The Norwegian Farmers Association's fight for re-establishing of Common Property Rights in the counties of Nordland and Troms, North Norway

The issue of Common Property rights in the State Common Land of North Norway very clearly demonstrate the bad and provincial treatment rural Norway and the counties in the North has been exposed to by the Authorities. In earlier times this was the King, now it is the Government and the Department of Agriculture and the State owned company Statsskog Ltd.

Approx. 150-200 years ago, the local communities were deprived of their rights in the Common Properties by the King and his men. Today, when North Norway claims the rights back, the Authorities have proven negative.

The issue has been raised repeatedly since the 1880's. This time Norges Bondelag (The Norwegian Farmers Association) will pursue it until justice is made and the legal rights of North Norway are redeemed.

History

The first humans who came to North Norway were nomads living by hunting, collecting and fishing. Later husbandry and agriculture became common, and the inhabitants became stationary along the coast and on the islands. Farmers who cleared and built a farm received the right to the ground for himself and his family.

We know that most farmers in the early times owned their farms, but from the Middle Age most of them became tenant farmers. They had to pay a rent to the landholder; the King, the Church or the Squire. At c. 1900 the majority of farmers were again freeholders.

During the Reformation the King took over most of the Church property. At this time and into the 19th century, people settled and cleared the farms in the King's Common Property in the fiords and valleys. In the whole of Norway the local communities used the woods and the mountains in the Common Properties. This supplied them with

King put restrictions on the felling of wood in the Common Properties in the whole of Norway. This was probably a consequence of over-felling. The restrictions were removed a few decades later in South Norway, but in the counties of Nord-Trøndelag, Nordland and Troms the opposite happened. (The State land in Finnmark is not mentioned here, because is has a different legal background). In North Norway, the King, through his men, restricted people's use of the woods even more. Consequently, people had to pay for felling in the Common Properties, and the King's men pointed out where to fell. If you failed, you were fined or put in prison.

This continuous and strict management in the King's – or State's – Common Properties, led in the course of some generations to a different view on the Common Properties. Local community members gradually came to believe that the State had complete ownership over the Common Properties, and that the communities had no rights to their resources.

In 1892 these matters were re-investigated. Mr. A. Taranger wrote a report on the State Common Properties in Northern Norway. He concludes that the King's strict management has «become an illegal situation, by depriving the populace of an ancient and extremely important right; namely the access to the Common Property woods without having to pay for wood needed on the farm». In other words, the State has made an injustice to the local communities by appropriating the Common Properties as its own.

North Norwegian interests forwarded the issue in 1930 and in 1956 for the central authorities in Oslo. It was rejected in 1930 because, according to the authorities, no Common Properties existed in North Norway. In 1956 it was again rejected, now because the legal status to the State land still wasn't clarified. It should be noted that the county of Nord-Trøndelag had their old Common Property rights re-established by a Parliament resolution in 1926.

The Norwegian Commission for Outlying Field and Mountain Areas in Nordland and Troms issued its first verdict in 1990, see separate paragraph. In November 1991 the Supreme Court also issued its verdict on these matters. Both Law Courts state that an injustice has been made against the local communities of North Norway. But they were unable to re-establish these rights because so much time – 150 to 200 years – had passed. This is a so-called fixed legal state. However, the Supreme Court also questioned the reasonableness of this. Is it fair that the local communities in North Norway should have a weaker position as to utilising the State Common Properties than the rest of Norway? This can be corrected if the State as a landholder decides a change, or if the Parliament does it.

The precise problem is if the Mountain Law of 1975, which applies in the rest of Norway, shall include North Norway as well. This has become a political issue. The Norwegian Farmers Association has now worked for 3 years with this without any visible results.

Today's struggle:

Claim for re-establishing of Common Property rights on State land – introduction of the Mountain Law in Nordland and Troms

In the preliminary work to the Mountain Law, it is expressed that if state land in Northern Norway is established to be Common Property, the Mountain Law automatically will be put into force here.

The Norwegian Commission for Outlying Field and Mountain Areas in Nordland and Troms together with the Supreme Court establish, in their verdicts of 1990 and 1991, that the State montain areas are Common Property, and that grazing rights for nearby farms are admitted on a general judicial base.

