MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Frar, 2015

Appell Civili Numru. 46/2014

Anthony Desira

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Anthony Desira tat-12 ta' Awwissu 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014 kontra PA 4063/06 'to sanction farmhouse and remove timber structures';

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

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

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

B'applikazzjoni, Full Development Application – PA 4063/06, l-appellant, Anthony Desira, f' 'Le Mirage', Sqaq il-Basal, Delimara, Marsaxlokk, talab:

"To sanction farmhouse and remove timber structures"

Permezz ta' rifjut mahrug fit-3 ta' Awwissu, 2007, l-Awtorita' dwar l-Ambjent u l-Ippjanar cahdet it-talba ghall-hrug tal-permess relattiv ghar-ragunijiet segwenti:

"1. 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.

2. The site lies in a Rural Conservation Area (as designated by the Structure Plan and indicated on the Key Diagram). The proposal does not comply with Structure Plan policy RCO 2 which clearly states that no form of urban development will be permitted within Rural Conservation Areas.

3. Structure Plan policy RCO 4 provides that, particularly within Rural Conservation Areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan policy RCO 4.

4. The proposed development conflicts with Structure Plan Policy SET 11, which does not permit urban development outside existing and committed built-up areas. The development does not fall into a category of non urban development which may be permitted outside existing or committed built-up areas in accordance with Paragraph 7.6 of the Structure Plan. The proposed development also therefore runs counter to policy BEN 5.

5. There is no justification for the development of this site as required by Structure Plan policy SET 12. It is apparent that there are no reasons from a planning point of view why the proposed development can not be located in an area designated for development or in an existing built up area.

6. The proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, and in particular to paragraph 8.2(i), which states that the need for a new development must be clearly explained and justified. It would lead to urbanisation outside those areas specifically designated for urban uses in the Structure Plan - i.e. : existing and committed built up areas and primary development areas, and so also runs counter to the Structure Plan strategy to channel development into existing and committed urban areas to constrain further inroads into undeveloped land.

7. The development is located within the buffer zone of a scheduled site (GN400/96) level 3 area of ecological interest and the development thus runs counter to paragraph 15.39 of the Explanatory Memorandum of the Structure Plan which specifies that no residential development is permissible within such areas.

8. The development runs counter to the Marsaxlokk Bay Local Plan policies MD01 which identifies the perimeter of the National Park and prohibits any development which will have a harmful or conflicting impact, policy MS08 which clearly specifies that no new residential development will be allowed on Delimara Peninsula and policy MS09 which limits new development to the defined urban and industrial areas."

Permezz ta' ittra datata id-9 ta' Novembru, 2007, l-Awtorita' dwar l-Ambjent u l-Ippjanar infurmat lill-appellant li qed tohrog dismissal tal-applikazzjoni PA 4063/06 u dan skond Art. 52(7) tal-Att X, 1992, u dan peress li kien gie kkonfermat li kien sar ksur tal-Enforcement Notice 330/06.

Permezz tal-appell tieghu l-perit Musumeci ressaq l-aggravji tal-applikant kif gej:

"Appeal is being made on the following counts.

Application should not have been dismissed in the first instance, given the fact that there is no access to the building (and therefore no use of building) as can be attested from a site inspection.

We therefore request that the file be referred to the DCC to enable reconsideration of the first decision on account of the material planning considerations underlined below.

Application relates to a dwelling in ODZ built prior to the enactment of the Structure Plan, where the pertinent records were not traced in the planning archives, since these were mislaid. In fact, no proof has been forthcoming from MEPA to justify that the building has been constructed without a permit. An enforcement notice was served more than twenty years later from the date of construction, on the pretext that the permits were not found.

In this ambit, we deem that the enforcement should not have been issued in the first instance and therefore the application in caption should be approved.

Thank you in anticipation for your attention to the above matter."

Permezz tar-rapport taghha l-Awtorita', permezz ta' Dr Anthony DeGaetano, resqet il-kummenti kif gej:

"Illi fl-ewwel lok, dak verbalizzat fl-ahhar seduta tas-27 ta' April, 2009 mill-perit ta' l-appellant mhux parti mill-aggravji ta' l-appell tieghu u l-Awtorita' f'dan l-istadju mhux ser twiegeb, salv li tirriserva li tittella' provi fl-istadju opportun;

Ghar-rigward l-aggravju ta' l-appell li hu mid-dismissal ta' l-applikazzjoni minhabba li tkompla l-ksur ta' l-avviz ECF 330/06 li kien inhareg kontra l-istess Anthony Desira, a bazi ta' l-artikolu 52 (7) tal-Kap. 356, mhux talli kien hemm access ghall-izvilupp, izda, l-istess bini gdid inkisirlu s-sigilli li kienu saru mill-istess Awtorita' wara li tkompla l-izvilupp u baqa' jintuza, kif del resto ingiebu provi dokumentarji mill-

Awtorita'. Dwar dan li l-istess appellant kien inghata l-informazzjoni w kien ben konxju taghhom, fejn jidher car il-ksur kontinwu ta' l-istess avviz;

