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The Land Consolidation Courts in Norway: Designing rules for joint ownership.

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1. Introduction

Rules about land consolidation are found in the oldest known Norwegian laws. The first Land Consolidation Act came in 1821, and in 1859 the Norwegian Land Consolidation service was established.

The Land Consolidation service has mainly worked with consolidation of fragmented holdings and dissolving joint ownership. In the later years this process has declined, and the Consolidation Courts in Norway are now working more and more with designing rules for the use of joint ownership instead of dissolving them.

In this paper the reasons for this will be discussed, and the accomplish of a case where the court designed rules for a joint ownership will be presented.

2. Brief history of the development of land consolidation in Norway.

We may assume that the history of property in Norway started ca. 4000 years ago, when agriculture became established. We do not know much about what ideas the first farmers had of property. But up to the Viking age (ca. 1000 years ago) it had been developed a system of single farms that each managed and utilised a large area. The farm was owned by a family, and all members of this extended family lived and worked on the farm.

Huge areas of outfields, mostly unproductive but also some productive areas, were beyond the control of the farms. In the Viking age the State (i.e. the King) gradually was accepted as owner of all «untaken» land.

Growth of the population during the Viking age caused migration, reclamation of the outfields by settlers and subdivision of the old farms. The Black Death (650 years ago) halted this process for some centuries. In the last few centuries

the population has increased rapidly and the old farms have been greatly subdivided.

Some of the products of these subdivisions are today modern family farms, but here in North-Norway many of the small agriculture properties are now used as residences or for recreation. The arable land of these properties is either out of use or lent to farmers in the neighbourhood.

In Norway the farmers generally have been in a strong position regarding the control of the land they lived on and cultivated. Often the farmer owned the land, and if he was a tenant he was protected by laws which made it difficult for the owner to remove him from the land.

Today Norwegian farmers almost always own the land they live on and most of the land they cultivate. The «standard» farmer very often also rent arable land from neighbouring farms.

When the old farms were subdivided it was often done in such a way that the infields - the arable land - were divided, while the outfields were kept in joint ownership. The new farm established through this subdivision process existed of exclusive owned part(s) of the infield and a share in the outfields. Normally the size of the share in the outfields correspond with the assessed value of the farms in the property tax rolls.

In the infields the subdivision process often led to scattered strips - each property comprised many small plots of arable land scattered throughout the whole infield area of the originally undivided farm.

In the outfields the different uses often were divided when need arose. The right to the trees and to harvest grass and to use peat were the first to be divided. The right of pasture were nearly almost kept in joint ownership, and still is. Whether the ground in the outfields were kept in joint ownership or divided together with the trees is a difficult question, which today often cause disputes.

Rules for land consolidation are found in the oldest known Norwegian laws from the 11th. century. The first Land Consolidation Act came in 1821, and in 1859 the Norwegian Land Consolidation service was established.

The reason for the first law and for establishing a Land Consolidation service was the growing concern about the economic disadvantages of scattered strips and joint ownership. The scattered strips and joint ownership were in the 19th century regarded as one of the main obstacles for the development and modernisation of the agriculture in Norway.

In the 19th century the Land Consolidation Courts concentrated on the infields, dissolving joint ownership and consolidating the scattered strips of arable land belonging to each property into compact blocks. In the outfields the court often, as mentioned, individualised only the right to trees.

Early in the 20th century much of the infields had been consolidated and the Land Consolidation Courts concentrated on dissolving the valuable parts of the outfields. In 1934 an amendment to the Land Consolidation Act from 1881 gave the courts authority to clarify, mark and describe property boundaries. This brought a lot of new work to the courts.

The new Land Consolidation Act from 1950 did not greatly alter the task of the Courts, but the Land Consolidation Act from 1979, which is the Act in force today, introduced more important reforms.

In the Act from 1979 designing rules for joint ownership, eliminating rights of use, organising joint measures, reallocating landed properties when land and rights are to be sold and clarifying and determining conditions relating to property and rights became counterpart to the traditional tasks of dissolving joint ownership and consolidating scattered strips. This has made the Land Consolidation service a more flexible tool in the everlasting work to adjust property rights to the actual use of the area.