This, in addition to the views based on reasonableness (see above), prompted The Norwegian Farmers Association to raise the issue towards the Norwegian Department of Agriculture and demanded the introduction of the Mountain Law in North Norway. The Law has functioned well in South Norway since 1920. The Department rejected the demand without discussing the facts to any extent.

The Norwegian Farmers Association considers this issue to be of great regional political importance for North Norway. Our demand implies:

1. Equality for the law in North and South Norway.

2. Local participation in the management of the State Common Properties, which add up to 45 % of the total land area in Nordland and Troms. Participation is organised through Mountain Boards elected by the local councils. The task of the Boards is to organise and manage the rights in the Common Properties.

3. The income from use of the areas should remain in the local communities where the values are created. Until now the income has been transferred to the State's company Statsskog Ltd., and only a fraction has been transferred back to the districts. The incomes total c. 2 million USD per year.

4. For the agriculture this means that farmers get the right to grazing, mountain dairy farming and supplementary ground in the Common Property without any expenses. Today, farmers often have to pay for this.

The introduction of the Mountain Law has now become a political issue, which the Parliament eventually will have to settle, in the same way as happened in the county of Nord-Trøndelag in 1926.

The reason why the Department of Agriculture and Statsskog Ltd. will not accept the demands, is probably a combination of several causes. The Norwegian Farmers Association wishes to point out the following.

– The State owns one third of Norway's area, 111 000 km^2. ¾ of this lies in North Norway, and it is only here that the total income goes to the Treasury. In South and Middle Norway the income goes to the local communities represented by the Mountain Boards. In reality, North Norway is unjustly paying an extra tax. The Norwegian Farmers Association demand represents reduced income for the State.

– Until January 1993, the State properties were managed by the Directorate of State Forests. It was then converted into a limited, named «Statsskog Ltd.». Besides the task of managing the areas, it should also run them as a business. In 1993 the subsidiary companies «Statsskog Natureventyr Ltd.» and «Statsskog Naturstein Ltd.» were established. It is only in North Norway, where the State fully owns the areas, that these companies can run their business. The subsidiary companies are engaged in country tourism and stone industry, and it is a paradox that the State itself run such projects in direct competition with private interests in the local communities.

Before the Parliament makes its decision, the politicians in Nordland and Troms must express their opinions in this matter. «Statsskog SF» struggle against, afraid to lose both influence and income. Factual as well as biased information is issued, together with downright misinformation. E.g. it is maintained that the accessibility for the general public to hunt and fish in the State Common Properties will be reduced with the introduction of the Mountain Law.

Recently, in April 1995, a committee appointed by the County Council of Nordland issued a report on the effects of the introduction of the Mountain Law in Nordland. It concluded that it would have little effect on the management of the areas. The committee is left with two questions. These are:

– Who should have the income of the areas, the State or the local communities?

– Should there be local codetermination or should the areas be managed by the State from far-away offices?

The politicians in the county of Nordland will make their decision for or against the Mountain Law in June 1995.

The Mountain Law

Common Property are areas belonging to the State which have been used by farmers and the rural population. The Common Property rights have strong historical roots, and the legal base dates back to the 12th and 13th century. A more modern law design was achieved in the Mountain Law of 1920. It was revised in 1975 and is now called «Law of utilisation of rights [med mere] in the State Common Properties».

As one will see below, and as is underlined repeatedly in the preliminary work for the Mountain Law of 1920 and 1975, administration and management of the State Common Properties should be in accordance with what serves the interests of the local communities.

This is still of great importance. If the local communities shall endure, all accessible resources must be utilised with sense, also those lying in the State Common Properties.

The main features of the Mountain Law are described below.

– It is valid for the State Common Properties, but can also be applied on other State properties.

– The local Council is to establish a Mountain Board with 5 members. Two must be farmers, the other three attend the interests of hunting, fishing and outdoor life.

– The Mountain Board is to promote the use of the State Common Properties to serve the local economic life, and attend the interests of conservation and outdoor life.

