



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Dicembru, 2014

Appell Civili Numru. 174/2012

Frankie Tonna

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Frankie Tonna tas-26 ta' Novembru 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012 li biha cahdet PA 1847/02;

Rat ir-risposta tal-Awtorita li ssottomettiet li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Kopja Informali ta' Sentenza

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni tat-28 ta' Marzu 2002 – Full Development Permission – PA 01847/02 l-appellant, f' Frankit, Triq Had-Dingli, Dingli, talab:

“To sanction construction of pool ”

B'rifjut mahrug fl-25 ta' Gunju 2009 l-Awtorita' cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

“1. The proposed pool lies within a Level 3 Area of Ecological Importance, running counter to section 5.1 (1) of the adopted Development Control Policy: Swimming Pools Outside Development Zone.

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

Fl-appell tieghu l-perit Charles Buhagiar ressaq l-aggravji tal-applikant kif gej:

“Two reasons have been given to substantiate this decision. Reason 2 i.e. alleged illegalities on site runs counter to PA circular 2/96 in subject to another planning appeal application PAB 82/07 which to date has not been determined.

With regard to reason 1 of the refusal i.e. proposed pool runs counter to policies regarding swimming pools outside development zones. I would like you to note that such swimming pools attached to residential units located outside the development boundaries have been approved on numerous occasions. Indeed during the proceedings of this appeal we will provide various development permits for such

Kopja Informali ta' Sentenza

pools. Indeed just opposite my client's site two development permits for pools have been issued namely PA 4742/05 and PA 6556/05.

Furthermore the pool is located within the perimeter of the residential building and hence within a committed site. Thus it is not correct to state that it lies within a "level 3 Area of Ecological Importance."

In view of the above we feel that our request to construct (sanction) a swimming pool is reasonable and would therefore like to respectfully request that you review our application and grant us our development permit. "

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

"5.0 COMMENTS ON APPELLANT'S ARGUMENTS & REFUSAL NOTICE

5.1 The proposed development is objectionable on two main issues, being that:

a. A swimming pool cannot be accepted on such a highly environmentally sensitive site the Policy Guidance on swimming pools outside the development zone paragraph 5.1 (1) clearly states that pools will not be permitted on sites of ecological importance, and the site on which the proposed pool is situated is scheduled with several designations of environmental significance, including an Area of Ecological Value, and Area of High landscape Value, and a Special Area of Conservation.

b. Other illegalities are present on site- the provisions of PA Circular 2/96 apply, as the existing dwelling is an illegal structure in its entirety, and hence further development on the site cannot be sanctioned until the other illegalities are sanctioned or removed.

5.2 With regard to the illegalities on site, as the appellant rightly points out, another application was presented to sanction both the residential building and the swimming pool in PA 0354/04. This application was refused by MEPA, and is presently subject to an appeal in PAB 82/07. Moreover, another application PA 1266/00 is also requesting the sanctioning of the existing swimming pool, and is also presently subject to an appeal in PAB 85/04. It is also noted that in all three applications the design and scale of the swimming pool do not tally, and hence it

Kopja Informali ta' Sentenza

would be appropriate for the appellant to identify which application is actually sanctioning the swimming pool in its actual size, design and form. Hence, if the swimming pool applied for sanctioning in this application does not accord to what is actually present on site, the provisions of Circular PA 2/96 are still applicable.

5.3 With regard to the environmental sensitivity of the site and its designation as a Level 3 Area of Ecological Importance, the appellant states that this consideration should not apply as the pool is located within the curtilage of the existing residential building. However, as already explained the existing residence is not a legally existing structure and is illegal in its entirety. The illegal status of the residential building was also confirmed in the appeals decisions for the enforcement notices issued on site (vide decisions PAB 279/97, PAB 18/04 & PAB 20/04). Therefore, the site is not considered to qualify as committed, and there is no justification for accepting a pool on this environmentally sensitive site.

5.4 Conversely, the permits issued for swimming pools cited by the appellant do not serve as any form of precedent for this application, as these consist of ancillary development to legally existing residential development, unlike the case of this application.”

Permezz tal-kummenti responsivi tieghu l-perit Buhagiar wiegeb kif gej:

“The main reason given why this application cannot be approved is that the existing residence has not been built according to the approved plan i.e. illegally and so the existing swimming pool which is ancillary to it cannot be sanctioned since it forms part of an alleged illegal development.

On the other hand no planning reasons were presented as to why the application for a swimming pool should be refused.

In these circumstances since there is another planning appeal for the sanctioning of the villa as built (PAB 82/07) it is proposed that these two appeal applications be adjudicated together.”

Permezz ta' nota ta' sottomissjonijiet l-Avukat Joanne Vella Cuschieri wiegbet kif gej:

Kopja Informali ta' Sentenza

“1. Illi fl-ewwel lok naghmel referenza ghall-fatt li dan l-appell kien qed jinstema kontestwalment ma' l-appell bin-numru 262/04 f'isem Antoine Borg u dan stante li l-appelli jikkoncernaw siti vicini ta' xulxin fl-istess zona u ghalhekk jaqghu taht l-istess kriterji u l-appellant odjem jissottometti li jaghmel tieghu is-sottomissjonijiet kollha kontenuti fl-appell bin-numru 262/04 bhala sottomissjonijiet ukoll fi hdan dan l-appell u ghalhekk ghandhom jittellghu ghall-konsiderazzjoni u skrutinju tat-Tribunal anki fid-decizjoni ta' l-appell odjern;

2. Illi fit-tieni lok l-appellant jaghmel referenza ghas-sottomissjonijiet kollha kontenuti fil-korrispondenza- precedenti bejn il-partijiet kemm quddiem il-Kummissjoni qabel ir-rifjut, kif ukoll quddiem il-Bord u t- Tribunal nkluz:

A) L-ittri ta' l-appell;

B) B'mod specifiku ssir referenza ghall-ittri kontenuti fl-atti tal-applikazzjonijiet appellati u ndirizzati lie-Chairman ta' l-Awtorita' datati 28 ta' Gunju, 2004 li filhom gew ikkwotati ghadd ta' permessi ta' zvilupp li jaqghu taht l-istess kriterji talapplikazzjoni tal-appellant;

C) L-ittra ta' l-appellant datata 15 ta' Marzu, 2007 fejn gew indikati permessi ohra ta' zvilupp li kienu nhargu aktar recenti fiz-zona;

D) Ir-risposta ulterjuri ta' l-appellant datata 17 ta' Ottubru,2007;

E) L-ittra tat-28 ta' Frar, 2008;

u l-appellant jaghmel tieghu dak kollu kontenut fl-istess u jitlob li dan it-Tribunal jjehu konjizzjoni taghhom fl-analizi ta' dawn l-appell kontestwalment u d-decizjonijiet;

