



COMMONS REGISTRATION ACT 1965

Reference No 203/D/33

In the Matter of site of former
pond by Little Moseley Lodge,
Hughenden, Wycombe District,
Buckinghamshire

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No CL. 221 in the Register of Common Land maintained by the Buckinghamshire County Council and is occasioned by Objection No 114 made by Mr R S Piercy and noted in the Register on 25 July 1972.

I held a hearing for the purpose of inquiring into the dispute at Aylesbury on 9 March 1978. At the hearing (1) Hughenden Parish Council were represented by Mr E B Smith their clerk, (present also was Mr R C Pushman their vicechairman), (2) Buckinghamshire County Council were represented by Mr C D Durrant senior administrative officer in their Secretary and Solicitor's Department, and (3) Mr Ronald Sidney Piercy (the Objector) attended in person.

Mr Durrant said that although the registration is on the Register stated to have been made "by the registration authority without application", the County Council before making it in fact consulted the Parish Council. The registration was based on the Hughenden Inclosure Award dated 4 August (and confirmed 20 August) 1862 and made under the *Second Annual* Inclosure Act 1856 (19 & 20 Vict c.106). The Award (Mr Durrant produced it) contained the following allotment: "And I declare that I have set out and appointed and do hereby set out and appoint the following public ponds or watering places that is to say...one other public pond numbered 110 on the said map Part I containing twenty six perches situate next the Walters Ash road which said pond shall be from time to time properly cleaned out and repaired by the owner for the time being of the allotment number 111...". It was not disputed that the land ("the Unit Land") comprised in this Register Unit (in the Register said to contain .17 of an acre) is the same as allotment number 110; a strip of land north of and having a frontage of about 6 times that of the Unit Land is on the Award map shown as No 111.

The grounds of the Objection are:- "Objection is on the ground of ownership in so far as this land is part of Moseley Lodge Farm owned by me and does not belong to the Parish Council. It is admitted that the PC has a right of access to water there, this being known as droverage rights. The pond is filled in and negotiations with the PC are in progress with regard to compensation for the extinction of these rights. The County Council drain onto this land is not in question."

Mr Piercy who has known the land all his life (63 years) in the course of his evidence produced an agreement dated 12 March 1946 and made between Mr S F Piercy (his father) and the County Council. Mr S F Piercy who died in 1949, bought Moseley Lodge Farm in 1916, the ownership of his death passed to Mr Piercy (the Objector). When Mr Piercy first knew the land it was (as now) part of



the land held with the Farm; it was then apparent that it had been a pond, but it was always dry, having apparently been almost completely filled in. The works for which provision was made by the 1946 agreement, about 15 years ago, were found to need the construction of a soak away; with this agreement, made informally with the County Council, the soil dug out in this construction was put over the site of the pond on the land now in question. Ever since the land has appeared as it is now part (perhaps not a very important part) of the garden land enjoyed with the dwelling house. At one time there was a gap in the hedge through which access from the highway to the land could be obtained, but there has been no such gap for many years.

Mr Smith gave oral evidence, explaining that the Parish Council claimed the registration was proper by reason of the above quoted allotment and contended that the lack of maintenance was irrelevant. He said nothing contrary to the evidence of Mr Piercy as to the use made of the land while he had known it.

After the hearing I inspected the land.

One of the ordinary meanings of "common land" may be land which is public and/or to which the public have access, and a public pond or watering place may be within this meaning, at any rate as long as it is used as such. But I am bound by the definition of "common land" in section 22 of the 1965 Act which so far as relevant is: "waste land of a manor not subject to rights of common". Although there is I think no reason why a public pond or watering place should not be within this section 22 definition (a pond could be on waste land of a manor), the mere circumstance that the land was in 1862 allotted as public pond or watering place is not I think evidence that it was in 1969 (the date of registration) within the section 22 definition. Perhaps the 1965 Act should have expressly included land by an inclosure award allotted for public purposes; however this may be, taking (as I must) the section 22 definition as it now stands, this land was in my opinion in 1969 not "waste land" within any meaning of these words which could now be relevant. I conclude therefore that the registration should not have been made.

I express no opinion as to the contention made by Mr Piercy in the course of the hearing that any rights the public may have over this land under the 1862 Award have been lost by non-use or by the County Council deliberately filling in the pond; it may be that having regard to the changes made in the use of the surrounding land since the Award, it is unlikely that any member of the public will ever want to water animals there; however this may be I have no jurisdiction to determine whether any right as this granted in 1862 has now ceased to exist.

For these reasons I refuse to confirm the registration.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 26th day of June

1978

a. a. Bada Fuller

Commons Commissioner