



COMMONS REGISTRATION ACT 1965

Reference Nos. 33/U/10
33/U/11

In the Matters of (1) Longsdon Green
Common and (2) the Waste Land at
Nether Stanslow, both in Longsdon,
Leek R.D., Staffordshire

DECISION

These references relate to the question of the ownership of lands known as (1) Longsdon Green Common on the west side of Devils Lane and (2) the Waste Land on the north west side of County Road A.53 at Nether Stanslow, both in Longsdon, Leek Rural District being the lands comprised in the Land Section of Register Unit Nos. CL.18 and CL.19 in the Register of Common Land maintained by the Staffordshire 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 these references no person claimed to be the freehold owner of the lands in question and no person claimed to have information as to their ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Stafford on 22 May 1973. The hearing was attended by Longsdon Parish Council who were represented by Mr. G. Shufflebotham, a member of the Council. He asked me to hear both these references together.

Mr. Shufflebotham who was born in 1898, has lived all his life in or within a mile of the parish of Longsdon, was clerk of the Council for 21 years until about 1970 and for all that time has been and still is a member of the Council, gave evidence. He produced an old book containing a copy of the Horton Inclosure Act 1808 and of the Award dated 28 August 1815 and made under it.

By the 1808 Act (48 Geo. 3. cap cxxxii), after reciting: "Whereas there are within the Manor of Horton, in which are situate the Parish of Horton and the several Townships of Endon, Longsdon and Stanley in the parish of Leek and the Township of Bagnall in the parish of Stoke-on-Trent certain Commons and Waste Grounds containing in the whole 1600 acres or thereabouts, it was thereby enacted (section XVII) that "the said Commissioner shall and he is hereby authorised and empowered after he shall have set out and appointed the necessary public ... Highways ..., to assign set out and allot such and so many Plots and Parcels of the said Common and Waste Grounds as he shall think proper and necessary to be used for the Purpose of public Watering Places for Cattle or for digging and getting stones, gravel and other Material for the making or repairing of the Bridges Highways and Roads within the said Manor and for the use of the Proprietors of Estates within the same Manor and their Tenants for the time being for and in respect of their Estates within the same; and that the Herbage growing and renewing in and upon the Lands so to be set out as aforesaid shall be vested in such Person or Persons and applied to such uses as the said Commissioner shall by his Award direct".

By the 1815 Award, under the heading "ALLOTMENT for watering places for Cattle - getting Stone, etc" were allotted numerous pieces of land, two of which were allotted by these words:- "Plan V. No.375. Two Roods thirteen perches adjoining Horsebridge Road near Cotham Park bounded ... " and "Plan V. No.465. Two Roods adjoining the



Newcastle Turnpike opposite Stanlow Folly bounded ..." After the allotments so headed, the Award continued: "And I do hereby direct and appoint that the several Allotments so set out by me as aforesaid except .. are for the purpose of digging and getting Stone Gravel and other materials for the making or repairing the Bridges Highways and Roads within the said Manor and for the use of the Proprietors of Estates within the same Manor and their servants for the time being for and in respect of their Estates within the same". The Award, in respect of the two pieces of land so allotted contained no direction as to the vesting of the herbage.

Mr. Wallis who was representing the County Council as registration authority, arranged for the original of the 1815 Award to be produced from the County Record Office. Mr. Shufflebotham from the plan annexed to the Award identified Register Unit CL.18 with that shown on the Award map as "375 Stone Quarry. O. 2. 13." and Register Unit CL.19 with that shown on the Award map as "465. Stone Quarry. O. 2. O."

Mr. Shufflebotham said:- Unit CL.18 is known locally as "Longsdon Green Common" and has on it some blackberry bushes and mountain ash and other trees. Unit CL.19 is known locally as "the Waste": part of it was taken some years ago to widen the road; the remainder is now about 9 or 10 feet above road level and is surrounded by a wall.

As a general rule, a right cannot be granted to a fluctuating body of persons such as the owners of land within a particular area to take without limit the profits (e.g. stone) of a piece of land (e.g. a quarry); as an exception to this general rule, land may be validly granted upon trust for the inhabitants or a particular class of the inhabitants of an area, see Goodman v Saltash (1882) 7 A.C.632 and compare Beckett v Lyons 1967 1. Ch.449. I construe the above quoted allotments as creating such a charitable trust, see re Christ Church Inclosure Act (1888) 38 Ch. D.520.

The allotment does not expressly grant the ownership to any person as trustee, nor does it make it clear in whom the herbage (not awarded) and the ownership rights other than getting "stone gravel and other materials" shall belong beneficially. Having regard to sections XX and XLIII of the 1808 Act, it seems to me that the whole ownership (apart from mines particularly mentioned in section XLIII) was subjected to the charitable trust to the entire exclusion of any beneficial interest in the Lord of the Manor; see Simcoe v Pethick 1898 2.Q.B.555 which is I think nearer to this case than Attorney-General v Meyrick 1893 A.C.1.

Although under the direction and appointment above quoted all the pieces of land to which it is applicable are stated to be allotted for purposes and uses "within" the Manor, at the time the Manor included (as the recital in the 1808 Act shows) the parish of Horton and four townships, ~~it~~ may be that in 1815 the circumstances were such that persons needing "stone gravel or other materials" could not sensibly want to go outside the parish or township where the need existed, and that the Award should therefore be construed accordingly. So construed, it would I think follow that the lands now under consideration under the Award belonged to the parish or township in the popular sense of the expression and so became vested in the appropriate Churchwarden and Overseers; for the reasons set out in my decision, re Gravel Pits reference 1/U/24 dated 15 March 1973 and based on section 17 of the Poor Relief Act 1819 (59 Geo. 3 cap. 12), Doe v Hiley (1830) 10.B. & C.885, Doe v Terry (1835) 4.A. & E.274 at p.281 and Haigh v West 1893 2.Q.B.19 at p.31, and Wylde v Silver 1963 1.Ch.243 at p.271.



-3-

There was no evidence as to how the parish of Horton or the townships mentioned in the 1808 Act had for local government purposes been subsequently grouped from time to time; however having regard to the absence of any claim consequent on the advertisement of these proceedings by any local authority other than the Longsdon Parish Council, I conclude that these lands if they were ever vested in the appropriate Churchwardens and Overseers are now owned by the Parish Council.

So the result of these present proceedings depends on the circumstances as they existed in 1815. Of these circumstances I have no direct evidence. However Mr. Shufflebotham clearly thought that these lands now belong to the Parish Council. Having regard to his long residence in the Parish and his great concern with local affairs, I can I think infer that the circumstances in 1815 were (or is I think likely) such that I ought to construe the Award as vesting these lands in the parish or township in which they were then situated.

For the above reasons I am satisfied that Longsdon Parish Council is the owner of these lands and I shall accordingly direct the Staffordshire County Council as registration authority to register Longsdon Parish Council as the owner of the lands under section 8(2) of the 1965 Act.

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

16th

day of

July

1973.

a. a. Baden Fuller

Commons Commissioner