Illi dwar l-aggravju li l-istess zvilupp kien bini antik, dan mhux taht il-gurisdizzjoni ta' dan il-Bord f'dan l-appell, stante li l-istess avviz numru 330/06 kien mar in gudikat tant li sahansitra ttiehdet azzjoni diretta biex jitwaqqaf l-izvilupp inkluz l-uzu u gie issigillat b'sigilli ta' l-Awtorita'. Oltre dan l-istess applikazzjoni mertu tad-dismissal u ta' dan l-appell hi biex tissanzjona l-istess zvilupp kollu. Dan apparti, u minghajr pregudizzju ghal dak iktar 'l fuq f'dan l-ahhar paragrafu, li l-istess mill-aerial photos u mid-dokumentazzjoni f'idejn l-Awtorita', jidher bic-car li l-izvilupp kollu hu illegali;

Apparti dan l-ahhar parti ta' l-appell li l-istess avviz qatt ma kellu jinhareg ma jistax isir f'dan l-appell kif intqal fuq oltre' li hu fuori termine, stante li l-avviz kien gie notifikat lill-istess appellanti fl-14 ta' Gunju, 2006 mill-enforcement officers Philip Sammut u Oreste Galea, liema avviz l-istess appellant iffirma li ircevieh (vide dok. TD1 – kopja li tinsab fil-file ta' l-ECF blue 8) waqt li dan l-appell dahal fit-22 ta' Novembru, 2007, cjoe' iktar minn sena u hames xhur wara;

Ghaldaqstant l-appell ghandu jigi rifjutat w id-dismissal ikkonfermat."

Fis-seduta tal-4 ta' Ottubru, 2011, l-enforcement officer, Hubert Cini, pprezenta dokument li kien jghid is-segwenti:

"Case History

This enforcement notice is being issued instead of ECF 800/07, which was withdrawn on 28th April 2006.

ECF 800/07 had to be closed and withdrawn on 28/04/06. A new S/E notice ECF 330/06 was thus issued against same developer since the first enforcement notice was not served according to law (vide mins 26 to 38 in ECF 800/97). Following legal advice itw as instructed to re-issue enforcement notice as per min 34 and e-mail red 31 in ECF 800/97.

Site has been inspected by O Mizzi on 28/04/06 and all new development added after the date of issue of the first enforcement notice 800/97 was included in this new enforcement notice. Development included various rooms for residential use,

garage, timber sheds, canopies and gazebos,boundary walls, gate chainlink fence and concrete pavement around site.

Owner Mr. Anthony Desira (a/k/a ic-centezmu) was contacted by Omar Mizzi and was informed that a new enforcement notice was to be issued against all the illegal development on site.

The notice was mailed by pink card on 06/05/06 but was unclaimed and returned on 19/5/06.

Site was re-inspected after office hours by Philip Sammut and SEO O Galea. The notice + site plan was served by hand directly to Mr. Desira on 14th June 2006 at 18.45. The contentsof the notice were explained to Desira. He informed that an application was to be submitted.

A DA operation was carried out on the 16/08/06.It consisted in the sealing of the main gate with brick, the sealing of a garage door with MEPA seal (number 723) and the sealing of a wooden gate leading to the premises (seal numbers 731, 745, 781, 722). The operation started at about 6.00 am and lasted till noon (inconjunction with another operation on a nearby site). Contractor was CI Vella Ltd. A truck, the necessary material and two workmen were used to carry out the necessary works. Two police officers assisted MEPA personell. All DAT officials were present on site under the supervision of PEO C. Debattista.

An appeal against direct action notification (DANL – the sealing of the premises) was submitted on site on 17/08/06 as per PAB 201/06E. It later transpired that this appeal was lodged fuori termini by Mr. Bertu Mifsud who is the owner of the adjacent property (in ECF 691/05).

The appeal by Mifsud was lodged since the DANL (letter prior direct action) issued by Direct action team against Mifsud had misquoted by error the ECF 330/06 (number of Desira k/a ic-centezmu). Matter brought to the attention of Legal advisor i/c Appeals

PA 4063/06 was submitted on 26/06/06 ie within the regulatory period of the notice (16 days). The proposal sought the sanctioning of the illegality constructed dwelling outside of the development zone and planning consent for the removal of timber

structures located at first floor level and other outbuilding located within the site perimeter also constructed in timber.

On checking planning situation on 2/08/07 it was noted that DCC refused the proposal on 30/07/07. The appeal against enforcement was still sub judice' although the PAB was informed by Legal Advisor that appellant (Bertu Mifsud) was not connected tot he site and that the appeal was fuori termini.

Site was inspected on 2/08/07 at 11.30 by H Cini and O Galea when it was found out that the MEPA seals fixed on 16/08/06 were removed and the premises were in use. A white saloon car was noted int he garage and windows at first floor level were open. Moreover the bricks mentioned above were removed from the main gate entrance. No one was on site. Photos available.

Refusal of PA 4063/06 was sent on 08/08/07 but a reconsideration request was lodged on 4/09/07. The PEO was asked to state whether the notice was still being breached as already noted on 2/08/07. If confirmed, PA 4063/06 would be recommended for dismissal in line with Art 52(7).

Site inspected by H Cini on 24/09/2007 and photos taken. It was found out that the seals of the main gate were broken, the seals of the garage door were broken with a car (with its engine on) inside , windows open and one could also hear people talking inside. Two dogs (tal-kacca) were also noted on site.

Case was referred for dismissal of application of PA 4063/06 (in terms of Art 52.7) – vide memo red 29 endorsed by Area Team Manager.

Attended DCC sessions re dismissal on 1/10/07. Architect obo developer was not present and case differed for another hearing on 15/10/07 (postponed for 6/11/07)

Attended DCC sessions re dismissal on 6/11/07. PA 4063/06 was dismissed after a vote taken by DCC. Architect Musumeci declared that an appeal is be submitted against dismissal notice snet on 9/11/07.

