



COMMONS REGISTRATION ACT 1965

Reference No. 206/D/461-465

In the Matter of Gorran Haven Beach
St. Goran, Cornwall

FURTHER DECISION

This decision deals with a number of matters arising out of a decision given by the former Chief Commons Commissioner Mr G D Squibb Q.C. on 7 February 1977 relating to Entry No. 1 in the Land Section of Register Unit No. CL.308 in the Register of Common Land maintained by the Cornwall County Council and the Notice of Final Disposal given by him to the Cornwall County Council on 13 May 1977.

On 4 January 1968 the St Goran Parish Council applied to the Cornwall County Council as Registration Authority for an area of land described as "Gorran Haven Beach South of the stream" and identified by a map, to be registered as common land. On 8 October 1968 the Registration Authority provisionally registered the land as follows -

"The piece of land called Gorran Haven Beach in the Parish of St. Goran, in the County of Cornwall, as marked with a green verge line inside the boundary on sheets No. 96 and 96A of the register map and distinguished by the number of this register unit. Registered pursuant to application No. 0570, made 4th January, 1968, by St. Goran Parish Council (Clerk: Mr William Vivian, Trenance, Gorran Haven, Nr. St. Austell, Cornwall)."

On the register map the unit land looked very small but there is no doubt that in registering the land the Registration Authority complied with the express terms of the application that it should be the beach "south of the stream" that is to say that the northern boundary of the unit land was the southern edge of the stream.

Section 1(2) of the Commons Registration Act provides -

"After the end of such period, not being less than three years from the commencement of this Act, as the Minister may by order determine -

(a) no land capable of being registered under this Act shall be deemed to be common land... unless it is so registered."

By article 2 of the Commons Registration (Time Limits) Order 1966 the Minister determined that the period referred to in section 1(2) should end on the 31st March 1970. By Article 2 of the Commons Registration (Time Limits) (Amendment) Order 1970 the Minister substituted for that date the 31st July 1970. The period was not further extended.

It follows that no land is deemed to be common land unless it was registered before that date. After that date had passed the St. Goran Parish Council wrote to the Registration Authority on 20 December 1971 as follows -



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" The Parish Council would be most grateful to know if it is possible, at this late stage, to clarify what is meant by the "green verge line". When the above application was made on 4th January 1968, our intention was that the claim to this piece of land called Gorran Haven Beach came flush up against the wall of the "Beach Cafe". Is this envisaged in the somewhat vague description in the registration?"

Now the wall of the Beach Café is on the north side of the stream which at this point is covered by a block of concrete running from one side to the other, and measuring only a few feet in either direction. I will refer to this land as "the concrete block". It might seem strange to some that so small a piece of land has given rise to so much worry and indignation but not, I think, to anyone concerned with commons registration.

After some correspondence about maps the St. Goran Parish Council on 9 March 1972 wrote to the Registration Authority as follows:-

"With reference to our letter of 8th February concerning the above and subsequent phone call, in which it was stated that the original registration submitted by the previous Parish Council went only as far as the South Bank of the stream. In the opinion of this Council, this definition is rather ambiguous and they wondered, if at this late date if it would be possible for it to be altered to the "North" bank of the stream. We should be very grateful if you could confirm whether this alteration in the Registration of 1968 can be made valid."

To this the Registration Authority on 30 March 1972 replied quite rightly -

"In reply to your letter dated 9th March 1972, I have to advise that in accordance with Regulation 36(a) of the Commons Registration (General) Regulations 1966, the Registration Authority is not authorised to increase the area of any land registered under the above Act. Neither is it possible to make an additional new registration since the registration period closed finally on 2nd January 1970."

The date given is the last date on which applications for registrations could be made. The Registration Authority's letter went on -

"I must, therefore, confirm that the alteration suggested by your Council would not be valid. It appears however, that it is open to the Parish Council to lodge an objection to the existing registration in order that the matter may be referred to the Commons Commissioner for decision."

In fact the Parish Council could not possibly, by objecting to their own application, secure the registration of the concrete block or for that matter any other land which had not been registered before 31 July 1970, but the Registration Authority cannot, I think, be blamed for thinking that the question had better be disposed of by a Commons Commissioner rather than by them.



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Accordingly on 18 May 1972 the Parish Council lodged an objection in these terms -

"The Parish Council contends that the land registered as Common Land called Gorran Haven Beach should include the stream, which is bridged with concrete. Thus the Common Land extends to the boundary wall of the Beach Cafe (at present known as the Mermaid Cafe, and marked in red on the plan attached.

The above being Common Land in addition to the Common Land referred to in the provisional Registration made by the St. Gorran Parish Council dated 6th October 1968 and marked in green on the attached plan." [emphasis as in the objection]

Meanwhile an objection in almost identical terms had on 1 May 1972 been made by the Gorran and District Residents Association.

It is quite clear from these words that what was being sought was the registration of land which had not been registered during the registration period, something which the Registration Authority had already rightly said could not be done.