– The Mountain Board receives the whole of the income from hunting and fishing, and one half of the leasehold site income. In the order of priority, the money is to be used for:

1. Common Property maintenance,
2. Strengthening the economic basis in the local communities, and
3. Forwarding issues of public utility in the local communities.

– Normally, Land in the State Common Properties cannot be sold.

– The farmers who have grazing rights in the Common Property should not pay for it. They also have the right freely to obtain supplementary ground if the farm needs it.

– There are also rules for hunting and fishing. For net fishing and hunting without dogs there are some exceptions. The Norwegian Commission for Outlying Field

and Mountain Areas in Nordland and Troms, as well as the Supreme Court have stated that in North Norway the exceptions regarding hunting and fishing will still apply if the Mountain Law is introduced. This means equal conditions for hunting and fishing for all inhabitants in North Norway.

The Norwegian Commission for Outlying Field and Mountain Areas in Nordland and Troms (Utmarkskommisjonen): Settling the borders between private and State property

The Norwegian Commission for Outlying Field and Mountain Areas in Nordland and Troms was established by law the 7th June 1985. The commission is authorised to settle the borders between State and private ground in the mountain areas. It shall also settle if utilisation rights exist (on) State land, and, if so, who has the rights and what they are based on.

It is anticipated that there are 2000 kilometres of uncertain borders between State and private land in Nordland and Troms. To date, in 1995, the commission has settled 800-900 km of borders by verdict. The background for the work is as follows:

When the King sold in- and outlying fields, mostly during the 19th century, it wasn't specified how far into the mountains the land bought by the farmers stretched. It was the areas below the tree-line that were important at the time, not the physical extent of the property in the mountains. Ownership uncertainties became a problem – administratively, in connection with industrial and hydro-electric scheme development as well as concerning compensation matters.

In 1904 a special court of justice was established – the High Mountain Commission for South Norway. It settled the borders between State and private land in South Norway. The commission finished its work in 1954, and was dissolved.

At that time, in 1954, the Norwegian Government and Parliament held the view that there was little uncertainty regarding the borders in North Norway, and those which existed, the existing juridical system had to take care of. This soon proved to be unsatisfying. Demands were put forward for a judging commission similar to the one that previously worked in South Norway. The authorities rejected this, but established in 1971 a consultative committee for North Norway to advise on where borders should be drawn. Again, this proved to be an unsatisfactory solution. The committee was dissolved.

After 30 years of trial and error, and again after pressure from North Norway, it was decided that these questions should be solved in the same way in the North as in the rest of Norway. In 1985 a special court of justice was established, The Norwegian Commission for Outlying Field and Mountain Areas in Nordland and Troms. The tasks of the commission are described above.

The commission consists of 3 lawyers and 2 lay justices. Normally in such cases, the State claims that the border shall follow the tree-line. The private side normally claims that the border should be drawn higher into the mountains, often along the watershed. Technically, the matters are treated as a civil process, a border conflict between two sides. What is of interest here, is the disputed area between the two claims. It is not rare that this area has a size of 100 square kilometres or more in a single case. The jurists, for the State and the private side, plead for their border claims. Then follows the hearing of parts and witnesses, and inspections in the field. Thereafter, the commission evaluates all accessible documentation and gives a decision on the course of the border, together with possible utility rights on the State land.

The task of the commission is to attempt a reconstruction of how much land the State sold to the farms in the 18th to 19th century. The basis is that the farms were given areas large enough to provide for the family.

Guidelines for this can be found e.g. in old written sources. Documents from the 18th and 19th century commonly state that the border between two farms continues to «the highest mountain», «the high mountains», etc. Through legal practice, statements like these have been considered to have little or no value.

If the written sources give no guidance in border conflicts, other matters are considered. One attempts to find out how the local communities utilised the woods and the mountains in the past. How the cattle grazed, which lakes were used for fishing and which fishing methods were used. Timber felling, mountain pastures, hayfields, hunting and catching are also important. All of this gives guidelines about how much land became private land and how much the State was left with.

As mentioned before, 800-900 km of borders are settled. Here, the local communities are awarded grazing rights on State property, and the State land is defined as Common Property. The commission plans to finish this work in 7 years, in 2002.