

Acquisition of Land for Town Planning in Denmark.

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To give an exhaustive account of the Danish rules dealing with the acquisition of land for the purposes and in the interests of town planning is not possible within the frame-work of this paper, for the Danish statutory provisions dealing with this subject are too scattered and heterogeneous. They are the outcome of a development extending over a century, and were brought into being gradually as required, in consequence of which they bear the marks of the special tasks they were to solve. There has been no endeavour to bring about a connected whole. The need for town planning in which all details form part as it were of an organic structure was not felt until rather late, because the country with its numerous islands, fiords and bays, woods and fields, has already been divided up at the hands of nature and this in itself secures good and healthy conditions of life to the population. The increase in population*, the development of the means of communication, and the flight from the country to the towns have had the result that the town planning problem has been taken up by several local authorities, and should be taken up soon by many other local districts where the absence of such plan has already left its marks in the shape of inefficient and unsightly suburbs and still uglier villages around the railway stations.

In the following I propose to give a outline of the main provisions of Danish law that have relation to the town planning problem, and to deal in detail with typical provisions about compulsory acquisition of land.

Sec. 80 of the Danish Constitution provides that the right of property is inviolable, and that no person can be compelled to surrender real estate unless it is required for the common good. A person can only be required to surrender his property under a statute and against full compensation.

The provisions in Danish law about the surrender of real estate for town planning purposes must be viewed with this fundamental rule in the background.

In Denmark legislation dealing with town planning has not existed until recently. To promote sensible town planning powers taken from cognate fields of legislation have been resorted to but owing to their lack of uniformity and cohesion they have not been very efficient. When in spite of this we have succeeded in taking up a series of town planning tasks this has been due more to a reasonable use of the influence which the local councils have been able to exert by the purchase of land and otherwise, than to the support given by legislation.

* The population of Copenhagen, the capital of Denmark, was in 1801 about 100,000 inhabitants as compared with about 600,000 now; if the suburbs (Frederiksberg, Lyngby and Gentofte) are included it totals 750,000 inhabitants. Aarhus, the second largest town of the country, had in 1801 about 4,100 inhabitants as compared with about 75,000 now—about 100,000 with suburbs.

The most important provisions of an earlier date authorising the compulsory purchase of land for town planning purposes are contained in the law dealing with roads and the erection of new buildings.

The Legal powers for dealing with Highroads are based on an Ordinance of December 31st, 1793, on highroads in Denmark and their maintenance. Other important highroad acts are the Act of August 20th, 1853, on taking land for public bye-roads, and the Act of June 21st, 1867, on roads and their management.

These acts contain authority to take land compulsory for the purpose of carrying through public highroads and bye-ways and for the extension of existing roads. They contain only the most elementary rules for determining the projected roads. The main roads must as far as possible be constructed on straight lines, unless very expensive houses or difficult surface conditions make a deviation from this provision desirable. Further, there are provisions authorising the straightening out of inconvenient and obstructive road turnings. By various acts the authorities have, furthermore, been authorised to take over private roads and upon the whole to exert an influence on the arrangement of such roads and their connection with the ordinary road system. In fixing the compensation for the taking of land regard must be paid not only to the market value of the land taken but also to the damage sustained to the property concerned. If the land expropriated is sown for grain or grass compensation must also be given for the crop of which the owner is deprived in the year concerned. In the case of re-adjustment of highroads the owner concerned may be called upon to take over the old road as part compensation for the taking of land for the new road. Stones, earth, gravel and sand for the roads may be taken in the place where these materials are obtainable most conveniently and land owners are bound to allow them to be taken from their lands without compensation. On the other hand, land for the making of private roads cannot be taken compulsory. The compensation to be paid for the taking of land for public roads is fixed by two persons appointed by the Court, and an appeal from their decision lies to a Land Valuation Committee comprising four persons appointed in the same manner. In the nature of things the legislation dealing with roads is mainly of interest to the rural districts.

