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Loi om koncession og om forleingsrett for det offentlige ved erverv av fast eiendom (koncessjonsloven)

Act no. 19 of 31 May 1974 relating to Concession and to the Public Authorities' Right of Pre-emption in the Acquisition of Real Property (Short title: The Concession Act)

(Presented by the Ministry of Agriculture. Ot.prp. no. 12 (1973-74). Innst.O.no. 22. Besl.O.no. 27. Adopted by the Odelsting and Lagting (1st and 2nd Chambers of the Storting), on 14 and 20 May 1974 respectively)

As amended by Act no. 58 of 28 June 1974 relating to Allodial Rights and Rights of Primogeniture (§ 6 subsection 2 and § 6 second paragraph)

Chapter I - Purpose and Instruments

§ 1 (Purpose)

The purpose of this Act is to regulate and control the sale of real property in order to achieve effective arrangements to protect areas used in agricultural production and to bring about such ownership and user conditions as are in the best interests of the community at large, i.e. in order to benefit:

1. farming, horticulture and forestry (the agricultural industry),
2. the need for land zoned for development purposes. The term land zoned for development purposes shall mean areas, which, in the adopted Local Plans or in

the General Plans (i.e. Municipal Plans/Master Plans), with pertaining adopted by-laws are allocated for uses other than as agricultural areas,

3. the public interest relating to the protection of the natural environment and open-air recreation,
4. a sound socially orientated price development for real property.

§ 2 (Instruments)

Subject to the exceptions laid down in this Act, real property may not be acquired without permission of the King (concession).

Unless otherwise prescribed, the State or the municipality shall have the right of pre-emption in respect of such acquisitions as are subject to concession pursuant to this Act.

The Act does not comprise acquisitions subject to concession in pursuance of:

1. Act no. 5 of 3 July 1914 relating to the Acquisition of Limestone Deposits,
2. Act no. 16 of 14 December 1917 relating to the Acquisition of Waterfalls, Mines and other Real Property etc. Chapter I or II,
3. Act no. 3 of 17 June 1949 relating to the Acquisition of Quartz Deposits.

The King may by administrative provisions grant exemptions from the concession requirement or solely from the right of pre-emption further to those given in pursuance of §§ 5, 6, 10 and 11. If special considerations so indicate, the King may also in certain cases grant exemptions from the concession requirement or from the right of pre-emption.

Chapter 2 - Transactions which are equated with the acquisition of real property

§ 3 (Special rights falling within the scope of the Act)

The rules in this Act relating to concession and the right of pre-emption shall also apply to the

establishment or conveyance of leasehold rights or other similar user rights in real property unless the right is established for a period not exceeding 10 years without the user having the right to demand the prolongation of the contract beyond such a period. The rules in this Act shall also apply to other rights in real property which mean that the owner's right to dispose over the property or to enjoy the usufruct thereof is substantially curtailed.

Real property may not be taken into mortgagee possession for a period exceeding 3 years without a concession.

§ 4 (Sale of shares falling within the scope of the Act)

The acquisition of shares or other partnership interests in a limited liability company in such numbers that the acquirer thereby becomes the owner of more than one tenth of the total number of shares or other partnership interests or acquires the right to vote on behalf of more than one tenth of the share capital, is subject to concession in accordance with the rules in this Act if the company has right of ownership or any other right which the acquirer would be unable to obtain without a concession in conformity with this Act. Similarly a concession is required, when two or more persons or other legal persons either jointly or separately acquire shares or other partnership interests in such numbers that they will jointly become the owners of more than one tenth of the total number of shares or other partnership interests, if such acquisition has taken place as a result of any prior mutual agreement. Shares and other partnership interests belonging to the acquirer's spouse, children, parents or siblings shall be taken into account together with the acquirer's own shares or partnership interests. If the acquirer is a member of a company with unlimited liability or of a limited partnership, shares or other

partnership interests belonging to the said company or to the other members of the company shall likewise be taken into account. This rule shall apply correspondingly to the owner and the silent partner of a company. If the acquirer is a company with limited liability, shares or other partnership interests belonging to board members and servants of the said company, or to another company in which the majority of the board members are also members of the first company's management board, shall likewise be taken into account.

