



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta ta' l-14 ta' Jannar, 2015

Appell Civili Numru. 48/2013

Nicholas Cassar

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Nicholas Cassar tat-3 ta' Lulju 2013 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Gunju 2013 li biha cahdet PA 2385/09 'to sanction extension to building used for organic prduction';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

A. Il-Kummissjoni ghall-Kontroll tal-Ambjent u l-Ippjanar, fit-22 ta' Frar 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 2385/09 – Site at il-Qasam il-Kbir, l/o Rabat: To sanction extension to building used for organic production.

L-erba' ragunijiet ghar-rifjut kienu s-segwenti:

“1. The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of policy Circulars 2/96 and 2/98. The illegal development consists of the erection of organic centre not according to approved plans.

2. The proposed sanctioning runs counter to Policy 2.4A (2) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since the applicant holds other structures registered on this name.

3. The proposed sanctioning runs counter to Policy 2.4A (3) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), since applicants holding between 10 to 20 tumoli of land qualifies for a tool room of 20m², and the applicant already holds a storage space of approximately 63m².

4. 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.”

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B. In-nota tal-Perit Robert Musumeci ghall-Appellant, ipprezentata fis-17 ta' Marzu 2011, inter alia l-punti segwenti:

“Illi fir-rigward ta' l-ewwel raguni tar-rifjut... l-appellant qed jinsisti dwar il-htiega li tali allegazzjoni jkunu kjarifikati u b'hekk qed jitlob minn issa li jixhed rapprezentant ta' l-Awtorita' appellata dwar dan u dan anke minghajr pregudizzju ghall-fatt li policy Circulars 2/96 u 2/98 ma kienx ghadhom in vigour dak in-nhar tad-decizjoni, u dan peress li dawn kienu mhassra bl-introduzzjoni tal-Kap 504 tal-Ligijiet ta' Malta.

Illi dwar it-tieni raguni tar-rifjut [...] l-appellant qed jinsisti dwar il-htiega li tali allegazzjonijiet ikunu kjarifikati ..

Illi dwar it-tielet raguni tar-rifjut [...] l-appellant jissottometti li huwa bidwi genwin – fatt li qatt ma gie kkontestat mill-Awtorita'. Huwa fil-fatt investa konsiderevolment f'apparat u makkinarju bil-ghan li jkun jista' jsostni l-attivita tieghu fil-qasam ta' l-agrikoltura organika. Tali attivita hi rikonoxxuta mill-Awtorita' appellata, tant li fil-Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) saret referenza proprju ghal dak li qal Goteborg (2001) dwar l-importanza ta' din l-attivita' f'kuntest strategiku internazzjonali.

[...] Illi ma hemmx dubbju allura li tali attivita hi krucjali ghall-pajjizna. L-appellant ghandu bzonn dawn l-istores peress li tali attivita tirrikjedi spazju adegwat ghall-hazna ta' l-apparat u l-prodott. [...]

6. Huwa principju ben risaput li ghalkemm l-gwidi ta' l-Awtorita' jtkellmu dwar qisien permissibli, l-Awtorita' kellha fl-ewwel lok tara jekk l-applikant ghandux bzonn genwin ta' aktar spazju minn dak citat fil-linji gwida, u dank if jirrizulta konsistentement f'numru ta' decizjonijiet ta' l-Ippjanar. (ara decizjoni PAB 377/04 PA 2961/00 fl-ismijiet Leonard Calleja vs. MEPA fejn kien approvat store ta' 155 metri kwadri (anke jekk fiz-zmien meta ttiehdet din id-decizjoni, l-Awtorita' kienet isostni li l-qisien ma ghandhomx jeccedu 15 metri kwadri). Il-Bord approva dan il-permess in vista tal-fatt li “Kif gie kkostatat mill-Bord fl-access, l-istore mertu ta' dan l-appell, fil-qisien li nbena, qed jigi utilzzat kollu mill-appellant billi biex ilahhaq max-xoghol tal-kwantita' ta' raba' li jahdem, jirrikjedi dan l-ispazju.”

7. Ma hemmx dubbju li mir-ritratti prodotti (Dokument RM040211-01) dawn il-kunsiderazzjonijiet isibu comfort fil-kaz odjern u dan in vista tal-fatt li l-istore de quo huwa infatti 'utilzzat kollu', tant li parti sostanzjali mill-apparat li juza l-appellant qed

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jithalla barra stante li ma ghadx ghandu aktar spazju fejn jista jahzen il-makkinarju u l-prodott.

