

FORMS OF MANAGEMENT OF THE AGRICULTURAL PROPERTY STOCK OF THE STATE TREASURY*

Aneta Suchoń

Poznań University of Life Sciences

Abstract. The Agricultural Property Agency (previously the Agricultural Property Agency of the State Treasury) has been in existence for over 16 years. Forms of management of property from the Agricultural Property Stock of the State Treasury and statistical data on the subject are presented in the paper. The dominant forms are lease and sale. Main problems faced by the Agency are identified. They results primarily from a lack of respective legal regulations.

Key words: Agricultural Property Stock of the State Treasury, sale, lease

INTRODUCTION

The Agricultural Property Agency (previously called the Agricultural Property Agency of the State Treasury¹) has been operating for over 16 years. At the moment of its establishment the primary task of this state legal person was to take over and distribute agricultural property of the State Treasury. In practice the former has been completed. At present property management is affected. Starting from its foundation until the 31st December 2006 APA took over 4 717 940.00 ha land to the Agricultural Property Stock of the State Treasury. Of that amount up to the end of 2006 a total of 1 693 984.00 ha were sold (including 107 367.00 ha in 2006), while 1 905 607.00 ha

* The article was prepared within an interdisciplinary grant no. 4/04/WI/07/AR-UAM.

¹ On the strength of the Act of the 11th April 2003 on the Formation of the Agricultural System [Ustawa... 2003] the name of the Agricultural Property Agency of the State Treasury was changed to the Agricultural Property Agency. The Agricultural Property Agency is a legal successor of the Agricultural Property Agency of the State Treasury.

were leased, 56 691.00 ha were used in the perpetual usufruct system and 2 304.00 ha were managed by the Agency. In turn, 15 785.00 ha were brought in to shareholder companies. Large areas of land were also gratuitously transferred to local government units, the State Forests or Roman Catholic Church legal persons. On the 31st December 2006 approx. 386 248.00 ha were left to be distributed at the disposal of the Agricultural Property Stock of the State Treasury [Raport... 2007].

The aim of this study was to present the forms of management for property at the disposal of the Agricultural Property Stock of the State Treasury and to assess their functioning in practice. Due to the limited scope of the paper and the extensive nature of the problem, only selected issues will be presented here.

GENERAL INFORMATION ON THE AGRICULTURAL PROPERTY AGENCY

APA is a state legal person operating nationally and based in Warsaw. It was established on the strength of the Act of the 19th October 1991 on the Management of Agricultural Property of the State Treasury [Ustawa... 2004 b]². In the light of article 5 item 1 of the above mentioned Act the State Treasury bestows on the Agency the right to exercise the property right and other rights in rem for the benefit of the State Treasury within the scope stipulated by the regulations. The authority of the Agency to manage property of the State Treasury is based on the legal structure of trusteeship.

The Act of the 19th October 1991 [Ustawa... 2004 b] regulates the principles of property management of the State Treasury in relation to:

- 1) agricultural property as defined in the Civil Code located in areas defined in the town and country development plan to be used for farming, exclusive of land administered by the State Forests and national parks,
- 2) other property and elements of property left after the liquidation of state farms and their unions and associations,
- 3) forests which were not isolated in surveys from property, as defined in points 1 and 2.

The Agricultural Property Stock of the State Treasury comprises both arable land and land not utilized agriculturally, as well as other components of property, e.g. movables. In conformity with article 24 item 1 of the Act of the 19 October 1991 [Ustawa... 2004 b] the analyzed trusteeship institution manages the Agricultural Property Stock of the State Treasury by: 1) sale of property as a whole or in part, 2) transfer for a specified period of time for value received to be used by legal or physical persons (tenancy, lease), 3) contribution of property or its part to a partnership, 4) transfer of property as a whole or in part for a specified time to an administrator to be managed, 5) handing over for management, 6) exchange of property.

Lease and sale are dominant forms of property management for the Agricultural Property Stock of the State Treasury and thus they will be further analysed.

² Hereinafter referred to as the Act of the 19th October 1991.