H Cini attended appeals case PAB 201/06E (lodged by Bertu Mifsud who is the owner of the adjacent property). H Cini presented a copy of the notice which was

issued against Mifsud (in another ECF 691/05). Case was deffered as Chairman wanted to see Bertu Mifsud's case file.

In the meantime an appeal was lodged in PAB 300/07 ISB on 22/11/07 by Mr. Stivala (ic-Centesmu) against the dismissal of his application PA 4063/06.

GAO – 24/01/11 – CPS and noted that the 2 appeals PAB 201/06 (by Albert Mifsud re DANL) and PAB 300/07 (by Desira re dismissal of application) were still pending."

Fin-nota tal-perit Musumeci tad-9 ta' Novembru, 2011 huwa jghid is-segwenti:

"1. Illi fl-ewwel lok irid jinghad li l-appell odjern si tratta dwar applikazzjoni PA4063/06 To sanction farmhouse and remove timber structures. Skont decizjoni tad- DCC datata 9 ta' Novembru 2007, l- Awtorita appellata ma kkunsidratx din l-applikazzjoni fil- mertu stante li imponiet "dismissal" ta' l-istess ai termini ta' l-Artikolu 52(7) tal- Kap 356 tal- Ligijiet ta' Malta. Fil- fatt, f'din l-imsemija decizjoni, jinghad "it has been confirmed that there was a breach of enforcement notice ECF 330/06." Del resto, il-Kummissjoni ma elenkatx ir- ragunijiet dwar x'wassal sabiex jissustixxi dan l-allegat ksur.

2. Illi f'dan l- istadju jehtieg li l- esponenti jaghti kronologija tal- fatt wasslu ghad-decizjoni odjerna:

• L- Awtorita kienet allegat li l- bini in disamina huwa illegali, stante li ma nstabux il-permessi relattivi, u konsegwentement harget enforcement ECF 330/06 fil- konfront ta' l-appellant

• L-appellant intavola l-applikazzjoni PA4063/06 odjerna, sabiex jittenta jissanzjona il- bini de quo, ben konsapevoli li fis-snin sebghin kien inhareg permess sabiex il-bini tar-residenza tigi mibnija kif inhi illum, liema permess nonostante ma kienx ikopri l- istruttura ta' l- injam u kien proprju ghalhekk li l-applikant indika ab initio li l-istruttura ta' linjam kienet se titnehha. Mill- banda l- ohra, l-appellant kellu mohhu mistrieh li l- Awtroita ma setghetx tirrifjuta il- hrug tal- permess tar-residenza, stante li diga kien jesisti permess f'dan is-sens u allura l-Awtorita kienet legalment kostretta li ma tinjorax tali dritt kwezit.

• Illi fil- mori tal- process ta' din l-imsemmija applikazzjoni, l-appellant kien ircieva ittra mill- Awtorita bid-data ta' l- 24 ta' Settembru 2007 fejn gie indikat li l- file PA4063/06 kien qed jigi rakkomandat ghal dismissal ai termini ta' l- Artikolu 52(7) quddiem il- Kummissjoni. In segwitu, il- Kummissjoni iddefiriet il- kaz darbtejn, u cioe nhar il- 15 ta' Ottubru 2011 u s- 6 ta' Novembru 2011. Finalment inghatat

decizjoni mill- Kummissjoni nhar is- 6 ta' Novembru 2011, fejn l-istess Kummisjoni sempliciment iccitat li kien jissussisti ksur ai termini ta' l-Artikolu 52(7), izda l-Kummissjoni naqset li taghti r- ragunijiet li inducuha biex taghmel dan.

3. Illi ormai kien proprju fil- mori ta' dawn il- proceduri, senjatament waqt l-ahhar seduta, li Hubert Cini ghall- Awtorita appellata ipprezenta dokument markat HC1, li jinkludu numru ta' ritratti sabiex b'hekk issostni il- posizzjoni taghha.

4. Illi huwa pacifiku li l- appellant qatt ma kellu konjizzjoni ta' dawn il- provi fil- mori tal- proceduri quddiem il- Kummissjoni u b'hekk ma kienx f'posizzjoni li jirregola il-linja difensjonali f'dak ir-rigward- invece il- kaz instema quddiem il- Kummissjoni, tant li d- decizjoni ma elenkat ebda raguni in sostenn tad- dismissal. Fil- fatt jinghad li kien hemm "breach", minghajr ma tghid fhiex kien jikkonsisti dan il- "breach" u ghalhekk l-appellant mhuwiex f' posizzjoni li jargumenta a contrario senso id-decizjoni tal- Kummissjoni peress illi ma jirrizultax liema hi l- lanjanza li hadet.

5. Illi l-appellant isostni li dan it- Tribunal ghandu jiskarta d-dokument HC1 esebit minn Hubert Cini u dan ghaliex il- Kummissjoni ma ghamlet ebda riferenza ghalih fid-decizjoni taghha u ma hemm ebda nexus legali jew addirittura fattwali bejn it-test fid-decizjoni u d-Dokument HC 1 esebit minn Hubert Cini.

