Membri:

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Dok 'A'.

Appell 383/16 MS.
GF 727/98.

Landscape Properties Limited u Trevor Buttigieg
kontra
l-Awtorita' tal-Ippjanar

Illum, 7 ta' Frar 2019.

It-Tribunal,

Illi dan l-appell jirrigward cahda ta' talba ta' thassir ta' skedar ta' 'Farmhouse' fi Triq l-Isponsun, fil-lokalita' tal-Fgura, li hija skedat fi Grad 3 ta' protezzjoni skont l-Avviz tal-Gvern numru 722 tal-1995.

Illi r-rikors tal-appell huwa s-segwenti:

"1.1 Illi huwa car illi l-esperti fi hdan l-Awtorita appellata ikkonfermaw, tant illi bdew il-procedura mertu tal-vertenza odjerna, illi l-ordni ta' l-iskedar m' ghadx hemm lok li tibqa fis-sehh, u l-proprjeta m' ghandiex tibqa skedata.

1.2 Illi I-appellant jirriserva li jressaq l-argumentazzjoni teknika kompilata minn espert jew esperti imqabbda minnu, illi jikkonfermaw il-posizzjoni mehuda mid-Direttorat ta' l-istess A wtorita appellata.

1.3 Illi huwa car illi l-istess Kunsill ippermetta illi d-decizjoni mitluba minnu tkun influenzata minn konsiderazzjonijiet u fatti illi m' humiex rilevanti ghall-kaz odjern u li tressqu quddiemu bl-intenzjoni li tigi influenzata id-decizjoni.

1.4 Illi huwa car illi l-iskedar ghandu jkun ibbazat fuq fatti cari u li jservu bhala il-bazi li fuqha l-istess Awtorita tohrog l-ordni ta' l-iskedar. Illi kull skedar illi jsir u li ma jkunx imsejjes fuq fatti cari u inekwivoci, ghandu necessarjament ikun ikkunsidrat bhala mhux legittimu.

1.5 Illi m'hemmx dubju illi ordni ta' skedar hija limitazzjoni fid-dritt ta' tgawdija tal-proprjeta mis-sidien taghha. U certament illi sabiex tali limitazzjoni tkun legittima, din trid tkun ibbazata fuq fatti cari illi ghandhom bazi legittima. Hawn si tratta ta' kuntest ta' gid komuni fejn proprjeta privata tigi protetta sabiex igawdi minnha il-gid komuni.

1.6 Illi huwa inkoncepibbli kif id-Direttorat fi hdan I-Awtorita jghid illi tali bazi legittima m' ghadiex vigenti, filwaqt illi I-Kunsill, filwaqt li jichad il-bazi ta' l argument tad-Direttorat tieghu stess, jikkonferma ordni ta' skedar minnghajr ma jaghti ragunijiet cari u inekwivoci li a bazi taghhom jkun ha tali decizjoni.

1.7 Illi huwa principju assodat illi kull decizjoni trid tkun motivata u I-appellant ghandu jinghata decizjoni motivata li fiha jkun hemm ben spjegat ir-ragunijiet li fuqhom ittiehdet tali decizjoni. Illi f dan is-sens issir referenza ghad-decizjoni ta' I-Onorabbli Qorti ta' l-Appell fl-ismijiet *Fenech vs. Awtorita'*.

Ghaldaqstant, I-appellant qed jitlob li *l-files* li ssir referenza ghalihom fil-process ta' l-applikazzjoni odjern jigu vverifikati mit-Tribunal u dan billi l-Awtorita' ghandha tigi mitluba sabiex tipprezenta *l-files* msemmija minnu lit-Tribunal, u in segwitu ta' dan l-istess Tribunal ghandu jhassar id-decizjoni ta'rifjut mehuda mill-PC fil-kaz odjern, u tenut kont ta' dak sottomess u li ghad jrid jigi sottomess, jiddeciedi l applikkajoni billi, jilqa it-talba ta' I-appellant u jordna li jinhareg il-permess relattiv, u dana taht, u minnghajr pregudizzju ghal kull decizjoni jew provvediment iehor li joghgbu jiehu dan it-Tribunal.