Illi dwar ir-raba raguni ghar-rifjut [...] l-esponenti jerga' jaghmel referenza ghal fatt li huwa bidwi genwin u investa konsiderevolment f'apparat u makkinarju bil-ghan li jkun jsita' jsostni l-attivita' tieghu fil-qasam ta' l-agrikoltura organika.”

C. In-nota risponsiva ta' Darren Fava ghall-Awtorita', ipprezentata fl-24 ta' Gunju 2011, inter alia l-punti segwenti:

"5.2.2 Illegality on Site

In arguments made, the appellant is insisting that the Authority clarify the illegalities present on site. The appellant is stating that the development proposed is seeking to sanction all illegalities on site covered by ECF 773/08. In addition, the appellant is arguing that PA Circulars 2/96 and 2/98 are no longer valid in light of recently amended legislation. However, this statement is only partially correct, since the provisions of PA Circular 2/96 have now been transposed and amended in Article 14 of L.N. 514/10 PA Circular 2/96. Similar to PA Circular 2/96, Article 14(1) of L.N. 514/10 clearly states that where illegal development is present on site, new development on that same site will not be considered unless it is regularized. The appellant should rectify this situation prior to further consideration of this proposed development.

It is clear that the appellant has included the illegalities identified in the pending ECF 773/08 into the application, although the proposed sanctioning has already been refused in previous application PA 977/07. The arguments raised previously in the processing stages of this application as well as those raised in previous refusal are still valid and the illegal development cannot be sanctioned. Hence, in accordance with Article 14 of L.N. 514/10, the illegalities must be removed from site prior to the consideration of new development.

5.2.3 Development as Proposed for Sanctioning

The Authority acknowledges the proposal as an innovative approach to traditional agriculture, and that organic agriculture is a production system that sustains the health of soils, ecosystems and people. However, with regards to planning permission for development, the same conditions as illustrated in Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007) apply as in the case of normal agricultural practices.

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The proposed sanctioning of the extension to building used for organic production has an area of approximately 43m² and a height of approximately 4m, (Red 1G/1H). The external walls of the existing building are constructed in franka blocks and the external apertures are proposed to be made of timber, (Red 1H).

To be eligible for the construction of an agricultural store, Policy 2.4A (1) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), requires that the applicant is registered as a farmer and that the site in question is registered with the Department of Agriculture on the applicant. Furthermore, the applicant must hold at least 5 tumoli of land. According to the Department of Agriculture the applicant is registered as a part-time farmer having 14.1.7 tumoli of land at Rabat, (refer to Doc 1J).

Policy 2.4A (2a) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007), states that there must be no disused or under-utilised building on any arable farm holding of the applicant that could be used for storage purposes. Doc 1G indicates that the applicant holds other structures on his sites, having a total area of approximately 63m². In this regard, the applicant already has enough storage space within his arable farm as specified/permitted in Policy 2.4A.

Furthermore, the applicant holds more storage space than he is eligible, since applicants holding between 10 to 20 tumoli of land qualify for a tool room of 20m². In this regard, the proposed development is objectionable in principle since the applicant is not eligible for the construction of any additional storage space. The proposed additional structures clearly runs counter to Policy 2.4A (3b) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (December 2007).

5.2.4 Other Arguments raised by Appellant

The appellant is stating that in the past, MEPA has permitted similar development when it was decided that the proposal merited exceeding the limitations of the policy; and permit PA 2961/00 – PAB 337/03 is being quoted.

PA 2961/00:

Full Development application to sanction store and reservoir (agricultural store was approved obo applicant but on a different site indicated by mistake). Permit was refused in May 2001 by DCC Board and again by Reconsideration Board in November 2003; since there was a previous commitment towards the development

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(albeit on another site) the proposed store exceeded the maximum permissible area and height without proposing any mitigating measures or landscaping to avoid visual impact.

The applicant in that case made an Appeal of the decision in PAB 337/03 which was decided by the Planning Appeals Board decided in 2006. This decision stated that in view of the commitments made by the Authority in previous permit and given that the appellant tilled over 40 tumoli of agricultural land; the development would be granted permission subject to a proper landscaping scheme which would screen the structure from the surrounding environment.