2. Illi fit-tieni lok l-appellant jaghmel ukoll referenza ghall-verbali taz-zewg accessi li saru fuq il-post minn zewg Bordijiet diversi minn fejn irrizulta li dan il-bini huwa r-residenza ordinarja tal-appellant u l-familja tieghu u dan sa mill-bidu tas-snin tmenin (80), li huwa l-uniku residenza li ghandu fejn huwa jirrisjedi flimkien mal-familja tieghu, li dan il-bini jifforma parti minn bosta blokok ohra ta' bini (parcel of properties) li ghalkemm kienu originarjament proposti sabiex jigu rikonoxxuti bhala 'small rural settlement' jew 'hamlet' ghal xi raguni dan ma sarx b'rizultat li r-residenzi

Kopja Informali ta' Sentenza

li jinsabu f'din iz-zona u li ilhom ezitenti sa mill-bidu tas-snin 80 ma nghatatilhomx il-protezzjoni li kien jixiriqilhom;

3. Illi fit-tielet lok l-appellant jaghmel referenza wkoll ghad-dokumenti prezentati li juru li sahsitra l-appellant ilu ghexieren ta' snin ihallas lill-istess Gvern ta' Malta licenzja ghall-uzu tal-'pool' imsemmija f'dawn il-procedura. Ghalhekk minn naha ghandek Dipartiment tal-Gvern li ilu li accetta il-legalita ta' din il-'pool' tant illi qed jipretendi hlas ta' licenzja fuqha, minn naha l-ohra ghand l-istess Gvern tramite l-Awtorita' li qed tibqa tinsisti fuq l-illegalita' ta' din il-'pool'. Dan certament jilledi bi shih id-drittijiet ta' l-appellant u ghandu jittiehed in konsiderazzjoni minn dan it-Tribunal;

4. Illi fir-raba' lok l-appellant ifakkar ukoll anki b'referenza ghall-verbali tal-accessi li fil-vicinanze tas-sit inhargu bosta permessi ta' zvilupp lil terzi anki recenti izda ghal xi raguni l-Awtorita' b'mod diskriminatorju ghall-ahhar baqghet ma ssanzjonatx ir-residenza tal-appellant b'detriment ghad-drittijiet tieghu u tal-familja tieghu li jigu trattati b'mod ugwali bhal applikanti ohra.

Illi apparti l-kwistjoni tad-diskriminazzjoni l-istess permessi ta' zvilupp iwasslu wkoll ghall-kwistjoni tal-'commitment' li hemm fiz-zona ghall-permessi ta' zvilupp simili u ohrajn anki diversi izda lkoll ghal skopijiet ta' residenza jew sahsitra 'stores', liema 'commitment' ghandu jimmita favur li jigu milqugha l-applikazzjonijiet tal-esponent.

Illi mill-lat ta' gurisprudenza ssir referenza ghad-decizjoni fl-ismijiet Joseph Gauci vs. Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar deciza mill-Qorti ta' l-Appell nhar il-25 ta' Frar, 2010 fejn fdik id-decizjoni l-Qorti ddikjarat li applikazzjonijiet simili jirrikjeddu trattament identiku u jirrikjedju li jkunu konsistenti sabiex ma tigix krea ta diskriminazzjoni u inegwaljanza ma' l-appellant altrimenti l-Awtorita' jew it-Tribunal ikunu hatja ta' diskriminazzjoni ingjustifikata fil-konfront ta' l-appellant. Fil-fatt f'dak il-kaz il-Qorti annullat id-decizjoni u baghtet lura l-atti quddiem il-Bord.

Issir ukoll referenza ghad-decizjoni fl-ismijiet Joseph Muscat vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar datata 15 ta' Meju 2005 fejn ikkonfermat decizjoni ta' l-istess Bord ta' l-Appell li ddikjarat kif isegwi:

'Illi peress li l-izvilupp fis-sit adjacenti gie approvat, hu difficli ghal dan il-Bord li jasal ghall-konkluzjoni differenti.'

Kopja Informali ta' Sentenza

Sentenzi ohra fuq l-istess linja huma Anna D' Amato vs. Kummissjoni ghall-Kontroll tal-Izvilupp deciza nhar it-28 ta' Gunju, 2006 mill-Onorabli Qorti ta' l-Appell, Dr. Garhan Busuttil vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar decizja fit-28 ta' Frar, 2008 ukoll mill-Qorti ta' l-Appell, Marco Farrugia vs. Kummissjoni ghall-Kontroll ta' l-Izvilupp (10 ta' Dicembru, 2008, Appell), Christine Steege vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (26 ta' Novembru, 2009, Appell), Kevin Azzopardi vs. l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar (26 ta' Novembru, 2009, Appell).

Jigi sottomess li sa minn quddiem il-Kummissjoni ghall-Kontroll ta' l-Izvilupp l-appellant dak iz-zmien l-applikant kie gia qed ihossu li qed jigi diskriminat tant illi qajjem dan il-punt fl-ittri tieghu fl-atti ta' kull applikazzjoni indirizzati lill-Kummissjoni u datati 28 ta' Gunju, 2004. Fl-istess ittri gew elenkati mill-anqas sittin (60) permess ta' zvilupp fl-akkwati tas-sit koncernat kif ukoll f'irhula fil-vicinanze u ohrajn le li lkoll kellhom l-istess kriterji, fosthom li kienu

jinsabu barra z-zona ta' zvilupp IZDA LKOLL INHARGILHOM PERMESS MILL-AWTORITA'. Dawn il-permessi ta' zvilupp sahsitra ma kienux biss jikkoncemaw zvilupp residenzjali izda wkoll zvilupp kummercjali.

Illi l-istess preokkupazzjoni li kienet qed tigi mwettqa diskriminazzjoni fil-konfront ta' l-appellant tressqet bhala aggravji fl-appell tieghu u fl-ittri u sottomissjonijiet ulterjuri. Fil-mori tal-appelli regghu gew ikwotati permessi ta' zvilupp ohra li nonostante li kellhom l-istessi kriterji, u nonostante li l-applikazzjonijiet ta' l-applikant kienu gew rifjutati u kienu pendent i l-appell, dawn xorta wahda nghataw il-permess ta' zvilupp mill-Awtorita'. Jehtieg li l-Awtorita' u rapprezentanti taghha japplikaw il-'policies' u r-regolamenti applikabbli b'mod ugwali ghal kulhadd u mhux f'certu kazijiet jimxu b'mod rigidu magghom u jirrifjutaw l-applikazzjonijiet filwaqt li f'kazijiet ohra jinjorawhom b'mod assolut u jinhargu l-permessi. Jigi emfasizzat li la darba l-Awtorita' anki f'kaz wiehed biss (ghall-grazzja ta' l-argument) tinjora dawn il-'policies' u regolamenti u taghmel eccezzjoni ghall-istess, din l-eccezzjoni ghandha ssir fl-applikazzjonijiet kollha ohra simili altrimenti ma jkunx hemm trattament ugwali u tkun qed tigi kommessa diskriminazzjoni.

