CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44302/02
by J.A. PYE (OXFORD) LTD and J.A. PYE (OXFORD) LAND LTD
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 8 June 2004 as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 17 December 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the parties' oral submissions at the hearing on 8 June 2004,

Having deliberated, decides as follows:

THE FACTS

The applicants, J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd, are companies incorporated in the United Kingdom. They are represented before the Court by Mr P. Lowe, a lawyer practising in Oxford with Darbys

Solicitors. The Government are represented by their Agent, Ms E Willmot, of the Foreign and Commonwealth Office, London.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The second applicant company is the registered owner of a plot of 23 hectares of agricultural land in Berkshire. The first applicant company was its predecessor in title. The owners of a property adjacent to the land, Mr. and Mrs. Graham ("the Grahams") occupied the land under a grazing agreement until 31 December 1983. On 30 December 1983 a chartered surveyor acting for the applicants wrote to the Grahams noting that the grazing agreement was about to expire and requiring them to vacate the land. In January 1984 the applicants refused a request for a further grazing agreement for 1984 because they anticipated seeking planning permission for the development of all or part of the land and considered that continued grazing might damage the prospects of obtaining such permission.

Notwithstanding the requirement to vacate the land at the expiry of the 1983 agreement, the Grahams remained in occupation at all times, continuing to use it for grazing. No request to vacate the land or to pay for the grazing which was taking place was made. If it had been, the evidence was that the Grahams would happily have paid.

In June 1984 an agreement was reached whereby the applicants agreed to sell to the Grahams the standing crop of grass on the land for £1, 100. The cut was completed by 31 August 1984. In December 1984 an inquiry was made of the applicants as to whether the Grahams could take another cut of hay or be granted a further grazing agreement. No reply to this letter or to subsequent letters sent in May 1985 was received from the applicants and thereafter the Grahams made no further attempt to contact the applicants. From September 1984 onwards until 1999 the Grahams continued to use the whole of the disputed land for farming without the permission of the applicants.

In 1997, Mr Graham registered cautions at the Land Registry against the applicant companies' title on the ground that he had obtained title by adverse possession.

On 30 April 1998 the applicant companies issued an originating summons in the High Court seeking cancellation of the cautions. On 20 January 1999 the applicant companies issued further proceedings seeking possession of the disputed land.

The Grahams challenged the applicant companies' claims under the Limitation Act 1980 ("the 1980 Act") which provides that a person cannot bring an action to recover any land after the expiration of 12 years of adverse possession by another. They also relied on the Land Registration

Act 1925, which applied at the relevant time and which provided that, after the expiry of the 12-year period, the registered proprietor is deemed to hold the land in trust for the squatter.

Judgment was given in favour of the Grahams on 4 February 2000. The High Court held that since the Grahams enjoyed factual possession of the land from January 1984, and adverse possession took effect from September 1984, the applicant companies' title was extinguished pursuant to the 1980 Act, and the Grahams were entitled to be registered as proprietors of the land.

The applicant companies appealed and on 6 February 2001, the Court of Appeal reversed the High Court decision on the ground that the Grahams did not have the necessary intention to possess the land, and the applicant companies were therefore not "dispossessed" of it within the meaning of the 1980 Act.

The Grahams appealed to the House of Lords, which, on 4 July 2002, allowed their appeal and restored the order of the High Court. Their Lordships held that the Grahams did have "possession" of the land in the ordinary sense of the word, and therefore the applicant companies had been "dispossessed" of it within the meaning of the 1980 Act.

Lord Bingham of Cornhill made the following statement in the course of his judgment:

> "[The Grahams] sought rights to graze or cut grass on the land after the summer of 1984, and were quite prepared to pay. When Pye failed to respond they did what any other farmer in their position would have done: they continued to farm the land. They were not at fault. But the result of Pye's inaction was that they enjoyed the full use of the land without payment for 12 years. As if that were not gain enough, they are then rewarded by obtaining title to this considerable area of valuable land without any obligation to compensate the former owner in any way at all. In the case of unregistered land, and in the days before registration became the norm, such a result could no doubt be justified as avoiding protracted uncertainty where the title to land lay. But where land is registered it is difficult to see any justification for a legal rule which compels such an apparently unjust result, and even harder to see why the party gaining title should not be required to pay some compensation at least to the party losing it. It is reassuring to learn that the Land Registration Act 2002 has addressed the risk that a registered owner may lose his title through inadvertence. But the main provisions of that Act have not yet been brought into effect, and even if they had it would not assist Pye, whose title had been lost before the passing of the Act. While I am satisfied that the appeal must be allowed for the reasons given by my noble and learned friend, this is a conclusion which I (like the judge [Neuberger J]...) 'arrive at with no enthusiasm'." [*JA Pye (Oxford) Ltd and another v Graham and another* [2000] 3 All ER 865, at 867]