SALE OF LAND

Statistical data show that the rate of sale for state-owned land is increasing. In the first half-year of 2007 APA sold almost 57 thousand ha land, i.e. 50% of the area planned for sale for that year (113 thousand ha). As it results from preliminary data, in 2007 the Agency sold over 103 thousand ha land from the Agricultural Property Stock of the State Treasury (in 2006 – 107 thousand ha). Approximately 345 thousand ha are left in the Stock to be disposed of, while almost 1 million 840 thousand ha are leased. Since the beginning of its operation the Agency sold almost 1.8 million ha. The biggest areas of land to be disposed of are found in the Zachodniopomorskie province (over 60 thousand ha), the Warmińsko-mazurskie province (almost 50 thousand ha), the Lubuskie province (over 37 thousand ha) and the Dolnośląskie province (almost 36 thousand ha). In turn, the least land is at the disposal of the Agency in the Małopolskie (slightly over 5 129 ha), the Podlaskie and the Kujawsko-pomorskie provinces (approx. 7 000 ha each).

Sale of property included in the Agricultural Property Stock of the State Treasury is usually executed by tender. The regulations of the Act of the 19th October 1991 [Ustawa... 2004 b] provide for its following forms: open oral auction, open auction on closed bids, oral auction open to selected persons and auction on closed bids open to selected persons.

In the open oral auction these subjects may participate which lodged an auction gage at a specified date and in the specified form, met other conditions specified in the notice of invitation to tender and appeared at the oral auction. Unless there are circumstances justifying the discontinuation of the auction, the chairman of the commission initiates the auction, giving the starting price for land and inviting bidders to increase the bid. The chairman of the commission presents successive (higher) bids brought forward orally by the bidders until – despite the same price being called three times – no further higher bids are presented.

In situations justified by economic reasons APA may organize an auction on closed bids (tender competition). It consists of an open and closed part. It is conducted if at least one bid meeting the terms and conditions specified in the notice of auction was brought forward. APA may also organize closed auctions. They are conducted when it is stipulated in the notice that all or certain categories of persons as defined by art. 29 item 3b of the Act of the 19th October 1991 [Ustawa... 2004 b] may participate in the auction. These subjects include e.g. physical persons, meeting conditions defined by the regulations on the formation of the agricultural system, intending to establish or enlarge their family farm as defined by these regulations, being e.g. farmers owning a farm in the commune, in which the property to be sold at auction is located, and intending to enlarge this farm. Conditions to be met to qualify for the participation in the procedure are given in the notice of invitation. Interested subjects need to present in the place specified by the auction organizer documents confirming they meet the conditions stipulated in the notice.

However, it needs to be stated that in cases defined by the regulations APA may sell land without an auction to persons having the pre-emption right to the property. However, the Act of the 19th October 1991 itself and respective executory provisions do not define the term the pre-emption right. This has not been done by the legislator in other legal acts applying to this institution. It is indicated in literature on the subject that pre-

emption consists in the fact that categories of persons specified in the act may purchase – with the exclusion of other candidates, and thus the normal bidding procedure – property and flats in houses on land belonging to the State Treasury or communes, or may receive such land for further lease or tenancy [Prutis 1997].

In accordance with art. 29 item 1 of the Act of the 19th October 1991 [Ustawa... 2004 b], the pre-emption right to purchase property without an auction is reserved to:

- 1) the former owner of sold property or their heirs, if the property was taken over for the State Treasury before the 1st January 1992,
- 2) a farming cooperative, actually managing the sold property, in relation to which usufruct for this cooperative expired on the basis of art. 16 item 2 as of the 31st December 1993,
- 3) the leaseholder of the transferred property if the lease lasted actually at least for three years.

In case when there is an eligible person (e.g. a leaseholder), APA sends a notice in writing. It needs to include data which were incorporated in the sale notice, supplemented with the price, the deadline for the application to purchase (this date may not be shorter than 21 days from the date of receipt of the notice) and other conditions concerning the purchase of the property.

