



COMMONS REGISTRATION ACT 1965

Reference No.45/U/76

In the Matter of Gravel Pit,
High Eggborough, Osgoldcross R.D.,
Yorkshire West Riding

DECISION

This reference relates to the question of the ownership of land known as Gravel Pit, High Eggborough, Osgoldcross Rural District being the land comprised in the Land Section of Register Unit No.CL.204 in the Register of Common Land 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 Eggborough 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 Wakefield on 5 February 1974. At the hearing, Eggborough Parish Council were represented by Mr. J. Hemingway, their clerk.

Mr. Hemingway, who was born in the adjoining village of Whitley, who has lived there ever since and who has been clerk of the Eggborough Parish Council for about 30 years gave evidence.

He produced from the Parish Council records an Inclosure Award dated 20 January 1803 and made under the Kellington Inclosure Act 1800 for inclosing the hamlets of High Egbrough, Low Egbrough, Sherwood, Hutgreen and Tranmoor (40 Geo. 3 c.xlv). The Award contained an allotment in these words:- "and we do appoint and award for the purpose of getting Gravel and Stone and other materials for the repairs of the several public Highways within the said vills or hamlets of High Egbrough, Low Egbrough, Sherwood, Hutgreen and Tranmoor aforesaid All that piece or parcel of Land as the same is now staked or set out ditched or bounded containing one rood and 20 perches lying in the said middle Field adjoining upon the said Snaith Road on or towards the North upon Lands hereinafter awarded to Henry Norton on or towards the south and west and upon Lands herein awarded to Bircham Milford esquire on or towards the East also all that other piece or parcel of land as the same is now staked or set out ditched or bounded containing two roods and thirty three perches lying in the said Low Moor in the said Township of High Egbrough, adjoining upon the said Low Moor Road on or towards the East in the gravel Pit Road on or towards the north upon an old Inclosure belonging to the said Bircham Milford and two cottage Gardens formerly an inclosure from the waste on or towards the west and upon the said two cottage Gardens and drawing to a point adjoining the said Low Moor Road on or towards the south".

The land ("the Unit Land": according to the Register containing 0.550 acres) is situate at the road junction in High Eggborough which is just three farms; it is a not very deep hollow railed on the roadside, now covered with grass and weeds.



-2-

Mr. Hemingway said (in effect):- He had never seen anybody take anything out of it since he was a boy. The Parish Council had never done anything to it and the Rural District Council had never used it. Nobody has used it. It might be of value to a gravel merchant.

By the 1800 Act it is " ... Enacted That the said Commissioner shall ... set out and appoint all such public and private Roads and Ways, Places for getting Gravel, Stone and other Materials for the Repair of the several public Highways within the said Vills and Hamlets ... as they shall judge proper convenient or necessary ... And Enacted that ... the Herbage or produce of the said Roads or Ways which shall be fenced on either side as aforesaid and also the Herbage of the Ground so to be set out as aforesaid for getting Gravel, Stone and Materials for the Repair of the Public Highways as aforesaid shall be vested in the said Surveyor or Surveyors (of Highways).. and (they) shall let to the best Bidder or Bidders the said Herbage and produce to be mown or to be eaten or grazed with cattle and the Rents and Profits (in both cases) shall be applied towards the Repair of the said several Highways within the said Vills or Hamlets and shall be accounted for by the said Surveyor or Surveyors ..."

There is nothing in the Act expressly vesting the ownership of the places or grounds so set out for getting gravel in the Lord of the Manor or anyone else. I infer that in 1800 it never occurred to anyone that ownership subject to a right to get the gravel and subject to a right to let the herbage could be of any importance or value. In my view the Unit Land could in 1819 properly be regarded as "belonging" to the parish in the "popular sense of the expression" within the words used in the judgment in Doe v Terry (1855) 4 A. & E. 274 at page 281 (cited in Haigh v West 1893 2 Q.B. 19 at page 31), so that the ownership was by section 17 of the Poor Relief Act 1819 vested in the churchwardens and overseers. Although it follows from this view that the Unit Land is "parish property" within the definition in section 305 of the Local Government Act 1953 (so that the Parish is concerned with it, see section 166), it does not I think follow that the legal estate in fee simple (with which I am concerned, see section 22 of the 1965 Act) is in the Parish Council.

The issue of ownership seems to me to be between the three concerned local authorities and nobody else. Mr. Pickersgill, who was attending the proceedings as representing the County Council as registration authority, said that the County Council made no claim. While I think it might have been argued that the Unit Land, when the Local Government Act 1894 came into operation had somehow become vested in the highway authority, and accordingly under sections 25 and 67 became vested in the Rural District Council, no representative of such Council attended. By the Overseers Order 1927, the property of the churchwardens and overseers was transferred to the appropriate parish Council, and accordingly there being no contrary argument, I can I think properly conclude that the ownership of the Unit Land has so passed.

For these reasons I am satisfied that the Parish Council is the owner of the land, and I shall accordingly direct the West Riding County Council, as registration authority to register Eggborough Parish Council as the owner of the land under section 8(2) of the Act of 1965.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to





-3-

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 8th day of March 1974.
a. a. Baden Fuller

Commons Commissioner