



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**MARK CHETCUTI**

Seduta tal-11 ta' Marzu, 2015

Appell Civili Numru. 50/2014

**John Camilleri**

**vs**

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

**Il-Qorti,**

Rat ir-rikors tal-appell ta' John Camilleri tat-13 ta' Awwissu 2014 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tal-24 ta' Lulju 2014 kontra PA 4531/10 'to sanction villa building as built';

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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, fil-11 t' Awissu 2011, irrifjutat l-applikazzjoni ghall-permess tal-izvilupp PA 4531/10 – Site at Triq Gharghur, Iklin: To sanction villa building as built.

Ir-ragunijiet ghar-rifjut kienu s-segwenti:

“1. The proposal runs counter to the adopted policy Development Control Guidance: Developments Outside Built up Areas, particularly to criteria (iii) and (v) of Section 8.2, as the proposed resultant floor space area exceeds the 150m<sup>2</sup> floor space limitation and shall also not respect the size and proportions of the existing building fabric.

2. Proposal fails to comply with the objectives of Structure Plan policies RCO 4, in view that the existing structure disrupts the natural landscape setting of the surrounding rural environment and thus it adversely affects the scenic value of the Area.”

B. In-nota tal-Perit Edgar Caruana Montaldo ghall-Appellant, ipprezentata fit-22 t' Awissu 2011, senjatament il-punti segwenti:

“1. With reference to Reason for Refusal Number 1, the building to be sanctioned consists of a 1 floor building (with basement and access to roof) and that was built in the late 1980's.

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2. With reference to Reason for Refusal Number 2, the site in question has Permit PA 661/10 for construction of a villa and PA 3007/10 for construction of a swimming pool. Therefore this reason for refusal is not valid.”

C. In-nota responsiva ta' Jonathan Borg ghall-Awtorita', ipprezentata fl-20 t'Ottubru 2011, inter alia l-punti segwenti:

“

1. In re-assessing the plea for Appeal, the Authority wishes to clarify that the development approved by MEPA in PA 3378/05 has still not been activated in its entirety, since part of the conditions for approval revolved around partial demolition of the building to reduce the impact on the surrounding environment and to comply with policy PLP 20 of the Design Guidance for Residential Dwellings ODZ. In fact, the crux of the planning considerations had pointed towards a refusal of that application since the building would exceed the suitable change for rural buildings in accordance with policy PLP 20 and hence run counter to Structure Plan RCO 2. On condition of the demolition proposed, the development was approved by DCC Board in June 2006.

In PA 661/10 the same appellant has recently been permitted a renewal of this permit since the demolition works have not yet been carried out (May 2010). It now appears that the intentions of the appellant have changed since he is no longer willing to remove the illegalities but is seeking to sanction the building as built. The appellant is claiming that the ground floor and basement level are covered by permit, and this permit is merely sanctioning an extension of the building at ground floor level from 253m<sup>2</sup> to 304m<sup>2</sup> and a first floor turret.

Notwithstanding this, the Authority wishes to underline the fact that the only reason the permit approved in PA 3378/05 was issued was on agreement that parts of the existing building would be demolished. Secondly, since the changes to the previous development in PA 3378/05 have not been carried out in entirety, parts of the development indicated as existing and covered by previous permit in this application are not the case. The appellant has acknowledged the fact the works remain to be carried out as approved in PA 3378/05, and therefore sought permission to renew the length of validity of permit.

The appellant cannot however now seek to sanction 'the remaining' parts of the existing building since the original works will only be sanctioned upon demolition of structures as agreed in condition 1 of PA 3378/05 and as renewed in PA 661/10 conditions 1 and 2.

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2. With regards to the proposed development, the Authority is also quoting Section 8.2 (iii) of policy PLP 20 which states that: extensions to existing buildings must not create a total floorspace which exceeds 150m<sup>2</sup>.