The question whether the result was incompatible with the applicants' rights under Article 1 of Protocol No. 1 to the Convention was not pursued before the House of Lords, it being conceded that the Human Rights Act 1998, which gave effect to the Convention rights, had no retrospective

effect. However, in his judgment Lord Hope of Craighead observed that the question under the Convention:

> "....is not an easy one, as one would have expected the law - in the context of a statutory regime where compensation is not available - to lean in favour of the protection of a registered proprietor against the actions of persons who cannot show a competing title on the register. Fortunately.....a much more rigorous regime has now been enacted in Schedule 6 to the 2002 Act. Its effect will be to make it much harder for a squatter who is in possession of registered land to obtain title against the wishes of the proprietor. The unfairness in the old regime which this case has demonstrated lies not in the absence of compensation, although that is an important factor, but in the lack of safeguards against oversight or inadvertence on the part of the registered proprietor."

B. Relevant domestic law and practice

Section 15 of the Limitation Act 1980 provides:

> "(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person...
>
> (6) Part I of Schedule 1 to this Act contains provisions for determining the date of accrual of rights of action to recover land in the cases there mentioned."

Paragraph 1 of Schedule 1 provides:

> "Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action shall be treated as having accrued on the date of the dispossession or discontinuance."

In the case of unregistered land, section 17 of the 1980 Act provides that, on the expiration of the limitation period regulating the recovery of land, the title of the paper owner is extinguished. In the case of registered land, section 75(1) of the Land Registration Act 1925 provides that, on the expiry of the limitation period the title is not extinguished but the registered proprietor is deemed to hold the land thereafter in trust for the squatter.

The Law Reform Committee considered the law on limitation periods in its report of 1977 (Cmnd 6923). It commented negatively on the courts' practice of granting an implied licence to the would-be adverse possessor, which had the effect of stopping time running against the owner, and proposed no change to the existing limitation periods.

A Law Commission Consultation Paper on Limitation of Actions in 1988 (Law Com 151) gave a number of general policy aims of the law on limitations. The Consultation Paper noted that defendants have a legitimate interest in having cases brought to court reasonably promptly as evidence may not be available indefinitely, and because defendants should be able to rely on their assumed entitlement to enjoy an unchallenged right. The State, too, has an interest in ensuring that claims are made and determined within a

reasonable time in order to deliver a fair trial, and as guarantor of legal certainty. Finally, limitation periods were seen to have a salutary effect on plaintiffs in encouraging them to bring claims reasonably promptly.

A separate Law Commission Consultation Paper on land registration in 1998 (prepared with the Land Registry; Law Com 254) noted that although the original intention of the system of land registration was to apply the principles of unregistered land to a registered format, there were certain areas where this was not wholly true. One example given was the position of the rights of adverse possessors (section 75(1) of the Land Registration Act 1925 was referred to). The Consultation Paper set out four particularly cogent reasons often given for the law on adverse possession: (i) Because it is part of the law on limitation of actions, and protects defendants from stale claims and encourages plaintiffs not to sleep on their rights. (ii) Because if land and its ownership are out of kilter, the land may become unmarketable. (iii) Because in case of mistake the innocent but mistaken squatter of land may have incurred expenditure. (iv) Because it facilitates and cheapens investigation of title to land. The Law Commission accepted this reason as being very strong for unregistered land, but considered that for registered land, where title depends on the contents of the register rather than possession, it was not applicable.

The Law Commission proposed, provisionally, that the system of adverse possession as it applied to registered land should be recast to reflect the principles of title registration, and that it should be limited to very few, exceptional cases.

Two Reports, on Limitation of Actions (Law Com 270) and on registered land (Law Com 271), followed the Consultation Papers, and were published in July 2001.

The Law Commission Report on Limitation of Actions recommended that the general limitation period for actions in respect of land should be ten years. It added that if the proposals made on registered land in Law Com 254 were accepted, the proposal would relate only to interests in unregistered land (and unregistrable interests in registered land [Future interests, such as the reversion of a lease, in respect of which the limitation period began to run only when the interest fell into possession]).

The Report on registered land (Law Com 271) proposed that a squatter should be able to apply to be registered as proprietor after 10 years' adverse possession, and that the registered proprietor should be notified of that application. If the proprietor objected to the registration, the application by the adverse possessor for registration would be rejected. The registered proprietor would then be required to regularise the position (for example by evicting the squatter) within two years, failing which the squatter would be entitled to be registered as proprietor.

The Land Registration Act 2002, which does not have retroactive effect, implemented the proposals in Law Com 271.

COMPLAINT

The applicant companies complain under Article 1 of Protocol No. 1 to the Convention that the taking of their land – valued for the purposes of the present application at £21 million - by operation of law breaches the fair balance principle and so infringes their rights under the provision.