Illi fl-appelli odjerni tqajjmet ukoll il-kwistjoni tal-'commitment'. L-appellant jinsisti li dan il-'commitment' ma jstax jigi injorat mill-Awtorita' wisq anqas mit-Tribunal. Ma jstax ikun, kif seta jigi verifikat mill-access, li kwazi faccata tas-sit talappellant inhargu permessi ta' zvilupp ghal residenzi filwaqt li gew michuda l-applikazzjonijiet tal-appellant u dan ghal bini li ilu ezistenti ghal aktar minn tletin sena. Dawn il-permessi ta' zvilupp huma pjuttost recenti u saret referenza ghalihom, kemm fl-appelli kif ukoll f'sottomissjonijiet ulterjuri. Sahansitra ssir referenza permess ta' zvilupp iehor faccata tas-sit involut f'dan l-appell bin-numru 04742/05 f'isem certu Marco Milli nonostante li kien jaqa taht ezattament l-istess kriterji ta' skrutinju bhal applikazzjoni odjema. Jirrizulta li f'korrispondenza ulterjuri li ghaddiet bejn l-Awtorita' u l-appellant quddiem dan it-Tribunal l-Awtorita' pruvat tahbi l- izbalji taghha billi

Kopja Informali ta' Sentenza

ssottomettiet li dan il-permess partikolari inghata fuq sit fejn gia kien hemm residenza. Irrizulta izda li dan ma kienx minnu ghaliex l-uniku permess li kien hemm kien ghal 'store' (li xorta jikkostitwixxi precedent favur l-applikant stante li wahda mill-applikazzjonijiet tikkoncerna s-sanzjonar ta' store) u meta saret ir-residenza l-Awtorita' l-ewwel harget Avviz ta' Nfuzzar u konsegwentement harget il-permess ghar-residenza. Fil-fatt jekk wiehed jara t-tieni 'statement' tal-Awtorita' datat 17 ta' Jannar, 2008 dan jikkonsisti biss fi skuza wara l-ohra ghalfejn fis-siti adjacenti nhargu l-permessi ta' zvilupp filwaqt li dawn ma nhargux lill-appellant. Attentat iddisprat biex l-Awtorita' tahbi li qieghda tagixxi b'kejl divers fuq applikazzjonijiet ugwali.

5. Illi dwar il-kwistjoni li z-zona kienet indikata sabiex tigi rikonoxxuta bhala 'small rural settlement' jigi sottomess li ghalkemm huwa minnu li finalment dan ma sehxx (ghalkemm wiehed ma jistax jifhem ghalfejn dan ma sarx in vista tan-numru kbir ta' bini, residenzi, stores fiz-zona u permessi ta' zvilupp) dan ma jfissirx li t-Tribunal ghandu jinjora ghal kollox dan il-fattur daqshekk importanti speċjalment in vista tat-trapass taz-zmien minn meta nbdew dawn l-istrutturi. Ssir f'dan l-istadju referenza ghall-artiklu 41 sub-artiklu 13 tal-Kap. 504 tal-Ligijiet ta' Malta fejn jinghad li f'kull appell minn decizjoni tal-Awtorita', it-Tribunal huwa obbligat ukoll li jhares id-disposizzjoni tal-artiklu 69 tal-istess Kap. 504. Fil-fatt is-sub-artiklu 13 tal-Artiklu 41 jaqra kif isegwi:

'u t- Tribunal ghandu jizgura li jkun konformi mad-disposizzjonijiet tal-artiklu 69 meta jirrevedi d-decizjoni tal-Awtorita'.

Illi l-artiklu 69 sub-artiklu (2) jaqra kif isegwi:

'Fid-determinazzjoni taghha fuq applikazzjoni l-Awtorita' ghandha ukoll tqis:

(a) kull haga ohra ta' sustanza komprizi konsiderazzjoni ambjentali, estetici u sanitarji li l-Awtorita tikkunsidra rilevanti;

L-appellant isostni li dan l-aggravju u l-fatti relatati mieghu fil-fatt jikwalifikaw bhala materja ohra ta' sustanza li ghandha tinghata d-debita konsiderazzjoni minn dan it-Tribunal u ghandha timmilta favur l-ghoti ta' dawn il-permessi ta' zvilupp.

6. Illi finalment issir referenza ghal dak li l-Awtorita' qieghda tinsisti fuqu bhal raguni ta' rifjut cioe' li jekk jigi approvat dan l-izvilupp ser ikun hemm impatt vizwali u

Kopja Informali ta' Sentenza

ekologiku fuq is-sit u d-dintorni. Jigi sottomess li dan assolutament mhux minnu kemm minhabba n-numru konsideravoli ta' binjiet ezistenti f'din iz-zona kif ukoll minhabba li fl-uniku kaz fejn l-Awtorita' f'din iz-zona waqqgħet binja illegali is-sit partikolari thalla zdingat u għadu hekk sal-lum. Dan seta jigi vverifikat mill-istess Bord ta' l-Appell waqt l-accessi.

Jigi wkoll emfasizzat il-punt li l-appellant ma jistax' jifhem kif fil-kaz ta' l-applikazzjonijiet tiegħu l-Awtorita' qed tinsisti li z-zona hija ta' importanza vizwali u ekologika filwaqt li fil-kazijiet fejn inhargu l-permessi ta' zvilupp adjacenti u faccata s-sit ta' l-appellant dawn il-konsiderazzjoni lanqas biss issemew. Ma tridx tghid l-Awtorita' li l-valur ekologiku jieqaf mas-sit tal-appellant li fuq kollox huwa mibni u ilu hekk għal aktar minn tletin sena! Anki minn dan il-lat johrog car id-diskriminazzjoni li qed tigi kommissa fil-konfront ta' l-appellent bir-rifjut ta' l-applikazzjoni de quo. ”

Fit-tielet rapport tagħha l-Awtorita' kkummentat inter alia kif gej:

“1.0 COMMENTS ON APPELLANT'S ARGUMENTS

1.1 Following the submission of the second report by the Authority; the appellant replied in letter dated 30th May, 2012 by arguing (mainly) the following:

- The appellant has been residing in the same residence which is his only residence since 1980 and the building forms part of other clusters of dwellings which were previously recognized as a 'small rural settlement' which eventually was not established.
- The appellant has been paying his licence for the use of a 'pool'. This means that the Government has long since established the legality of the 'pool'.
- Several permits have been issued in the vicinity of the site to third parties. Hence, the appellant should have the same identical treatment.
- The nearby dwellings and stores imply that the area is committed with developments similar to the appellant's.

Kopja Informali ta' Sentenza

- Reference to examples of appeal decisions.
- The appellant had previously outlined a number of permits which were issued in the vicinity which are located outside the development zone.
- Permission PA4742/05 was issued on a site facing the appellant's residence which was assessed against the same criteria of the appellant's case.
- The appellant is referring to reasons for refusal concerning the impact on the environment to which he is stating that the area is already committed by development and the Authority had removed an illegal development and the site was left to deteriorate.
- The discrimination is also apparent in the reason for refusals concerning the visual impact since the property adjacent to the appellant's and that in front were not assessed on their impacts on the environment.