The Building Statutes which, of course, are of interest mainly to the towns are framed so that the local councils desiring to make full use of the provisions of these statutes must embody these in special Building Bye-laws. These bye-laws are subject to the sanction of the Ministry of Home Affairs. The basis of the contents of these bye-laws will in all essentials be found in the Building Bye-laws for Frederiksberg, promulgated on August 1st, 1912. Through such building bye-laws the particular local council may be granted authority to take land and buildings compulsorily for the making and extension of streets and roads or for other public purposes. It will thus be seen that the local districts are given a very far-reaching authority to exert such influence on buildings and sites as is necessary for the furtherance of town planning. But the obligation imposed by the Constitution to pay full compensation is, of course, a barrier against the efforts of the local councils in this respect.

The actual town planning provisions are contained in the *Town Planning Act of April 18th, 1925*.

Much work had been expended and many vain attempts had been made before the act came into being. The interest displayed by the local

councils was only half-hearted, as encroachments on local self-government was feared, and landowners have shown reserve owing to fear of curtailments of property rights. It was only when the act was confined so as to contain the scantiest number of provisions and the local councils were given a free hand as to whether they desired to make use of the act that it was carried through. It will thus be understood that—in spite of the passing of the act—it is still necessary to pursue a powerful agitation in Denmark for the furtherance of a consistent town planning policy, and to undertake an energetic demonstration of the resultant economic and social amenities. The soil for such agitation must in a country like Denmark, where social legislation has developed so rapidly, be said to be favourable.

If once the social importance of town planning, more particularly its immense value for the labouring part of the population, is realised by those who ought to be most interested the application of the act will surely become more extended. The need for a more elaborate and effective legislation will then arise quite naturally.

In its present form, however, the act must be characterised as an important step forward and as an efficient basis for its further development.

According to the act, binding provisions may be made by the town plan as regards the position of the roads, their length cross sections and construction, the position of squares and other public places, the situation of rails and pipes and tubes for gas, water, electricity, drainage, etc., the nature of the buildings to be erected and their distribution, and also with regard to buiding lines, proportion of plot to be built on, etc. These details must be drawn up in writing and be accompanied by plans after which they must be submitted to the superior authorities for inspection and approval by them. When they have been sanctioned no area must be used in a manner which is at variance with the plan—and this provision is registered as a charge on the property concerned. The compensation is fixed by two impartial persons who are appointed by the Court. In the event of an interested party being dissatisfied with the result arrived at by these persons the question in dispute may be appealed to a committee comprising two members elected by the Prefect of the County Council concerned for a period of four years (one of these represents the towns of the county concerned and the other the rural districts) and two impartial persons elected by the Court for the particular case. One of the members elected by the Prefect is designated by the Prefect as chairman of the Committee. In the case of an equality of votes on the Committee an Umpire decides the case. This umpire must be appointed by the President of the High Court concerned.

When in accordance with the town plan part of a property is to be ceded the owner has the right to demand that the local council take over his whole property, if in the opinion of the members of the committee the remainder would be of such a shape that it could not be adequately used for the erection of an independent building or as an independently built-on property in accordance with its use hitherto. In fixing the amount of compensation, deduction shall be made of the increase in value of any remaining property. In consequence of this latter provision the question of compensation may disappear because the benefits which fall to the owner owing to the re-arrangements made may be held to exceed the amount of compensation.

Besides giving authority to demand the cession of land for streets and roads, the town planning act also gives authority to undertake extensions of existing roads and to make future road connections. The act contains no limitations in respect of the ties which may be imposed on the owners of land in this respect, provided only that compensation is granted. The building act also contains authority for a local council to secure possibilities for an extension of streets and roads but this right is only supposed to embody authority for such council to widen the streets or roads concerned up to 20 metres. When carrying out such schemes the authorities may in certain cases relieve themselves of the obligation to pay compensation by granting the owners of the land the right to build the house in several storeys.