Although the appellant is arguing that the proposal will not introduce disruption to the natural landscape setting of the surrounding rural environment due to permits approved on site; there is no justification to the extension from a planning point of view, since the permitted development on site already exceeds the maximum permissible footprints allowed in policy PLP 20. In addition to this, when considering that other parts of the structure are also still considered illegal since permit to sanction has yet to be ratified in its entirety, the excessive impact to the scenic value of the area is further entailed; and hence the development runs counter to Structure Plan policy RCO 4.

Without prejudice to the above, the Authority reserves its right to reply further on the merits of the appeal, if it would become necessary, after the decision of this Tribunal on the above preliminary point.”

Ikkunsidra ulterjorment:

Il-mertu ta' dan l-appell jirrigwarda talba sabiex f' font konsistenti minn villa li tinsab barra z-zona tal-izvilupp (ODZ) fl-Iklin, jigi ssanat zvilupp mhux kopert bil-permess.

Precedentement kien inhareg permess ghall-villa (PA 3378/05) li jaqra' hekk:

“To demolish existing building which was approved in PB 2095/87 and rebuild to the same footprint as originally approved and to a style more befitting to the rural landscape and to sanction development which is to be retained.”

Ir-raguni ghar-rifjut jistrieħu fuq il-fatt li l-firxa tal-izvilupp prezenti teccedi l-limitu ta' 150 metri kwadri. Għalhekk, it-talba hi in kontravvenzjoni tat-tielet u l-hames subincizi ta' Section 8.2 tad-Development Control Guidance – Development Outside Built-up Areas (PLP 20). In oltre, peress li d-disinn tal-binja jgharraq l-ambjent naturali tal-madwar, it-talba hi wkoll f' kunflitt mal-policy RCO 4 tal-Pjan ta' Struttura.

L-aggravji tal-Appellant huma bbazati fuq il-premessa li l-binja li qed jintalab is-samar tagħha hi wahda antika - għax inbniet fit-tmeninijiet (1980s) – u għalhekk ma

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japplikawx il-policies imsemmija fir-raguni ghar-rfjut. Fil-fatt, is-sit hu gja' kopert b'permess ghal villa (PA 661/10) u swimming pool (PA 3007/10), u allura ma jistax jinghad li l-izvilupp prezenti qed jgharraq l-ambjent cirkostanti.

L-Awtorita' zammet ferm l-oggezzjoni taghha u rilevat li l-permess originali (PA 3378/05) qatt ma ssaraf jew gie ezegwit fl-intier tieghu minhabba l-fatt li kundizzjoni f' dak il-permess kienet tispecifica li kellha titwaqqa parti minn binja antika, u dan sabiex l-izvilupp li kien qed jigi approvat ikun jirrispekkja l-ambjent cirkostanti. Fil-frattemp pero', kienet giet intavolata applikazzjoni (ohra) sabiex dak il-permess jigi rinnovat (PA 661/10 kif indikat supra), madankollu kif jidher fil-kaz odjern, l-Appellant illum qed jittenta jzomm ukoll dawk il-partijiet tal-izvilupp antiki li kien kostrett iwaqqa dakinhar li nhariglu l-permess PA 3378/05.

Ezaminati fid-dettal is-sottomissjonijiet tal-partijiet, jigi osservat li bl-applikazzjoni odjerna, l-Appellant qed jittenta bhal jissanzjona l-izvilupp antik li kien suppost waqqa meta nhariglu permess ghall-villa prezenti, bhallikieku dak l-izvilupp huwa wiehed illegali. Dan huwa agir inaccettabbli; ghax kemm il-darba l-Appellant intrabat li jsarraf permess (konferma ta' dan hu l-fatt li mhux talli ma appellax mill-kundizzjonijiet imposti fil permess PA 3378/05 talli sanhansitra parti mill-izvilupp gja' gie attwat), illum biddel fehmtu u qed jittenta jaghti l-impressjoni li l-parti mill izvilupp li kien marbut li iwaqqa (izda li ma waqqax), jista' minflok jittlob li jissanah, daqslikieku kien xi illegalita'.