The applicant companies contend that there is no justification for the loss of their rights in this instance.

THE LAW

The applicant companies allege a violation of Article 1 of Protocol No. 1 to the Convention through the acceptance, by the courts, of the Grahams' claims to adverse possession of 23 hectares of agricultural land in Berkshire.

Article 1 of Protocol No. 1 to the Convention provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government note that the applicant companies bought the land in question between 1975 and 1977, when there was no doubt as to the content of the law of adverse possession. The applicant companies thus acquired their interest in the land subject to the pre-existing legal regime, which included the risk of losing it after 12 years' adverse possession by another. The application of that law in the present case was no more than the due operation of the pre-existing national legal regime, and not such as to engage Article 1 of Protocol No. 1.

The Government submit that, even if Article 1 of Protocol No. 1 is engaged, it has not been violated. They first underline that the interference with the applicant companies' peaceful enjoyment of the land was not encouraged or discouraged by the State – it resulted from the Grahams' action and the applicant companies' inaction. The applicant companies' attempt to end the interference was met with a defence based on the 1980 Act, and the operation of the Act was a limitation of the applicant companies' rights of access to court, not an interference with their property rights. The present case should therefore be considered in the context of Article 6 of the Convention, rather than Article 1 of Protocol No. 1.

In any event, the Government further submit that as the interference with the applicant companies' peaceful enjoyment of their possessions was the result of the Grahams' actions, and not the State's, there can be no question of a breach of primary, negative obligations by the State. At most, the State's positive obligations were at issue. However, the State is not required to protect a professional property developer from the entirely avoidable consequences of his failing to enter into contractual arrangements (in this case, for example, a discontinuous series of grazing agreements with the Grahams).

Assuming Article 1 of Protocol No. 1 to be engaged, the Government submit that broadly the same test should be applied for the compatibility with the Convention of limitation periods under that provision as under Article 6. In the application of such a test, the Government contend that the limitations pursued a legitimate objective, namely, the public interest in preventing stale claims being brought before the courts, and in ensuring that the reality of unopposed occupation of land and its legal ownership coincide. The Government further claim that a wide margin of appreciation is allowed to the State in determining the proportionality of a measure, and in that context they note that: at twelve years, the limitation period is long; the applicant companies could have brought an action against the Grahams at any time during that period; the limitation period would have been stopped if the applicant companies had obtained a written acknowledgement of their ownership from the Grahams; the applicant companies had failed to respond to correspondence from the Grahams and had failed to take any steps whatever to assert their ownership for well over 12 years, and the applicant companies must have been aware of the general effect of section 15 of the 1980 Act. The Government also note that a substantial amount of time and study has been devoted to achieving the right balance in matters of limitation periods, and the mere fact that the 2002 Act has modified the position does not render the previous legislation incompatible with Article 1 of Protocol No. 1. As to the relevance of compensation, the Government repeat that they did not benefit from the operation of the law on limitation periods in the present case, and they add that even where an interference involves the complete loss of a person's economic interest in an asset for the benefit of the State, an absence of compensation may still be compatible with Article 1 (*Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, Series A no. 306-B, §§ 66-74).

Finally, the Government note that title can be obtained by adverse possession in a number of other jurisdictions, and that in no case is compensation paid to the displaced former owner. They refer specifically to the Northern Irish, Scottish, Irish, Hungarian, Polish, Swedish, Dutch, Spanish, German and French jurisdictions.

The applicant companies contend that Article 1 of Protocol No. 1 clearly applies to the present case. They underline that the cumulative effect of the

Limitation Act 1980 and the Land Registration Act 1925 is to extinguish the title of the owner of the land in favour of the person who has established adverse possession: the legislation does not merely limit the right of access to court. As to the Government's contention that the applicant companies held the land subject to the operation of the Limitation Acts, the applicant companies do not accept that a State should be able to apply a law which provides for the taking of property and handing it over to another, free from the fair balance test of Article 1 of Protocol No. 1, simply because the law was in existence when the property was acquired.

The applicant companies do not accept that their inaction was responsible for the taking of the land: the land was taken by operation of the 1980 Act and the 1925 Act. The courts' decisions applying those Acts constituted the State's interference with the applicant companies' enjoyment of their possessions, and that interference is in breach of the negative obligation under Article 1 of Protocol No. 1. They refer to comments made by judges in the case and comments of the Law Commission and the Land Registry to the effect that the law should be changed. In addition, the applicant companies consider that the objectives regularly given for the limitation legislation are not satisfactory. They say that where land is registered, there is no uncertainty of ownership and no justification for depriving somebody of his title simply because he has not objected to somebody else using his land. They see no public benefit in transferring land to persons in adverse possession in circumstances such as the present.

The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President