mhux minnu li kien hemm illegalitajiet mhux koperti bl-applikazzjoni sanatorja ghax it-talba hi għal sanzjonar tal-izvilupp 'as built' li jkopri kollox. L-affarijiet mhux imsemmija b'mod specifiku kienu biss accessorji għat-talba principali ta' sanzjonar;

3. L-appellant ma nghatax l-opportunita li jressaq il-kaz tieghu ghax iddiferixxa l-appell għas-sentenza meta kien għad fadal li jsiru s-sottomissjonijet.

L-ewwel aggravju

L-appellant jilmenta illi t-Tribunal injora l-commitment fiz-zona u li għandu attvita agrikola. Dan qatt ma kien aggravju fl-appell quddiem it-Tribunal. Qari tal-aggravji riportati mit-Tribunal f'pagna 2 u 3 huma prova cara ta' dan. Jirrizulta pero illi fl-atti hemm indaħħlin numru ta' pjanti u permessi bla ebda referenza għal min ipprezentahom u meta u jekk sarx xi verbal jew nota biex jiddaħħlu. Il-Qorti għamlitha cara f'diversi sentenzi illi aggravji li ma tqajmux b'mod car quddiem it-Tribunal ma jsitghux jiddaħħlu quddiem il-Qorti tal-Appell biex tikkunsidrahom hi jew jintuzaw bhala mezz biex l-atti jergghu jintbagħtu lit-Tribunal biex tikkunsidrahom. Il-parametri tal-poteri tat-Tribunal u tal-Qorti huma cari. It-Tribunal obligat jikkunsidra l-aggravji kollha ta' sustanza li jistghu jkollhom effett għad-decizjoni pero ma għandux hu idaħħal aggravji li ma jitqajmux mill-partijiet. Wisq anqas għandha l-Qorti tiehu konjizzjoni ta' aggravji li ma kienux tqajmu b'mod esplicitu quddiem it-Tribunal. L-inserzjoni ta' pjanti u permessi fil-process ma jikkostitwix aggravju. Mhux minnu li t-Tribunal ikkunsidra

Kopja Informali ta' Sentenza

xi aggravju f'dan is-sens meta skond l-appellant qal li s-sit jinsab f'certa distanzi minn residenzi oħra parti minn rural settlement. It-Tribunal ikkostata biss bhala fatt l-ubifikazzjoni tas-sit komparat maz-zona u xejn aktar u dan għal fini ta' deskrizzjoni ta' fejn is-sit kien kollokat.

Għalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan ukoll hu aggravju li mhux gustifikat. It-talba tal-appellant hi għal sanzjonar tal-istrutturi kollha 'as built'. Dan jindika li ebda struttura kif mibnija ma hi skond il-ligi, għax kieku ma kienx jintalab sanzjonar. Dak li jirrizulta bhala fatt hu biss illi l-uniku permess ezistenti cioe PB 3139/82 li ikkonceda bini ta' tlett ikmamar zghar u garage li kellhom jinbnew ma' existing store', bil-footprint tal-izvilupp ta' circa 160 metru kwadru. Jirrizulta invece skond it-Tribunal li xejn ma nbena skond il-permess u l-footprint tal-binja ezistenti hi esagerata għal dak permess fiz-zona skond il-policies vigenti, senjatament CG04, apparti li s-swimming pool ukoll hi eccessiva u l-hitan, pavimentar u gates li ma jirrizultawx fil-pjanti għas-sanzjoni. Kwindi hu bla ebda mertu l-argument tal-appellant li t-Tribunal kellu jsalva dak l-izvilupp li jezisti pre 1992 u jagħti permess għall-izvilupp li seta' jigi legalizzat. It-Tribunal seta' jikkostata biss illi l-izvilupp kollu magħmul ma kienx kopert bil-permess mogħti fl-1983 u l-uniku bini ezistenti kienet biss 'store skond il-permess PA 3139/82 li ma jidhirx mittiefes bl-izvilupp mertu ta' dan l-appell.