L-Awtorita' wiegbet b'mod verbali:

Ra l-verbal tal-access mizmum minn dan it-Tribunal tal-24 ta' Lulju 2017;

Ra d-decizjoni ta' dan it-Tribunal kif kompost fejn irrinvija l-process lura lill-Kunsill Ezekuttiv sabiex it-talba ta' de-scheduling tigi deciz mill-gdid wara li l-Awtorita' tippibblika tali applikazzjoni;

Ra d-decizjoni tal-Qorti tal-Appell (sede inferjuri) tas-27 ta' Gunju 2018, fejn laqghet l-appell tal-Awtorita' tal-Ippjanar u rrevokat id-decizjoni tat-Tribunal billi osservat dan li gej:

> "Ghalkemm hu ghaqli, prudenti u mixtieq li kull process u procedura specjalment fil-kamp amminstrattiv tkun maghmula b'mod trasparenti biex tirrifletti li dak li qed isir qieghed isir fl-interess pubbliku pero lparametri tal-policies u funzjonijiet tat-Tribunal huma regolati mill-ligi u jrid joqghod strettament fil-limiti li l-ligi timponi fuqu……
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> Dan ifisser illi l-iskedar jew tnehhija jew bidla fi skedar hi funzjoni primarjament interna afdata lil Awtorita li bhala l-entita regolatorja fuq kwistjonijiet ta' protezzjoni ta' siti u ambjenti fl-interess pubbliku, ghandha tiehu hsieb li tassigura li dak li hu misthoqq li jigi protett, taghmlu bl-ghajnuna u bl-awzilju ta' rapporti jew stharrig iehor espert li hi jidhrilha li hi necessarja biex tasal ghaddecizjoni taghha. La darba l-ligi ma timponi ebda razan jew proceduri oltre dawk imsemmija fil-ligi, cioe l-pubblikazzjoni tad-decizjoni u l-informazzjoni lis-sid, itTribunal ma ghandux il-poter li jzid proceduri li ma jirrizultawx mill-ligi, bhal ma huwa pubblikazzjoni tal-proposta jew intendiment jew laqghat fil-miftuh jew xi obbligu li jigu avzati terzi oltre s-sid jekk l-istess Awtorita ma tqis li jkun utili biex tasal ghal konkluzzjoni taghha, ghax altrimenti t-Tribunal ikun qed jmur lil hinn mill-poteri tieghu."

Ikkunsidra:

Illi l-aggravji fl-appell, kif gie osservat b'mod car fid-decizjoni tal-Qorti tal-Appell, jirrigwardjaw in-nuqqas ta' motivazzjoni tal-Awtorita li tichad talba ta' tnehhija ta' skedar bla raguni fondata meta d-direttorat tal-istess Awtorita kien wasal ghal konkluzjoni differenti. Ma' dan gie sottomess illi d-decizjoni tal-Awtorita giet influenzata minn konsiderazzjonijiet jew fatti mhux rilevanti bl-intenzjoni li tigi influwenzata d-decizjoni.

Illi mill-inkartament tal-process ta' skedar tal-Awtorita', dan it-Tribunal innota dan li gej:

1. Illi s-sit mertu ta' dan l-appell gie skedat fi Grad 3 ta' protezzjoni skont l-Avviz tal-Gvern numru 722 tal-1995, mahrug fis-17 ta' Novembru 1995.

2. Illi talba formali sabiex tigi *de-scheduled* din il-proprejta giet prezentata permezz ta' ittra mill-Perit Paul Camilleri fid-19 t'Ottubru 2009.

3. Illi sussegwentament tresqet talba ohra simili mill-Perit Dr. Edwin Mintoff permezz ta' ittra tal-20 ta' Lulju 2011.

4. Illi l-Kumitata Konsultattiv ghall-Wirt Storiku ma sabx oggezzjoni mat-talba ta' tnehhija ta' skedar tas-sit in mertu;

5. Illi fil-laqgha tad-19 ta' Dicembru 2011, il-Bord tal-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar qabel li jirrakomanda lill-Ministru sabiex il-proprejta in kwistjoni tigi *de-scheduled.*

6. Madankollu l-Ministru ma wasalx ghal tali decizjoni u talab kunsens ukoll mill-Kunsill Lokali tal-Fgura, u fill-fatt kemm l-Awtorita' kif ukoll l-applikant bdew xi forma ta' diskussjonijiet mal-Kunsill Lokali

7. Illi l-Kunsill Lokali ressaq l-oggezzjonijiet tieghu ghal tali talba u pprezenta ukoll rapporti teknici sabiex isostni tali oggezzjoni.