The provisions of this Act relating to the acquisition of shares or other partnership interests in companies with limited liability shall also apply to the acquisition of shares or other partnership interests in companies (holding companies) which directly or indirectly own more than one tenth of the original capital in other companies referred to in this Act.

In the same way, the provisions of this Act relating to the acquisition of shares or other partnership interests shall apply correspondingly in cases where the relevant shares' or other partnership interests' percentage of the original capital is increased as a result of the company's purchase of its own shares or other partnership interests for amortization.

Chapter 3 - Conveyances not subject to the concession requirement

§ 5 (Exception on the basis of the nature of the real property)

A concession is not required for the acquisition of:

1. a single dwelling lot or a lot for vacation residence purposes, if the lot:
 - a. is located in an area which in the adopted Local Plan is allocated as a building area (cf. § 25 subsection 1 in the Building and Planning Act) and where the parcelling of the

land has been undertaken or approved by the building authorities, or

- b. is located in an area in which buildings may be erected in accordance with the land use plan or any other provision issued in or in pursuance of an adopted by-law under § 82 second paragraph, second sentence, of the Building and Planning Act, or
- c. is located in an area which in an approved shore plan or mountain plan is allocated as a building area, cf. § 7 in Act no. 103 of 10 December 1971 concerning Planning in Shore and Mountain Areas, and where the lot is reserved for building purposes.

It is a precondition that the acquirer or his spouse or child(ren) under 20 years of age do not own or lease any other lot for permanent dwelling or vacation residence purposes in the municipality. If the acquirer himself is under 20 years of age, the precondition is that neither his parents nor any of his siblings under 20 years of age own or lease such a property in the municipality.

- 2. developed property, provided that the lot is not larger than 5 decares and, by the Building Council's confirmation, is not substantially larger than the buildings require nor worth substantially more than the buildings themselves.

The King may by administrative provisions restrict or suspend the freedom from concession for developed property in areas where this is warranted by special considerations.

- 3. property which is acquired for the purposes of rationalization in accordance with the Land Act, provided that the County Agricultural Committee finds it possible to approve the acquisition.

The Ministry may issue regulations as to what information must be supplied to enable it to be said that such acquisition falls within the scope of this Section.

§ 6 (Exception on the basis of the acquirer's status)

A concession is not required when the acquirer is:

1. the owner's spouse, or is related to the owner or the owner's spouse in the directly ascending or descending line or in the owner's or the spouse's first collateral branch, including the children of siblings. As regards agricultural and forestry properties, the freedom from concession is conditional upon the acquirer taking up residence on the property within one year and living there himself and running it for at least 5 years,
2. entitled to the property under allodial law,
3. co-owner in the jointly-owned property which the conveyance concerns, except that jointly owned between agricultural holdings,
4. the State,
5. the county municipality or municipality in which the property is located, provided that the acquisition applies to property in an area falling within the scope of an adopted Local Plan or an approved General Plan with pertaining approved by-laws and the property in the plan has been allocated for other purposes than as an agricultural area, or the acquisition is effected by expropriation,
6. a bank or other institution approved by the King in this connection, and the acquisition is effected through forced sale in order to obtain coverage for a claim in respect of which the acquirer has a lien in the property. The property must be resold within two years. The time limit is calculated from the confirmation of the auction bid and may be extended by the Ministry.

The King may ease or grant full dispensation from the residence and operation requirement in accordance with subsection 1.

The Ministry may issue regulations as to what information must be supplied to enable it to be said that such acquisition falls within the scope of this Section.