6. Molto piu, irid jinghad li imkien ma jirrizulta li kien l-appellant li wettaq l-allegat agir deskritt f' Dokument HC1. Jekk xejn, f'dan l-imsemmi dokument jinghad li minkejja li l- ufficjali spezzjonaw is-sit numru ta' drabi, ma ngiebet ebda prova li l-appellant kien responsabbli mill- allegat ksur. In oltre, jinghad ukoll fl-istess Dokument HC1, li l-enforcement officers qatt ma ltaqghu u, wisq anqas, tkellmu ma xi persuna fuq il- post– invece jghidu biss li dawn lemhu zewgt iklieb tal- kacca, semghu xi hsejjes u raw vettura minghajr ebda hadd go fiha!

7. Multo magis, irid jigi enfasizzat li l-appellant ma esegwa ebda xogholijiet in segwitu ta' l-applikazzjoni PA4063/06, u dan kif jista' jigi facilment ikkonstatat fuq il-post. F'dan il- kuntest, issir riferenza ghal- Artiklu 70. (1) tal- Kap 504 tal- Ligijiet ta' Malta li jiddisponi inter alia li ma ghandux jinghata permess jekk : " [...] min japplika jew il-predecessur tiegħu fit-titolu ma jkunx: (a) minnufih li jkun gie meħtieg li jagħmel hekk, waqaf milli jkompli xogħol li jkun gie meħtieg li jwaqqaf;" Issa fil- kaz odjern, ma ngabet ebda prova li turi li l-applikant (illum l-appellant) kompla b'xi xoghol li hu (l-appellan) kien mehtieg li jwaqqaf.

8. A propositu, u kif inghad fis-suespost, l-izvilupp mertu ta' l-appell odjern jirrigwardja bini tas-snin sebghin li kien inbena bil- permess. Mammano, L-appellant kien kostrett jitlob is- sanzjonamnet ta' dan il- bini stante li l-Awtorita harget enforcement ECF330/06 fil- konfront tieghu u dan wara li kienu intilfu il- permessi relattivi. Fil- fatt, l-applikant intavola lapplikazzjoni PA4063/06 To sanction farmhouse… ben intiz li l- proposta tissubentra ai termini ta' l- Artikolu 33 tal- Kap 356 (illum l- Artikolu 69 tal- Kap 504) stante li "l-pjanijiet sussidjarji u l-policies m'għandhomx ikunu applikati retroattivament b'mod li jkunu jolqtu b'mod kuntrarju drittijiet akkwizti li jirrizultaw minn permess ta' zvilupp validu;" Applikati dawn il-kunsiderazzjonjiet fil- kaz in disamina, l-appellant talab leskussjoni tal- perit Duminku Mintoff, Prim Ministru ta' Malta fiz-zmien li nhareg il- permess, u dan sabiex tali xhud jikkonferma li kien jesisti "permess ta' zvilupp validu" koncernanti s-sit mertu ta' dan l-appell, u liema permess jirrigwardja il- parti mibnija salv ghall-istruttura ta' l- injam li l-appellant kien fi hsieb li jnehhi. Il- perit Mintoff huwa konsapevoli ta' dan stante li hu kien involut fil- hrug tal- permess u l-appellant, bi pregudizzju kbir ghalih, gie priv milli jressaq tali prova sabiex jikkonferma dan il- fatt.

9. Illi in fine, l-esponenti jissottometti li (i) l-applikant (illum l-appellant) ma wettaqx l-agir deskritt fid- dokument HC1 u in oltre, ma wettaq ebda xogholijiet fil- mori tal-process ta' l-applikazzjoni mertu ta' dan l-appell; (ii) id-decizjoni li nghatat mill-Awtorita nhar id- 9 ta' Novembru 2007 mhix motivata, stante li ma inghatat ebda indikazzjoni ta' kif l-Artikolu 52(7) kien semaj vjolat; (iii) l-appellant gie priv mill-opportunita li jipproduci xhieda li turi li l- bini in disamina huwa in effetti kopert bilpermess.

10. Illi in vista tal- kunsiderazzjonijiet citati supra, l-esponenti jitlob lil dan it-Trubunal jirrimetti l-Atti quddiem il- Kummissjoni appellata sabiex tipprosegwi bis-smigh tal- file PA 4063/06."

Fir-risposta tieghu Dr DeGaetano, jirrispondi kif gej:

"Illi l-istess nota tal-appellant li dahlet fid-9 ta' Novembru, 2011 ghand it-Tribunal u notifikata fl-14 ta' Novembru, 2011 ma tattakkax bl-ebda mod il-provi li jirrizultaw fl-ECF 330/06 u fil-PA file 4063/06 izda iqajjem teorija fallaci fejn qed jinghad illi ghax l-Awtorita` tellghet il-provi quddiem dan it-Tribunal xhieda ta' enforcement officer, l-istess appellant qed jitlef xi drittijiet ghax dan quddiem l-EPC ma xehedx viva voce. Din it-tesi hi kompletament fallaci li ma hemm xejn li zzomm lill-Awtorita`, kif ma hemm xejn izzomm lill-appellant milli jtella' quddiem dan it-Tribunal dawk il-provi li kull parti jidhrilha xierqa biex jew tipprova l-appell taghha jew tiddefendi l-istess appell;

Illi wkoll mill-istess processi kif ukoll mill-istess xhieda jirrizulta minghajr dubju illi wara listess avviz, tkompla l-izvilupp u sahansitra inkissru s-sigilli w ir-residenza illegali giet kompletata u bdiet tintuza u dan kontra l-istess artikolu 52 (7) dak iz-zmien taht il-Kap. 356 tal-Ligijiet ta' Malta fejn l-istess Kummissjoni "shall" , u cjoe` hi obbligata u m'ghandhiex diskrezzjoni hlief li taghmel dismissal f'kaz li jigi ppruvat li kien hemm ksur tal-istop and enforcement notice, liema notice tirrikjedi taht piena ta' dismissal, li l-izvilupp ghandu jieqaf bin-notifika tal-avviz anki fil-pendenza ta' applikazzjoni biex tittenta tissana. Altru` milli ma sarux ebda xogholijiet fil-mori tal-process tal-applikazzjoni, anzi sar zvilupp kemm ta' terminazzjoni tax-xogholijiet kif ukoll uzu tal-istess xogholijiet illegali;

Ghaldaqstant l-istess appell ghandu jigi michud u l-istess dismissal ikkonfermata."