8. Illi ghal darba ohra saret talba ta' *de-scheduling* mill-applikanti (illum l-appellanti) permezz tal-Perit Angelo Portelli b'ittra lis-CEO tal-MEPA fil-25 t'Ottubru 2015;

9. Illi tali talba giet diskussa waqt il-laqgha tal-Kunsill Ezekuttiv tal-Awtorita' tal-Ippjanar fis-7 ta' Novembru 2016 fejn giet michuda u l-iskedar konfermat. Il-laqgha kienet fil-pubbliku fejn gew mistiedna li jattendu kemm l-applikanti kif ukoll il-Kunsill Lokali tal-Fgura.

Illi l-Kunsill Ezekkutiv kellu zewg rapporti konfligenti, ossia r-rakomandazzjoni tad-Direttorat tal-Ippjanar favur it-tnehhija tal-iskedar, u minn naha l-ohra l-fehma tal-Kunsill Lokali tal-Fgura favur iz-zamma tal-iskedar.

Id-Direttorat tal-Ippjanar spejga dan li gej:

"Property Description

The farmhouse was scheduled as a Grade 3 building as explained above. Between 1994 and 2001, properties geczived from the exterior as might having some architectural importance were still scheduled as Grade 3, espite that Structure Plan policy UCO 7 considered their demolition and placed emphasis not on the building itself but on promoting and controlling the better design of the replacement building in order to blend with its surroundings, usually aimed at a UCA or other scheduled property at Grade 1 or 2.

The farmhouse consists of 12 rooms (one of which is at first floor) and a small internal courtyard built during different periods, some in a haphazard manner, such that there is only one room which has some vernacular features and methods of construction (such as stone slabs and kileb). There is also a small, poorly built pigeon loft. It is evident that a number of rooms were added (or reconstructed) in the post war years judging from the size of stone and materials used (RSJs and stone slabs as well as reinforced concrete ceilings). The building has been subjected to various alterations such as opening and closing of square headed garage apertures.

One of the rooms in the complex might be worthy of retention where it in a rural or UCA context. In this site however it appears to be completely out of context. Furthermore, the building is a few courses below the level of the current road (Triq Hompesch) thus it is difficult to re-use as is owing to current sanitary requirements, humidity levels and other issues.

The property has a small 2-course high niche without a statue located directly above the central doorway which is painted in a dark brown colour. The fagade was whitewashed (probably with lime) while the apertures are painted in brown as the niche. This makes the niche stand out, which together with the toponym Dahlet in-Niéèa I-Antika may have served as a main reason behind the scheduling of the property. However, given the small size of the niche, probably there was a larger niche in the area not this one that might have been removed for road widening purposes.

The farmhouse is within a very modern context located on one of the primary roads of this part of Malta that serves a link between the Grand Harbour area and the south east of the Island. The area is densely urban developed in the post war years. The area in the immediate vicinity of the farmhouse appears to have been predominantly rural up to 1968 (as evidenced by the survey sheets of the time) and surrounded by various others that seem similar (organic-like development that is typical of local rural architecture) in size and layout. The area is currently characterised by 1970's and 1980's apartment development that is rather run of the mill. Thus, given that the policy on Grade 3 allows for the redevelopment of such sites, the replacement development should be "of a sufficiently high quality to be used as an example of good practice in urban renewal" hence also in keeping with Structure Plan Policy UCO 9.

Recommendation

From the analysis carried out it results that the building in question does not have merits for its conservation given that there is only one small room which has some vernacular features which may be salvaged/reused and the rest of the structures are of non-descript architecture, making the farmhouse a discordant ensemble rather than a pleasing complex. Additionally, the site is within a modern dense urban context adjacent to a main road this office is of the opinion that retaining a property such as this one as scheduled can only serve to rescind other scheduled properties that are of higher significance.

Il-kummenti tal-Kunsill Lokali Fgura kienu s-segwenti:

"1) Storja w arkitettura

Mir-ricerka li ghamilt, ftit hemm xhieda ta' storja ddokumentata marbuta ma' dan il-post. Skond dak li jinghad mix-xjuh, ir-razzett inbena ma' bosta ohrajn fil-madwar fl-imghoddi meta ghadd ta'bdiewa (hafna minnhom Ghawdxin) kienu jahdmu l-art hawn sabiex ikabbru w jbighu hwejjeg ta' I-ikel lin-nies tat-Tlett Ibliet, partikolarment Iil haddiema tat-Tarzna.