Chapter 5 - Circumstances of significance for whether or not a concession shall be granted

§ 7 (General circumstances arguing against a concession)

A concession shall not as a general rule be granted if there is reason to suppose that the primary aim of the acquirer is to invest capital in the property, or if the acquisition may be regarded as a stage in a process of amassing real property. The same applies if there is reason to suppose that the acquirer aims to make a profit by selling the property or parts thereof within a short period.

§ 8 (Special circumstances relating to agricultural properties)

In deciding on the application for permission to acquire a property which is to be used for agricultural purposes, special attention should be paid to:

1. whether the acquirer is regarded as being suitably qualified to run the property,
2. whether the acquirer will take up permanent residence on the property in order to run it himself,
3. whether the acquirer as a result of the acquisition will obtain a rational unit of operation which through proper utilization either on its own or in combination with another occupation will provide a reasonable income for a family, or which will give him the opportunity of obtaining such an income,
4. whether the acquisition will lead to an appropriate adjustment of lots.

§ 9 (Terms for concession)

Pursuant to this Act concessions may be granted on such terms as are deemed necessary in the public interest in each individual case. The terms may be modified on application.

Chapter 5 - Right of pre-emption for the State and the municipality

§ 10 (The State's right of pre-emption)

Pursuant to this Act the State's right of pre-emption is not applicable to:

1. such rights as are referred to in the second sentence of the first paragraph in § 3,
2. shares and partnership interests referred to in § 4,
3. in cases of expropriation and in takeovers under allodial law,
4. when the concession requirement comes into effect because an acquirer, as described in § 6 subsection 1 or 2, does not comply with the residence and operation requirement,
5. when the concession requirement comes into effect only because the freedom from concession pursuant to § 6 subsection 2 is restricted or suspended by special regulation.

§ 11 (The municipality's right of pre-emption)

Pursuant to this Act the municipality's right of pre-emption is only to apply to land intended for the purpose of building, open-air recreation or nature conservation. The exceptions in § 10 subsections 1-5 apply likewise to the municipality's right of pre-emption.

The right of pre-emption falls to the municipality in which the property is located. If the property is located in more than one municipality, the King decides

whether the right of pre-emption shall be asserted by only one of the municipalities or by several jointly or by each in respect of its share of the property.

The municipality's right of pre-emption takes precedence over the State's right of pre-emption.

§ 12 (Relationship to right of pre-emption on other grounds)

The municipality's right of pre-emption pursuant to Act no. 1 of 28 April 1967 relating to Redevelopment of Urban Areas and co-owners' takeover rights pursuant to § 11 in Act no. 6 of 18 June 1965 relating to Co-ownership take precedence over the right of pre-emption under this Act. The right of pre-emption under this Act takes precedence over all other rights of pre-emption irrespective of their basis in law.

§ 13 (Time limit for implementing the right of pre-emption)

The decision to implement the municipality's right of pre-emption must be made within three months of the municipality's having received an application for a concession or notification in accordance with § 19 or § 20 second or third paragraph. If the decision to implement the municipality's right of pre-emption is adopted without the necessary qualified majority, a new decision must be taken at the latest within one month after the expiry of the normal time limit.

The decision to implement the State's right of pre-emption must be made within three months of the receipt of the documents by the County Agricultural Committee after the handling of the matter has been completed by the municipality.

If the application or the notification fail to supply the information required in or pursuant to § 19, the time limit does not begin to run until the information that is lacking has been received, if the applicant without undue delay has been requested to supply such information.

If a valuation is undertaken in accordance with § 14, the right of pre-emption lapses unless a decision is taken, within four weeks of the finalization of the valuation proceedings, to effect the pre-emptive purchase in conformity with the valuation.

§ 14 (Rights and obligations when the right of pre-emption is implemented)

If the right of pre-emption is asserted, the State or the municipality shall accede to the acquirer's rights and obligations.