In light of the comparison made by appellant, the Authority brings to the attention of the Tribunal that from the case history of PA 2961/00 mentioned above, there is no comparison between the two cases. In fact, the development in concern has no previous commitments made by the Authority towards the applicant over storage space which is not being utilized. In the quoted permit, the Tribunal justified the approval on the basis of such commitments.

Furthermore, it is frivolous to compare decisions taken prior to the issue of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2007). This policy document provided planning guidance for agriculture-related developments; and the use of the site for 'organic' agriculture does not substantiate the fact that the proposal seeks to sanction structures which exceed the limitation of the policy tenfold."

D. In-nota ta' sottomissjonijiet tal-Avukat Dott. Ian Spiteri Bailey ghall-Appellant, ipprezentata fl-4 ta' Jannar 2012, precizament il-punti segwenti:

"i. The attention of this Tribunal must primarily be drawn towards the fact that the appellant in question had previously submitted application PA 676/00 – "to change use of a store into a centre for promotion and co-ordination of organic sustainable agriculture, including internal and external alterations", which application was upheld by the Authority.

The appellant consequently submitted application PA 2385/08 precisely in order to request sanctioning of the development which was carried out based upon the above-mentioned application PA 676/00, but which exceeds the parameters of that permitted by the latter.

The Authority has itself acknowledged, in its submissions to this Tribunal, that the 'appellant has included the illegalities identified in the pending ECF 773/08 into the application'. The Authority further states that all the arguments put forward in the processing stages of the application as well as those in relation to the previous application PA 977/07 apply to the present application and therefore the illegality cannot be sanctioned. It must be noted that in the DPA Report prepared by the Directorate, reference is made to the said PA 977/07 as well as to Enforcement Notice 773/08. The report states that the present application PA 2385/09 'does not seek to sanction such illegal works' and therefore the proposal cannot be considered further unless the existing illegality is removed.

It must necessarily be pointed out that the above submissions made by the Authority contain an apparent contradiction. The Authority seeks to justify refusal on the grounds of existing illegal development on site firstly by claiming that the appellant is not seeking sanctioning, then by subsequently referring to such argument in order to refuse sanctioning the development, whilst simultaneously admitting that the illegal development has been included in the present proposal. The line of argument herein adopted by the Authority is at best ambiguous and is in no way acceptable as a concrete ground for refusal of the sanctioning requested by the applicant. It certainly leaves appellant in the unwanted situation of legal uncertainty.

ii. [...] The attention of this Tribunal must be drawn towards the fact that the claim made by the Authority in this respect is entirely unfounded. Policy 2.4A(2) clearly stipulates that a proposal for extension may be refused on this basis, if there exists any disused or under-utilized building on the applicant's land which could be used for such purpose. In the circumstances prevalent with regard to the present application this is clearly not the case.

iii. Policy 2.4A(3) provides that on arable farms of between 10 and 20 tumoli permission will be granted for a storage building of up to 20sqm. The Authority claims that the applicant presently already 'holds more storage space than he is eligible' and therefore no additional construction may be permitted.

[...] In its submissions to this Tribunal, the Authority itself, 'acknowledges the proposal as an innovative approach to traditional agriculture, and that organic agriculture is a production system that sustains the health of soils, ecosystems and people'. [...] The appellant is doing his utmost to develop this activity and to further organic production on the site in question. This endeavour however brings with it certain exigencies. The extension forming the subject-matter of the present application is indispensable if the appellant is to continue carrying out the organic farming activity he has developed through his own initiative. [...]

The appellant humbly submits that despite the fact that the circumstances prevalent in case PAB 377/03 are different to those applicable to the present case, the comparison made remains of particular relevance. The decision taken by the Tribunal in PAB 377/03 illustrates a particular situation where the Planning Appeals Board, in considering the application before it, adopted a holistic approach taking into account all the circumstances pertinent to the matter, and finally reached an exemplary decision to the effect that in the particular situation the applicable policy did not dictate the optimum solution. The importance of the analogy with the present case rest precisely on this principle, and therefore any argument based on the fact that the circumstances were not identical, and that the current policy was not yet applicable are completely irrelevant.