New statutory provisions to safeguard future extensions of thoroughfares by prohibiting the erection of buildings within a certain distance from the middle of the street are in course of preparation.

Provisions dealing with the redistribution of awkwardly shaped plots of land so that the owner of such land in consideration of the alienation is given another piece of land more conveniently situated are not contained in the town planning act. This power, which would be of the greatest importance by facilitating an economical carrying through of the town plan, is warranted only in exceptional cases in Danish law.

I have given an outline of Danish law in relation to compulsory purchase of land for town planning purposes. A number of acts give special authority to expropriate land for tramways, railways, burial grounds, schools, harbours, drainage, sewers, water and gas systems, etc. The law contains no fixed uniform principle for the valuation to be made. Some acts contain no directions for the valuation beyond providing that compensation shall be made for the actual taking of land, and it is then left to the valuers themselves to take into consideration all circumstances which may have an influence on the amount of compensation. Other acts contain more elaborate directions but it would take up too much time here to make a thorough examination of these cases.

The principle governing the valuation to be made at the surrender of land for the construction of railways* being rather typical, I intend to touch briefly on these, amongst other things, because these principles are frequently made the basis of the computation of the compensation to be paid for other compulsory purchases, when no special rules have been laid down. The Valuation Committee must make a statement of the compensation to be paid for each particular property on the basis of the market value of the land with due regard to the prices paid for land of the same kind in the neighbourhood at the particular time. To this is added a special value which the land taken may have in view of its position and its particular use, provided that this value can be fixed in money, and persons in possession of expert knowledge (for instance forest horticultural and building experts) may be called in to assist at the valuation. Furthermore, regard must be had to the diminution in value which the rest of the property may undergo on account of the surrender, for instance because the working of the property left is rendered difficult on account of the severance. Further, any loss due to the surrender, for instance loss of crop, must be taken into consideration. On the other hand, the loss which the owner may suffer by having to sell property

* The rules as to this are contained in an ordinance of March 5th, 1845.

to which, because it has belonged to his family for many years or on other personal grounds, he feels himself attached must not be taken into consideration. The committee must as far as possible endeavour to effect exchanges between such pieces of land as are severed from properties, but which may be suitably added to adjoining properties. If the pieces of land which in consequence of the compulsory purchase are severed from the property are so small and inconveniently shaped that they cannot be independently cultivated such land must also be taken over by the railways.

In other cases, for instance at the surrender of land for streets and other town planning purposes there is, as stated above, authority for deducting from the amount of compensation the increase in value which the rest of the property has undergone owing to the construction concerned, while on the other hand, the owner is granted the right in certain cases to demand the whole property to be taken over either unconditionally or because the remaining part of the property cannot be used for the purposes for which it was previously used. Just as there are no uniform principles for making the valuation there are no fixed rules dealing with the composition of the valuation authorities. Very often the valuation—as mentioned above—is left to impartial men appointed by the Court; but in other cases the valuation is left to a special committee of which one or more members or commissioners are in possession of technical or legal expert knowledge (surveyors of land, judges and others). Often a dissatisfied party is given possibility for appealing against a valuation. While thus the fixing of the amount of compensation is often left to special persons or a committee appointed for this purpose, it must be supposed that the question as to whether compensation is to be granted at all and the question of the amount of the loss which is to be made good may be brought before the ordinary tribunals.