Prices of arable land in Poland, although increasing, are still lower than those in other EU countries. Thus many foreigners are interested in their purchase. In accordance with the negotiation position, Poland was granted a transitory period in relation to agricultural and forest property, consisting in the stipulation that within twelve years since it became an EU member country, it may apply in relation to foreigners, being citizens or entrepreneurs in the member countries of the European Economic Zone, the regulations of the Act of the 24th March 1920 on the purchase of property by foreigners [Ustawa... 2004 a]. This means that the requirement to obtain a permit from the Minister of Internal Affairs and Administration to purchase agricultural and forest property is still binding.

Other rules apply in relation to farmers being citizens of EU member countries, settling in Poland and taking up employment in farming on the self-employment basis. These persons may purchase arable land with the exclusion of the requirements stipulated by the Act of the 24th March 1920 [Ustawa... 2004 a] on the purchase of property by foreigners on condition that they previously leased the agricultural property, permanently reside in Poland and farm the land in person. This lease has to last without interruption for three years and in the Warmińsko-mazurskie, Pomorskie, Kujawsko-pomorskie, Zachodniopomorskie, Lubuskie, Wielkopolskie, Dolnośląskie and Opolskie provinces for the period of seven years, starting from the date of the acceptance of the accession treaty and be completed immediately before the purchase of the property. The conclusion of a lease contract needs to be in writing with a certified date.

We also need to mention an institution which may lead to a disturbance of the maintenance of the permanent management of lands purchased from the Agricultural Property Stock of the State Treasury. It is connected with the right of redemption. In view of the Civil Code parties may introduce in the sale contract the reservation of the right of redemption, creating on the part of the buyer the obligation of transfer of ownership of property to the seller at the date the eligible party uses that right for the reimbursement of the price, sale costs and outlays. In concordance with art. 29 item 5 of the Act of the 19th October 1991 [Ustawa... 2004 b] APA has the right of redemption of property for the State Treasury within 5 years, starting from the date of its purchase from APA, with

this right being entered in the land register. A certain consolation here may be the fact that APA uses the right of redemption in exceptional cases. In concordance with the rules of property sale from the Agricultural Property Stock of the State Treasury the introduction of the statutory right of redemption does not mean that it will use this right in relation to all sold property. This regulation needs to be seen as an instrument to prevent possible speculation of arable land. Thus, in practice APA considers whether to use the right of redemption when:

- the buyer sells the agricultural property to a person who as a result of this purchase will own over 500 ha agriculturally utilized land,
- the purchaser does not fulfill their obligation to invest or create new workplaces – when such an obligation resulted from the stipulations of the sale by tender,
- the land function of the property in the local town and country development plan is changed to a non-agricultural function [Dzierżawa... 2003].

LEASE OF LAND

As far as lease contracts for property from the Agricultural Property Stock of the State Treasury are concerned, they are concluded as a rule also after a bidding procedure. On the basis of art. 24 item 1 point 2 of the Act of the 19th October 1991 [Ustawa... 2004 b] the legislator put on APA the obligation to conclude lease contracts for a specified period of time, leaving the specification of its length to the parties. Most commonly they are periods of many years, usually 10 years.

However, it needs to be explained here that a tender procedure is not used when at least one of the circumstances mentioned in art. 39 item 2 of the Act of the 19th October 1991 [Ustawa... 2004 b] apply, e.g. the current leaseholder presented APA with an declaration to further lease the property under new conditions, agreed upon with the above mentioned legal person, provided the land rent is not lower than the previous amount. However, there have been cases when despite presenting of a respective declaration of will by the leaseholder, some Regional Branches of the Agency did not enter into any negotiations, leading to the termination of the lease contract as a result of the expiration of the lease term. Leaseholders were frequently of the opinion that as they presented the declaration of further lease of property on time, they were not to blame for the Agency not entering negotiations. Thus as a rule they refused to release the leased property, demanding the extension of the contract, which as a result of the expiration of the date was not longer binding. Such a situation caused numerous problems in practice. For this reason a positive development was the coming into force of the act of the 15th June 2007 on an amendment to the Act on the Management of Agricultural Property of the State Treasury. In concordance with its regulations, within a month of the amendment coming into force APA was to propose new lease conditions to the current leaseholders of property, which before this act came into force presented, before the expiration of their lease, declarations mentioned in art. 39 item 2 point 1 of the Act on the Management of Agricultural Property of the State Treasury, and did not receive any proposal from the Agency in this respect, on condition however that on the day the Act came into force [Ustawa... 2007]:

- 1) the leased property was still used by them,
- 2) they paid the land rent on time.

