



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta ta' l-14 ta' Jannar, 2015

Appell Civili Numru. 47/2014

Joseph Cauchi

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joseph Cauchi tat-12 ta' Awwissu 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014 li cahdet PA 1615/09 'to sanction stables and carry out alterations';

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:

A. Il-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fid-19 ta' Novembru 2010, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 1615/09 – Site at Triq Grunju, Qala: To sanction stables and carry out alterations.

Ir-ragunijiet ghar-rifjut kienu s-segwenti:

“1. The proposal is not acceptable since it does not meet criteria (e), (f) and (g) of Policy 4.3B of the Policy Guidance: Agriculture, Farm Diversification and Stables (2007); in that the site lies less than 100 metres from a habitable dwelling and the proposal does not constitute an overall environmental improvement for the area.

2. The proposed stables would lead to the loss of land earmarked for intensive crop production in Map 14.8-A of the Gozo and Comino Local Plan. Thus the proposal runs against the provisions of Local Plan Policy GZ-AGRI-2.

3. The proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interests, which may be permitted in Rural Conservation Areas where they meet the principles and criteria set out in Structure Plan policy RCO 4. The proposal is not essential to, nor does it enhance agricultural, ecological, or scenic interests.”

B. In-nota tal-Perit Saviour Micallef ghall-Appellant, ipprezentata fil-21 ta' Dicembru 2010, senjatament il-punti segwenti:

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“Reason for refusal 1 – AFDS (2007) Policy 4.3B criteria e, f, and g Policy 4.3B requires that new stables have to satisfy the nine criteria (a-i). The site under consideration is located in area free from ecological or other constraints and in fact the directorate confirmed that proposal satisfies 6 of the nine criteria. Hence there is agreement of 6 criteria with disagreement on remaining 3, that is:

Criteria e- The site has to be within 300 m from the DZ and 100 m from an inhabited area. The site is 150 m from the development zone and hence satisfies this condition. A nearby single dwelling does not constitute an inhabited area and in any case the adjacent dwelling is covered with an enforcement. Hence this criteria is surely being respected.

Criteria f and g – The development has to be environmentally acceptable and screened so as not to have an adverse impact on the landscape. The stables have been dug into the terrain and roofed very low (8crs) so that they lie almost completely below the terrain level as shown on the section. They will moreover be screened with the proposed landscaping so that the impact on the landscape is minimal. It is relevant to note that greenhouses are permitted in this area together with ancillary storage rooms etc. Such structures will definitely have a massively greater impact on the landscape than these 4 stables lying practically below terrain level. We feel that these 2

criteria are also satisfied.

Reason for refusal 2 – GZ AGRI-2

GZ agri-2 only states that greenhouses shall be favourably considered if located in areas zoned as Intensive Agricultural Zones. This in view that such areas tend to “... lend themselves to visual mitigation...”. The policy does not state that stables are not permitted in such zones. The site in question has poor agricultural value and its location within the IAZ should, to the contrary, be advantageous due to less visual disturbance as in fact contemplated in same policy. The fact that proposal will not affect good agricultural land is confirmed by the fact the agricultural department recommended the proposal.

Reason for refusal 3 – Proposal is not essential in ODZ The AFDS policy permits and indeed requires that stables are located ODZ. Hence ODZ location is justified.”

C. In-nota responsiva ta' Mario Scicluna ghall-Awtorita', ipprezentata fit-28 ta' Jannar 2011, inter alia l-punti segwenti:

“5.1.4 As regards to the arguments of the appeal itself, the Authority states that as regards to the issue of the necessary distance from the nearest dwelling, it is

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important to establish what exactly is written in the policy itself. In fact, Policy 4.3B includes:

(e) the proposed development is located within 300 metres from the development zone boundary but at least 100 metres away from adjacent dwellings or an inhabited area or an area which is intended for residential, residential institutions, hotels, education, assembly or leisure buildings, or tourism development;

The site plan below as per the MapServer, clearly shows that the site under appeal (blue border) is practically adjacent to a dwelling which was approved as per Permit PA 784/07 (red border) which granted: To sanction additions and alterations to house and sanction demolished and reconstruction of room and carry out additions and alterations and pool in DCC decision dated in decision taken by the DCC on 11.09.07 (the Directorate had recommended a positive recommendation in view that the building was already an established dwelling and the requested development was within the established criteria). Hence the location of these illegal stables cannot be accepted by this policy.

