



COMMONS REGISTRATION ACT 1965

Reference Nos.25/D/185
25/D/187

In the Matter of Sutton Staithe,
Sutton, Norfolk (No.2)

DECISION

These disputes relate to the registration at Entry No.1 in the Ownership section of Register Unit No.VG 30 in the Register of Town or Village Greens maintained by the former Norfolk County Council and are occasioned by Objection No.228B made by Sutton Hotels Ltd and noted in the Register on 11th November 1970 and the conflicting registration at Entry No.2 in the same section of the Register Unit.

I held a hearing for the purpose of inquiring into the disputes at Norwich on 24th April 1975. The hearing was attended by Major R.A.F.Kemp, Clerk of the Sutton Parish Council, the applicant for the registration, and by Mr Colin Lamb, of counsel, on behalf of the Objector and the Smallburgh Internal Drainage Board, the applicant for the conflicting registration.

The registration at Entry No.1 relates to the whole of the land comprised in the Register Unit and the registration at Entry No.2 relates to all except about a quarter of the area at its eastern end.

So far as is relevant for the purposes of these proceedings the history of the land comprised in the Register Unit begins with the Catfield and Sutton Inclosure and Drainage Act of 1802 (42 Geo.III,c.lxxiv). By that Act the lords of the manors of Sutton Insoken, Sutton Outsoken, and Catfield, the rectors of Catfield and Sutton, and each owner of 20 ac.of land to be drained by virtue of the Act were appointed Drainage Commissioners. By the Inclosure Award made 7th August 1808 the Inclosure Commissioners allotted to the Drainage Commissioners the land in question to be used as a public staithe (i.e. landing place) for the owners and occupiers of estates in the two parishes for the laying and depositing thereon of corn, manure or other things conveyed or intended to be conveyed to or from the river by means of a boat dike made under the powers of the Act.

The Drainage Commissioners appointed under the Act of 1802 became known as the Catfield Drainage Commissioners and remained in existence until their powers were abrogated by a Scheme confirmed by the East Norfolk Rivers (including the River Waveney) Catchment Board (Smallburgh Internal Drainage District) Order 1935 (S.R.& O.1936 No.157). Para.5(a) of the Scheme transferred to the Drainage Board all the property of (inter alia) the Catfield Drainage Commissioners.

There is thus a prima facie case for saying that the ownership of the whole of the land allotted to the Drainage Commissioners in 1808 has passed to the Drainage Board, although the Board only applied to be registered as the owner of part of the land. Major Kemp, however, relied upon the Tithe



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Apportionment Award for the parish of Sutton made in 1841, in which the whole of the land allotted to the Drainage Commissioners in 1808 appears as Plot No.89 with the entry "Sutton Town Land" in the owners' column and the entry "Inhabitants of Sutton" in the occupiers' column. This, Major Kemp contended, proves that the ownership was transferred from the Drainage Commissioners to the Vestry of the parish of Sutton at some time between 1808 and 1841. The next step, so Major Kemp argued, was that the land was transferred from the Vestry to the Parish Council by virtue of sections 6(1)(a) and 67 of the Local Government Act 1894.

This was not the view held by Major Kemp's predecessor as Clerk of the Parish Council, for on 11th December 1962 he wrote to the Clerk of the Drainage Board to ask whether the Board would be prepared to transfer the ownership of the staithe at Sutton to the Parish Council for a nominal sum and enclosed a copy of the relevant part of the Award of 1808. The negotiations for the purchase proved to be abortive, but on 12th September 1964 the Board demised to the Parish Council for one year and thereafter from year to year the land shown on the plan annexed to the lease. The land shown on the plan was not the whole of the land allotted to the Drainage Commissioners in 1808, but only the part comprised in the conflicting registration. This lease was terminated by the Board at the end of the first year, and the land is now held on a lease for 21 years granted by the Board to Mr G.M.Boaden on 26th September 1966. This lease contains a covenant by the tenant to allow the public access to the staithe at all times without the payment of any charge. It is not without interest that the then Clerk of the Parish Council protested against the granting of this lease, saying in a letter dated 2nd June 1966 that it was felt by the Parish Council "that the staithe should remain under lease to the Parish Council and not to an individual". Furthermore, in a letter dated 14th September 1966 the Clerk stated "the ownership of Sutton Staithe has never been disputed by Sutton Parish Council in letters sent about the transfer of the lease to a parishioner". The claim that the ownership of the staithe had passed from the Drainage Commissioners to "Sutton Town Lands" was first made in a letter dated 22nd February 1967 written by Major Kemp after he had become Clerk of the Parish Council.