3. Changes in the utilisation of properties in the rural districts and the adaptation to that by the Land Consolidation service.

In this section will briefly mention the main traits in the development of the rural districts in Norway after Second World War. Furthermore I will show how this has influenced the institution of Land Consolidation. Especially I will focus on the Land Consolidation Courts work with designing rules for joint ownership.

Until the Second World War the Land Consolidation Courts had worked in rural areas where there was a continual growth in the number of properties used for farming. Many of the small farms established in the decades before the war were not big enough to support a family and functioned as so-called «support farms».

The most important development after the war can be summarised like this: The amount of people employed in farming decreased - industry and service became increasingly important. Many people left the rural areas and settled in cities and small towns in the centre of the district.

To obtain a reasonable income the farmers left in production had to enlarge the production and be more effective. On the smallest farm the production was given up. The need for additional arable land was mainly solved through renting land, not buying, as the owners of the small farms were not willing to sell land to a great extent.

The income from the main products of Norwegian farms - milk, milk products and meat - has been reduced the latest years. The farmers therefore look for new income possibilities, and a more intense use of the outfield offers opportunities.

Rural districts are increasingly influenced by railways, roads, industry and growing cities. Because of this much arable land has been lost, or otherwise made difficult to utilise.

Generally a growing urban population and more leisure time increases the demand for recreation activities.

This development has resulted in the number of property units defined as agriculture properties being much higher than farm units. One will therefore find owners of property with different opinions on the use of the properties. A farmer who lives of his property will often want to utilise the joint ownership more intensively than the urban owner of land who use the property mainly for recreation.

Stagnation in income from the traditional agrarian products and growing demand for recreation activities increases the interest in utilising the outfields for hunting, fishing, recreational cabins etc. Very often these outfields, or the actual right are, as mentioned, subject to joint ownership.

In order to reduce the negative effects of development on arable land the Land Consolidation Courts in 1979 was given authority to accomplish land consolidation when «circumstances become unfavourable» as a result of the building of public roads and railways. The Courts were also given authority to accomplish land consolidation when agriculture land is sold. This is one method to reduce the amount of rented land in the farming districts.

Of most interest in this forum is the extended possibilities to design rules for joint ownership which the Courts were given after 1979. The Land Consolidation Courts now have very wide authority to give appropriate rules for joint use. The prescribing of rules can also include organising joint measures and apportioning of costs to each owner.

A more particular change which was introduced in 1979 must be mentioned. It became then possible for the Courts to prescribe rules related to the use of any area that is not subject to joint use by estates, when the attendant circumstances make such use particularly difficult. This concern e.g. resources like fish or game which wander through many properties. This leads to a kind of dependence between the properties - the owners of the properties have to co-operate to manage the resource. If this co-operation does not exist, it can be forced upon the owners by the Land Consolidation Court.

4. Design of rules for joint ownership by land consolidation

In Norway land consolidation is conducted by a court, not by a administrative organ as in many other European countries, and because of this the land consolidation process is in many ways very formal.

Generally only owners of registered real property or perpetual right of use can apply for land consolidation. It is not necessary that a majority of the shareholders of land or right jointly owned want to accomplish a land consolidation. It is enough that one person apply, if the Court decide that the conditions for land consolidation exist.

When the Court receives an application for land consolidation it is examined by the judge to ensure that all legal formalities are fulfilled.

The court will at the first hearing decide whether the case shall be proceeded with, and reasons for this decision shall be given. A case can not be effected «if the costs and disadvantages involved exceed the benefit accruing to each individual property».

Furthermore the Court must clarify, as accurately as possible, the circumstances of ownership and all rights and encumbrances that affect the relevant area. Any disputes shall be decided by the judgement of the Land Consolidation Court.

When all preparatory work has been completed the Land Consolidation Court shall draw up a draft consolidation plan which shall be presented to the owners for discussion. A final plan then shall be adopted.