If the right of pre-emption is asserted in order to benefit agriculture and the purchase price is considered to exceed the operative agricultural value of the property, the County Agricultural Committee may require that the amount due shall be determined by valuation. The valuation determines the amount due in respect of the operative value of the property. Nevertheless, the amount due shall not be set at a figure lower than the utility value the property has for the seller. The valuation cannot set the amount due at a figure higher than the purchase price which has been agreed, unless special circumstances so indicate and the agreed price is considerably lower than the property's utility value.

In the case of inheritance, donation or give-away sale, or when for personal reasons the property has been sold at a particularly reasonable price, the amount due for the property is determined as described in the ninth paragraph.

A mortgagee who has purchased the property at a forced sale or an auction pursuant to § 127 in the Bankruptcy Act in order to secure his claim may require that the State or the municipality also pay the unpaid part of such claim to the extent of the value of the mortgage.

The transferor may require that the pre-emptive purchase shall also include chattels, real property or rights which were an inherent part of the acquisition, even if the right of pre-emption does not apply to such incidentals.

If the amount due has been wholly or partly determined in terms other than money, the State or the municipality may require that the entire consideration be converted into money. Conditions for the acquisition which have no economic value lapse without financial compensation.

The acquirer is entitled to payment for any necessary expenses he has incurred in connection with the acquisition.

Claims under the fifth or seventh paragraph must be submitted within four weeks after receipt of notification of the decision on pre-emption.

The State's or the municipality's obligations under the third to the seventh paragraph shall be decided by valuation if the parties fail to agree. In determining the amount due in accordance with the third paragraph where the State has asserted the right of pre-emption in order to benefit agricultural objectives, the second paragraph, except for the last sentence, shall apply correspondingly. In other respects the amount due shall be determined, according to the third paragraph, in respect of the property's market value.

The demand for valuation must have reached the court within six weeks after the decision on pre-emptive purchase is final or the requirements made under the fifth or seventh paragraph have been submitted.

§ 15 (Reversal of conveyance)

An agreement to the effect that the transferor shall be entitled to repurchase or that the transferor

or acquirer shall be entitled to depart from the agreement if the right of pre-emption is implemented cannot be invoked against the State or the municipality or anyone whose right derives from the State or the municipality. The same applies if the transferor or the acquirer is entitled to depart from the agreement on terms which neither the State nor the municipality have it in their power to fulfil.

§ 16 (Reconveyance to a person not needing permission)

The right to pre-emption pursuant to this Act may be asserted on the basis of the original conveyance even if the property has been reconveyed to a person who could have acquired the property from the original transferor without the State or the municipality having had any right of pre-emption.

§ 17 (Use of property taken over by pre-emptive purchase)

The State and the municipality shall ensure that property taken over by pre-emptive purchase pursuant to this Act is used in such a way that the purpose under § 1 is as far as possible met.

§ 18 (Resale of property taken over by pre-emptive purchase)

In cases of reconveyance of property which the State has acquired by pre-emptive purchase pursuant to this Act, provisions may be issued concerning the use which the acquirer shall make of the property and specific conditions may be laid down in order to ensure that the purpose is duly met. When agricultural property has been acquired and resold by the State in order to meet the purpose under Section 1 of the Land Act, Chapter XII in the Land Act shall apply correspondingly.

In the case of reconveyance of property which the municipality has acquired by pre-emptive purchase, the municipality may issue specific rules concerning the

use of the property and lay down conditions to ensure that the object of the pre-emptive purchase is duly met.

Chapter 6 - Concession procedure

§ 19 (Application for concession)

An application for a concession pursuant to this Act shall be sent to the Chairman of the Municipal Council in the municipality where the property is located. Such application shall include information concerning the acquirer and the property in question and on the purpose of, and all conditions relevant to, the acquisition. In the case of inheritance, donation or give-away sale, the value of the property or of any rights shall be stated. Copies of the document of authorization (title deeds), the contract and valuation shall be enclosed if such documents are available. An account must be given of any circumstances which may have a bearing on the question of concession and the implementation of the State's or the municipality's right of pre-emption. The owner and user must accept that inspection, survey, mapping and quality analysis of the property and buildings are undertaken.