Reference must also be made in this context as noted by Architect Musumeci, to that stipulated by Article 69(2)(a) (Chapter 504 of the Laws of Malta), namely that in its determination of an application the Authority must have regard 'to any other material consideration' which may be deemed relevant. The legislator clearly intended that in considering an application for development, the Authority must not restrict itself solely to that stipulated by the applicable plans and policies, but ought also to take into account all other relevant factors in deciding upon the particular proposal.

Various and numerous are the Court of Appeal decisions which sustain and maintain that when the Authority, or this Tribunal, considers an application/proposal, the relevant policies should be taken in consideration but not to the exclusion of any other relevant material consideration. [...]

iv. The third ground for refusal put forward by the Authority, is based upon the claim that 'the proposal does not fall within one of the categories of development, namely structures or facilities essential to agricultural, ecological or scenic interest', which are considered permissible under Structure Plan Policy RCO 4.

It must be noted in this respect, that as illustrated in the DPA Report the Department of Architecture clearly voiced its approval of the proposal and stated that it 'finds no objection for the proposed sanctioning since land in question is of no agricultural importance. This development is essential as applicant needs to house heavy machinery'.

The attention of this Tribunal must therefore primarily be drawn towards the fact that despite the insignificance of the site in question from an agriculture perspective, the

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land concerned is of utmost importance from the perspective of the appellant who requires the extension in question in order to carry out his organic farming activity.

In this context, the argument submitted by the Authority to the effect that the proposed development runs counter to Policy RCO 4 because it is 'not essential to, nor does it enhance agricultural, ecological or scenic interests' is nothing short of absurd. The appellant is seeking the sanctioning of an extension to a building upon land deemed to be of no agricultural importance, precisely to be able to develop the farming of organic crops. As illustrated above the proposed development is in fact essential to the furtherance of this activity carried out by the appellant. How can the Authority validly argue therefore that the proposal contradicts the above-mentioned policy? It is evident that any attempt to justify refusal of this application on the said grounds is unfounded and unacceptable."

E. In-nota second statement ta' Jonathan Borg ghall-Awtorita', ipprezentata fit-2 ta' Marzu 2012, senjatament il-punti segwenti:

2.1 The Authority recognises that the appellant had throughout the processing of the application requested the sanctioning of all illegalities. The Authority also acknowledged this request in the DPAR. However the proposal was never republished.

Furthermore the drawings and plans that the Authority assessed included all illegalities, albeit apart from the extension, none of the other illegalities were shown with the proper colour coding.

Therefore, in view of the situation as described above, the Authority is no longer objecting on the basis of Article 14 of LN 514/10.

2.2 Nevertheless the proposed sanctioning cannot be acceded to because the proposal runs counter to the established policy regulating agricultural stores. Policy 2.4A(2) together with criterion 4 makes it amply clear that if an applicant has other structures within 1km of the site that can be used or are used for agricultural purposes (as is the case in this appeal) than no further agricultural stores will be permitted on site.

2.3 The appellant is arguing that the proposal should be granted even if it runs counter to the policy regulating the size of agricultural stores in view of the particular

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needs of the activity (organic farming). The Authority notes that the Policy and Design Guidance: Agriculture, Farm Diversification and Stables (2008) takes into account organic farming. In fact policy 2.4A(1b) of this document makes a specific reference that this policy regulates also organic farming. This means that the justification brought forward by the appellant - that the established policies may be not applied strictly in the case of organic farming is simply not valid.

2.4 The appellant holds other structures on his sites, having a total area of approximately 63m². In this regard, the applicant already has enough storage space within his arable farm as specified/permitted in Policy 2.4A.

Furthermore, the appellant holds more storage space than he is eligible, since applicants holding between 10 to 20 tumoli of land qualify for a tool room of 20m². In this regard, the proposed development is objectionable in principle since the applicant is not eligible for the construction of any additional storage space. The proposed additional structures clearly runs counter to Policy 2.4A (3b) of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008).

2.5 In regards to PAB377/03, the Authority notes that the Planning Appeal's Board decision was given before the coming into force of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables (2008) and therefore under a different planning regime.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba sabiex f' sit li jinsab fil-kampanja barra z-zona tal-izvilupp (ODZ) fil-limiti tar-Rabat, tigi ssanata l-kostruzzjoni ta' estensjoni ma' binja (cjoe', mahzen) li tintuza ghall-agrikoltura organika. Il-font huwa propjeta' tal-Gvern, u l-Appellant huwa registrat mal-Ministeru ta' l-Agrikoltura u s-Sajd bhala part-time farmer u ddikjarat li jahdem 14.7 tomniet raba.

