



COMMONS REGISTRATION ACT 1965

Reference No. 220/D/260-262

In the Matter of Land in the Vicinity of
Maden Reservoirs, Rochdale

DECISION

This dispute relates to the registrations at Entry No. 1 in the Land Section and Entries Nos. 1-9 in the Rights Section of Register Unit No. CL 173 in the Register of Common Land maintained by the Lancashire County Council and is occasioned by Objection No. 249 made by West Pennine Water Board and Objection No. 163 made by B and J Ovenden, noted respectively in the Register on 7 March 1972 and 30 June 1971.

I held a hearing for the purpose of inquiring into the dispute at Preston on 9 December 1981. The hearing was attended by Mr B Ovenden and by Mr Prytherch, Solicitor of North West Water Authority ("the Water Authority").

The registration as Common Land was made in consequence of the application by Mr T Steeple to register rights (Entry No. 1 in the Rights Section), Entry No. 2 was made on the application of Mr and Mrs C Povey and Entries Nos. 3 to 9 on the application of Mr Ovenden. The Water Authority is the successor body to West Pennine Water Board whose objection was on the ground that "the land or some part thereof was not common land at the date of registration". Objection No. 163 is to Entry No. 2 in the Rights Section.

Mr Steeple's registration is now withdrawn and Mr and Mrs Povey were not present or represented. In these circumstances I refuse to confirm their registrations. Entries Nos. 3 to 9 relate to grazing rights over part of the land ("the Unit land") comprised in this Register Unit and also over six other Register Units, of which one is CL 175. The part of the Unit land affected by the rights is that lying to the north west of the line CD on the register map.

The evidence given by Mr Ovenden at the hearing in relation to CL 175 (Ref: 220/D/248-257) was equally applicable in relation to the Unit land, nor did Mr Prytherch call any further evidence in this case. He informed me that the Unit land was originally acquired by Heywood Water Authority under statutory powers conferred by local Acts of 1846, 1855 and 1857 which incorporated the Land Clauses Act 1845. He did not refer to any statutory provision which precluded the subsequent acquisition of rights of common over the land, nor did he submit that this was the position: and there was no evidence as to the date or dates of the purchase by the Heywood Authority or the subsequent development of the land. In a conveyance dated 19 November 1883 by James Lord to the Heywood Borough Corporation of an area of land of 1 acre 2 roods, lying to the north of Maden Higher Reservoir, there is a covenant by the Corporation to fence off the area from the Vendor's adjoining land: but it is not clear from the plan on the Conveyance that the area is included in the part to which Mr Ovenden's claimed rights relate, and it does not seem to me that the



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covenant is of significance in regard to those rights. In all the circumstances, I think my decision should follow that in the CL 175 case, and I confirm the registrations at Entries Nos. 3 to 9 in the Rights Section.

As regards the Land Section, with the non-confirmation of Entries Nos. 1 and 2, the part of the land to which Mr Ovenden's rights do not extend will have no rights of common registered over it: there is no suggestion that it is waste land of a manor, and accordingly I shall exclude it from the land and confirm the registration at Entry No. 1 in the Land Section modified with this exclusion.

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

12 March

1982

Commons Commissioner