As will be understood, Denmark is not without statutory provisions dealing with the compulsory taking of land for the public good, but a revision of the existing provisions would be desirable. It would thereby be possible to gain the necessary view and secure uniformity in regard to the rules for the granting of compensation and the composition of the authorities fixing the compensation, in which latter an element in possession of the necessary expert knowledge is now often lacking. The town planning act, so far, means a step towards such codification, but its importance is weakened because the act is not obligatory, because it is without sufficient touch with the abovementioned older legislation relating to these matters, and because it does not pay sufficient regard to the town planning experts. The aim must be an obligatory act. Such act must not be a strait-jacket for development, but must guide development so that every step forward becomes a link in a connected whole. At the same time the public expense in connection with town planning must be reduced so much that compulsory purchases against cash compensation could be avoided to the extent to which compensation can be made through the values created by the town, that is to say by a sensible rearrangement of the sites. In the framing of such an act valuable support should be received from the international townplanning movement. And by using, in lawmaking and in practice, the experiences gained by the international movement the act will, if linked up with the codification of the older Danish statutory provisions previously mentioned, nevertheless be based on a solid national foundation.

Summary.

The Danish statutes dealing with the construction and upkeep of roads and buildings are very scattered, as the statutory provisions came into existence gradually as they were necessitated by the large increase in the population during the last century. The population of Copenhagen, the largest town in the country, was in 1801 about 100,000 inhabitants as compared with about 600,000 now; including the suburbs about 750,000. The figures for the second largest town, Aarhus, are about 4100, 75,000 and 100,000 respectively.

No codification has been made but is urgently needed, more particularly because there are many diverse rules governing the valuation and compensation and the provisions regarding composition of the valuation authorities for the various purposes for which valuations are to be made.

Sec. 80 of the Constitution provides that the right of property is inviolable. In the event of compulsory acquisition of land for the public good full compensation must be granted. Compulsory purchase can only be made under a statute.

All provisions about compulsory purchase have their root in this provision.

The country was without a special Town Planning act right up to 1925, but many local councils have been able to carry through tasks partaking of the character of town planning, for instance by undertaking the purchase of large areas of land.

The legislation dealing with highroads is to some extent built on very old statutory provisions giving authority to take land compulsory for the carrying through of highroads and byeways and for the extension of existing roads. These statutes are of interest mainly to the rural districts.

The Building Statutes are framed so that the local district desiring to make full use of their provisions must adopt special building byelaws which must be approved by the Ministry for Home Affairs. The building bye-laws may contain authority for the local council concerned to make compulsory purchase of sites and buildings for the construction and extension of streets and roads. The obligation to pay compensation is a barrier to the use of these provisions.

The Town Planning Act of 18th April, 1925, is rather weak, as it is not obligatory. This is due to the struggle that was necessary to secure its passage. The local districts feared an encroachment on their local self-government, and the owners of land feared a curtailment of their property rights. However, the act must be described as a very important step forward.

Under this act it is possible by the town plan to make binding provisions about the situation of the roads, their length, cross sections and construction, the position of squares and other public places, the position of rails for tramways and the like, the position of pipes and tubes for gas, water, electricity and drainage, the nature of the various buildings to be erected and their distribution, and also with regard to building lines, proportion of plot to be built on etc.

If for the purpose of the town planning it is necessary for an owner to surrender part of a property he is in certain cases entitled to demand that the whole property be purchased.

The town plan cannot, however, enforce a re-arrangement of the building areas, and such re-arrangement is on the whole only possible in exceptional cases under Danish law.

A number of special acts give authority for the compulsory purchase of land for tramways, railways, burial grounds, schools, harbour construction, drainage, sewers and water and gas pipes.

Sommaire.

Les règlements danois concernant la construction et l'entretien des routes et des bâtiments se trouvent dispersés dans différentes lois. Cela provient de ce que ces mesures furent prises au fur et à mesure que le besoin s'en fit sentir au cours du siècle dernier par suite du grand accroissement de la population.

La population de Copenhague, la plus grande ville du pays, était, en chiffre rond, de 100,000 habitants en 1806 et de 600,000 aujourd'hui et même de 750,000 avec la banlieue. Pour la seconde ville, Aarhus, ces chiffres sont respectivement de 4,100, 75,000 et 100,000 âmes environ.