Fin-nota tal-perit Musumeci tat-28 ta' Novembru, 2011 huwa jghid is-segwenti:

"1. Illi b'referenza ghan-nota ta' l-esponenti bid-data ta' l-20.10.2011, l-esponenti jippreciza li t-tieni paragrafu f'pagna 3 irid jaqra hekk: "[…] u cjoe nhar il-15 ta' Ottubru 2007 (u mhux 2011) u s-6 ta' Novembru 2007. (u mhux 2011) Finalment inghatat decizjoni mill-Kummissjoni nhar is-6 ta' Novembru 2007 (u mhux 2011) kif indikat fin-ntoa precedent) […]"

2. Illi b'referenza ghall-istess nota ta' l-esponenti bid-data ta' l-20.10.2011, senjatament ghall-ahhar punt (numru 10), l-esponenti jippreciza li huwa qed jitlob lil dan it-Tribunalli l-atti tal-file PA 4063/06 jigu rinvjati lura quddiem il-Kummissjoni ta' l-Ambjent u l-Ippjanar sabiex terga' tigi kkunsidrata t-talba tieghu fid-dawl ta' l-arugmenti sollevati fl-istess nota ta' l-20.10.2011."

Ikkunsidra ulterjorment:

Il-mertu tal-applikazzjoni PA 4063/06 jirrigwarda talba ghas-sanzjonar ta' residenza illegali ODZ u t-tnehhijja ta' struttura tal-injam. Din l-applikazzjoni kienet saret wara li kien hareg ECF 330/06. Fit-3 ta' Awwissu, 2007, l-Awtorita' cahdet it-talba ghall-hrug tal-permess relattiv u gabet tmien ragunijiet biex tissostanzja dan ir-rifjut.

Permezz ta' ittra datata id-9 ta' Novembru, 2007, wara li kienet saret applikazzjoni ghal reconsideration minn-naha tal-applikant, l-Awtorita' dwar l-Ambjent u l-Ippjanar infurmat lill-appellant li qed tohrog dismissal tal-applikazzjoni PA 4063/06 u dan

skond Art. 52(7) tal-Att X, 1992, u dan peress li kien gie kkonfermat li kien sar ksur tal-Enforcement Notice 330/06.

Dan l-appell qed isir mid-decizjoni tal-Awtorita' li tohrog dismissal ghal din

l-applikazzjoni.

Permezz ta' rapport ipprezentat mill-ufficjal taghha Hubert Cini fis–seduta tal-4 ta' Ottubru, 2011, l-Aworita' spjegat is-sekwenza ta' fatti li wasslu ghad-dismissal tal-applikazzjoni PA 4063/06. Il-punti saljenti f' dan ir-rapport huma is-segwenti:

• Fuq is-sit in ezami kien originarjament hareg enforcement notice ECF 800/97 li sussegwentement kien gie rrtirat biex minn flok hareg ECF 330/06 li kien gie aggornat biz-zidiet kollha fl-izvilupp illegali li kienu saru fil-frattemp fuq is-sit de quo.

• Skond l-enforcement notice l-izvilupp illegali kien jinkludi kmamar residenzjali, garage, timber sheds, tined, gazebos, boundary walls, gate, chainlink fence u pavimentar tal-concrete;

• L-appellant kien inghata l-enforcement notice direttament f'idejh u ghalkemm kien sar appell minn ECF 330/06 dan kien sar bi zball minn persuna li ghandha propjeta adjacenti is-sit de quo u li ukoll kellha enforcement notice u li kien ikkwota n-numru tal-ECF hazin. Fi kwalunkwe kas l-appell mill-enforcement kien sar fuori termine;

• Fis-16 ta' Awwissu, 2006 kien sar direct action fuq is-sit in ezami fejn is-sit kien gie ssigillat f' numru ta' postijiet;

• Wara li fit-30 ta' Lulju 2007 id-DCC kien irrifjuta l-applikazzjoni PA 4063/06, l-Awtorita' fit-2 ta' Awwissu, 2007, kienet ghamlet inspection fuq is-sit in ezami u sabet li s-sigilli kienu gew imnehhija u li s-sit kien qed jintuza;

• Fl-4 ta' Settembru, 2007 kienet giet sottomessa talba min-naha tal-applikant biex isir reconsideration;

• Fl-24 ta' Settembru, 2007, l-Awtorita' permezz tal-ufficjal Hubert Cini kienet ghamlet site inspection ohra u sabet li s-sigilli kienu imnehijja u li s-sit kien qed jintuza u kien irrizulta li diversi attivatajiet kienu ghaddejjin fuq is-sit;

• Fis-6 ta' Novembru, 2007 id-DCC iddecieda li johrog dismissal tal-applikazzjoni PA 4063/06 a basi tal-Artiklu 52(7) tal-Kap.356.