1.2 The Authority has the following comments to make:

1.2.1 Repeat of Earlier Comments

At third statement most of the appellant's arguments are identical to the response to the Reconsideration report dated 9th June 2005, and to the first and second statements. Hence, the Authority retains the arguments made in para.5.2 - 5.7 of the initial report of PB 82/07.

1.2.2 Re: Issue of illegality

The appellant is trying to justify the construction of a new dwelling and its ancillary facilities through its long-term use as a residence. However, this fact alone does not present sound planning justification to regularize the building or entitle the proprietor to any rights on the use of his land. As long as the activity and development on site was carried out illegally, the enforcement actions taken on site are still active. This was confirmed in the Court of Appeal decision of 31st May 1996: Francis Mugliett vs. the Planning Authority, which confirmed the presence of illegal development on

Kopja Informali ta' Sentenza

a site notwithstanding that the illegal development existed on site for more than 40 years, even if with the knowledge of the authorities and no action was taken by these authorities during these 40 years

The appellant is alleging that the Authority has issued permits for residential dwellings in the vicinity of the site. As already remarked in the previous statements, the street along which the development is located is characterized by a number of illegal developments all of which have either been refused or are currently being heard at appeals. The only permit cited by the appellant as applicable to this case is PA 4742/05. The Authority has already commented on this application in the initial report" points 5.3 and 5.4 of the original report to the Tribunal in PB 82/07. The permit issued in the case mentioned by the appellant was warranted since the site was an infill site between legally existing residential development which although these sites were subject to development, the illegalities consisted of development which followed after the issuance of the original permits for the construction of dwellings.

In addition to the site's location (infill site) of PB 4742/05, the original permit issued on this site for residential development was granted prior to the enactment of the Local Plans. At the time of these permits, ODZ applications were determined on their own merits. In several instances, as in the case of the two permits cited by the appellant, residential development would be favourably considered on committed sites, sites adjacent to blank party walls, and/or on infill sites.

However the Local Plans recognized that further policy guidance was required to control development in such areas. The Local Plans recognized that some areas were more committed than others, and some merited greater environmental sensitivity. This exercise led to the designation of Rural Settlements (Category 1, 2 & 3), where only within these designated areas could a certain extent of residential development be considered as provided for in Policies NWRS 2 & NWRS 3. Within the areas falling outside the designated rural settlements, new residential development is no longer permitted, with the implementation of the Local Plan.

The site subject to appeal does not fall within a recognized rural settlement, and whether this area should have qualified as such cannot be contested in this development permission application. As already outlined in previous reports, the site falls within an earmarked Natura 2000 site within which no new dwellings are permissible. Therefore, the area cannot be termed a de facto hamlet just because the site is committed by dwellings, the majority of which have been illegally built as testified by the number of applications to sanction.

Kopja Informali ta' Sentenza

With regards to the legality of the swimming pool, this issue was raised in previous appeal applications lodged on site which are also being tackled in this report as a single appeal. The construction of the swimming pool was initially mentioned in PA 1266/00 also currently subject to appeal PB 85/04. In this application, the swimming pool was not yet constructed since it was assessed against Circular 1/100 for the construction of new swimming pools in ODZ. Therefore this appeal is null since the swimming pool was eventually constructed illegally and is now being sought for sanctioning through PA1847/02 which is currently subject to PB 144/09.

Nevertheless, in this appeal PB 82/07, the appellant is stating that he is in possession of a license issued by the Water Services Corporation on 22nd February 1999, to contest his entitlement for the swimming pool. The license in question concerns solely the use and operation of a fresh water swimming pool (doc.1 B in PA 1266/00) and by previous appeals the swimming pool is illegal and Circular PA 2/96 is still applicable.

1.2.3 Re: Issue of site sensitivity

The appellant is alleging that the scheduling of the surrounding area was not an issue in applications filed for development adjacent and facing his site. On the contrary, the planning history of these buildings indicates that the development has been carried out without a valid permit. The Buskett Roadhouse facing the appellant's site was subject to two appeals PB339/01 and PB 181/05 lodged against the refusal of PA 1098/01 both of which were eventually withdrawn by the applicant. PA 1098/01 and the preceding application PA 1408/94 were both refused solely on the incompatibility of the proposal with the area in view of its ecological value. On the same note, the building immediately adjacent to the appellant's site subject to application PA 5656/98 was also refused by the DCC since 'the construction of garages outside development zone is not considered as development essential for the need of agriculture, scenic or ecological interests.'

It is also telling to note that even had the site not been scheduled and assessed as a pre-local plan application it would have also been found to run counter to the established policy. It would have had to be assessed according to the provisions of the PLP 20 which does not permit new dwellings in the ODZ except under the most stringent criteria which the proposal does not satisfy.

Nevertheless, it is established policy that applications are always decided according to policies and legislation in vigore at the time of the decision.”

Kopja Informali ta' Sentenza

Permezz tal-kummenti responsivi tiegħu l-perit Charles Buhagiar wiegeb kif gejj:

“It is to be noted that PAB 85/04, PAB 144/09 and PAB 82/07 all relate to the same site and to the same building and therefore should be considered together.

The main application is PA 354/04 (PAB 82/07) to construct a bungalow with a pool whilst the other two applications relate to this application i.e. PA1266/00 (PAB 85/04) to carry out minor alterations at ground floor level and construct a swimming pool and PA 1847/02 (PAB 144/09) to sanction construction of a pool.

Whilst refraining from repeating the same arguments which have been made in previous correspondence I would like to point out that these works were originally applied for in April 1984 (PB 1760/84). At that time this site qualified as a building site as per BDA Act and hence these works could have been carried out. It was only the undue long period taken to process this application which hampered its approval - refusal was issued seven years later after the application was submitted on the 13th February, 1991. Had this application been processed with a reasonable time period it would have been approved.

The argument that application needs to be assessed as per current planning policies is unfair because a 28 year old application is being subject to today's policies.

I would therefore like to request that this argument be given due consideration during your adjudication.

Furthermore I have once again to reiterate that the swimming pool is covered with a permit issued by the Water Services Corporation at the time it was constructed - which was the only permit required for pools.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba għall-issanzjonar tal-izvilupp ta' pixxina.

Is-sit mertu ta' dan l-appell jinsab fl-indirizz ta' 'Frankit', Triq Had-Dingli, Dingli.

Kopja Informali ta' Sentenza

Din l-applikazzjoni giet rifjutata peress li l-pixxina proposta tinsab f' Level 3 Area of Ecological Importance li jmur kontra l-artikolu 5.1 (1) tad-Development Control Policy: Swimming Pools Outside Development Zone, u li l-bini ezistenti mhuwiex kopert b'permess u li l-proposta tmur kontra c-cirkolari PA 2/96.

