



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

MARK CHETCUTI

Seduta ta' l-20 ta' Mejju, 2015

Appell Civili Numru. 2/2015

Raymond Cilia

vs

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

l-kjamat in kawza Maryanne Giordimaina

Il-Qorti,

Rat ir-rikors tal-appell ta' Raymond Cilia tad-9 ta' Frar 2015 mid-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Jannar 2015 li laqghet it-tigdid tal-permess PA

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1919/02 'erection of a club house and to sanction relevening on the rear of the site as approved in PA 5118/94 with a shift in position';

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:

Ra r-ragunijiet ta' l-appell hekk kif gej:

"On behalf of my client. Mr Raymond Cilia, I wish to lodge an appeal against the permit referred to or rather the lack of provision in its conditions to protect his investment and livelihood in a farm he runs on a site just across the road.

To make things clear, we are objecting to the fact that there is no condition that regulates the element of noise pollution whilst there are conditions that regulate light pollution, landscaping etc. and this is creating a disastrous effect on his activity and livelihood.

The appellant has a animal farm just across the road where he breeds cows and sheep primarily for milk production and the load cracks of gunfire has been disturbing them ever since the opening of the activity. However, the situation has exasperated with the recent introduction of probably high powered rifles and/or machine gun fire to the extent that milk production has fallen to unsustainable lows a recent introduction of what seems to be high calibre, All this is documented and certified by his veterinary surgeon. Mr Cilia also breeds other animals such as horses which are all living in a state of agitation which is not conducive to good reproduction levels and, hence, ruin his activity.

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Whilst it is an accepted fact that both these activities are ideally located in rural areas, the need to find the correct balance between them lies in the hands of MEPA and in this case whilst the first cannot be moved elsewhere and has a priority standing in that it was here first, the second could be housed in covered, albeit underground areas as might have to be the case in a small island like Malta where land is scarce and such large tracts with all the good credentials are not easy to find.

The proposal tends to also help increase the activity level and is therefore, naturally conducive to greater intensity of use. This will make the situation more intolerable and is therefore, totally unacceptable to us.

In view of the above, either kindly overturn the permit or introduce those conditions that will limit the noise pollution to sustainable levels. Thank you.”;

Ra r-risposta tal-Awtorita' li giet prezentata fit-30 ta' Mejju 2013 li taqra' kif gej;

“5.2 The Directorate has the following comments to make:

5.2.1 Introduction

In comments submitted, the third party appellant (owner of an animal farm across the road breeding cows and sheep for milk production) is arguing that the cracks of gunfire from the current shooting range have been disturbing the animals to the extent that milk production has fallen to unsustainable lows. In addition to this, other animals owned by the appellant (horses etc.) are living in a state of agitation which is not conducive to good reproduction levels. The appellant is asking the Tribunal to reconsider the proposed development since increasing the intensity of the activity on site would make the situation more intolerable.

The Authority will be addressing these comments in the report below, and will clarify to the Tribunal why the decision taken to accept the renewal development application was correct from a planning point of view.

5.2.2 Principle of Accepting the Requested Renewal

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This development proposal sought the renewal of permit PA 1919/02. No new policies affecting the current site have been introduced since the issuance of permit PA 1919/02. In submission of application (Section 9 of Doc 1L in PA File) the architect declared that no changes are being proposed from the previously approved drawings/documents; however the Environment Protection Directorate requested that the proposed development approved in PA 1919/02 include an appropriate waste management facility. In this respect, apart from the renewal of PA 1919/02 this application includes the provision of a cesspit for the clubhouse (Docs 39B/39C in PA File).

The merits of approval for the clubhouse itself as well as sanctioning of re-levelling on the rear of the site and shift in position were established in the original Full Development permit. This element is now unassailable especially when considering that no appeals were lodged against the original Full Development permit.

In submission the appellant is stating that the activity is ideally located in rural areas, although imposing that further increase in activity should not be accepted in view of the impact to his farm. The Authority is struggling to identify what activity the appellant is suggesting since the only change from previously approved development is the cesspit which hardly instigates an increase in activity. Further to this, for the appellant to now argue that the renewal permit contains material variations in relation to that previously accepted is unacceptable because the Full Development permit now constitutes a vested right to the applicant and an established principle of development in planning terms.