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

Fl-appell tieghu l-appellant jissottometti li l-applikazzjoni qatt ma' kellha tigi dismissed mid-DCC u dan peress li l-bini ma' jistax jintuza peress li m' hemmx access ghalieh u dan jista jigi facilment ikkonstatat minn site visit. Ghalhekk l-appellant jitlob li l-kas jintbaghat lura d-DCC biex jitkompla l-ipprocessar tal-applikazzjoni li kien wasal fl-istadju ta' reconsideration.

F-sottomissjonijiet ulterjuri huwa jzid, inter alia, is-segwenti:

• Meta d-DCC iddecieda li johrog dismissal tal-applikazzjoni ma' taghax ragunijiet ghal dan. Il-kummissjoni sempliciment qalet li d-dismissal kien sar ai termini ta' Art. 52(7);

• Kien biss fil-kors tas-smieh ta' dan l-appell li l-Awtorita' taghat spjegazzjoni permezz tal-ufficjal taghha Hubert Cini;

• Peress li l-appellant ma' kienx jaf ir-ragunijiet ghad-dismissal waqt l-ipprocessar tal-applikazzjoni quddiem id-DCC huwa ma' setghax jiddefendi ruhu meta nstema' l-kas quddiem il-kummissjoni;

• Ghalhekk it-Tribunal ghandu jinjora r-rapport ta' Hubert Cini u jibghat il-kas lura ghand l-Awtorita' biex tpompli tipprocessa l-applikazzjoni PA 4063/06 fl-istadju ta' reconsideration;

• In oltre ma' jirrizulta minn imkien li l-appellant kien wettaq l-affarijiet li huwa allegat li saru f' dan ir-rapport. In fatti l-ufficjali tal-Awtorita' qatt ma' ltaqghu jew tkellmu ma' xi persuna meta kienu fuq is-sit de quo; u

• L-appellant ma' ghamel ebda xogholijiet fuq is-sit in ezami wara li ssottometta l-applikazzjoni PA 4063/06.

Fis-sottomissjoni taghha l-Awtorita' tghid is-segwenti:

• Kontra ghal dak li qal l-appellant, kien inholoq access ghas-sit in ezami wara li l-Awtorita' kienet ghamlet is-sigilli tant hu hekk li inkisru s-sigilli, tkompla l-izvilupp u s-sit baqa' jintuza;

• L-appellant kien inghata informazzjoni dwar dan u hu kien konxju taghhom;

• L-ECF 330/06 kien inghata direttament f' idejn l-appellant minn ufficjali tal-Awtorita' u fil-fatt qatt ma' sar appell minnu;

• Kemm l-appellant u kif ukoll l-Awtorita' ghandhom kull dritt li jtellghu quddiem it-Tribunal il-provi kollha necessarji biex jiddefendu l-pozizzjoni rispettiva taghhom;

u

• Kontra ghal dak li qed jafferma l-appellant, fil-mori tal-applikazzjoni tkompla x-xoghol illegali fuq is-sit de quo tant li r-residenza illegali tlestiet u bdiet tintuza.

Minn ezami dettaljat tal-files relattivi dan it-Tribunal jaghmel l-osservazzjonijiet segwenti:

• Fil-file tal-Awtorita’ jezistu kopji ta’ document tal-24 ta’ Settembru, 2007 li juru li l-appellant u l-perit tieghu kienu gew infurmati permezz ta’ ittra formali li l-applikazzjoni PA 4063/06 kienet tpoggiet fuq l-agenda tad-DCC biex dan jikkunsidra jekk ghandhux johrog dismissal tal-applikazzjoni. Ma’ din l-ittra kien hemm anness rapport li kien sar minn Hubert Cini fl-24 ta’ Settembru, 2007, wara li kien ghamel site visit fuq is-sit in ezami. Ir-rapport kien endorsed minn Oreste Galea u l-perit Victor Sladden. Dan ifisser li l-appellant u l-perit tieghu kienu jafu bir-ragunijiet li wasslu lill-Awtorita’ biex tikkonsidra l-possibilita’ li l-applikazzzjoni PA 4063/06 tigi dismissed hafna zmien qabel ma’ din telghet quddiem id-DCC. Jigifieri l-appellant kellu kull opportunita’ li jipprepara ruhu. Ghalhekk huwa car li l-appellant ghal izjed minn darba fil-kors tas-smieh ta’ dan l-appell iddikjara li ma’ kienx jaf ir-ragunijiet ghad-dismissal meta huwa izjed minn ovvju li dan mhux minnu;

• Mir-ritratti li hemm fir-rapport li pprezenta Hubert Cini fil-kors tas-smieh ta’ dan l-appell jidher car li kien jezisti access ghas-sit in ezami. Dan it-Tribunal jinnota li hemm diskrepanza bejn dak li qal l-appellant fl-appell tieghu meta ddikjara li ma’ kienx hemm access ghas-sit u dak li jirrizulta minn dawn ir-ritratti. L-appellant ma’ ghamel ebda kumment fil-mertu dwar il-kontenut tar-rapport;

• L-avviz ECF 330/06 kien hareg kontra l-appellant pero dwar xogholijiet illegali li kienu qed isiru specifikament fuq is-sit in ezami. Ghalhekk l-appellant ma’ jistax jahrab mir-responsabbilta’ billi jghid li x-xogholijiet ma’ kienx ghamilhom hu;