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

L-appellant jissottometti li gew approvati diversi pixxini barra miz-zona tal-izvilupp u li l-appellant jista jissostanza izjed fid-dettal partikolarment dwar PA 4742/05 u PA 6556/05, li l-pixxina tinsab fil-perimetru ta' bini residenzjali u f'sit kommess u li mhuwiex korrett li jinghad li s-sit jinsab f' "level 3 Area of Ecological Importance", u li f'dan is-sens it-talba ghall-issanzjonar tal-pixxina hija ragjonevoli u gustifikata.

L-Awtorita' tissottometti li pixxina ma tistax tigi accettata f'zona daqshekk sensitiva, li jezistu illegalitajiet ohra fuq is-sit u li tapplika c-cirkolari 2/96, li l-binja ezistenti hija illegali u li zvilupp ulterjuri ma jistax jigi kkunsidrat sakemm l-illegalitajiet jigu mnehhija jew sanzjonati, li l-applikazzjoni PA 0354/04 ghall-issanzjonar tal-illegalitajiet giet michuda, li giet ipprezentata applikazzjoni ohra PA 1266/00 ghall-issanzjonar tal-pixxina li hija soggetta ghall-appell PAB 85/04, li s-sit ma jistax jigi kkunsidrat bhala sit kommess ghall-izvilupp, u li l-permessi ghal pixxini msemmija mill-appellant ma jikkostitwux precedent peress li jikkonsistu f'zvilupp mizjud ma zvilupp residenzjali legali kontrarjament ghal dak mertu ta' dawn il-proceduri.

l) L-ewwel motivazzjoni tar-rifjut tirreferi ghaz-zona fejn jinsab l-izvilupp propost; cjoe zona sensitiva u ta' importanza Ekologika.

Dwar dan l-appellant issottometta li nghataw diversi permessi li huma ancillari ma residenzi li jinsabu f'zona li hi barra z-zona tal-izvilupp. Saret referenza partikolari ghal zewg permessi PA 4742/05, u PA 6556/05, li skond l-Perit ta' l-appellant huma "Just opposite my client's site".

Kif gie rilevat fl-Appell 82/07, ta l-istess appellant bil-proposta fuq l-istess sit "To sanction construction of bungalow with swimming pool" l-izvilupp tal-permess PA 4742/05 mhux faccata tas-sit tal-appellant. Dan is-sit hu mmarkat 'A' fuq il-pjanta Dok 1 annessa mar-rapport tal-Awtorita' pprezentat fil-11 ta' Gunju 2007. Skond din l-pjanta jirrizulta li sit li ghalih saret referenza jinsab certa distanza 'l boghod mis-sit in kwistjoni, fuq in-naha l-ohra tar-triq. L-Awtorita' spjegat x'kienu c-cirkostanzi

Kopja Informali ta' Sentenza

partikolari ghaliex nghata l-permess citat, u cjoe li dan is-sit kien 'infill' site bejn zewg residenzi legittimi ezistenti.

Is-sit mertu ta' din l-applikazzjoni mhux 'infill site' bejn zviluppi legittimi; hu struttura 'detached' vicina ghal numru ta' zviluppi mmarkati B,C,D,E, F, G, H u I fuq l-istess pjanta, li kollha nbnew bla permess; u huma soggetti ghal enforcement.

L-akbar ostakolu ghall-approvazzjoni ta' din l-applikazzjoni hu 'zoning' fejn jinsab s-sit, li hu Area of High Landscape Value, Special Area of Conservation of International Importance, Level 3 Area of Ecological Importance u Rural Conservation Area.

L-appellant originarjament fin-1984 applika 'to construct dwelling and garage' PB 1760/84 – applikazzjoni li giet michuda mill-PAPB. Ghalkemm l-applikazzjoni giet michuda, l-appellant bena xorta wahda daqs li kieku nghata l-permess. Infatti l-applikazzjonijiet sussegwenti prattikament kollha saru to sanction, l-izvilupp li l-appellant bena bla permess.

PA 7747/94 To carry out minor additions at ground floor and construction of swimming pool. L-applikazzjoni giet michuda mid-DCC fis-16 ta' Frar 1996.

PA 1266/00 To sanction minor additions at ground floor and construction of swimming pool. L-applikazzjoni giet michuda mid-DCC fit-8 ta' April 2002. Sar appell PAB 85/04.

PA 2289/00 To sanction store. L-applikazzjoni geit michuda mid-DCC fit-8 ta' April 2002, rifjut ikkonfermat fis-16 ta' Settembru 2002 wara talba ghal reconsideration michuda fis-16 ta' Settembru 2002.

PA 0354/04 To sanction construction of bungalow with swimming pool. L-applikazzjoni giet michuda mid-DCC fis-26 ta' Lulju 2004, u r-rifjut gie kkonfermat fl-20 ta' Frar 2007 wara talba ghal reconsideration. Appell Numru 82/07.

PA 0513/04 To sanction existing store for agricultural purposes. L-applikazzjoni giet michuda mid-DCC fl-24 ta' Awwissu 2004, rifjut ikkonfermat fit-13 ta' Settembru 2005 wara talba ghal reconsideration. Appell Numru 365/05.

Kopja Informali ta' Sentenza

Billi l-izvilupp kollu sar bla permess hargu l-enforcement notices segwenti:

ECF 447/97 Construction of swimming pool without permit. Sar appell PAB 279/97 li gie michud mill-Bord ta' l-Appell fis-26 ta' Gunju 2002.

ECF 634/03 Construction of Villa without Permit. Sar appell PAB 20/04 li gie michud fl-4 ta' Frar 2005.

ECF 631/03 Construction of store without Permit. Sar appell PAB 18/04 li gie michud fl-10 ta' Marzu 2006.

Il-permess jikkonferma li l-appellant applika biex jibni residenza u garage fin-1984. Ghalkemm l-applikazzjoni giet michuda, bena bungalow, swimming pool u store bla permess, u llum jippretendi li dan l-izvilupp urbanistiku estensiv, f'zona sensittiva fejn mhux permess zvilupp jigi sanzjonat.

Dwar is-sensitivita tas-sit fl-Appell 82/07 l-Awtorita' ghamlet referenza ghall-Appell 323/02 fl-ismijiet:

"Antoine Borg vs Kummissjoni ghall-Kontroll tal-Izvilupp" deciz fit-23 ta' Lulju 2003. L-appell jirreferi ghas-sit mmarkat 'H' fuq il-pjanta Dok 1 annessa mar-rapport pprezentat fil-11 ta' Gunju 2007, prattikament adjacenti s-sit in kwistjoni regolat regolat bl-istess principji ta' ippjanar.