Mr Lamb contended that in these circumstances the Parish Council is estopped from denying that the Board is the owner of the land the subject of the conflicting registration. Estoppel is a rule of evidence under which in certain circumstances one is not allowed to aver that a fact is otherwise than one represented it to be. It does not appear to me that this case is one to which the doctrine of estoppel in pais is applicable, because what is in dispute here is ownership, which is a question of law and not of fact. However, there is a closely related rule which, in my view, does debar the Parish Council from contesting the Board's title. This rule was very conveniently stated by Honymen J. in Smith v. Baker (1873), L.R.8 c.P.350, at p.357, as follows:-

"A man cannot at the same time blow hot and cold. He cannot say at one time that the transaction is valid, and thereby claim some advantage, to which he could only be entitled on the footing that it is valid, and at another time say that it is void for the purpose of securing some further advantage".



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Here the Parish Council took the lease of 12th September 1964 on the footing that the Board was the owner of the land. Now Major Kemp is saying that that lease was one which the Board had no power to grant. What is more the Parish Council was still saying that the Board was entitled to lease the land at the time when the lease of 26th September 1966 was granted to Mr Boaden and Major Kemp is now seeking to prejudice the position of Mr Boaden who took the lease on that footing. I have therefore come to the conclusion that my proper course is to refuse to confirm the registration so far as the land the subject of the conflicting registration is concerned.

This leaves for consideration the remainder of the land comprised in the Register Unit. This, in its turn, falls to be considered in two parts. The southern part has buildings on it. In his letter dated 14th September 1966 already referred to the then Clerk of the Parish Council said: "We have knowledge that the sheds standing on Sutton Staithe have been transferred from one owner to another as freehold, could it be that the Drainage Board have sold this plot in the past?". To this the Deputy Clerk of the Board replied on 19th September 1966: "As these buildings are at least 60 years old, the freehold must have been sold when these were built, for there is nothing on record to show that this has taken place in more recent years".

The buildings referred to in these letters and their curtilage were the subject of a conveyance made 17th March 1969 between (1) Staithe Hotels Ltd (2) Bryant Properties Ltd. No earlier documents of title were produced, but I was informed by Mr Boaden that Staithe Hotels Ltd had purchased this property from a Mr J.H. Linford in 1963, and Major Kemp produced a draft conveyance of the property dated 1959 between (1) Harold George Withers (2) John Harry Linford.

I would not be prepared on this evidence to hold that Staithe Hotels Ltd had a good title to this property on 4th January 1968, the date of the registration the subject of these disputes. That, however, is not the matter now in issue. What I have to determine is whether the Parish Council had a good title at that date. In the light of all the evidence before me I am far from satisfied as to this. If the Parish Council was the owner, it is remarkable that it took no steps to assert its title when, as stated in the letter of 14th September 1966, those in charge of the Council's affairs had knowledge that the property had been transferred from one owner to another as freehold. I shall therefore refuse to confirm the registration so far as it relates to the land which has been the subject of the conveyances. This means, of course, that there will have to be a reference under section 8 of the Commons Registration Act 1965. It will then be open to the Parish Council and Bryant Properties Ltd to endeavour to produce more cogent evidence than was produced at this hearing.

So far as the remaining part of the land not the subject of the conflicting registration is concerned no evidence was produced by either the Objector or the Drainage Board. I shall therefore treat this part of the registration as being uncontested.

For these reasons I confirm the registration with the following modifications:- namely the exclusion of the land comprised in the conflicting



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registration and the land the subject of the 1969 conveyance.

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 ~~12th~~ day of May 1975

A handwritten signature in cursive script, appearing to read 'G. Lapin', with a horizontal line underneath.

Chief Commons Commissioner