All new boundaries shall be marked in the fields and noted down.

- Appeal may be lodged against any land consolidation and the individual decisions that are made in connection with such consolidation.

In a case where the court design rules for joint use the procedure will be in the main as outlined above. To clarify the circumstances of ownership and rights are very important. The consolidation plan in this kind of case seldom cause any changes in boundaries or rights. Most important is to clarify who the shareholders are and the size of each share in the relevant resource, and to establish proper institutions and rules for the management of the resource. Off course it varies from case to case which rules the court design for joint use, according to what is necessary in the given situation. Often the Court will establish a co-operative organisation amongst the shareholders with rules about annual meeting, election of members to a governing board, annual accounts and survey etc. In bigger cases this part of the rules can be compared with the rules of a small stock company. The Court also will give rules about how the resource shall be used. This can, if necessary, be done very detailed, but often the Court outline the framework and leave it to the shareholders by majority decision to formulate the detailed rules for use. Normally the owners vote according to their share.

Finally I will shortly present a case where Salten Land Consolidation Court designed rules for the use of Saltdal river.

Saltdal river is situated in the municipality of Saltdal in the district of Salten. The river flows northward and the whole watercourse is approximate 60 km long (1 mile = 1,6 km). The river has been one of the best salmon rivers in Norway. The last decades the amount of salmon caught has decreased. The river has been popular among anglers, and it is easy available, as the state highway E6 runs beside the river down the Saltdal valley.

The application for land consolidation was caused by a dispute between owners on two farms about sale of fishing permit.

- After preliminary proceedings it was decided by the Court that the whole river had to be included in the case.

The case (case number 3/1984, Salten Land Consolidation Court) was proceeded with in 1984 and concluded in 1989.

475 owners of properties with fishing rights were involved.

The main reason for proceeding with the case was the need for a management system for the river. Especially sale of fishing permits and stocking needed co-operation among all owners of fishing rights along the river.

During the period the case lasted temporary rules for the use of the river were made.

- Twelve disputes on fishing rights were decided by judgement of the Court. The Court produced a list over all properties with fishing rights and the size of the

share each property had in the fishing rights. This list is used when income or expenses shall be divided between the owners.

The final rules for the use of the river were given when the case was concluded in 1989. It was established a organisation where all owners of properties with fishing rights on the river are members. The membership is compulsory. It was given rules about annual meetings, governing board, authority at the annual meeting and the board etc. In short: Rules for the management of the organisation. These rules can be changed at the annual meeting if 2/3 majority of the meeting shares vote for it. It was also given regulations on the fishing. Rules about the fishing can be changed at the annual meeting by simple majority.

To maintain the salmon population it was necessary to build a hatchery. This investment therefore was included in the consolidation plan.

In 1994 some land consolidation student evaluated the effect of case 3/1984. They concluded that the rules given by the Court for the most part is functioning according to the intention. The building of the hatchery became more expensive than expected. Because of this much of the income from the sale of fishing permits has gone to the hatchery. Some of the owners of fishing right are dissatisfied with this, especially since the effect of stocking is a bit doubtful.

References:

Case number 3/1984; Salten Land Consolidation court.

Grendahl, T., 1959: «Jordskifteverket gjennom 100 år» (The Land Consolidation service through 100 years). The Norwegian Ministry of Agriculture, Oslo.

Lund, E.A. and Grimsmo, L, 1994 «Effektstudie av fiskeordningssak i Saltdalsvassdraget» (A study on the effect of case 3/1984, Salten Land Consolidation Court) Semester composition, Agricultural University of Norway, Ås.

Norges Offentlige Utredninger (NOU) 1976:50 Revisjon av jordskifteloven (Revision of the Land Consolidation Act).
The Norwegian Ministry of Agriculture, Oslo.

Ot.prp. nr. 56 (1978-79. Om lov om jordskifte o.a (About the Land Consolidation Act).

Sevatdal, H., 1994. «Common property in rural areas in Norway», Agricultural University of Norway, Ås.

The Norwegian Land Consolidation law Act No 77 of 21 December 1979.