Hawnhekk tirrizulta anomalija, ghax sabiex l-applikazzjoni in ezami tista' tigi kkunsidrata bhala wahda verament sanatorja, kieku l-permess PA 3378/05 kellu jigi attwat – u nhareg compliance certificate. Madankollu, il-process tal-izvilupp qatt ma tlesta (u nghalaq) ghax indipendentement minn - izda konkorrentment ma - l-applikazzjoni de quo, giet intavola applikazzjoni ohra sabiex jigi mgedded dak il-permess. Minn dan isegwi li kemm il-darba giet intavola applikazzjoni sanatorja dan effettivament ifisser li l-Appellant ex admissis qed jiddikjara li hemm xi illegalitajiet fuq is-sit u li ma kienx bi hsiebu jnehhom.

Dan qed jinghad minhabba l-fatt li kif jirrizulta mill-mori tal-appell odjern, l-applikazzjoni PA 661/10 intiza sabiex jigi rinnovat il-permess PA 3378/05, giet intavolata f' Frar tas-sena 2010 u approvata f' Mejju, cjoe' tlett xhur wara. L-applikazzjoni ghas-swimming pool PA 3007/10 suriferita, saret fl-Lulju tal-2010 u approvata f' Novembru tal-istess sena. Din in ezami giet sottomessa f' Settembru 2010, fl-istess zmien li kienet qed tigi kkunsidrata t-talba ghall-iswimming pool.

Dan it-Tribunal mhux ser joqod jissindika b' liema kriterji l-Awtorita' harget il-permess ghall-iswimming pool, madankollu tajjeb li jigi osservat li l-permess ghall-

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pixxina inhareg fl-istess zmien li l-Kummissjoni kienet qeda tikkunsidra l-applikazzjoni sanatorja in ezami.

Fic-cirkostanzi, irid jigi osservat ukoll li kemm il-darba ma sarx appel minn kundizzjoni f' permess (u li addirittura issarraff in parte), il-procedura korretta sabiex tinbidel tali kundizzjoni hi li ssir applikazzjoni gdida li specifikament titlob ir-revoka tal-kundizzjoni –mhux li ssir applikazzjoni sanatorja.

Fl-ahharnett, jekk ghall-grazzja tal-argument jista' jigi sorvolat l-agir oggezzjonabbli taz-zewg partijiet, tibqa' il-kwistjoni tal-firxa tal-izvilupp; cjoe' li din tissupera gmiela l-massimu ta' 150 metri kwadri petrmessi fl-ODZ. Din hi raguni sufficjenti sabiex it-talba in ezami tigi michuda.

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 4531/10 kif mahrug mill-Kummissjoni ghall-Kontroll ta' l-Izvilupp tal-Ambjent u l-Ippjanar, fil-11 t' Awissu 2011.

### Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal ikkummetta zball ta' ligi ghax ma applikax il-policy PLP 20 ghal zvilupp li jilledi l-150 metru kwadru billi l-binja saret fit-tmenijiet u ghalhekk il-policy ma hix applikabbli. It-Tribunal ghalhekk naqas li jikkonsidra s-sanzjonar kif mitlub u ma ikkunsidrax l-aggravju;
2. It-Tribunal naqas li jikkonsidra li l-applikant kellu dritt japplika ghal sanzjonar ta' bini antik flok waqqa' parti minnu u jerga' jibnih;
3. It-permess PB 2095/87 jaghti dritt vestit lil aplikant u commitment tas-sit li ma setghax jigi injorat mit-Tribunal.

