



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta tal-11 ta' Frar, 2015

Appell Civili Numru. 92/2012

Joe Lautier ghal J. Lautier Co. Ltd

vs

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

Il-Qorti,

Rat ir-rikors tal-appell ta' Joe Lautier ghal J. Lautier Co. Ltd tad-29 ta' Mejju 2012 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012 li cahad l-applikazzjoni PA 3267/08 'demolition of parts of existing building and reconstruction of farmhouse';

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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 :-

B'applikazzjoni prezentata fit-30 ta' Gunju 2008, Outline Development Permission, PA 3267/08, l-appellant f'sit fi Tal-Latmija, Marsascula talab :-

“demolition of parts of existing building and reconstruction of farmhouse”.

L-applikazzjoni giet michuda b'rifjut tat-23 ta' Mejju 2011 ghar-ragunijiet segwenti :-

"1. The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of regulation 14 of Legal Notice 514 of 2010. The illegal development consists of the construction of Franka stone structures for animal breeding without permit.

2. The development as proposed runs counter to the South Malta Local Plan Policy SMSE 08 - Small Rural Settlements (Category 3 Settlements ODZ) stating that rehabilitation and re-development for land-uses identified in policy SMSE 07 (A) to (E) will be permitted, provided the criteria stipulated in policy SMSE 07 for each land-use are complied with. The proposed development exceeds both the footprint and floorspace dimensions for residential development as stipulated by policy SMSE 07.”;

Fl-appell tieghu, il-Perit Dr. Edwin Mintoff ghall-appellant iddikjara li l-izvilupp illegal kien ser jitnehha billi l-proposta hi ta' demolition and reconstruction.

Fir-rapport taghha, l-Awtorita' rrilevat s-segwenti :-

"Preliminary Plea

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The case being considered in this appeal is entirely identical to the appeal PAB 54/06 (PA 6870/03) which is yet ongoing. The issue of illegalities on site that is central to PAB 54/06 is still present and thus the same impediments apply.

On a preliminary point, the Authority respectfully asserts that this Tribunal cannot hear and decide on the merits of this appeal, as this application does not seek to sanction any of the illegal developments on site, and hence the provisions of Article 14 of LN 514/10 are applicable. Article 14 (1) of LN 514/10 clearly states that where illegal development is present on a site, new development on that same site will not be considered unless it is regularized.

The illegalities consist of structures for animal breeding situated a few meters away from the farmhouse subject of this appeal. These illegalities are covered by enforcement notice ECF230/01. The enforcement officer confirmed during the processing of the application that these illegalities are not being sanctioned with this planning application (refer to minute 13). Moreover an attempt to sanction these structures has already been refused (PA 852/02).

The appellant is stating that the reason for refusal based on the issue of illegalities is not valid because these illegal structures are going to be demolished as highlighted by the development proposal which includes the word 'demolition'. The Authority finds this comment baffling.

Apart from the fact that according to Article 14(4) of LN 514/10 no request to demolish illegal structure shall form part of any development application; i.e. it is not possible to request to remove something which is illegal which by definition it should not be there in the first place, the appellant's assertion is simply not true. Both the site plan and the drawings excludes completely any reference whatsoever to the illegal structures. Furthermore the proposal description makes it amply clear that any reference to demolition is strictly limited to the existed farmhouse.

The appellant should rectify this situation, prior to further consideration of this development. Consequently, this appeal should be dismissed for the above reasons.

Merits of the Proposal

The proposed development is located in a Category 3 Settlement. Policy SMSE 08 states that only rehabilitation and re-development of existing buildings for land-uses

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identified in Policy SMSE 07 A to E and tourist accommodation will be permitted within Category 3 Settlements.

In the case of residential dwellings, the criteria in policy SMSE 07 stipulate that (i) the new building has a footprint not larger than 150sq.m when measured externally at ground floor including any internal courtyards, (ii) the total floor space is not less than 120sq.m and not larger than 200sq.m, and (iii) parking spaces are provided albeit not more than 2.

However the proposed alterations result in a dwelling with a footprint and floor space of 227sq.m. Moreover no off-street parking is being indicated. Therefore the proposal is also not acceptable on planning grounds since it runs counter to policy SMSE 07 of the local plan.";

Fis-seduta tas-7 ta' Settembru 2011, il-konsulenti tal-appellant iddikjaraw li talbu zmien biex jirregolaw ruhhom dwar l-illegalitajiet li jezistu fuq is-sit; pero' fis-seduta sussegwenti tas-27 ta' Ottubru 2011 ma taw l-ebda informazzjoni jekk sarx xi tibdil dwar l-illegalitajiet fuq is-sit.

Ikkunsidra ulterjorament :-

Dan l-appell jirreferi ghall-istess sit mertu tal-applikazzjoni, PA 6870/03, appell numru 54/06 li ser jigi deciz illum.

Kif konfermat mill-verbali tas-seduti fuq imsemmija, l-illegalitajiet ghadhom fuq is-sit billi l-appellant naqas li jwaqqahom.

L-Artiklu 14 (1) tal-Avviz Legali 514 tal-2010 jghid hekk :-

"Minghajr pregudizzju ghall-Artiklu 70 u ghas-sitt skeda li tinsab mal-Att, meta zvilupp ezistenti fuq is-sit ikun ghal kollox jew biss f'parti illegali, l-Awtorita' ghandha tirrifjuta applikazzjoni ghall-izvilupp li jkollha x'taqsam ma' zvilupp gdid, fuq dak is-sit, kemm-il darba l-izvilupp illegali ikun inkluz ghall-issanzjonar u l-izvilupp illegali jkun konformi mal-policies attwali."