Meanwhile three perfectly valid objections had been made to the registration of parts of the unit land. These were -

(1) Objection No 838 dated 17 June 1971 by Sir Hugh Park on the grounds that -

"Those portions of the land which comprise the apron of the building known as Big Cellars and the slipway were not common land at the date of the registration (such portions being coloured red on the plan annexed)"

(2) Objection No. 846 dated 16 July 1971 by Frank William Brown which is in exactly the same terms as objection No.838

and (3) Objection No. 1077 dated 17 June 1972 by William George Dadda on the grounds -

"That the land being a slipway and shown coloured red on the plan annexed hereto was not common land at the date of the registration and was and is in the ownership of the said William George Dadda"

On 22 December 1975 the Registration Authority sought the advice of the Clerk to the Commons Commissioners as follows -

"An application was submitted by a Parish Council for a strip of foreshore to be Common Land, without any rights applicants. Subsequently objections were entered by three nearby landowners in relation to an area of slipway in front of their properties on the South West side of the area.

An objection was also entered by a Residents Association which considered the area involved was not large enough and they wished the area extended in a Northward direction by a few feet. The Parish Council agreed with this and then entered an objection in similar terms against their own application.



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Following considerable discussion the Parish Council have agreed to amend their application to meet the objectors who wanted the area reduced and also those who wanted the area increased in a different direction.

I am contacting the objectors concerned to obtain their views on the above and I would appreciate some guidance as to how the agreement which will probably be reached is dealt with.

It would appear that all involved would have to agree an amended map of the area which could then be forwarded with all the other documents for a decision.

I should be grateful for your advice in writing as to the correct course of action in this matter."

On 30 December 1975 the Clerk to the Commons Commissioners replied as follows -

"Thank you for your letter of 22 December, the contents of which are noted.

Although it is not for me to seek to advise upon this problem it would appear that the most acceptable solution would be to draw up a consent application (Regulation 31) which would incorporate suitable amendments to the original application and would be accompanied by a plan showing the area of land which all parties are now happy to accept. Both the consent application and the plan would need to be signed by all the parties concerned."

I am afraid that letter may have given the impression that, while disclaiming any advice, the Clerk to the Commons Commissioners was saying that a decision could be given under Regulation 31 whereby land not duly registered could be added to the unit land. If it did so that is unfortunate

On 3 March 1976 the Registration Authority referred to the Commons Commissioners the disputes occasioned by the above objection sending at the same time a form of consent under Regulation 31. That form of consent was certainly not so worded as to draw to the Commissioner's attention the fact that he was being asked to give a decision which would add to the register unit land which had not been registered at the proper time.

It merely said -

"We the undersigned request the Commons Commissioner to confirm the registration of the abovementioned land as common land and to give his decision in accordance with such request without a hearing, the boundaries of such land to be as delineated on the agreed plan attached hereto"



What had in fact been agreed was not that the registration should be "confirmed" but that it should be "confirmed with modification"(see section 6(1) of that Act).

It is true that if the Chief Commons Commissioner had compared the register plan with the plan attached to the agreement he would have seen that some of the unit land was omitted and that if he had compared it with very great care he might have noticed that a very small piece of land had been added.

What in fact happened was that nearly a year later on 7 February 1977 the Chief Commons Commissioner signed a decision which simply ran -

"All the persons entitled to be heard at the hearing of that dispute have agreed upon the terms of the decision to be given by me and have sent to the Clerk of the Commons Commissioners particulars of such terms signed by or on behalf of all such persons.

I am willing to give a decision in accordance with that agreement and accordingly confirm the registration" [my emphasis].

No one appealed against that decision and on 13 May 1977 the Chief Commons Commissioner, in accordance with regulation 32 of the Commons Commissioners Regulations 1971 and in the form prescribed by that regulation gave Notice of Final Disposal of Disputed Registration to the Registration Authority that -

"On the 8th day of April 1977 the registration at Entry No. 1 in the Land Section of Register Unit No. CL.308 in the Register of Common Land maintained by you became final."

Now, on the face of it that is a perfectly clear notice and it only remained for the Registration Authority to comply with Section 6(2) of the 1965 Act, which, as far as relevant, is as follows -

"(2) On being informed in the prescribed manner that a registration has become final (with or without modifications).... a registration authority shall indicate that fact in the prescribed manner in the register..."

Since there is no mention of any modification in this notice all the Registration Authority had to do was to comply with regulation 3 of the Commons Registration (Disposal of Disputed Registrations) Regulations 1972 and strike out the words "(Registration Provisional)"

That, however, would have satisfied none of the parties to the regulation 31 agreement, all of whom had agreed that the registration should be modified in one way or another.



However, neither the Registration Authority nor anyone else made any complaint at that time as to the form of the notice.

Having regard to the course I intend to take I am not concerned with what entry the Registration Authority in fact made in the register as a result of the section 6(2) notice. Nor need I go into the, possibly difficult, questions of the extent to which, if at all, the terms of the decision can be read to modify the clear words of the notice or whether the terms of the agreement can be read to modify the clear words of the decision.