• L-ipprocessar ta’ applikazzjoni hija attivita amministrattiva li permezz taghha l-Awtorita’ ghandha taghmel dak kollu necessarju biex il-permess li johrog ikun skond il-policies tal-ippjanar vigenti u skond il-ligi. L-Awtorita’ ghandha kull dritt li tohrog dismissal jekk jirrizultalha li c-cirkostanzi kienu tali li jiggustifikaw din id-decizjoni. L-Awtorita’ m’ mhix obbligata, kif qed jippretendi l-appellant, li qabel ma’ tohrog id-dismissal jigi trattat mill-partijiet jekk ghandhiex tigi dismissed l-applikazzjoni;

• L-Awtorita’ kienet korretta u konformi mal-ligi meta iddecidiet li tohrog dismissal billi hekk irrizultalha mir-rapporti tal-ufficjali taghha.

F’kazi bhal dawn jigifieri meta jkunu jezistu irregolaritajiet fuq is-sit in kwistjoni, f’dan il-kas minhabba li tkompla l-ksur tal-avviz ECF 330/06 li kien inhareg kontra l-appellant, l-Awtorita’, skond l-artiklu tal-ligi li kienet vigenti meta saret id-decizjoni tal-Awtorita’, jigifieri Articlu 52(7) tad-Development Planning Act, ghandha twaqqaf din l-applikazzjoni minnufih. Illum, bl-emendi li dahlu fis-sehh recentement, din is-sitwazzjoni hija koperta fl- Artiklu 86(10) ta’ l-Att X tat-2010.

Mill-premess dan it-Tribunal huwa tal-fehma kunsidrata li l-Awtorita’ kienet korretta meta ddecidiet li tohrog dismissal ghal din l-applikazzjoni u li l-appellant kien

infurmat bil-proceduri kollha li kienu ghaddejjin f’dan ir-rigward anke fil-kors tal-ipprocessar tal-applikazzjoni. Ghalhekk, f’dawn ic-cirkostanzi partikolari dan l-apprell ma’ jistax jinghata konsiderazzjoni favorevoli.

It-Tribunal, ghalhekk, qieghed jichad dan l-appell u jikkonferma id-dismissal tal-applikazzjoni PA 4063/06, “To sanction farmhouse and remove timber structures”.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal naqas li jevalwa l-aggravju li l-Awtorita ma tatx raguni ai termini tal-artikolu 52(7) tal-Kap. 356 ghaliex kien qed jigi vjolat l-enforcement order u ghalhekk id-dismissal tal-applikazzjoni bla ebda raguni kienet nulla, u n-nuqqas tat-Tribunal li jaghraf dan, ippregudika l-applikant;

2. It-Tribunal zbalja meta fost il-konsiderazzjonijiet li ghamel qal li l-Awtorita mhix obbligata tisma’ lil partijiet jekk ghandhiex tigi dismissed l-applikazzjoni. Dan mhix korrett ghax l-Awtorita hi obbligata tressaq ragunijiet u provi u tisma x’ghandu xi jghid l-applikant. Dan ippregudika lil applikant peress illi t-Tribunal kellu biss il-verzjoni tal-Awtorita fuqhiex jimxi.

L-ewwel aggravju

Fl-ewwel lok dan l-aggravju kif maghmul qatt ma kien wiehed mill-aggravji imressqa quddiem it-Tribunal u t-Tribunal hu obbligat biss jiddeciedi aggravji imressqa fl-ittra tal-appell quddiemu. Il-kwistjoni imressqa b’dan l-aggravju tqajmet mill-appellant fil-mori tal-appell qua sottomissjoni. Sottomissjoni mhix aggravju ghalkemm f’certi cirkostanzi partikolari u eccezzjonali fejn si tratta ta’ kwistjonijiet bhala dawk ta’ ordni pubbliku, it-Tribunal ghandu jikkonsidra tali sottomissjonijiet fid-dawl tal-appell migjub quddiemu. Ghalkemm dan ma kienx wiehed minn dawn il-kazijiet, it-Tribunal xorta dahal fil-kwistjoni, kuntrarjament ghal dak li allega l-appellant. L-appellant jilmenta illi bhala fatt ma giex mgharraf f’hix kien jikkonsisti l-ksur tal-enforcement, u d-decizjoni a bazi tal-artikolu 52(7) fejn l-Awtorita tista’ tichad applikazzjoni jekk ikun qed isir ksur ta’ ordni ta’ enforzar ma kienx fiha spjegazzjoni tal-ksur biex l-appellant jiddefendi ruhu.