Fl-imsemmija decizjoni inter alia ntqal is-segwenti:

"Fl-appell tieghu, l-appellant jikkontendi illi s-sit in kwistjoni jifforma parti minn "hamlet" ezistenti li nbena xi sittax-il sena ilu u li ghandu s-servizz tad-dawl u l-ilma. Huwa qal illi l-garaxx in kwistjoni gie konstruwit ferm qabel ma s-sit gie skedat bhala zona ta' importanza ekologika u ta' "high landscape value" u ma setax jifhem kif l-izvilupp kien qieghed b'xi mod ihassar jew inaqas minn din l-importanza.

L-Awtorita qed tissottometti illi l-izvilupp illi l-appellant qieghed jittenta jirregolarizza mhuwiex accettabbli 'l barra miz-zona ghall-izvilupp u mhuwiex inkluz bhala tip ta'

Kopja Informali ta' Sentenza

zvilupp accettabbli fparagrafu 7.6 tal-policy BEN 5, Oltre dan, s-sit mhuwiex qiegħed jigi rakkomandat sabiex jigi inkluz bhala "rural settlement", F'sottomissjoni ulterjuri, l-Awtorita pprezentat pjanta li tindika illi kien hemm numru ta' binjiet vicin is-sit illi kienu gew rifjutati.

Il-policies tal-Pjan ta' Struttura jimmilitaw kontra l-izvilupp barra miz-zona tal-bini u l-barra minn zoni kommessi u mibnija, partikolarment meta si tratta ta' zvilupp urban bhalma huwa dak propost, u i-policies SET 11 u SET 12 huma carissimi f'dan ir-rigward. Minn ezami tal-pjanta esibita mill-Awtorita, jidher illi saru numru ta' binjiet u kien sar tentattiv biex jigu sanzjonati izda kienu gew rifjutati u bicciet minnhom gew imnehhija permezz ta' "direct action", Ghaldaqstant, ma jistax jingħad illi hemm xi "commitment" vicin is-sit li jista' b'xi mod jiggustifika l-izvilupp mertu ta' dan l-appell.

Oltre dan, il-fatt illi s-sit ilium jinsab gewwa zona skedata, anke jekk semplicement gewwa l-"buffer zone" ifisser illi għandu jsir kull tentattiv sabiex l-izvilupp f'din iz-zona ssir b'certa sensitività. Il-tatt illi dan l-iskedar sar wara illi nbena l-izvilupp bl-ebda mod jiggustifikah u dan l-izvilupp l-appellant għamlu a riskju unikament tiegħu meta bena mingħajr ma għamel id-debita applikazzjoni lill-awtoritajiet ta' dak iż-żmien vestiti bil-funzjoni tal-hrug tal-permessi u beda jopera l-attività ta' mechanic/sprayer. Din it-tip ta' attività hija wahda essenzjalment ta' natura urbana:

Il-policies RCO 2 u RCO 4 li jitrattaw il-konservazzjoni ta' zoni rurali, bhalma huwa s-sit in ezami, huma cari meta jipprovdu illi l-ebda zvilupp ta' natura urbana m'għandu jigi permess f' dawn iz-zoni u illi għandhom jigu kkunsidrati favorevolment biss dawk l-istrutturi jew facilitajiet li jkunu essenzjali għall-interessi agrikoli, ekoloġici jew mil-lat xeniku, u li ma jiksrux il-principji enuncjati til-policy RCO 4. Dan il-Bord jidhrilu illi l-izvilupp illi l-appellant qiegħed jittenta jissanzjona ma jinkwadrax ruhu that ebda minn dawk il-kriterji stipulati f'dawn il-policies, peress illi l-uzu propost huwa essenzjalment urban u xejn iktar. Oltre dan jaffettwa l-integrità vizwali taz-zona peress illi jiddomina vizwalment din il-parti tal-Buskett u jhassar il-veduta ta' dan il-post li jimmerita kull mizura ta' konservazzjoni, filwaqt illi l-attività proposta tista' tkun ta' dannu ambjentali f'post tant sensitiv.

Għaldaqstant, dan il-Bord, wara li qies bir-reqqa l-applikazzjoni in kwistjoni, ma jsib l-ebda gustifikazzjoni sabiex l-izvilupp propost jigi permess f'zona klassifikata bhala ODZ".

II) It-Tieni motivazzjoni tar-rifjut hi fis-sens li billi r-residenza mhix koperta bil-permess l-proposta ta' sanzjonar tal-pool hi in kontravvenzjoni tac-cirkolari PA 2/96 li tgħid li meta l-izvilupp ezistenti jkun kollu jew inparti illegali l-Awtorita' ma tikkonsidrax applikazzjoni għall-zvilupp għid fuq l-istess sit sakemm l-izvilupp ma

Kopja Informali ta' Sentenza

jigix regolarizzat, cjoé jew titnehha l-illegalita fuq is-sit jew tigi ssanzjonata. Dan hu illum inkorporat fir-Regolament 14 tal-Avviz Legali 514 ta' l-2010.

Kif konfermat mill-elenku ta' applikazzjoni fuq citati li saru dwar is-sit 'de quo'; l-izvilupp propost fin-1984 ghar-residenza kien gie michud mill-PAPB; izda l-appellant xorta wahda bena l-izvilupp minnu propost, li wara talab li jigi sanzjonat.

Dwar dan l-appellant irrefera ghall-appell 82/07 ghall-korrettezza din il-motivazzjoni tar-rifjut; cjoé kontravvenzjoni tac-cirkolari PA 2/96 nghatat fl-appell 85/04 (PA 1266/00) mhux fl-appell 82/07.

Billi bl-applikazzjoni prezenti l-appellant qed jitlob sanctioning ta' swimming pool, u peress li rrizulta li l-bungalow u l-istore nbnew bla permess, tapplika ghal-kaz c-cirkolari PA 2/96 illum Regolament 14 tal-Avviz Legali 514 ta' l-2010.

Dwar iz-zona mertu ta' dan l-appell, kif ukoll dwar is-sottomissjonijiet ulterjuri tal-konsulenti tal-appellant, issir referenza ghall-appell 85/04 fejn ntqal is-segwenti:

“Il-premess jikkonferma, mhux li l-appellant f'xi zmien kellu permess, izda li ilu ghall snin shah igawdi mill-illegalita' impunement. L-appellant kellu l-obbligu li japplika qabel jibni, u jibda jibni kemm-il darba jinghata l-permess. L-appellant applika ghall-permess fin-1984, ma nghatax permess u bena zvilupp urban estensiv f'area sensitiva daqs li kieku inghatalu l-permess.