Il manque encore un résumé général de ces prescriptions; il est cependant indispensable à cause de la grande divergence qui existe, non seulement entre certaines déterminations relatives à l'évaluation et à l'indemnisation, mais aussi entre les règlements concernant la composition du jury spécial chargé de fixer les évaluations dans les différents cas exigeants cette opération.

L'Article 80 de la Constitution danoise déclare que le droit de propriété est inviolable; qu'en cas d'expropriation forcée pour cause d'utilité publique, le propriétaire doit être pleinement indemnisé; qu'il ne peut être procédé, à des expropriations forcées que dans la mesure des prescriptions en vigueur; les prescriptions forcées sont basées sur cette disposition de la constitution dans les décrets concernant.

Jusqu'en 1925 le Danemark n'avait pas de plan de construction urbain proprement dit; néanmoins, beaucoup de communes ont réalisé des affaires qui sont du domaine de la construction urbaine; par exemple, l'action de grands terrains à bâtir.

La loi des grandes voies de communication repose, dans une certaine mesure, sur de très vieux décrets donnant le droit d'exproprier du terrain pour la construction de routes de grande communication et de routes secondaires, de même que pour l'extension des routes déjà existantes. Ces prescriptions intéressent principalement les campagnes.

Des lois de construction sont conçues de telle sorte que les communes qui veulent profiter de toutes leurs prescriptions, doivent publier un règlement de construction approuvé par le Ministère de l'Intérieur. Ces règlements de construction peuvent reconnaître au Conseil municipal le droit de procéder à des expropriations forcées de terrains et d'immeubles indispensables pour l'établissement ou le développement de routes et de chemins. L'obligation de payer une indemnité met certaines limites à l'application de ces déterminations.

La loi de construction urbaine du 18 avril 1925 est pour ainsi dire inopérante, puisque'elle n'exerce pas d'effets obligatoires. c'est une conséquence de la lutte qui dut être menée pour la faire voter. Les municipalités craignaient une diminution de leur administration autonome et les propriétaires une immixtion dans leur droits de propriété. Néanmoins cette loi doit être considérée comme un grand progrès.

Le cadre de cette loi permet en effet de prendre, à l'aide du plan urbain, des dispositions concernant: le tracé des routes, leur longueur, leur profil transversal et la manière de les construire; la situation des places et autres terrains publics; l'établissement de voies de tramways, de conduites d'eau, de gaz, d'eau et d'électricité; la construction d'égouts; la forme et la distribution des divers bâtiments à construire, leur alignement et l'étendue des terrains à bâtir.

Si l'un des projets de construction urbaine demande qu'un propriétaire cède une partie de sa propriété, celui-ci a le droit d'exiger, dans certains cas, la prise de la propriété entière.

Le plan de construction ne peut pas cependant exiger une autre utilisation des superficies déjà bâties; cela n'est possible, d'après le droit danois, que dans certains cas tout à fait spéciaux.

Une série de lois spéciales permettent l'expropriation forcée de terrains, pour la construction de lignes de tramways, de chemins de fer, de cimetières, d'écoles et de ports; le drainage et la canalisation ainsi que pour l'établissement de conduite d'eau et de gaz.

Auszug.

Die dänischen Bestimmungen über den Bau und die Instandhaltung der Straßen und Gebäude finden sich ganz zerstreut in verschiedenen Gesetzen. Denn die einzelnen Maßnahmen wurden im Laufe der Zeit getroffen, wie sie eben durch die starke Bevölkerungszunahme während des letzten Jahrhunderts notwendig wurden. Die Bevölkerung von Kopenhagen, der größten Stadt des Landes, bestand im Jahre 1801 aus ungefähr 100.000 Einwohnern gegenüber ungefähr 600.000 von heute (einschließlich der Vororte ungefähr 750.000). Diesen Ziffern entsprechen für die zweitgrößte Stadt Aarhus ungefähr die Zahlen 4100, 75.000 und 100.000.

