COMMONS REGISTRATION ACT 1965

Reference Number
206/D/638

In the Matter of Grade Ruan Primary School Playground GRADE RUAN KERRIER D

DECISION

This dispute relates to the registration at Entry No 1 in the Land Section of Register Unit No.VG.687 in the Register of Town or Village Greens maintained by the Cornwall County Council and is occasioned by Objection No.X718 made by the Trustees of Grade Ruan Church of England School and noted in the Register on 23 February 1972.

I held a hearing for the purpose of inquiring into the dispute at Truro on 14 March 1979.

Mr P H London of Messrs. Randle Thomas and Thomas appeared for the Grade Ruan Parish Council, Mr R W Money of Messrs.Sitwell Money and Murdock appeared on behalf of the School Trustees, Mr D M Gill appeared for the Cornwall County Council and Mr J C T Trewin appeared for the Kerrier District Council.

In 1958 the Trewithen Estate conveyed the land in question to the Minister and Church Wardens of Ruan Minor for educational purposes pursuant to the provisions of Section 2 of the School Sites Act 1841.

Section 2 aforesaid provides that when the land ceases to be used for the purposes of the Act it shall thereupon immediately revert to and become portion of the estate or manor from which it came and be held in fee simple as if the Act had not been passed, anything therein contained to the contrary notwithstanding.

A school was built on the site and the unit land is the school playground surrounding the school. There is the possibility that at some time in the future the school, which is currently operational, may be closed down, and the parish council wishes to maintain the playground as an amenity for the parish if and when that event occurs and has therefore registered the playground as a village green.

The argument put forward on behalf of the Parish Council was to the effect that the land was a village green in 1858 and therefore that if and when it reverts to the Estate it should have the status of a village green which it had in 1858.

Mr M E Fletcher the Chairman of the Parish Council gave evidence that the land was described on the Tithe Map of 1841 as roadside waste, it was in the centre of the village adjoining the church, the blacksmiths and a public house, now the Post Office. He said the gates to the playground are never closed, and that there is free access to it and that children, but not adults, play there even when the school is closed.

Mr Trewin gave evidence that he is aged 70 and came to the parish at the age of 3 and his mother was born in the parish. He said the playground was grass until about 20 years ago.

When a macadam surface was put down any function was held on the land and the young men and women used to meet there, bicycles and ponys were ridden and a traditional game called "rings" was played there, also unorganised games of football, after 1914/18 war, the estate gave 2½ acres of ground to the parish for the purpose of a recreation ground.

The Rev D A V Holyer who has been Rector of the Parish for 14 years gave evidence and said the headmaster allows play out of school hours and gives his permission to use the ground for activities of his clubs, and that no adults use the land except that there is a right of way.

I can only confirm the registration in the Land Section if the land falls within one of the three alternative definitions of village greens set out in Section 22 of the Commons Registration Act 1965.

The only relevant definition in the instant case is land on which the inhabitants of any locality have indulged in lawful sports or pastimes as of right for not less than 20 years"

The Court of Appeal in New Windsor Corporation v Mellor 1975 3 WLR 25 decided that the 2 year period is "20 years before the passing of the 1965 Act.

In my view even if the inhabitants of the Parish have used the land during the period 1945/65 for lawful sports and pastimes such user has been by permission of the headmaster as the agent of the school trustees and not as of right. Even if the inhabitants had rights in 1858 they were by virtue of section 2 aforesaid "barred and divested" and any use of the land subsequent to 1858 cannot be regarded as the continued exercise of rights which existed prior to 1858. I futher take the view that the evidence does not establish that the inhabitants as a class have engaged in lawful sports and pastimes on the land during the 20 year period.

The existence of an alternative recreation ground throughout this period confirms me in the view.

It follows from what I have said above that I have come to the conclusion that the land is not now a village green and that I must refuse to confirm the Registration.

If the land was a Village Green in 1858 and it ~~records~~ reverts to the Estate as such "as if the Schools Sites Act 1841 had not been passed, then it will become a village green when that event occurs and the Parish Council may be able to procure an amendment of the Register Under Section 13 of the Act of 1965. In saying this I am not to be thought to be expressing any view as to the result of any application for the amendment of the Register, I am certainly not satisfied that on the evidence given before me that the land was a village green in 1858. The question does not arise for consideration at this stage and I would certainly not decide it without giving the Estate an opportunity to be heard.

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 10th day of April 1979

L. A. Leffe

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Commons Commissioner