L-appellant ghazel li jibni bla permess, u billi ilu snin jirrisjedi hemm jippretendi li l-izvilupp illegali jigi sanzjonat u l-area issir Rural Settlement. Il-process ta' ippjanar, partikolarment l-kontroll ta' l-izvilupp, issir b'mod tekniku u oggettiv biex jigi assigurat li certi areas li jimmeritaw protezzjoni jigu ppriservati a beneficju tal-komunita in generali, partikolarment ghall-generazzjonijiet futuri. Dan l-ezercizju idealment m'ghandux jigi influwenzat, kondizzjonat jew addirittura dettat minn min jabbuza. B'dan il-mod dak kollu kkonsidrat u ippjanat li jimmerita preservazzjoni, jigi stultifikat, u fejn kien intiz li jibqa mhux zviluppat, jigi zviluppat. In-nuqqas ta' kontroll, u l-assoggettazzjoni ghall-abbuz tannulla kull tentattiv u ezercizju intiz biex jorganizza l-izvilupp biex dan ikun dejjiemi u sostenibbli.”

“Fin-nota, ipprezentata fit-13 ta' April 2012, l-konsulent legali tal-appellant ssottomettiet li qed issir diskriminazzjoni kontra l-appellant, li nghataw diversi permessi ghar-residneza barra z-zona tal-izvilupp; li l-Awtorita' mhix konsistenti fid-decizjonijiet taghha billi applikazzjonijiet simili, barra z-zona tal-izvilupp gew approvati; li l-appellant ilu mis-snin tmenin juza l-fond ghar-residenzja; li fil-

Kopja Informali ta' Sentenza

lokalita'hemm diversi binjiet ohra, u ghalhekk l-lokalita' kienet timmerita' li tigi disinjata bhala Rural Settlement fejn certu zvilupp limitat jista' jigi approvat. Inter alia fl-imsemmija nota jinghad s-segwenti:

“Jigi enfasizzat li la darba l-Awtorita' anki f'kaz wiehed biss (ghall-grazzja tal-argument) tinjora dawn l-policies u regolamenti u taghmel eccezzjoni ghall-istess, din l-eccezzjoni ghandha ssir fl-applikazzjonijiet kollha ohra simili altriment ma jkunx hemm trattament ugwali u tkun qed tigi kommessa diskriminazzjoni.”

Il-premess jimmerita approfondiment fil-kuntest ta' konsiderazzjonijiet ta' ippanar.

Dwar permessi fil-vicinanzi tas-sit de quo, irrizulta fil-kors ta' smiegh ta' dan l-appell, li prattikament l-izviluppi kollha f'din il-lokalita' nbnew bla permess. Mhux sufficjenti li wiehed jirreferi ghall-izvilupp fil-lokalita', jinhtieg li dawn ikunu legittimi cjoe nbnew bil-permess. Kif irrizulta mill-pjanta pprezentata mill-Awtorita', l-lokalita' in kwistjoni hi karatterizzata bil-bini illegali.

Hemm permess fil-vicinanzi, PA 4742/05, izda dan skond l-Awtorita' nghata billi kien infill site bejn zewg residenzi legittimi. Dan hu mmarkat 'C' fil-pjanta annessa mas-second statement tal-Awtorita' Dok LV1. Is-sit mertu ta' dan l-appell la hu infill site u l-anqas adjacenti blank party wall, li huma l-eccezzjonijiet li jiggustifikaw permess f'Rural Settlement.

Saret in fatti sottomissjonijiet fis-sens li dan il-'parcel of properties' kien jimmerita li jigi rikonoxxut bhala rural settlement. Izda jibqa' fatt, li bil-Pjan Lokali ppubblikat f'Lulju 2006, din il-lokaltia' ma giet disinjata bhala Rural Settlement izda Area sensitiva ta' mportanza ekologika, u High Landscape Value of Buskett, u area ta' konservazzjoni rurali.

Hi sottomissjoni tal-appellant li jekk l-Awtorita' taghti permess kontra l-Policies, u taghmel eccezzjoni, din l-eccezzjoni ghandha tigi applikata fl-applikazzjonijiet kollha simili billi fin-nuqqas ikun hemm trattament mhux ugwwali u ssir diskriminazzjoni.

Indubbjament applikazzjonijiet simili jirrikjedu trattament identiku, pero' jinhtieg li jkunu simili. L-appellant ghamel referenza ghall-permessi li nghataw barra z-zona tal-izvilupp, pero' ghad-differenza taz-zona fejn jinsab is-sit mertu ta' din l-applikazzjoni, applikazzjonijiet f'areas ODZ li huma Rural Settlement jistghu jigu accettati purché jissodisfaw certi kundizzjonijiet. L-area fejn jinsab is-sit mertu ta' dan l-appell ma jinsabx f'Rural Settlement, u ghalhekk l-paragun ma jreggix; u fic-cirkostanzi ma jistax jigi allegat trattament diskriminatorju.

Kopja Informali ta' Sentenza

Konsiderazzjoni ohra doveruza hi li mhux kull permess jista' jigi citat bhala precedent; kif jippretendi l-appellant. Jista' jkun l-kaz li jinghata permess b'zball; jew in kontravvenzjoni ta' xi plans jew policy; dan ma jfissirx li l-'izball', ghandu jigi ripetut biex ma ssirx diskriminazzjoni ma' applikant susegwent. Ezempju ta' dan hu l-Housing Estate tal-Mosta li wara snin mibni b'mod simetriku, gew milqugha xi applikazzjonijiet ghall-garages f'dak li originarjament gie approvat bhala front garden. Dawn huma permessi li ma kellhomx jinghataw, u l-fatt li inghataw ma jaghtu l-ebda dritt lill-haddiehor li jippretendi li jinghata l-permess semplicement ghax dan nghata lill-haddiehor. Ara Appell Numru 294/11 fl-ismijiet Jesmond Farrugia vs. MEPA deciz fis-7 ta' Frar 2012.

Finalment l-perit tal-appellant ilmenta mill-fatt li d-dewmien kien ta' pregudizzju ghad-drittijiet tal-appellant, billi l-applikazzjoni giet deciza skond l-Policies attwali li huma aktar rigoruzi.

Il-perit isemmi 'a 28 year old application'. Dan mhux korrett. Dan mhux kaz ta' applikazzjoni li damet 28 sena biex tigi determinata; izda kwistjoni pprokurata mill-istess agir tal-appellant li applika l-ewwel darba fin-1984; u bena nonostante li l-applikazzjoni giet michuda.

Dwar liema Policies huma applikabbli, cjoe jekk humiex dawk fis-sehh f'zmien meta saret l-applikazzjoni, jew dawk fis-sehh meta tigi determinata l-applikazzjoni; dan hu illum stabbilit minn sentenzi tal-Onorabbli Qorti ta' l-Appell fosthom "Angelo Farrugia vs Chairman tal-Awtorita' ta' l-Ippjanar deciza fl-24 ta' April 1996, u "Emanuel Mifsud vs il-Kummissjoni ghall-Kontroll ta' l-Izvilupp", deciza fil-31 ta' Mejju 1996."

Ezaminata l-applikazzjoni fil-kuntest tal-Policies ta' l-ippjanar rilevanti, kkunsidrati l-aggravji tal-appell ghall-motivazzjonijiet tar-rifjut, l-appell ma jirrizultax fondat u r-rifjut jimmerita konferma.