### L-ewwel u t-tieni aggravji

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Dawn l-aggravji ma ghandhomx mis-sewwa. L-appellant qed jibbaza l-aggravju tieghu fuq il-permess PB 2095/87. Dak li konvenjentement jinsa' l-appellant hu illi dak il-permess tilef kull effikacija li kellu meta intalab u inhareg il-permess PA 3378/05 li kien ighid hekk 'to demolish existing building which was approved in PB 2095/87 and rebuild to the same footprint as originally approved and to a style more benefitting to the rural landscape and to sanction development which is to be retained'. Dan il-permess gie akkordat u beda jigi attwat ghalkemm jirrizulta mill-atti illi d-demolizzjoni akkordata bil-permess ghadha ma saritx. Pero jirrizulta illi bl-applikazzjoni PA 661/10 l-applikant talab u gie akkordat estensjoni tal-permess. Dan ghalhekk hu l-istatus quo legali maqbul u li jorbot lil applikant u l-Awtorita. Ma jistax l-applikant ffit wara jaghmel applikazzjoni bhal din prezenti biex jissanzjona dak li hemm meta dak li hu obbligat li jwettaq bil-permess PA 3378/05 ghadu vigenti u applikabbi. It-triq miftuha ghall-applikant mhux sanzjonar ta' illegalita ghax fil-fatt bil-permess 3378/05 kif rinnovat hemm obbligu fuq l-applikant li ghandu jitwettaq biex dak il-permess jigi attwat fl-intier. Jekk ma ghogbitux il-kondizzjoni tad-demolizzjoni fil-permess kellu d-dritt ta' appell miftuh ghalih. La darba dan ma ghamlux ifisser li accetta l-permess tant li irrennovah u jrid issa jottempera ruhu mieghu ghax jorbot lis-sit. Kull zvilupp mitlub, ghalhekk b'din l-applikazzjoni prezenti trid tirispekkja l-policies in vigore inkluz il-PLP 20 applikabbi ghal kaz essendo l-permess mhux ghal zvilupp tal-1987 izda ghal zvilupp gia approvat fl-2005.

Il-Qorti tqis illi t-Tribunal ikkunsidra mill-perspettiva legali u teknika gusta l-applikazzjoni in kwistjoni billi hu irrefera ghal dak gia awtorizzat bil-permess PA 3378/05 u ikkunsidra t-talba odjerna mill-ottika ta' dak il-permess u l-konsegwenzi li jinsorgu minnu tant li jghid:

Fic-cirkostanzi, irid jigi osservat ukoll li kemm il-darba ma sarx appel minn kundizzjoni f' permess (u li addirittura issarraf in parte), il-procedura korretta sabiex tinbidel tali kundizzjoni hi li ssir applikazzjoni gdida li specifikatament titlob ir-revoka tal-kundizzjoni –mhux li ssir applikazzjoni sanatorja.

Fl-ahharnett, jekk ghall-grazzja tal-argument jista' jigi sorvolat l-agir oggezzjonabbli taz-zewg partijiet, tibqa' il-kwistjoni tal-firxa tal-izvilupp; cjoe' li din tissupera gmiela l-massimu ta' 150 metri kwadri petrmessi fl-ODZ. Din hi raguni sufficjenti sabiex it-talba in ezami tigi michuda.

It-Tribunal bl-ebda mod ma hu qed ibiddel jew imiss il-permess PA 3378/05 pero kull talba ohra trid issir in linea u in konsegwenza ta' dak il-permess li gie rinovat u mhux

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b'applikazzjoni sanatorja generika li addirittura tivvjola kondizzjoni f'permess li ghadu jorbot lis-sit.

### **It-tielet aggravju**

Dan l-aggravju wkoll ma fihx mertu u jallacja ma l-ewwel aggravju. Il-permess PB 2095/87 gie superat bil-permess PA 3378/05 u kull dritt li l-appellant jista' jivvanta hu fuq l-ahhar permess billi dan il-permess qatel il-permess ta' zvilupp li kien hemm u rabat lis-sit bil-permess ta' zvilupp naxxenti bil-PA 3378/05 kif rinnovat bil-permess 661/10. Kwalunkwe konsiderazzjoni ta' commitment avanzata mill-appellant setghet giet indirizzata b'referenza ghall-permess PA 3378/05 u mhux ghal permess PB 2095/87 li miet bil-hrug tal-permess PA 3378/05 u li kien jolqot is-sit kollu. Billi l-aggravju tal-appellant hu mibni fuq permess illum mejjet u bla ebda effett dan l-aggravju ma fih ebda metru.

### **Decide**

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' John Camilleri 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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