Eine einheitliche Zusammenfassung dieser gesetzlichen Bestimmungen fehlt bisher, ist jedoch dringend erforderlich, besonders weil für die Schätzung und Entschädigung viele von einander abweichende Bestimmungen bestehen und auch die Bestimmungen über die Zusammensetzung der Schätzungsbehörden für die verschiedenen Zwecke, für welche Schätzungen gemacht werden müssen, voneinander abweichen.

§ 80 der Verfassung sieht vor, daß das Eigentumsrecht unverletzlich ist. Im Falle einer Zwangsenteignung für öffentliche Zwecke muß volle Entschädigung geboten werden. Zwangsenteignungen können nur nach Maßgabe der geltenden gesetzlichen Bestimmungen vorgenommen werden.

Alle Verordnungen über die Zwangsenteignung haben diese Bestimmung der Verfassung zur Grundlage.

Das Land hatte bis 1925 kein eigentliches Städtebaugesetz, doch haben viele Gemeinden Aufgaben durchgeführt, die in das Gebiet des Städtebaues fallen, zum Beispiel den Ankauf großer Grundflächen.

Das Gesetz über Hauptverkehrsstraßen beruht in einem gewissen Ausmaß auf sehr alten Verordnungen, die dazu berechtigten, Land zum Zwecke der Anlegung von Verkehrsstraßen und Nebenstraßen sowie für die Ausdehnung bestehender Straßen zwangsmäßig zu enteignen. Diese Verordnungen sind hauptsächlich für ländliche Gebiete von Interesse.

Die Baugesetze sind derart abgefaßt, daß die Ortsgemeinde, welche ihre Bestimmungen im vollen Umfang ausnutzen will, eine Bauordnung erlassen muß, die der Genehmigung des Ministeriums des Innern bedürfen. Diese Bauordnungen können den Gemeinderat dazu berechtigen,

die Zwangsenteignung von Gelände und Gebäuden für die Errichtung und den Ausbau von Straßen und Wegen vorzunehmen. Die Verpflichtung, Entschädigung zu zahlen, ist eine Schranke für die Anwendung dieser Bestimmungen.

Das Städtebaugesetz vom 18. April 1925 ist ziemlich schwach, da es keine obligatorische Wirkung ausübt. Dies ist die Folge des Kampfes, der dazu notwendig war, es durchzubringen. Die Ortsbehörden fürchteten eine Beeinträchtigung ihrer Selbstverwaltung und die Grundbesitzer befürchteten einen Eingriff in ihre Eigentumsrechte. Immerhin muß das Gesetz als ein äußerst wichtiger Schritt nach vorwärts betrachtet werden.

Im Rahmen dieses Gesetzes ist es möglich, durch den Stadtplan Bestimmungen zu treffen über die Lage der Straßen, ihre Länge, Querschnitte und Art der Erbauung, die Lage von Plätzen und anderen öffentlichen Gebieten, die Schienengeleise für Trambahnen und dergleichen, die Anbringung von Rohren und Kanälen für Gas, Wasser, Elektrizität und Kanalisierung, die Art und Verteilung der verschiedenen zu errichtenden Gebäude, die Baulinien, Größe der Bauplätze usw.

Wenn es für Städtebauzwecke notwendig wird, daß ein Grundbesitzer einen Teil seines Besitztums abgibt, so steht es ihm in gewissen Fällen zu, die Übernahme des ganzen Besitzes zu verlangen.

Der Bebauungsplan kann jedoch nicht eine andersartige Verbauung schon überbauter Gebiete erzwingen, das ist nach dänischem Recht im allgemeinen nur in besonderen Ausnahmefällen zulässig.

Eine Reihe von besonderen Gesetzen berechtigt zur Zwangsenteignung von Grundstücken für Trambahnen, Eisenbahnen, Friedhöfe, Schulen, Hafenanlagen, Entwässerungsanlagen, Kanalisation und Wasser- und Gasleitungen.