Furthermore, another application as per PA 1474/09 (also shown by the red border) is being processed and is seeking permission to establish a second dwelling also adjacent to the stables under this appeal (although it is also at appeals stage).

5.1.5 As regards to the issue of the area itself, reference is made to Map 14.8A of the Gozo Local plan and which shows that the area in which the proposed sanctioning of stables lies is in fact identified as an area of "Intensive Agriculture Zone" and is subject to Policies GZ AGRI 2 and GZ AGRI 3. While the former considers development relating to Greenhouses, the latter considers farm and agricultural related structures so as to sustain, improve and promote intensive agricultural activities in this particular area. Thus, the proposed stables in this specific area counter the notion of the policy area since stables are not related to intensive agricultural activities and could easily be located in other, less sensitive areas (whilst greenhouses and agricultural store must be located within one's land's holdings). Hence, the proposed stables are not permitted in this location also on this account.

5.1.6 The submitted photos as well as the submitted plans of appellant shows that the structure to be sanctioned was actually built as a garage (without any permits) and was duly served with an Enforcement Notice ECF 504/09.

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'Ghandek zvilupp minghajr permess u li jikkonsisti f'kostruzzjoni ta' garaxx u kmamar ohra.'

Hence, this application under appeal is an attempt to acquire a permit for a 'garage' now to be converted into stables. The photos show that these rooms abut the main road and hence were not built as stables which should not be abutting a main road but are recessed from the road and adequately screened through appropriate landscaping. In this case under appeal, such landscaping and screening works cannot be done and hence, the existing façade would be retained (which is actually one of a garage) and is not labelled as an Equipment Store of circa 20 sq.m. area. This is not acceptable from a design, location and fresh land take-up point of view since stables do not require such a large store and all buildings (including any store) should be screened from the public road and long distance views through adequate landscaping."

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba sabiex f'font konsistenti minn ghalqa li tinsab barra z-zona ta' izvilupp (ODZ) tal-Qala, jigu ssanati stallel u jsiru xi modifiki. Skond il-mappa 14.8-A tal-Pjan Lokali (GCLP) iz-zona hi ndikata bhala intensive agricultural zone (IAZ).

Is-sit jiffirma parti minn sensiela ta' strutturi li wkoll nbnew minghajr permess, u precedentement intlaqat b' avvbiz biex tieqaf u ta' twettieq ECF 504/09 li jaqra' kif gej:

"Ghandek zvilupp minghajr permess u li jikkonsisti f' kostruzzjoni ta' garaxx u kmamar ohra."

Ir-raguni ghar-rifjut jistghu jigu riassunti kif gej:

- Distanza limitu minn residenzi:

Peress li s-sit jinsab f' distanza ta' inqas minn mitt metru mill-abitat, il-proposta hi f' kunflitt mal-policy 4.3B tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables.

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- Din hi zona indikata bhala IAZ:

L-izvilupp mhux wiehed essenzjali ghall-agrikoltura, ekologija jew ta' beneficciu xenografiku, li jista jigi permess f' rural conservation area; anzi jirrizulta f' telf ta' art tajba ghall-agrikoltura in kontravenzjoni tal-policies GZ-AGRI-2 tal-Pjan Lokali u RCO 4 tal-Pjan ta' Struttura.

L-aggravji tal-Appellant jistrieħu fuq il-premessa li skond l-Awtorita', mid-disa' kriterji elnekati fil-policy 4.3B sucitata, tlieta minnhom biss mhux qed jigu rispettati. Madankollu, anke minn dan l-aspett, skond il-kriterju (e), is-sit irid ikun fl-limitu ta' 300 metru mill-konfini tal-izvilupp.. Il-fatt li fil-vicin hemm dar wahda illegali ma jikkostitwixxix zona abitata. In oltre, ghar-rigward taz-zewg kriterji l-oħtra (f) u (g), l-Appellant jikkontendi li peress li z-zona hi wahda fejn huma permessi hafna serrer, u billi l-proposta tieghu hi fis-sens li l-istallel ikunu mohbijja prattikament that l-art, mhi qeda ssir l-ebda hsara viziva. Fl-ahharnett jispjega li skond il-policies indikati supra, l-istallel huma permessi biss li jsiru fl-ODZ, bhalma huwa l-kaz odjern.