The King may issue specific rules concerning the information which is to be given in, or documents which are to accompany, an application for concession and to the effect that the application shall be written on special forms.

§ 20 (Time limit for application for concession)

An application pursuant to § 19 shall be sent to the Chairman of the Municipal Council not more than four weeks after the agreement on the conveyance has been made or the acquirer has taken over control of the property. In the event of a forced sale the time limit is calculated from the confirmation of the auction bid. The Court of Attachment shall notify the Ministry when

it confirms a bid from a purchaser who needs a concession for the acquisition.

If the rules in the first paragraph are not observed, the King shall stipulate a time limit within which the acquirer must either apply for a concession or give the Chairman of the Municipal Council an account containing information as laid down in or in pursuance of § 19. Also the transferor may be required to produce such an account within a stipulated time limit.

If the time limit for mortgage possession pursuant to § 3 second paragraph is exceeded or the acquirer, as described in § 6 first paragraph subsection 1 or 2, does not observe the residence and operation requirement, or the acquirer, as described in § 6 first paragraph subsection 6, does not observe the time limit for resale, the King may stipulate a time limit for the acquirer to apply for a concession.

The King may determine a continuous coercive fine which must be paid if the time limit stipulated pursuant to the second or third paragraph has been exceeded. The time limit may be extended if special considerations so indicate.

§ 21 (Procedural bodies)

The Chairman of the Municipal Council submits the application or the report to the Land Board which expresses its opinion on the concession question and on the use of the State's or the municipality's right of pre-emption.

The Municipal Council decides whether the municipality's right of pre-emption shall be implemented. If the municipality does not assert its right of pre-emption, or if the execution of the pre-emptive purchase is dependent on concession, the matter is forwarded to the County Agricultural Committee. Subject to the limitations arising from § 24 subsection 1 of Act no. 1

of 12 November 1954 relating to the Executive Committee in Rural and Urban Municipalities, the Municipal Council may delegate its duties under these provisions to its Executive Committee.

The County Agricultural Committee decides whether the State's right of pre-emption is to be asserted if the purpose is to benefit agriculture (cf. § 1 subsection 1, as well as § 1 of the Land Act, cf. § 6). If the County Agricultural Committee does not adopt a decision to implement the right of pre-emption, the matter is sent to the Ministry with an opinion on the concession question and on the implementation of the State's right of pre-emption.

The King decides the concession question.

In decisions regarding pre-emptive purchase the purpose of the acquisition must be stated. In recommending a concession or pre-emptive purchase, it should be decided whether special terms shall be stipulated for such concession or in the case of reconveyance following pre-emptive purchase.

The acquirer and the transferor shall receive written notification without delay of the decision to implement the right of pre-emption.

The King may issue specific regulations supplementing the rules of procedure under the Administrative Procedure Act and the present Act. In these regulations it may be decided that there shall be a departure from the normal procedure in respect of certain cases and that other specialist bodies shall supersede or supplement the County Agricultural Committee or the Land Board, and also whether the chairman is to be entitled to give the opinion on behalf of the County Agricultural Committee, the Land Board or other similar bodies.

Chapter 7 - Miscellaneous provisions

§ 22 (Concession is a condition for land registration)

An acquisition which requires concession pursuant to this Act may not be registered unless a concession has been granted. However a declaration such as described in § 174 first paragraph of Act no. 7 of 13 August 1915 concerning the Enforcement of Claims may be registered notwithstanding this provision.

§ 23 (Infringement of terms of concession)

For infringement of the terms stipulated for concessions in accordance with this Act, the King may determine a coercive fine which runs until the matter is regularized or falls due in respect of each infringement.

If a concession is granted on the basis of incorrect or incomplete information concerning circumstances of substantial significance or if the acquirer infringes stipulated terms of substantial significance, the concession may be withdrawn.