Precedentment kienet giet intavolata applikazzjoni (PA 4179/99) sabiex mahzen agrikolu ezistenti, jinbidillu l-uzu f' centre for promotion and co-ordination of organic sustainable agriculture. Din kienet giet milqugha fil-fazi ta' rikonsiderazzjoni. Sussegwentement kienet giet intavolata applikazzjoni ohra (PA 977/07) sabiex tigi ssanata estensjoni ghall-istess Centru approvat bil-permess precedenti, izda din kienet giet rifjutata. Ghalhekk il-font intlaqat b' avviz biex tieqaf u ta' twettieq (ECF 773/08), f' isem l-Appellant odjern. Din l-enforcement notice taqra' kif gej:

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“Ghandek zvilupp minghajr permess li jikkonsisti minn bini ta' kamra oltre' minn dak approvat fil-permess PA 676/00 mahrug fiz-17 ta' Gunju 2003 u dan skond l-applikazzjoni sanatorja tieghek stess il-PA 977/07 liema applikazzjoni giet rifjutata fil-25 t'April 2008.”

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

- L-Appellant jahdem inqas minn ghoxrin tomna raba u ghalhekk hu ntitolat li jzomm mahzen sa' ghoxrin metru kwadru. Madankollu, it-talba odjerna hi ghal mahzen ta' 63 metri kwadri. Terga' tghid, l-Appellant gja' ghandu diversi kmamar jew imhazen fil-vicin. Ghalhekk it-talba de quo hi in kontravvenzjoni tat-tieni u t-tilet subincizi tal-policy 2.4 tal-Policy and Design Guidance – Agriculture, Farm Diversification and Stables.

- Di piu', peress li jsegwi li tali proposta mhix gjustifikata fiz-zona rurali w ekologika in ezami, it-talba odjerna hi wkoll f' kunflitt mal-policy RCO 4 tal-Pjan ta' Struttura li ghandha bhala ghan is-salvagwarda ta' dawn il-katrattezzisti ambjentali.

L-Aggravji tal-Appellant jistghu jigu riassunti hekk:

- Peress li l-attivitá agrikola li jiggstixxi hi wahda organika, allura kellu jinvesti f' hafna makkinarju; li pero' ma joqodx f' 20 metru kwadru. Kien ikun xieraq li kieku l-Awtorita' hargitlu permess in linja mal-qisien kumplessivi tal-ingenji, u mhux tal-policies. Jirrileva li l-Awtorita' kemm il-darba hadet din il-linja t' argument, bhalma gara' fil-kaz tal-permess PA 2961/00 (PAB 377/03).

- In oltre, jargumenta li peress li hawn si tratta minn agrikoltura organika, jsegwi li l-attivitá li jiggstixxi hi perfettament idoneja mal-harsien u l-preservazzjoni tal-ambjent rurali w ekologiku tal-madwar.

(Tajjed li jigi osservat ukoll li wahda mir-raguni ghar-rifjut kienet tirrigwarda strutturi li ma kienux qed jigi ttentat is-sanar tagghom. L-Awtorita' pero', (fl-ahhar sottomissjoni taghha) ddikjarat fil-fazi tal-ipprocessar tal-applikazzjoni (propju permezz tad-DPAR odjern) kien intalab li dawn l-illegalitajiet jigu ssanati billi l-imsemmija strutturi jigu nkorporati fit-talba de quo. Ghalhekk ma kienx il-kaz li jinbidel il-titolu tal-proposta' u ssir ir-ripubblikazzjoni, u ssoktat bl-ipprocessar tal-applikazzjoni. In vista' ta' dan, l-Awtorita' irtirat l-ewwel raguni ghar-rifjut u l-eccezzjoni abbazi tar-regolament 14 tal-Avviz Legali 514 tal-2010.)

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Dan ifisser li llum jibqgħu it-tlett ragunijiet l-oħra għar-rifjut, cjoe' in kwantu l-arja tal-izvilupp jaqbez il-limitu citat mill-policies u li l-izvilupp prezenti mhux gjustifikat fil-kuntest ambjentali fejn jinsab.