Gew ukoll citati numru ta' permessi allegatament simili: PA 5012/10, PA 1614/09, PA 5493/08 u PA 5591/07.

L-Awtorita' zammet ferm l-oggezzjoni tagħha u rilevat li r-residenzi li hemm fil-vicin huma kollha bil-permess, u li prezentement fuqhom, ma hemm l-ebda avvizi biex tieqaf u ta' twettieq pendenti. L-istess pero' ma jistax jinghad ghas-sit in ezami milqut bl-enforcement notice sucitata, u dan peress li l-istallel originarjament inbnew bhala garaxx mat-triq, tant li illum huwa ferm difficli li ssir xi tip ta' screening jew landscaping.

Oltre minn hekk, l-Awtorita' ddikjarat li fif gja' gie rilevat supra, biswit is-sit odjern hemm zewg strutturi u li precedentement fuqhom inbnew swimming pool u saru xi modifiki fid-dar minghajr permess (PA 1473/09 u PA 787/07). Minn dan isegwi li – talba odjerna mhix wahda gjustifikata u mhux ser issarraff b' beneficciu ambjentali.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet jigi osservat li skond l-Awtorita', il-kwsitjoni principali tat-talba odjerna hi in kwantu l-genwita' tal-kaz, u dan minhabba l-fatt li l-istrutturi in ezami originarjament inbnew bhala garaxxijiet minghjar permess. Izda anke jekk ghall-grazzja tal-argument jista' jigi sorvolat dan il-punt (wara kollox l-applikazzjonijiet kollha jsiru lill-Awtorita' in bona fede), jigi nutat li ma ngiebet l-ebda prova tal-attivita' tal-appellant in kwantu t-trobbija taz-zwiemel (i.e. certifikati veterinarji, etc.).

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Oltre minn hekk, ghalkemm il-policies jstipulaw illi stallel ma jstghux jinbnew f'zoni residenzjali, l-argument tqi-Appellant - li allura ghandu jsegwi li dawn jstghu jinbnew f' kwalsiasi post fl-ODZ - ma jreggix. Kif gja' rilevat supra, din l-area hi ndikata bhala intensive agricultural zone, u allura anke f' dan il-kuntest wiehed jstenna li jara serrer, etc. (kif rilevat mill-Appellant) izda zgur li stallel ma jsibux posthom hawnhekk; jekk xejn minhabba s-semplici fatt li ser ikunu jokkupaw art li facilment tista' tintuza ghall-agrikoltura intensiva. Din hi raguni sufficienti sabiex dan l-appell jigi michud.

Fl-ahharnett, tajjed li jigi osservat li fir-rigward tal-permessi citati mill-Appellant bhala kazistika: wiehed biss kien jirrigwarda zvilupp fil-Qala (PA 1614/09) u ma kienx hemm oggezzjoni mill-aspett ambjentali. Mill-ohrajn; wiehed kien jirrigwarda modifiki f' sit fil-Munxar munit b'permess ghal-stallel (PA 5012/10), iehor f' Sannat (PA 5493/08), u iehor f' sit li jinsab fil-limiti tax-Xewkija (PA 5591/07).

Ghalhekk, in vista tal-konsiderazzjonijiet kollha hawn fuq maghmula, u fuq kollox sabiex ikun konformi mal-policies tal-ippjanar vigenti, dan il-Tribunal qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma ir-rifjut ghall-PA 1615/09 kif mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp, fid-19 ta' Novembru 2010.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ma ikkunsidrax l-aggravju tal-commitment dwar permessi ohra moghtija u minflok it-Tribunal skarta l-aggravju billi qal li fir-rigward ta' tlett permessi ikkwotati dawn ma kienux fl-istess lokalita meta l-policies japplikaw ghal Ghawdex kollu u in kwantu ghal permess fl-istess lokalita qal li ma kienx hemm oggezzjoni mill-aspett ambjentali. Dan ma jikkostitwix risposta studjata u d-decizjoni ghandha tigi revokata.

