



COMMONS REGISTRATION ACT 1965

Reference No.45/U/176

In the Matter of the Recreation Allotment,
Sutton, Norton, Doncaster R.D., Yorkshire
West Riding

DECISION

This reference relates to the question of the ownership of land known as the Recreation Allotment, Sutton, Norton, Doncaster Rural District being the land comprised in the Land Section of Register Unit No.VG.140 in the Register of Town or Village Greens maintained by the West Riding 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 the Trustees of Sutton Charities claimed to be owners of the land in question and the Norton Parish Council said that the land is the property of the said Trustees and is administered by the Parish Council. No other person claimed to be the owner of the land or 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 Wakefield on 6 February 1974. At the hearing, the Trustees of the Sutton Charities (of which Mr. C. J. Bowes is one) were represented by Mr. Bowes their secretary, and Norton Parish Council were represented by Mr. Gordon Smith their clerk.

Mr. Bowes who has lived in Sutton for the last 20 years (he is 30 years of age) and is a member of the Parish Council, gave evidence.

The land ("the Unit Land"; according to the Register containing 3.063 acres) comprised in this Register Unit is north east of and near Sutton Village, on the southeast side of the Askern road. It is grass land enclosed partly by a barbed wire fence and partly by a hawthorn hedge. Occasionally it is used by the Village for recreational purposes; Mr. Bowes remembers that there used to be swings on it for children, but they got broken down and were never replaced.

Mr. Smith produced from the Parish Council records an Inclosure Award dated 23 August 1858 for the inclosure of the commons and commonable lands in the township of Sutton. This Award contained an allotment as follows:- "And I declare that I have set out and do hereby set out and allot unto the Churchwardens and Overseers of the Poor of the said Township of Sutton All that piece or parcel of Land numbered 36 on the said Map containing three acres and one perch, to be held by them or their successors in trust as a place for exercise and recreation for the Inhabitants of the said Township and neighbourhood And I direct that the fences on the North, Northwest and Southwest sides of such allotment shall from time to time be repaired and maintained by and at the expense of the Churchwardens and Overseers of the Poor of the said Township for the time being". From the Award



map (subscribed "SUTTON INCLOSURE Parishes of Campsall and Burgh Wallis), the Unit Land is easily identifiable with that described in the allotment above quoted.

Mr. Bowes produced an order of the Charity Commissioners dated 11 July 1939 relating to (1) the Charity known as Poor's Cottages, (2) "the Charity known as the ALLOTMENT FOR EXERCISE AND RECREATION, founded by Inclosure Award dated 23rd August 1858" and (3) the Charity of Jane Middleton exclusive of her Educational Foundation; and by which it was ordered that the powers of appointing three trustees of charity (1), two trustees of charity (2) and two trustees of charity (3), which were exercisable before 1 April 1938 by the former Parish Meeting of Sutton should thenceforth be exercisable by the Norton Parish Council.

Mr. Bowes explained that the Sutton Charities of which he is the secretary, number five, being the three to which the 1939 order related, the Educational Foundation of Jane Middleton mentioned in it and the Poores Allotments. In May 1971 he and Mr. D. A. Gill were appointed trustees of the Recreational Allotment Charity by a resolution of the Parish Council; his understanding is that in relation to this charity, there are and need only be two trustees, (now himself and Mr. Gill) and that for at least one of the other of the five charities, additional trustees are not necessary. However, he explained that in practice there were five active trustees (including himself and Mr. Gill) who acted together in the administration of all five charities.

Mr. Smith said (in effect):- The Parish Council had always assumed that the Trustees of the Sutton Charities were owners of the charity lands which they administered. The Parish Council administered other local charities but they regarded the Sutton charities as on their own; they did not wish to dispute the claim of the Trustees of the Sutton Charities to be the owners of the Unit Land.

The 1858 award was made under the Second Annual Inclosure Act 1854 (17 & 18 Vict. c. 48).

Apart from the 1939 Order, and the evidence above mentioned as to the trust declared by the above quoted allotment being always treated separate from other charities administered by the Parish Council, I would incline to the view that the Unit Land became vested in the Parish Council by the Local Government Act 1894 sections 5(2) (since repealed) and 6(1) (c) or by the Overseers Order 1927 (made under the Rating Valuation Act 1925). But the 1939 Order (expressed to be made under Article III of the County of York, West Riding Review Order 1938, of which I have no copy) proceeded on a basis inconsistent with the Unit Land having become vested in the Parish Council and accordingly I cannot I think now properly conclude (particularly having regard to the said evidence) that it is now so vested. And I am unable to conclude on the evidence of Mr. Bowes that he and Mr. Gill are now the owners; even if they are (as to which I feel some doubt) now the only managing trustees of the trusts declared by the allotment above quoted, it does not follow that the ownership (the legal estate in fee simple) is now in them. However, I am satisfied that the Unit Land is subject to this trust and that the trustees of the legal estate whoever they be are the owners; because a trust cannot fail merely because the trustees are not known I shall direct the West Riding County Council as registration authority to register the trustees of the charitable trust known as "the Allotment for Exercise and Recreation founded by the Campsall and Burgh Wallis (Sutton Common) Inclosure Award dated 23 August 1858, as owners of the land under section 8(2) of the Act of 1965.



-3-

If for any dealing with the land it becomes necessary to know certainly in whom the legal estate is vested an application can be made to the High Court or other appropriate authority to determine this or it may be that some action under section 37 of the Charities Act 1960 would be appropriate.

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 15th day of March 1974.

a. a. Baden Fuller

Commons Commissioner