



COMMONS REGISTRATION ACT  
1965

Ref: No. 268/U/335

In the Matter of the piece of land containing  
3.8 acres or thereabouts known as Hebden Edge  
Side Quarry Highway Allotment, Hebden.

DECISION

This reference relates to the question of the ownership of land known as Hebden Edge Side Quarry Highway Allotment Hebden being the land comprised in the Land Section of Register Unit No. CL. 81 in the Register of Common Land maintained by the North Yorkshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference (1) Agnes Esther Jowett of Town Head Hebden as Administrator of David Leonard Jowett deceased and (2) the Hebden Parish Council claimed to be the freehold owner of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Skipton on 20th May 1987.

Hebden Parish Council was represented by Mr D Joy (chairman) and Mrs P Howick (councillor).

Mrs Jowett did not appear and was not represented.

Mrs Jowett had written to the office of the Commons Commissioners claiming ownership as administrator of the estate of the late David Leonard Jowett, on the ground that this estate owns the fields adjoining the unit land, to the north south and west sides. At the hearing the Parish Council accepted that the late Mr Jowett did own these fields. Nevertheless ownership of adjoining land unsupported by any further evidence of any sort confers no rights as regards the unit land. I therefore reject Mrs Jowett's claim.

The Parish Council are already finally registered in the Rights Section of the Register as being entitled "on behalf of all owners of land in the township of Hebden" to the right:-

"To get stone and gravel for the repairs of the roads and ways within the said township and for the use of all the owners of land therein for the purpose of getting stone for the building and repair of their houses, fences and drains in the said township, as per Hebden Moor Inclosure Award 1857"

Notwithstanding this registration the Parish Council claimed before me that "as the logical successors to the Surveyors of the Highways of the Township of Hebden", they were also entitled to the freehold of the unit land. In support of this claim they referred me to an extract from the Inclosure Award, in which they claimed that the unit land is identified as "piece number 54". I quote the extract in full:-

Cont/...



"And I Declare that I have set out and do hereby, set out, allot, and award unto the Surveyors of the Highways of the said Township of Hebden and their successors for ever, . . . - All those pieces or parcels of ground numbers 30 and 54 on the said map and containing by admeasurement fourteen acres and two roods, and I direct that such allotment piece or parcel of ground shall be appropriated and used as a quarry for supplying stone and gravel for the repairs of the roads and ways within the said Township and for the use of all the owners of lands in the said Township for the purpose of getting stone for the building and repair of their houses, fences and drains in the said Township."

I pointed out that to succeed in their claim to ownership of the unit land the Parish Council would have to establish that they were the legal successors in title to the Surveyors of the Highways, and not merely their "logical" successors. This they were unable to do at the hearing.

The historical sequence is of some complexity. By the Highway Act, 1862 the Surveyors of the Highways were replaced by Highway Boards; and the real and personal property of the Surveyors of any parish forming part of a district became vested in the highway board of that district: see section 11 thereof. Under section 25(1) of the Local Government Act 1894 highway boards ceased to exist, and were succeeded as highway authorities in rural districts by rural district councils; and by section 67(1) of that Act all property of the former was vested in the later. By section 30(1) of the Local Government Act, 1929 rural district councils ceased to be highway authorities, and county councils took over their functions as such. By section 118(1) of the same Act every county council was required to take over and pay for (inter alia) any quarry belonging to a district council within the county in their capacity as highway authority, but only if the district council so desired. Finally, in the Highway Acts of 1959 and 1980 it is provided that any enactment or other document referring to a surveyor of highways shall be construed as referring to the highway authority: 24th Schedule paragraph 35 of the 1959 Act and 23rd Schedule paragraph 23 of the 1980 Act.

Although parish councils have power to maintain footpaths and bridleways under section 43(1) of the Highways Act 1980 (formerly section 46 of the Act of 1959) such councils are not, and never have been, "highway authorities" within the meaning of any of the above mentioned enactments.

So much for the legal background. Asked whether the Parish Council had ever in fact carried out any repairs to highways, the answer was in the negative.

In these circumstances the claim of the Parish Council to ownership of the unit land must fail.

On this evidence I am not satisfied that any person is the owner of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.



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 2nd day of June 1987

Mati Rott.

Commons Commissioner