Kif gja' rilevat supra, originarjament kien propost li mahzen agrikolu jinqaliblu l-uzu f' kumpless deskritt bħala "centre for the promotion and co-ordination of organic sustainable agriculture." Fil-fatt, fis-sottomissjonijiet tiegħu għar-rikonsiderazzjoni tal-applikazzjoni PA 676/00, l-Appellant kien iddikjara li gej:

"The proposed centre for promotion and co-ordination of organic sustainable agriculture will basically serve as a reference and information base for local farmers. The idea is, of course, to make farmers more aware of this subject and encourage this form of agriculture. At the present moment there is no such available resource and farmers are poorly informed about organic farming techniques. Without such a proposed facility there is little hope of ever establishing this form of agriculture on the Island. The applicant, Mr. Cassar, himself a farmer, and is co-operating with other farmers who have expressed a similar interest in working together to explore effective organic farming techniques."

Madankollu, kif gie nutat mir-ritratti annessi kemm mal-appell odjern, kif ukoll fil-applikazzjoni sanatorja PA 977/07 (red 1d), l-izvilupp fuq dan il-font hu kkaratterizzat minn telqa' liema bħala (kostruzzjoni inkompluta, skart mhux rilatat ma' attivita agrikola, hazna mifruxa, etc.), li xejn ma jirrispekkja l-ghan nobbli u grandjuz li wiehed jistenna li jara f' centru għall-avvanz u l-koordinament t'agrikoltura organika u sostenibbli. Anzi, jidher car li l-estensjonijiet li nbnew matul iz-zmien illum qed jintuzaw esklużivament għal-hazna ta' għodda u ingenji agrikoli, kaxxi tal-pitkali, etc., mingħajr l-ebda ordni.

Detto cio, dan ma jnaqqas xejn mill-fatt li jista' jirrizulta li l-Appellant għandu bżonn spazju sabiex izomm makkinarju tant voluminuż. Fil-fatt, sottomissjoni fil-file PA 977/07 (red 1J) telenka lista gmiela ta' ingenji, etc., li għandu l-Appellant u li juza fir-raba' tiegħu. Madankollu, tenut kont tal-fatt li l-Appellant gja' jgawdi minn bosta kmamar oħra fil-madwar (u li per eżempju jista' jzomm uhud minn din l-ghodda hemmhekk), u in vista tal-fatt li ma ser l-ebda tentattiv sabiex jigi spjegat lil dan it-Tribunal kif per eżempju, dawk il-kmamar jintuzaw sal-kapacita' massima tagħhom, iqum dubbju serju fil-genwinita' tad-dikkjarazzjoni li hawn si tratta minn attivita' agrikola organika li timmerita s-sostenn tal-Awtorita' appellata; cjoe' permess għal-spazju ikbar minn norma.

Jigi nutat ukoll li fil-permess citat mill-Appellant bħala kazistika (appell 377/03 – PA 2961/00) kien gie approvat mahzen ta' madwar 155 metri kwadri, u dan nonostante

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L-fatt li l-policies ma kienux jippermettu mahzen tant kbir. L-Awtorita' tirrileva li l-mertu ta' dik l-applikazzjoni kien jirrigwarda zball fis-sit, u li peress li l-Awtorita' kienet gja' kkommettiet ruhha li tohrog permess, l-appell kien gie milqugh in vista tal-fatt li l-Applikant kien jahdem madwar erbghin tomna raba'. Terga tghid, il-permess inhareg prevja li ssir landscaping scheme adegwata. Dan mhux il-kaz illum. L-Appellant odjern jahdem ferm inqas raba', ma kien hemm l-ebda precedent li jorbot lill-Awtorita' sabiex tilqa t-talba odjerna u terga tghid lanqas ma sar tentattiv sabiex din il-proposta tigi gjustifikata.

Dan qed jinghad in vista tal-fatt li peress li hawn si tratta minn attivita' agrikola partikolari ghal-pajizna (cjo' organic farming), wiehed kien jistenna li tigi ntafolata xi tip ta' business plan li inter alia, tispjega olistikament kif jintuzaw il-kmamar kollha li ghandu l-Appellant; u jekk kemm il-darba jirrizulta li uhud minnhom huma sottutizzati, li ssir dikjarazzjoni kif bi hsiebu per ezempju, jirrinunzja ghalihom u minflokhom jikkoncentra l-hazna fuq il-font odjern.