If the concession is withdrawn, a time limit shall be stipulated for the holder of the concession to ensure that the property is conveyed to someone who may lawfully acquire it. If the time limit is exceeded, § 26 shall apply correspondingly.

§ 24 (Supervision to ensure that terms are observed etc.)

The Land Board and the County Agricultural Committee shall exercise supervision to ensure that the terms stipulated for concessions or resale by the authorities of property acquired through pre-emption are observed. Notification of infringement or breach of prerequisite conditions shall be sent to the Ministry without delay. The same applies if the Land Board or the County Agricultural Committee becomes cognizant of acquisitions lacking the necessary concession pursuant to this Act.

The King may decide that other specialist bodies shall carry out the duties pursuant to this Section instead of or in addition to the County Agricultural Committee or the Land Board.

§ 25 (Time limit for regularizing the position if a concession has not been granted)

If an application for a concession has not been submitted within the time limit stipulated in accordance with § 20 second or third paragraph, or if the application is rejected, the King shall stipulate a time limit for the mortgagee to terminate mortgage possession which is contrary to § 3 second paragraph, or shall stipulate a time limit for the acquirer to ensure either that the conveyance is reversed or that the property is conveyed to someone able to obtain a concession or not needing a concession. Nevertheless, the time limit shall not be stipulated before it is clear that neither the State nor the municipality intends to implement the right of pre-emption.

§ 26 (Exceeding the stipulated time limit)

If the time limit, stipulated pursuant to § 25 for winding up the acquisition of a property or the mortgagee's mortgage possession, is exceeded, the Ministry may without warning sell the property in conformity with the rules on forced sale insofar as they are appropriate. In relation to § 128 and § 129 in the Act concerning Enforcement of Claims, the auction is considered to have been initiated by a plaintiff with priority above all other rightful claimants as regards the acquisition of the property and by the mortgagee concerned as regards the mortgagee's mortgage possession.

If the time limit stipulated pursuant to § 25, in respect of rights as mentioned in § 3 first paragraph, is exceeded, the Ministry may either have the rights sold at a forced sale under the rules in the first

paragraph or, with binding effect, declare these rights to have lapsed.

The rules in the first paragraph apply correspondingly to conveyance of shares or ownership interests in companies with limited liability. If the owner of a share certificate, or a certificate of ownership interest, which is sold at an auction in accordance with this Section does not hand over such certificate, the purchaser may demand that the share certificate, or certificate of ownership interest, be declared null and void, at joint cost to the shareholder and owner. The company is thereupon required to issue a new share certificate, or certificate of ownership interest, which shall contain explicit information to the effect that it supersedes the certificate which has been declared null and void.

§ 27 (Prohibition against reducing the value of the property)

If the acquisition of real property is dependent on a concession pursuant to this Act, before the position is regularized, there must be no felling of standing timber or any other act which would reduce the value of the property. The Ministry may make exceptions to this provision.

Wilful infringement of the prohibition in the first paragraph is punishable by fines. Any timber removed, or anything in any other way separated from the property contrary to the prohibition, or the value thereof may be confiscated from the person at fault, or from the person on whose behalf he has acted.

§ 28 (Transitional provision)

If, before the entry into force of this Act, a concession has been applied for or a notification submitted regarding the conveyance of property or rights in conformity with § 19 of the Land Act, or the Provisional Act no. 4 of 25 June 1965 concerning the

Right of Pre-emption for Municipalities for the Purposes of Development and Open-Air Recreation, applications for concession and the questions of pre-emption shall be decided on the basis of the rules which applied before the entry into force of the Act. The same shall apply in respect of acquisitions which, according to the former rules, neither were subject to the concession requirement nor allowed for pre-emptive purchase, provided that the documents of authorization to title have been registered or the property taken over before the entry into force of the Act.

Chapter 8 (Entry into force

§ 29

This Act enters into force from such date* as the King may decide.

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* 1 January 1975