If the appellant disagreed with these variations as expressed in the Full Development permit, he should have appealed then and not in this instance.”;

Ra r-risposta tal-Avukat Dottor Matthew Brincat għall-applikant prezentata fit-3 t'April 2013 u li taqra hekk kif gej:

“We write on behalf of the applicant to humbly submit that this Third Party Appeal is unjustified in law and in fact , is null and void and should be rejected for the following reasons;

The Appeal is outside the 30 day obligatory limit to file an Appeal as the application in question is a permit approved several years back wherein the objectors where never registered as objectors and were never cattle or horse breeders as this activity has been uptaken recently.

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The Application PA 1919/02 has been approved several years back and PA 872/12 is merely a renewal for another five years of the old permit hence there should be no doubt that the objector has filed an appeal fuori termine. The permit as extended was also approved on the 31st October 2012 and hence the filing of the present Appeal filed on the 27th February 2013 is well beyond the prescribed time limit envisaged by law to file an appeal, hence the said appeal is null and void and should be rejected.

The said shooting range is over thirty years old, is known as the Victoria Shooting Range where shooting has been taking place for these last thirty years. The objection outlined in the appeal does not in any manner object to the permit approved as extended which relates to approval of Clubhouse and cesspit. The shooting that always took place over the last thirty years was always a licensed operation and the land was assigned to the Victoria Shooters Club by the lands Department and the applicant is the secretary of the Shooting Club. The said appeal is not only contradictory and illegitimate at law but in reality the approved application relates to a Club House and cesspit and releveling of rear site. These in reality have not been yet built and the appeal is thus contradictory as these developments do not create any shooting or sound generation and hence MEPA rightly so could not have been asked to set relative conditions relative to noise pollution as is being now belatedly asked by objector.

The said appeal is unjustified not only from a legal aspect but is ill motivated and filed in bad faith as the objector has other ulterior motives related to pretended rights over an adjacent field to the shooting range and in reality such litigation has nothing remotely connected to noise pollution and effecting any cattle or horsebreeding that is a very subjective excuse to bring up in these proceedings.

For these reasons and those that will result in the formal verbal submissions that will result in the hearing of this appeal we humbly request that this third party appeal be outrightly rejected.”;

Ra s-sottomissjoni ulterjuri tal-Avukat Dottor Pio Valletta ghall-appellant prezentata fit-12 ta' Novembru 2014:

Ra x-xiehda ta' Dr Grupetta mid-Dipartiment tas-Servizzi Veterinarji moghtija fis-seduta' tal-20 ta' Mejju 2014;

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Ra l-verbal tal-access mizmum minn dan it-Tribunal fil-25 ta' Marzu 2014;

Ra l-PA files 872/12, 2964/08 u 1919/02;

Ra l-atti kollha ta' dan l-appell.

Ikkunsidra ulterjorment:

Illi l-ilment principali tal-appellant kontra l-hrug ta' dan il-permess numru PA 872/12 huwa relatat mal-istorbju u hsejjes qawwija ta' sparar generat mill-operat tas-shooting range li tigi ezatt fuq in-naha opposta tat-triq faccata tar-razzett proprejta tal-appellant. L-appellant qieghed jinsisti li dan l-istorbju qieghed jaffettwa b'mod negattiv fuq it-trobbija tal-annimali, b'mod partikolari lill-moghoz u naghag, u li b'konsegwenza ta' dan qed ikun hemm tnaqqis tal-produzzjoni tal-halib. Dan seta' jigi konfermat skont ix-xieghda li tat-tabib veterinarju Dr Grupetta fil-process ta' dan l-appell.

Illi l-aggravji mressqa f'dan l-appell huma limitati fir-rigward tal-attivitá u hsejjes li qed jigi generati f'din is-shooting range, fejn b'mod konsistenti l-appellant qed jikkontendi li l-Awtorita' naqset li fil-permess kif mahrug 'la qiset u lanqas hadet mizuri sabiex tassikura li jigu evitati, prevjenuti jew imnaqqsa l-effetti li jaghmlu hsara u li johlqu inkonvenjent minhabba fis-smiegh ta' hsejjes fl-ambjent.'

Illi kemm l-Awtorita' kif ukoll l-applikanta sostnew li l-aggravji mressqa f'dan l-appell mhumiex relevanti ghal-mertu tal-proposta fl-applikazzjoni PA 872/12, fejn gie mitlub u hareg permess ghar-rinovar tal-permess originali PA 1919/02 li kien jikkonsisti minn bini ta' club house u sanzjonar tal-livell ta' parti tal-erja tas-shooting range, biz-zieda ta' cesspit bhala zvilupp addizzjonali mal-club house.