Lanqas ma saru (per ezempju) sottomissjonijiet li jindikaw: il-kapjenza tal-attivita' agrikola li jiggstixxi l-Appellant; il-volum tal-produzzjoni li jahsad; u r-rizultati li hargu mill-imsemmija attivita organika sostenibbli f' dawn l-ahhar snin. Caso mai, in vista tal-fatt li l-partijiet donnhom jaqblu li din l-attivita' hi wahda rilattivament gdida ghal-Malta, tali nformazzjoni setghet' tkun utili anke ghal studji approfonditi fil-materja; kif wara kollox kienet l-intenzjoni ahharija tal-Appellant.

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 2385/09 kif mahrug mill-Kummissjoni ghall-Kontroll tal-Ambjent u l-ippjanar, fit-22 ta' Frar 2011.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. Il-Kummissjoni invokat fid-decizjoni taghha l-policies 2/96 u 2/98 li kienu t-tnejn aboliti fil-mument tad-decizjoni tal-Awtorita. Quddiem it-Tribunal, l-Awtorita kkoncediet illi l-policies kienu gew abrogati pero policy 2/96 giet inkorporata fl-Avviz Legali 514/10. Dan irendi d-decizjoni monka proceduralment u t-Tribunal ma ccensurax dan in-nuqqas procedurali fid-decizjoni;

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2. In oltre l-Awtorita kienet kontradittorja meta qalet li din l-applikazzjoni ma kinitx qed titlob sanzjonar u ghalhekk l-applikazzjoni ma setghetx tigi kunsidrata qabel jitnehha l-izvilupp illegali meta quddiem it-Tribunal iddikjarat illi 'appellant has included the illegalities in the pending ECF 773/08 into the application';

3. L-Awtorita invokat l-applikabilita ta' policy 2.4A(2A) tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables li tghid li ma jistax ikollok spazji mhux utilizzati jew utilizzati hazin f'razzet. Bhala spazju gie ppruvat mir-ritratti li qed jigi utilizzat bhala mhazen u parti mill-makkinarju jinsab barra ghax proprju ma ghandux bizzejjed spazju. It-Tribunal zbalja meta qal li l-esponenti ma indikax l-uzu preciz ta' kull spazju u anqas esebixxa business plan ghall-attivitа agrikola tieghu. Dawn ir-rekwiziti ta' prova ma jirrizultawx u l-fatti urew l-uzu agrikolu minghajr il-htiega ta' business plan;

4. It-Tribunal naqas li jikkonsidra l-htiega bhala kwistjoni ta' sustanza meta irrizulta li kien inghata permess lil terzi PA 377/03 fejn gie moghti spazju aktar milli permess skond il-ligi biex jerigi mhazen u dan skond l-appellant ghax l-Awtorita qieset il-htiega b'mod holistiku u mhux ghax l-Awtorita f'dak il-kaz qalet li kienet gia kommessa. Kellu jittiehed kont f'dan il-kaz ghall-izvilupp innovattiv dwar agrikoltura organika li kien qed jipprova jaghmel l-appellant, li tirrikjedi ammont imdaqas ta' ingeni u li l-Awtorita kellha tqis u mhux timponi kundizzjonijiet kontra l-izvilupp.

L-ewwel u t-tieni aggravji

Dawn l-aggravji ma fihom ebda siwi ghaliex fil-fatt kemm l-Awtorita u kemm it-Tribunal ma kkunsidrawx ir-raguni ta' rifjut bbazata fuq il-policy 2/96 jew l-Avviz Legali 514/2010 liema raguni ta' rifjut giet irtirata mill-Awtorita quddiem it-Tribunal u anqas giet kunsidrata mit-Tribunal. Ir-ragunijiet ta' rifjut kunsidrati mit-Tribunal kienu t-tlett ragunijiet l-ohra promossi mill-Awtorita fuq il-mertu tal-izvilupp. Kwindi ma hemm xejn monk jew irregolari fil-gudikat tat-Tribunal li qies l-applikazzjoni mill-punto di vista kif maghmula cioe sanzjoni ta' zvilupp mhux kopert bil-permess originali.