In kwantu għas-sottomissjoni li kellu jigi applikat l-artikolu 91 u Skeda 8 tal-Kap. 504, dan qatt ma tqajjem bhala aggravju u lanqas jisthoqq jigi kunsidrat. Madankollu l-binja li qed tigi mitluba li tigi sanzjonata implicitament qed tigi indikata bhala illegali mill-appellant altrimenti ma kinitx tintalab sanzjoni u għalhekk hu illogiku li l-appellant jissottometti illi zvilupp li sar qabel l-1992 ma għandux ikun soġġett għal ebda kundanna. Kieku kien hekk il-binja li saret bejn il-hrug tal-permess fl-1983 u l-1992 ma kinitx tiffirma parti mit-talba għal sanzjonar tant li l-appellant hu inklusiv bl-istrutturi kollha meta fit-talba tiegħu indika l-istrutturi kollha 'as built' bhala l-mertu tas-sanzjonar mitlub. F'dan l-isfond is-sottomissjoni tal-appellant li t-talba sanatorja kienet tinkludi l-illegalitajiet kollha ma fiha ebda rilevanza għal aggravju li t-Tribunal

Kopja Informali ta' Sentenza

fettaq fuq dak li gie dikjarat bhala struttura ghal sanzjoni u illegalitajiet ohra li ma gewx inkluzi ghax fil-fatt it-Tribunal iddecieda dan l-appell fuq kwistjonijiet ohrajn ukoll ta' sustanza li ma jimmeritawx li l-appell jigi milqugh.

Ghalhekk dan l-aggravju qed jigi michud.

It-tielet aggravju

Dan l-aggravju ma hux korrett fil-fatt. Fis-seduta tad-29 ta' Marzu 2012 it-Tribunal iddiferixxa l-appell ghad-decizjoni bil-fakolta li l-appellant jaghmel nota ta' sottomissjonijiet fi zmien xahrejn b'risposta mill-Awtorita. Granet qabel id-decizjoni l-appellant ghamel rikors ghal prolazzjoni tad-decizjoni biex jiggustifika n-nuqqas tieghu billi jghid li l-Awtorita kellha taghmel hi s-sottomissjonijiet biex ikun jista jirrispondi. It-Tribunal cahad it-talba. Il-Qorti tqis illi l-fatti ma jirrispekkjawx l-aggravju kif maghmul u ma hemm ebda nuqqas la fl-operat tat-Tribunal u anqas fl-andament tal-proceduri.

Ghalhekk l-aggravju qed jigi michud.

Sottomissjoni ulterjuri

Fit-trattazzjoni l-appellant qajjem sottomissjoni li peress li llum inbidlu l-policies, id-decizjoni tat-Tribunal hi nulla u bla effett ghax ma hemmx policies li jiggustifikaw id-decizjoni. Dan l-argument mhux legalment korrett ghax it-Tribunal jiddeciedi applikazzjoni fuq il-policies, pjanijiet u ligijiet vigenti fil-mument tad-decizjoni tieghu. Appell quddiem din il-Qorti isir biss fuq punti ta' ligi minn dak deciz. X'dahal fis-sehh wara d-decizjoni mhux komputu tal-Qorti li tindagah anqas inghatat xi poter simili. L-uniku differenza li saret fl-2013 hu illi meta l-process ikun ghadu quddiem it-Tribunal qabel ma jigi deciz u hemm policies li qed jitbiddlu, ghandu d-diskrezzjoni li ma jiddeciedix l-appell u jibghat l-atti lura lil Awtorita biex terga tezamina mill-gdid l-applikazzjoni fid-dawl tal-policies godda. Dan il-poter ma jestendix wara

Kopja Informali ta' Sentenza

li tkun lahqet inghatat id-decizjoni mit-Tribunal, multo magis hu prekluz ghal Qorti li tikkunsidra talba bhas-sottomissjoni odjerna.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Jean Paul Busuttil u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012, bl-ispejjez kontra l-appellant.

< Sentenza Finali >

-----TMIEM-----