Illi dan it-Tribunal seta' jinnota li l-permess ta' renova kif ukoll il-permess originali ossia PA 1919/02 kien limitat biss ghal-bini ta' club house u livellar ta' art f'shooting range ezistenti. Din is-shooting range inezami kienet ga ezistenti anke meta hareg l-ewwel permess tal-bini tal-clubhouse bin-numru PA 5118/94. Huwa evidenti li f'dawn it-tlett permessi, inkluz dak mertu ta' dan l-appell, ma kienux jitrattaw l-operat tas-shooting range, imma strutturi, principalment il-club house, f'shooting range gja ezistenti u operattiva. Dan it-Tribunal seta' jinnota li fil-fatt aktar ricenti gie mahrug permess bin-numru PA 2964/08, ghal xogholijiet fix-shooting range sabiex jigi

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prattikat different shooting disciplines b'mod zigur, liema permess ma giex kontestat.

F'dan ir-rigward, dan it-Tribunal huwa tal-fehma li l-ilment imressaq f'dan l-appell mhux relatat mal-izvilupp approvat fil-permess PA 872/12. Dan tal-ahhar huwa relatat mal-bini tal-clubhouse u cesspit u l-ilment kellu jkun relatat ma dak li gie effittivament approvat u mhux l-operat tas-shooting range. Minn naha l-oħra, n-natura tal-ilment tal-appellant dwar strobju u uzu intensiv ta' din ix-shooting range, jista' dejjem jitressaq quddiem l-Awtorita' jew awtoritajiet kompetenti sabiex isir l-investigazzjoni u l-infurzar necessarju jekk ikun il-kaz, imma ma jistax jigi mwaqqaf dan il-permess minhabba l-attivitá li għaddejja fix-shooting range li mhiex il-mertu tal-permess appellat.

Għal dawn il-motivi, dan it-Tribunal qiegħed jichad l-appell.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. L-Awtorita' kellha d-dover li tiehu mizuri biex tevita jew tnaqqas effetti ta' hsara inkluz inkonvenjent minhabba tniggis skond l-Avviz Legali 193/05 li jitratta valutazzjoni u maniggjar ta' hsejjes fl-ambjent u dan minkejja li kienet applikazzjoni ta' tigidid. Tali regoli huma ta' ordni pubbliku u l-Awtorita' kellha obbligu tikkonsidrahom u billi naqset milli tagħmel dan, il-gudikat hu affett minn irregolarita' li tirrendi t-tigidid null u mingħajr effett.

Dan l-aggravju hu bla bazi għal raguni principali li t-talba għat-tigidid tal-permess PA 1919/02 kien limitat biss għal bini ta' club house u livellar ta' art f'shooting range già ezistenti u operativa anki meta inhareg l-ewwel permess tal-bini tal-club house PA 5118/94. Għalhekk ebda aggravju bħal dak magħmul ma jista' jsir meta ma hux relatat mat-tigidid tal-permess propost. Kwindi l-kwistjonijiet avanzati mill-appellant dwar storbju u hsejjes minn shooting range li qed jigu avanzati ma għandhomx u ma jistghux jitressqu quddiem it-Tribunal, kif gustament ikkunsidra l-istess Tribunal u wisq aktar quddiem din il-Qorti. Altrimenti t-Tribunal kien jaqa' fin-nassa tal-ultra petita.

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In oltre dwar l-obbligu tat-Tribunal li japplika l-Avviz Legali 193/2004, il-Qorti tirreleva li apparti li dan l-Avviz Legali ma tqajjimx bhala aggravju quddiem it-Tribunal, kif inghad tali aggravju ma setax jigi introdott f'tigdid ta' permess mhux relatat ma' tali aggravju. Ebda generazzjoni ta' hsejjes jew storjbu ma kien qed jigi attribwit lil club house jew livellar ta' art. Il-Qorti ma tqis ghalhekk li ghandha tidhol fil-mertu tal-kontenut tal-Avviz Legali in kwistjoni.

Decide

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tichad l-appell ta' Raymond Cilia u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tad-29 ta' Jannar 2015, bl-ispejjez kontra l-appellant.

< Sentenza Finali >

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