It-Tribunal ghalhekk qed jiddisponi minn dan l-Appell billi jichad l-istess u jikkonferma r-rifjut tat-8 ta' Marzu 2002 ghall-applikazzjoni PA 1847/02.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwent:

Kopja Informali ta' Sentenza

1. It-Tribunal ma applikax il-commitment li hemm fiz-zona ghal kaz u b'hekk iddiskrimina mal-appellant u kkommetta zball ta' ligi. Issir referenza specifika ghal permess PA 4742/05 ghal zvilupp li inghata permess faccata tas-sit tal-appellant fl-istess triq u fejn kienu japplikaw l-istess policies. Ebda wahda mill-izviluppi ma huma f'rural settlement kif issottometta t-Tribunal, pero irrifjuta l-applikazzjoni mertu tal-appell fuq il-bazi li l-izvilupp mhux gustifikat ghax mhix qeghda f'rural settlement. Il-paragun ma jreggix. In oltre t-Tribunal inkorra zball ta' ligi meta qal li l-permess PA 4742/05 kien gustifikat nonostante illi l-bini biswit is-sit in kwistjoni kienu illegali mentri invece l-izvilupp mertu tal-appell ma kienx gustifikat ezattament ghall-istess raguni;

2. It-Tribunal interpreta hazin il-kuncett ta' commitment meta qal illi mhux kull permess jista' jigi citat bhala precedent meta dan jinghata bi zball jew in kontravvenzjoni ta' pjan jew policy, dan igib fix-xejn il-principju li applikant ma ghandux jigi diskriminat fil-konfront ta' ohrajn, ghax bl-argument tat-Tribunal jista' jigi injorat il-commitment bhala principju.

L-ewwel aggravju

L-ewwel parti tal-aggravju jirrigwarda d-diskriminazzjoni li saret mill-appellant peress illi fil-konfront tieghu ma ittehidx kont tal-commitment fiz-zona u b'referenza partikolari ghal permess 4742/05 li hu allegat hu simili ghall-izvilupp in kwistjoni u jinsab faccata tas-sit in kwistjoni. Din il-kwistjoni giet ventilata mit-Tribunal b'mod dettaljat fejn it-Tribunal fl-ewwel lok sab illi l-izvilupp bil-permess 4742/05 mhuiex faccata tas-sit in kwistjoni izda f'certu distanza boghod. In oltre ma hemm ebda similitudni bejn iz-zewg fattispecie li jikkarakterizaw l-izviluppi. Fil-kaz tal-permess 4742/05, dan gie meqjus bhala infill site bejn zewg proprjetajiet legali u adjacenti blank party wall. L-applikazzjoni mertu ta' dan l-appell ma ghandhiex l-istess karatteristici anzi hi wahda minn sensiela ta' binjiet fl-istess zona mibnija illegalment u kolpiti b'enforcement notice. Il-Qorti in oltre tqis zbaljata s-sottomissjoni tal-appellant li z-zewg permessi kienu kolpiti bl-istess policies peress illi sottomissjoni tal-Awtorita, mhix ribadita mill-appellant, gie relevat illi s-sit fil-permess 4742/05 kellu gia permess ghal residenza qabel ma sar il-local plan fejn kien jinghata permess ghal zviluppi fuq il-mertu ta' kull kaz bhal kaz 4742/05 bil-fattispecie tieghu. Mid-dhul tal-pjan lokali eccezzjonijiet isiru biss f'rural settlements. Is-sit in kwistjoni ma jaqax f'din il-kategorija anzi hu desinjat bhala Area of Ecological Importance.

Kopja Informali ta' Sentenza

Kwindi hi l-fehma tal-Qorti li l-argument tad-diskriminazzjoni ibbazat fuq nuqqas ta' applikazzjoni ta' commitment hi errata fil-fatt.

In oltre kif gia intqal mhix korretta l-allegazzjoni fit-tieni parti tal-aggravju illi t-Tribunal ghamel xi evalwazzjoni hazina ghax irrifjuta din l-applikazzjoni ghax mhix f'rural settlement. It-Tribunal anzi qal li ebda ecezzjoni ma setghet issir ghal dan l-izvilupp precizament ghax mhix f'rural settlement izda f'conservation area mertu ta' protezzjoni. L-istess jinghad ghall-argument zbaljat li z-zewg siti cioe dik in kwistjoni u dik bin-numru 4742/05 jinsabu biswit zviluppi illegali. Anzi inghad preciz bil-kontra mit-Tribunal u din kienet wahda mir-ragunijet ghaliex iz-zewg siti ma setghux jigu paragonati bl-istess mod. Dan kollu apparti l-konsiderazzjoni tat-Tribunal illi ma jistax jigi sanzjonat zvilupp meta tali zvilupp hu ancillari ghal zvilupp primarju cioe residenza li hi illegali qabel din tal-ahhar tigi sanzjonata kif inkorporat fir-regolament 14 tal-Avviz Legali 514/2010 precedentement ic-cirkolari PA 2/96.

Ghalhekk dan l-aggravju qed jigi kompletament michud.

It-tieni aggravju

Hi l-fehma tal-Qorti illi t-Tribunal ma ghamel ebda apprezzament hazin tal-kuncett ta' commitment. It-Tribunal mhux marbut bil-precedent ghalkemm ghandu jkun konsistenti fid-decizjonijiet tieghu biex jaghti certezza lil gudikati u sens ta' direzzjoni lil min irid jaghmel zvilupp. Apparti dan pero, it-Tribunal hu marbut primarjament li japplika l-ligijiet, pjanijiet u policies fil-mument tad-decizjoni bla ebda diskrezzjoni afdana lilu li jiddeciedi mod iehor. Ghandu l-obbligu li jqis kwistjonijiet ta' sustanza bhal ma huma permessi simili fiz-zona fejn qed jintalab il-permess, pero approvazzjoni ta' zvilupp ibbazat semplicement fuq permess simili minghajr kont li l-izviluppi huma identici u li jitqies li fil-fatt l-applikazzjoni in kwistjoni tkun konformi mal-ligijiet, pjanijiet u policies in vigore fil-mument tad-decizjoni ma jikkostitwix bazi ghal gustifikazzjoni tal-aggravju kif qed jippretendi b'mod akkamediku l-appellant. Dan jinghad ghaliex kif irrelevant il-Qorti, fuq bazi fattwali ma hemmx is-similitudni allegata mill-appellant li jpoggi fix-xejn kull argument dwar nuqqas ta' apprezzament korrett jew applikazzjoni tal-kuncett ta' commitment fil-kaz in ezami.

Kopja Informali ta' Sentenza

Ghalhekk anki dan l-aggravju qed jigi michud u din il-Qorti taqbel mal-kunsiderazzjonijiet li ghamel it-Tribunal fuq il-materja.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Frankie Tonna u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-8 ta' Novembru 2012. Bi ispejjez kontra l-appellant.

< Sentenza Finali >

-----TMIEM-----