Ir-razzett jinsab f salib it-toroq li fil-qedem kien iwassal minn Hal-Tarxien sal-Kottonera u minn Rahal Gdid ghal Hal-

Zabbar. FI-1790 inbniet il-knisja tal-Madonna tal-Karmnu ma' gemb it-tisliba, li tkabbret fl-1844 u twaqqghet ghal kollox fl-1956 meta twessghet it-triq ewlenija. Minn I-inhawi ta' I-istess knisja fejn antikament kien hemm xbieha Marjana jinghad li dan il-lokal ha ismu.

Fi pjanta ta'mitt sena ilu jidher li r-razzett kien I-eqreb wiehed lill-knisja. Interessanti li listess razzett kellu xbieha Marjana fuq il-faééata mat-triq. Din tnehhiet biss dan l-ahhar. Wiehed jistaqsi jekk din ix-xbieha setghhet kienet l-istess wahda li tat l-isem lil lokalita partikolalment billi t-trejqa li jgib I-isem Dahlet in-Nicca l-Antika.

Mil-lat arkitettoniku, ir-razzett huwa wiehed tipiku Malti, pjuttost fqajjar fil-bini tieghu. Fqajjar iÈda aktar bhalha tqassim milli tfassil. Huma mibni madwar bitha milhuq minn dahla ewlenija, b' ghadd ta' imqawel u mhazen isfel u ghorfa ghal ghixien tal-bdiewa fuq, milhuqa minn taraé dejjaq miftuh. Wiehed ghad jista' jara bosta karatteristiéi li niltaqghqu maghhom ta' sikwit f"dawn it-tipi ta' binjiet. Fosthom jinstabu soqfa bil-kileb u xorok, travi ta' I-injam u xorok, barumbari, maxturi w hnejjiet ta' diversi suriet. Dawn u ohrajn jidhru fir-ritratti mehmuzin fl-ahhar ta' dan ir-rapport. F'wahda mill-imqawel hemm niééa li tidher inbniet minn biééiet ta' gebel imnaqxin b'sengha li x'aktarx ingiebu min xi bini iehor li twaqqa' L-eqdem parti tar-razzett x'aktarx ghandu mill-inqas mitejn sena u huwa ta' 1-aktar valur arkitettoniku waqt li hemm Zidiet reéenti hafna li m' ghandhom 1-ebda sinifikat.

2) It-tifsir ta' skedar bhalha Grad 3

Skond 1-ahhar dokument tal-Mepa accessibli fuq is-sit elletroniku taghha, dan ifisser li dawn il-binjiet m' ghandhom 1-ebda sinifikat storiku u joffru biss ftit valur arkitettoniku. Twaqqiegh tista' jigi permess bil-kundizzjoni li 1-bini 1-gdid irid ikun imfassal b'disinn addattat malmadwar. Meta dan jigi applikat ghar-razzett nahseb illi mill-lat storiku, ghad trid issir aktar riéerka b'mod speéjali fuq in-niééa li kienet tinsab fuq il-faééata sa ftit snin ilu. Min-naha arkittetoniku wiehed irid jistqarr illi 1-valur huwa limitat.

Minkejja dan, wiehed ghandu jqis il-valur intangibbili li' jaqa' taht it-tifsir ta x'inhu wilt kulturali li m'huwiex imsemmi fid-definizzjoni ta' Grad 3 jew ghaldaqshekk il-gradi 1-ohrajn.
Il-Mepa tghid *'Our cultural heritage consists of the places and objects we have inherited from past generations that we want to keep and pass on to future generations.* " U hawn nahseb li nsibu dik ir-raguni ghaliex dan il-bini huwa mportanti ghall-Fgura.

Ir-razzett huwa wiehed mill-ahhar tat-tip tieghu u b'hekk jissimboliüa 1-origini rurali tal-Fgura. Huwa fost 1-uniéi binjiet qodma sew li fadal fil-lokalita'

Jinsab f"salib it-toroq li dari kienet il-qalba tal-Fgura biswit il-knisja 1-qadima. Il-knisja m' ghadhiex teiisti izda r-razzett hemm ghadu.