Dan hu palesement skorrett. Tant l-appellant kien jaf dwar ir-raguni tal-ksur illi fl-appell mill applikazzjoni tal-artikolu 52(7), cioe l-mertu veru quddiem din il-Qorti, jinghad mill-applikant fl-ewwel paragrafu tal-appell quddiem it-Tribunal illi ma hemmx access ghas-sit u kwindi ma hemmx uzu u b'hekk l-applikazzjoni ma messitx giet rifjutata. Dan l-aggravju jimplika li l-appellant kien jaf ghaliex gie applikat l-artikolu 52(7) ghax kieku ma kienx isemmi l-access ghas-sit li kienet ir-raguni wara l-applikazzjoni tal-artikolu 52(7) skond ma jirrizulta mill-case officer report u ritratti mehudin. Aktar minn hekk pero t-Tribunal ikkonsidra bhala fatt, liema fatt mhux disputat mill-appellant, illi meta l-perit tal-applikant u l-istess applikant gew infurmati fl-24 ta' Settembru 2007 illi l-applikazzjoni kienet tpoggiet fuq l-agenda biex jigi kunsidrat dismissal, gie anness rapport ta' case officer bir-rizultanzi ta' access li ghamel fuq is-sit fejn irrizulta li kien rega' sar access ghas-sit meta dan kien vjetat bl-enforcement u skatta l-applikazzjoni tal-artikolu 52(7) ghal kaz in kwistjoni. It-Tribunal izid illi b'dan ir-rapport l-appellant kellu kull opportunita jipprepara ruhu. Saru in oltre zewg seduti quddiem il-Kummissjoni fl-1 ta' Ottubru 2007 fejn il-perit tal-appellant ma deherx u l-kwistjoni giet differita ghall-15 ta' Ottubru 2007 li giet posposta ghas-6 ta' Novembru 2007 fejn ittiehed vot ghal dismissal tal-applikazzjoni u fid-9 ta' Novembru 2007 il-perit tal-applikant iddikjara li ser jappella.

Dawn il-fatti mhux kontestati juru illi l-applikant kien jaf bir-raguni ghal dismissal, saru zewg seduti quddiem il-Kummissjoni u ittiehdet decizjoni. Anki jekk ghal grazzja tal-argument l-avviz dwar id-dismissal u/jew id-decizjoni finali ma kinitx telenka b'mod dettaljat ir-ragunijiet tal-ksur tal-enforcement order, ir-rapport tal-case officer, li kien il-bazi tal-azzjoni mehuda mill-Awtorita a bazi tal-artikolu 52(7) kienet maghrufa ghall-appellant u n-nuqqas tieghu li jressaq provi a rigward ma hi xejn hlief htija tieghu u xejn aktar. Id-decizjoni hi riflessa f'dak li hemm fir-rapport tal-case officer li fuqu ittiehdet id-decizjoni ta' dismissal, tant li l-avukat tal-appellant ghamel kontroezami tieghu quddiem it-Tribunal u kien ghalhekk ovvju l-bazi tad-dismissal. Kienet tkun diversa l-kwistjoni li kieku l-appellant ma nghata ebda hjiel tar-raguni tad-dismissal pero f'dan il-kaz ir-rapport tal-case officer kien ir-raguni u d-decizjoni hi biss il-konferma ta' dan.

It-tieni aggravju

Hu minnu illi b'mod teoretiku l-appellant ghandu ragun isib oggezzjoni ghal bran tat-Tribunal fir-raba osservazzjoni tieghu li jghid hekk:

> L-ipprocessar ta' applikazzjoni hija attivita amministrattiva li permezz taghha l-Awtorita' ghandha taghmel dak kollu necessarju biex il-permess li johrog ikun skond il-policies tal-ippjanar vigenti u skond il-ligi. L-Awtorita' ghandha kull dritt li tohrog dismissal jekk jirrizultalha li c-cirkostanzi kienu tali li jiggustifikaw din id-decizjoni. L-Awtorita' m' mhix obbligata, kif qed jippretendi l-appellant, li qabel ma' tohrog id-dismissal jigi trattat mill-partijiet jekk ghandhiex tigi dismissed l-applikazzjoni;

Il-Qorti tqis ili l-kliem uzat mit-Tribunal hu infelici ghall-ahhar u ma jirrispekkjax dak li ried ifisser meta taqra l-assiem tad-decizjoni. Fil-fatt qabel dan il-paragrafu t-Tribunal jishaq fuq il-fatt illi l-appellant kien avzat bir-ragunijet li kienu ser iwasslu ghas-smigh tal-applikazzjoni biix tigi dismissed. It-Tribunal implicitament irrikonoxxa d-dritt ta' smigh tal-appellant pero dak li ried u messu enfazizza hu illi darba stabbilit il-ksur mill-Awtorita a bazi tal-provi li tkun gabret hi stess, ghandha tirrigetta l-applikazzjoni ghaliex ma ghandhiex diskrezzjoni taghmel mod iehor. Sta ghal applikant li jappella kif ghandu d-dritt mir-rizultanzi tal-Awtorita quddiem it-Tribunal u jgib kull prova necessarja biex jirribatti s-sejbien ta' ksur tal-Awtorita li waslitha li tapplika l-artikolu 52(7) tal-Kap. 356 kif kien qabel dahal fis-sehh il-Kap. 504 bl-artikolu identiku 86(10). It-Tribunal imkien ma jghid li l-Awtorita ma kellhiex taghmel seduti biex jigi kunsidrat l-applikazzjoni tal-artikolu 52(7) tant li dawn saru u l-istess Tribunal ma jaghmel ebda osservazzjoni negattiva.

Il-kiem infelici wzati mit-Tribunal ma cahdu lil appellant minn ebda dritt, la quddiem l-Awtorita u wisq anqas quddiem it-Tribunal li ikkunsidra sottomissjoni qua aggravju meta lanqas kien sar aggravju a rigward fl-appell. It-Tribunal ivvaluta l-provi prodotti mill-partijiet u f'dan l-aspett l-appellant ma giex imcahhad milli jressaq xi provi u iddecieda fuq il-provi prodotti. L-aggravju ghalhekk, precizat dak li kellu jfisser it-Tribunal, ma fihx mertu fil-kuntest tad-decizjoni tat-Tribunal u qed jigi michud.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Anthony Desira 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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