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The Whitmey Case

Full name of case

R on the application of Whitmey v Commons Commissioners (Court of Appeal, 2004)

Case reference

[2004] EWCA Civ 951

Summary

The judges concluded that the commons commissioners have no jurisdiction for registering greens in a dispute arising under section 13 of the Commons Registration Act 1965

Issues considered

Christopher Whitmey, a trustee of the Hereford Diocesan Board of Finance, brought the action in a personal capacity following Stephen Tunnicliffe's application to Shropshire County Council to register the board's land as a village green.

Mr Whitmey contended that, when registration is opposed, it should be referred to the commons commissioners, and that registration authorities do not have jurisdiction to decide disputed applications.

The 1965 act sets out the system for initial registration, which ended on 2 January 1970. If an objection was made, the registration was referred to a commons commissioner (section 5(5), (6), (7)). However, the judges agreed that section 5(7) applies only to objections to the registration of land under section 5, ie the initial registration, and not to objections to applications under section 13 (where the land has since become a green).

The court was asked to decide whether the registration authority has the power to decide disputes. Lady Justice Arden, giving the leading judgment, confirmed that there are three ways in which disputes under section 13 can be determined.

1. An application to the court for a declaration that land is or is not a village green.
2. The registration authority can itself determine the matter.
3. Following registration, a dissatisfied party can apply to the court for rectification of the register under section 14(b) of the 1965 act.

The registration authority is not empowered by statute to hold a hearing, but it has various powers under section 111 of the Local Government Act 1972 which would allow it to call an inquiry. In the event of a serious dispute, an authority making a determination should proceed only after receiving the report of an independent legal expert following a non-statutory inquiry.

Mr Whitmey also sought advice on whether the procedure violated article 6 of the Convention of Human Rights. This states that ‘in the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...’. The court held that there was no breach of article 6, as a subsequent application to the court, by judicial review, was not prejudiced. (*R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295).

Commentary

This case confirms that registration authorities have powers to determine town and village green applications.