Hemm xhieda b'sahhietha li n-niééa Marjana li kien hemm fuqha kienet antika sew u li setghet kellha rabta ma' 1-isem tal-Fgura.

B'dawn il-punti nahseb li minkejja t-tifsir tal-gradi ta' skedar, xorta hemm kaz b'sahtu ghaliex dan il-bini ghandu mhux biss jinzamm izda jigi rrestawrat u mghoti uzu kulturali bhalma sehh per ezempju bl-lsptar Antik fl-lmqabba u bir-Razzett tal-MarkiÈ fil-Mosta. In-nicca 1-qadima ghandha tigi mahluqa mill-gdid u d-'Dahla' ghandha tigi miftuha wkoll bhalha spazju pubbliku. Napprezza li dan il-bini huwa privat izda s-sinifikat tieghu ghallidentita' u ghan-nies tal-Fgura, u dawk ta' warajhom huwa kbir u tkun telfa serja jekk jitwaqqa'. B'hekk, nirrakomanda li 1-livell ta' protezzjoni offrut mill-Grad 3, fqir kemm hu fqir, ghandu jinzamm."

Illi dan it-Tribunal jinnota li l-iskedar huwa wiehed baxx fi Grad 3 a bazi tal-Policy UCO7 tal-Pjan ta' Struttura, ossia "*buildings which have no historical importance and are of relatively minor architectural interest. Demolition may be permitted provided the replacement building is in harmony with its surroundings.*"

Illi minn dak li seta jigi konstatat waqt l-access mizmum fuq is-sit minn dan it-Tribunal, il-bini ezistenti jinsab fi stat dilapidanti, bi strutturi varji bi ftit elementi ta' arkitettura vernakolari. Illi l-kuntest tas-sit huwa wiehed modern u kontemporanju, b'faccata li thares fuq it-triq principali tal-Fgura, ossia Triq Hompesch.

Illi wiehed mill-gustifikazzjoni favur l-protezzjoni tal-*farmhouse* huwa marbut mal-isem tal-Fgura kif ukoll mal-isem tal-passagg Dahlet in-Nicca (li tinsab bejn il-bini u Triq Hompesch).

Madankollu, minn ezami tal-inkartament tal-GF 272/98 ma nstab ebda prova ta' struttura ta' nicca fuq il-bini tar-razzett indeżamina, jew xi hjiel li dan l-istess bini seta kien l-origini tal-isem tal-Fgura.

Illi huwa minnu li l-bini fuq is-sit origina fi zmien meta z-zona kienet wahda strettament rurali, ghaldaqstnat intrinsikament ghall-uzu rurali u agrarju, madankollu tali bini llum jinsab fil-qalba taz-zona urbana tal-Fgura, ikkaraterrizata minn bini modern u kontemporanju.

Illi l-istess bini jikkonsisti minn diversi stutturi mibnija b'mod organiku u fi ziminijiet differenti kif jindikaw fatturi bhal metodoligija ta' kostrurzzjoni, materjal u karatteristici artikottonici. Fil-fatt, skont kif indikat mill-esperti tal-Awtorita', li huma biss partijiet zghar tal-bini ezistenti li jinkludi dawk il-karaterristici vernakkolari. Minn naha l-ohra, ma hemm ebda prova konkreta li tindika li l-bini ghandu jitqies bhala struttura ta' valur storiku partikolari fis-sens li hija xi struttura li qed taghti xi identita' lit-triq jew liz-zona fejn tinsab li jimmeritha protezzjoni. F'dan ir-rigward, dan it-Tribunal huwa propens li jilqa' l-appell.

Billi d-decizjoni mit-tnehhija ta' l-iskedar saret mill-Kusill Ezekuttiv, a bazi tal- Kap552, ma ghadx hemm l-obbligu tal-approvazzjoni tal-Ministru kif kien il-process precedenti taht il-Kap 504.

F'dan ir-rigward, dan it-Tribunal qed jilqa' l-appell, u qed jordna lis-Segretarju tal-Kunsill Ezekuttiv sabiex jippubblika t-tnehhija mill-lista ta' skedar tal-proprejta' 'Farmhouse' fi Triq Hompesch, Fgura kif ippubblikata fl-Avviz tal-Gvern numru 722 tal-1995.

Martin Saliba | Simon Micallef Stafrace | Robert Sarsero