Claim no.: CA-2022-001952

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM KBD

Between

MR JAMES KNAGGS

Appellant

(AND FOUR CATEGORIES OF PERSONS UNKNOWN AND OTHERS)

and

THE SECRETARY OF STATE FOR TRANSPORT

HIGH SPEED TWO (HS2) LIMITED

Respondents

RESPONDENTS' PD RESPONSE TO PTA APPLICATION

GROUNDS

1. The Appellant submits that the learned judge erred in law:

   i. in concluding that HS2 had an immediate right to **possession** of the entirety of the land subject to the order capable of founding a claim in trespass.

   ii. in concluding that the Claimants may rely on rights under **Article 1 of Protocol 1** ECHR.

   iii. in defining the prohibited conduct in the injunction Order:

   a) By reference to a legal cause of action
   b) By reference to vague/imprecise terms such as '**slow walking'**
   c) Disproportionately

   iv. reached a conclusion no reasonable judge could make in finding that the service provisions in the directions order of 28.04.22 and the draft injunction order are sufficient to bring the proceedings to the attention of all those affected.

RESPONSE

[i] Possession

2. In her First Witness Statement, Julie Dilcock said [**Supplementary Bundle Tab 2, §33**] that HS2 has served the requisite notices under the HS2 Acts and is entitled to temporary possession of that part of the HS2 land coloured green pursuant to section 15 and schedule 16 of the Phase One Act and section 13 and schedule 15 of the Phase 2a Act. A spreadsheet of the notices was provided.

3. The learned judge summarises the schedules at his [30]. They refer to both 'works' and 'purposes', the later being very broad, e.g. landscaping, advance planting. There is much more to the scheme than the works.

4. The Appellant has accepted in earlier stages of these proceedings that Sch 15/16 rights were sufficient – see §13 in the submissions of 5th April 2022 [**Supplementary Bundle Tab 7, p13 (internal p 4)**]. This concession was correctly made.

5. Now, the Appellant submits that a person who is in actual occupation of land which is not needed 'imminently' by HS2 for Phase 2a purposes will have a better title (actual possession) than HS2 (no right to possession at all).

6. The green land is needed. That is why Parliament gave the rights under the HS2 Acts. Petitioners could, and did, petition Parliament to say that the land was not needed. Indeed, if a petitioner could show that land was not needed, that is a most effective means of challenging the hybrid bill. There is no requirement in the HS2 Acts to need the land 'imminently', as is common sense for a large infrastructure scheme which is being built over a period of years.

7. The Appellant has no interest in any green land and his point is therefore an arid one. He merely wishes to disrupt the scheme by any means available to him.

8. Paragraphs 78 and 151 of the judgment are correct. There is no prospect of the Court of Appeal taking a different view of the HS2 Act.

[ii] A1P1

9. This is a point which was developed largely by post-hearing submissions. The ground on which PTA is sought is that a governmental organisation cannot be a victim under the Convention.

10. As was made clear in the Respondents' A1P1 submissions dated 31st May 2022 [**Supplementary Bundle Tab 7, p17 (internal p 4)**], it is no part of HS2's case that it is a victim. The submissions at §§7-19 are repeated here. The learned judge was evidently correct at [123-129] and was supported by clear authority. The Appellant has failed to engage with the real issues and the ground on which PTA is sought has no prospects.

[iii] Terms of the Order – slow walking – chilling effect

11. It was a prominent part of the Appellant's case that slow walking should be permitted because it was a long-established form of protest. At the same time, it was also submitted that 'slow-walking' was too vague, relying on *Ineos*. The Appellant wants to have it both ways.

12. But, in any event, the injunction Order contains clear safeguards, as the learned judge carefully considered and found at: [63], [189-191]. The learned judge had to assess the effect of the particular order sought, including its provisions to ensure rights over public rights of way and to use the public highway are neither prevented nor interfered with. The effect of the Appellant's submissions is to suggest the removal of safeguards such as '*Nothing in this Order shall prevent any person from exercising their rights over any public right of way over HS2 land'*. That is a provision which one might have thought an objector to the Order would welcome. To include it cannot arguably be an error of law. This ground is unrealistic. The Appellant knows what 'slow-walking' is and he knows where it will have the effect of hampering the construction of the scheme.

[iv] Service

13. This is essentially the same debate which the High Court heard in respect of service of the Claim. That process was highly effective in drawing the proceedings to the attention of those who wished to participate. The Appellant asked the judge for permission to appeal the order dated 28.04.2022 which provided for service of the claim form. Sensibly, the Appellant did not pursue

that application further, no doubt because it was absolutely obvious that it worked.

14. The service provisions for the injunction Order are essentially the same and are equally effective. This is, in effect, a late re-run of and earlier argument and ruling, not appealed.

15. Further the answer to this ground of appeal lies in §11 of the injunction Order [**Core Bundle Tab 5, p47/48**]:

> "Further, without prejudice to paragraph 8, while this Order is in force, the Claimants shall take all reasonably practicable steps to effect personal service of the Order upon any Defendant of whom they become aware is, or has been, on the HS2 Land without consent and shall verify any such service with further certificates of service (where possible if persons unknown can be identified) to be filed with Court."

16. So, personal service is a requirement if it is reasonably practicable. The net result is that if HS2 becomes aware of, for example, a trespasser, the trespasser has to be served unless there are good reasons why that cannot be done. Quite why this approach would amount to an error of law has not been explained. There is no such error.

17. Permission to appeal should be refused for these reasons. There is no other compelling reason.

27th October 2022

Richard Kimblin KC

No.5 Chambers

Michael Fry

Francis Taylor Building