At any rate the Parish Council appeared to consider that the concrete block had in the end been registered as common land and that that gave them the right to place a public seat on it, an event which, according to the present owners of the Cafe took place in 1979 and interfered with the use hitherto made of the concrete block which was to display "a small number of goods and advertisements".

Since neither the Parish Council nor anyone else is registered as owner of the concrete block the council possibly considered that they had power to take this course under section 9 of the 1965 Act.

No one being registered as owner of the unit land, the Registration Authority referred the question of the ownership of the land to a Commons Commissioner under section 8 of the Act. On 20 October 1982 the Chief Commons Commissioner after holding a hearing decided that he was not satisfied that any person was the owner of the land and that it would accordingly remain under the protection of the local authority under section 9.

On 10 December 1986 the Clerk the Commons Commissioners received a letter from Messrs. G K T Kennedy and E C Taylor who had purchased the Mermaid Cafe in November 1985.

This letter complained, in effect, of the Parish Council's seat being on the concrete block and expressed understandable bewilderment at the position which had arisen under the Commons Registration Act.

A long correspondence ensued in which the Registration Authority, the Parish Council the Borough of Restormel, and in the end, all the objectors took part. Since the facts are not in doubt there is no need to refer at length to this correspondence the effect of which can be summarised as follows.

The Parish Council said the concrete block should be finally registered as common land.

The owners of the Mermaid Cafe said it should not.

The other objectors said that the land in respect of which they had objected should be omitted from registration.



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The Registration Authority wished for a clear direction which would, as far as possible, give effect to the article 31 agreement.

I have carefully considered what powers I have to put this matter right. I have no power, as some parties have suggested, to "re-open the hearing". A Commons Commissioner has no power to set aside the decision of another Commons Commissioner simply because he thinks it was wrong.

It seems to me that the only power I have at this stage must derive from regulation 33 of the 1971 Regulations which provides (following the wording of RSC O. 20 r. 11) -

"Clerical Errors

A Commissioner shall have power to correct in any document prepared by him or under his authority... any clerical mistake or error arising from any accidental slip or omission."

Neither of these documents was, however, prepared by me or under my authority. They were prepared by the former Chief Commons Commissioner who has now retired.

Regulation 29 however provides -

"Change of Commissioner

Where any proceedings have been begun by or before a Commissioner and have not been concluded, the Chief Commons Commissioner..... where the Commissioner.... is unable to continue with the proceedings shall direct that the proceedings shall be continued by or before such other Commissioner as shall be named in the direction."

I do not think that these proceedings have been concluded for the purpose of correcting a document under regulation 33 and I direct that they shall be continued by myself.

Reading the two regulations together I think that the reference in regulation 33 to the power of "a Commissioner" to correct a mistake in a document "prepared by him" must confer a similar power on another Commissioner who has been directed to continue the proceedings, if he is convinced that the first Commissioner has made such a mistake.

Turning first to the Decision of 7 February 1977, having regard to the fact that the agreement contemplated a confirmation of the registration with considerable modifications, I do not think that the former Chief Commons Commissioner could, except by mistake, have come to the decision "I accordingly confirm the registration."



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I have seen a number of decisions of the former Chief Commons Commissioner in similar cases and, where the agreement has been that the registration shall be confirmed with modifications, the decision has always stated that the registration should be confirmed "with the following modifications" (setting them out). This indeed I believe to have been the practice of all other Commissioners.

Accordingly I am convinced that only by mistake could the Chief Commons Commissioner have failed to refer to the agreed modifications in that decision.

On the other hand I am equally convinced that, had he realised that one of the agreed modifications proposed to add to the unit land which had not been registered as common land during the registration period, the former Chief Commons Commissioner would not have given effect to that modification.

I think, therefore, that the words "I accordingly confirm the registration" in that Decision arose from what may fairly be described as "a clerical mistake or error arising from an accidental slip or omission" and that, if that mistake had not been made, the former Chief Commons Commissioner would have said -

"I accordingly confirm the registration with the modification that the land referred to in Objections Nos 838, 846 and 1077 shall be omitted from registration."

In exercise of my powers under regulation 33 I shall correct that decision accordingly.

It follows that to the Notice of 13 May 1977 there should be added the words -

"with the modification that the land referred to in Objections Nos 838, 846 and 1077 shall be omitted from registration."

I have referred to the omission of the land referred to in the objections rather than to the plan attached to the regulation 31 agreement to avoid a complication introduced by that plan which, being taken from a later edition of the Ordnance Survey Map, shows the line of mean high water, which forms the seaward border of the unit land in a different position from that shown on the register map.

With the copy of this Decision which will be sent to the Registration Authority there will be sent copies of the Decision of 7 February 1977 and the Notice of 13 May 1977 corrected as set out above. It now only remains for the Registration Authority to comply with that Notice as so corrected.

The concrete block will not be registered as common land.



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 20th day of August 1987

Peter Landa-Davis

Chief Commons Commissioner