It-tielet u r-raba aggravji

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Dawn l-aggravji wkoll ma jisthoqqu li jigu milqugha kemm minhabba li jirrigwardaw punti ta' fatt u punti teknici ta' planning li jaqghu fil-mansjoni esklussiva tat-Tribunal u kif ukoll ghaliex, kuntrarjament ghal dak allegat, it-Tribunal ikkonsidra l-mertu tal-aggravju relattiv ghall-raguni ta' rifjut ibbazat fuq il-policy 2.4A(2A) tal-Policy and Design Guidance on Agriculture, Farm Diversification and Stables. Bhala fatt it-Tribunal ikkostata mid-dokumentazzjoni, senjatament ritratti esebiti, illi l-applikant kellu bini iehor fir-raba li ma kienx jidher utilizzat, anzi kien juri telqa b'kostruzzjoni inkompleta, skart mhux relatat ma' attivita agrikola, hazna mifruxa, u illi l-estensjonijiet li saru kienu qed jintuzaw esklussivament ghal hazna ta' ghodda u ingenji agrikoli, kaxxi tal-pitkali minghajr ordni, liema stat ma kienx jirrispekkja l-ghan nobbli u grandjuz relatat mal-attivita promossa bl-izvilupp. It-Tribunal ma qies, kif jallega l-appellant, li l-applikant kellu jindika uzu preciz mill-ispazju jew xi business plan bhala xi prerekwizit ghall-approvazzjoni tal-izvilupp bhala sanzjoni. Anzi t-Tribunal kien jidher lest li jiskarta l-provi fattwali li kienu jimmilitaw kontra l-approvazzjoni tal-estensjoni tal-izvilupp mhux awtorizzat li kieku l-appellant wera rieda jew intenzjoni cara ta' dak li fil-fatt ried jizviluppa u l-intenzjoni wara l-uzu ta' tant spazju u makkinarju tant voluminuz. Izda t-Tribunal wasal ghal fehma illi l-appellant ma ggustifikax b'mod konkret dan il-bzonn biex l-istess Tribunal ikun jista' jaghti sostenn ghal permess ta' spazju li jmur oltre n-norma stabbilita mill-policy stess. Dawn kienu argumenti ta' natura ta' planning li ma ggustifikawx il-proposta tal-appellant u tali kunsiderazzjonijiet u konkluzzjonijiet minnu raggunti mhux soggetti ghal rikonsiderazzjoni ta' din il-Qorti sakemm ma jirrizultax li saru fuq fatti li ma jezistux jew li huma zbaljati. Dan ma jirrizultax u l-aggravju ma jisthoqqu jigi milqugh.

Bl-istess mod it-Tribunal qies il-bzonn li jigi promoss attivita agrikola organika anki bhala kwistjoni ta' sustanza tant li t-Tribunal ighid li ma saret ebda gustifikazzjoni mill-appellant b'mod konkret li tiggustifika lit-Tribunal jiddipartixxi mir-rekwizit tal-Policy and Design Guidance tal-2007 rigward il-kobor permess ta' strutturi f'art agrikola f'ODZ. It-Tribunal ikkunsidra l-permess citat mill-appellant dwar kobor in excess ta' dak permess u t-Tribunal skarta din il-konsiderazzjoni wara li kkunsidra l-fattispecie differenti taz-zewg permessi pero b'referenza partikolari ghal dan il-kaz, ghaliex l-appellant ma ggustifikax ghaliex it-Tribunal kellu jiddipartixxi qua eccezzjoni partikolari ghal dak li tipprovdni l-policy dwar qisien ta' strutturi permissibbli fuq art agrikola bil-fattispecie tal-kaz in kwistjoni. In-nuqqas assolut tal-applikant li jiggustifika li t-Tribunal jiddipartixxi minn norma kien jispetta lilu, u t-Tribunal qies li l-appellant dan ma ghamlux. It-Tribunal semma' wkoll fost affarijiet ohra in-nuqqas tal-appellant li jippuntwalizza l-kapjenza tal-attivita agrikola li jigestixxi, il-volum tal-produzjoni u rizultati f'dawn l-ahhar snin. Minn dan kollu l-appellant ma ghamel xejn. Jista' jkun li l-appellant ma jaqbilx mal-opinjoni tat-Tribunal pero dan ma jirrendix id-decizjoni fallaci kemm-

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il darba l-punti kollha sostanzjali in kontestazzjoni jkunu gew kunsidrati mit-Tribunal kif fil-fatt sehh.

Ghalhekk dan l-aggravju li wkoll kien wiehed li jittratta maggorament punti ta' fatti ma jistax jigi milqugh.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Nicholas Cassar u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-13 ta' Gunju 2013. Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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