Il-Qorti tirrelewa illi l-appellant ghamel referenza ghal sentenza ta' din il-Qorti App. Civ. 155/2012 fl-ismijiet Anthony Cauchi vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar fuq zvilupp simili fl-istess zona fejn il-Qorti laqghet l-aggravju li t-Tribunal ma ikkunsidrax sottomissjoni dwar permessi ohra konnessi ma' aggravju partikolari imressaq mill-appellant. Din il-Qorti tqis li hu minnu dak li qed jissottometti l-appellant pero b'differenza ma' dan il-kaz ghaliex fil-kaz deciz it-Tribunal anqas ghamel accenn ghall-aggravju mentri fil-kaz sub iudice,

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I-istess Tribunal ikkonsidra s-sottomissjoni tant li ghamel referenza specifika ghall-permessi ikkwotati mill-appellant.

Din il-Qorti ma taqbilx mas-sottomissjoni tal-Awtorita li l-aggravju ma messux jigi kunsidrat mill-Qorti ghax ma tqajjimx bhala aggravju fl-appell quddiem it-Tribunal. Dan mhux strettament il-kaz ghaliex l-aggravju quddiem it-Tribunal kien li kuntrarjament ghal dak li qalet l-Awtorita fir-rifjut, l-izvilupp seta' jsir f'ODZ anzi kien l-uniku post fejn ghandu jsir. Dan kien l-aggravju. Biex jiggustifika dan l-aggravju l-appellant ikkwota erba' zviluppi ta' stalel f'Ghawdex approvati bl-istess policy.

Dak li trid tikkunsidra l-Qorti hu jekk tali aggravju fil-kuntest li sar giex kunsidrat mill-Qorti u jekk ma giex, kienx tali li jista jinfluixxi fuq s-sustanza tal-vertenza u s-soluzzjoni taghha. Qari tad-decizjoni jaghti x'jifhem illi t-Tribunal ma qalx li stalel f'ODZ ma kienux permessi ghax wara kollox dan kien il-mertu u sustanza tal-aggravju izda f'dan il-kaz partikolari kien hemm ragunijiet serji ghaliex it-talba ma setghetx tintlaqa' fosthom li hemm residenzi fil-vicin li ghandhom permess validu (u ghalhekk implicitament imur kontra policy 4.3c tal-AFDS 2007), kuntrarjament ghas-sit in kwistjoni milqut b'enforcement notice peress illi l-istalel originarjament inbnew bhala garage mat-triq u llum difficili jsir screening jew landscaping. Biswit is-sit hemm zewg strutturi minghajr permess u ghalhekk it-talba ma ser issarraf f'ebda beneficcju ambjentali. Dan wassal lit-Tribunal jiddubita mill-genwita tal-kaz aktar u aktar meta ebda prova ta' indikazzjoni ta' trobbija ta' zwiemel ma ngiebet mill-appellant. Zied ukoll illi d-desinjazzjoni taz-zona bhala 'intensive agricultrual zone' kienet aktar kompatibbli ma serer milli stalel, u biex tintuza ghal agrikoltura.

Il-Qorti tqis li f'dan il-kuntest aktar milli kwistjoni ta' commitment ghall-zvilupp peress li nhargu permessi ohra simili f'Ghawdex f'ODZ, it-Tribunal qies illi dan l-izvilupp partikolari kien jippekkha mill-policies rilevanti biex jinghata approvazzjoni kif fuq inghad. Madankollu t-Tribunal xorta accenna ghall-izviluppi imsemmija mill-appellant pero l-kwistjoni ma kinitx jekk kienx hemm commitment mill-Awtorita fil-permessi citati izda aktar jekk l-applikazzjoni kinitx timmerita ezitu favorevoli tenut kont tal-policies rilevanti. Del resto l-appellant stess fl-ebda hin ma jindika li l-permessi kienu jikkostitwixxu xi prova ta' commitment fil-konfront ta' dan l-izvilupp partikolari. L-iktar li seta jinghad kien illi l-permessi kienu f'ODZ. Fil-fatt kien jinkombi fuq l-appellant li jaghti indikazzjoni cara dwar is-similitudni li tikkostitwixxi xi forma ta'

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commitment. It-Tribunal ma qalx li l-izvilupp in kwistjoni m hux permess f'ODZ izda li c-cirkostanzi tieghu ma kienux jimmilitaw li jigi milqugh f'din iz-zona u sit partikolari.

Ghalhekk l-aggravju qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Joseph Cauchi u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014, bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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