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Dan ifisser li jekk hemm zvilupp illegali, l-applikazzjoni ma tigix milqugha; alternattivament jekk l-izvilupp illegali jista' jigi ssanzjonat dan ghandu jifforma parti mill-applikazzjoni.

Fil-kas in ezami ma rrizultax li l-appellant qed jitlob li jissanzjona l-kmamar ghat-trobbija tal-annimali – u ghalhekk dan hu zvilupp illegali li ghandu jitneha biex tkun tista' tigi kkunsidrata proposta ghall-izvilupp fuq l-istess sit u dan fit-termini tal-Artiklu 14 (4) tal-Avviz Legali 514 tal-2010.

Fil-mertu, billi l-proposta ghall-izvilupp tinsab f'Category 3 Settlement tapplika ghal kas, il-Policy SMSE 08 li tippermetti biss rihabilitazzjoni tal-ezistenti u mhux zvilupp gdid.

Fil-kas ta' residenzi, skond il-Policy SMSE 07, l-footprint tal-bini propost m'ghandux jeccedi 150 sq.m.; Floor space m'ghandhiex tkun anqas minn 120 sq.m. u mhux aktar minn 200 sq.m.; u bil-proposta ta' zewg parking spaces.

Fil-kas in ezami, l-izvilupp propost ghandu floor space ta' 227 sq.m. u ghalhekk in eccess ta' dak permessibbli skond il-Policy.

Billi l-proposta tal-izvilupp mertu ta' dan l-appell hi in kontravvenzjoni tal-policies hawn fuq citati, l-appell ma jistax jigi kkunsidrat favorevolment.

It-Tribunal, ghalhekk qed jiddisponi minn dan l-appell billi jichad l-istess u jikkonferma r-rifjut tat-23 ta' Mejju 2011 ghall-applikazzjoni PA 3267/08.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal iddecieda fattwalment u legalment hazin meta stqarr li l-izvilupp propost kien wiehed gdid;
2. It-Tribunal applika b'mod zbaljat policy SMSE 07 ghax ma hax in konsiderazzjoni li l-bini ezistenti li fuqu saret l-applikazzjoni gia kellu footprint oltre l-150 metru kwadru u ghalhekk l-

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izvilupp ma kienx ser johloq binja ta' aktar minn 150 metru kwadru meta kien gia jeccedih bhala binja ezistenti.

L-ewwel u t-tieni aggravji

Dawn l-aggravji mhux meritati. Fl-ewwel lok jigi rilevat illi t-Tribunal ibbaza d-decizjoni tieghu principalment fuq l-artikolu 14(1) tal-Avviz Legali 514 tal-2010 li jghid li applikazzjoni ghal zvilupp tigi rifjutata kemm il-darba jkun hemm illegalitajiet fuq is-sit li mhux inkluzi fis-sanzjonar. Jirrizulta illi din kienet eccezzjoni preliminari tal-Awtorita mill-appell ipprezentat mill-appellant. L-appellant iddikjara li l-izvilupp illegali kien ser jitnehha bid-demolizzjoni u rikostruzzjoni. Pero l-Awtorita irribadiet illi l-enforcement notice 230/01 li kienet tkopri strutturi ghat-trobbija tal-annimali ffit metri boghod mill-izvilupp ma kienux inkluzi fl-applikazzjoni. Ghalkemm fis-seduta tas-7 ta' Settembru 2011 quddiem it-Tribunal, l-appellant talab zmien jirregola ruhu, ma sar xejn. Kwindi t-tribunal gustament ikkonkluda li darba li hemm illegalitajiet fuq is-sit mhux koperti b'sanzjonar, l-applikazzjoni ma setghetx tigi kunsidrata. Din kienet is-sustanza essenzjali tad-decizjoni tat-Tribunal li stronkat l-appell qabel ma dan seta' jigi kunsidrat fil-mertu tieghu.

Effettivament it-tribunal ma kellu ebda htiega li jidhol fl-aggravji mqajma billi dawn l-aggravji ma setghux jigu kunsidrati ghax l-appell kien insostenibbli minhabba impediment procedurali li l-appellant ma rnexxilux jiskavalka.

Ghal dawk ir-ragunijiet, din il-Qorti ma tistax u ma ghandhiex tikkunsidra l-aggravji fil-mertu meta dak li effettivament stronka l-appell qabel jinstema fil-mertu ma giex attackkat.

L-appellant fin-nota ta' sottomisjonijiet tieghu talab li l-appell jintlaqa' ghax fil-mori tal-appell quddiem il-Qorti l-policies rilevanti inbidlu. Il-Qorti tqis din is-sottomissjoni bhala infondata fid-dritt fil-parametru ta' dan l-appell peress illi din il-Qorti tista' tirrevedi biss id-decizjoni tat-Tribunal ibbazata fuq dak li kien jezisti bhala stat ta' fatt u ligi f'dak iz-zmien. Altrimenti l-iskop ta' appell ibbazat fuq punt ta' ligi deciz mit-Tribunal fil-parametri tal-ligi, pjanijiet u policies ezistenti fiz-zmien tad-decizjoni jsir inutili.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' J. Lautier Co. Ltd u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-10 ta' Mejju 2012.

Bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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