For the period of administering the property after the expiration of the lease contract the current leaseholder is obliged to pay the equivalent of the chargeable land tax, agricultural tax or tax on forest as well as the fee for the Agency in the amount of the previous land rent for the respective period.

Moreover, we also need to present here the principles referring to leaseholders, which at present or in the future will apply to APA, to have their lease extended by presenting a respective declaration. In concordance with the amendment of the 15th June 2007 [Ustawa... 2007], on the failure by the Agency to present the current property leaseholder with their position on the conditions of further lease of this property within a month of the presentation by the leaseholder of the declaration on the intention of further lease of the property, it is assumed that the Agency agreed to the further lease of the said property at the previous terms and conditions for a period of 1 year.

When discussing the extension of lease of a property from the Agricultural Property Stock of the State Treasury a change in the amount of the land rent needs to be mentioned. Regulations allow for the possible extension of the lease on condition the rent is not lower than the current one.

First it needs to be stressed that in case of an extension of lease to the next lease period for many years there was a problem of principles determining the amount of the rent equal for all parties. The Act of the 19 October 1991 [Ustawa... 2004 b] does not regulate this issue. Moreover, it is not mentioned in the latest amendment of 15 June 2007 [Ustawa... 2007]. Thus appropriate actions have been taken aiming at the unification of the procedure, which resulted in the establishment of respective rules by APA in the second half of 2006. In concordance with these rules, when determining new lease terms and conditions the amount of the current rent needs to be compared with such a rent, which would most probably be paid to APA if a said property was leased as a result to tender in case the contract was not extended. The amount of the land rent for land covered by the current contract is determined using the data base containing amounts of the land rents, in terms of individual types and classes of agriculturally utilized land, collected from all property leased within the last year, separately for each county located within the area of operation of a given Regional Branch of APA. For the operation of such a data base special computer software was developed, calculating the amount of the average land rent and next rejecting transactions with extreme amounts of the land rent, i.e. those exceeding 150% and below 50% average land rent amount. Data bases may be established annually until the end of the first quarter of the year.

When presenting problems connected with the extension of a lease contract for a property from the Agricultural Property Stock of the State Treasury, it seems justified to present the security of APA receivables resulting from land rents. Such a security is undoubtedly a measure protecting the interest of the lessor. According to the specimen lease contract for property from the Agricultural Property Stock of the State Treasury, the leaseholder in order to secure the payment of back rent, most commonly for two half-years and an additional 3-month period set by the lessor, is obliged to present a security to APA. Providing a security to the rent payment is also necessary at the extension of lease. For many leaseholders of property from the Agricultural Property Stock of the State Treasury it is a problem to provide such a security. When establishing security for payment of the land rent APA applies these forms, which in a specific situation offer the best guarantee for the payment of liabilities. These include e.g. bank guarantees, a guarantee, a promissory note in blank, security on rights, mortgage, a transfer

of a claim, blocking of means on a bank account. Depending on a specific situation, APA uses one or several forms of security at the same time. Several forms are applied only when one is not sufficient to secure the whole amount of liability. Apart from that, APA uses the institution of voluntary submission to enforcement by the leaseholder in terms of the obligation to pay the land rent together with interest for delay in payment (art. 777 § 1 point 5 Code of the Civil Procedure). APA seems to use this option primarily due to the fact that as a trustee of the State Treasury it has to take special care to secure receivables from rent payments.

As it was already explained above, after a 3-year lease of a property from the Agricultural Property Stock of the State Treasury leaseholders are entitled to the pre-emption of this property with no tender procedure conducted. In the light of regulations the decision on the intended sale of a property is taken by APA. However, frequently leaseholders after a 3-year actual lease period apply to the above mentioned agency to have the leased property put up for sale. In many cases APA may not sell the leased land to the leaseholder due to the claims of the former owners. A ban on the sale of property, in relation to which claims have been raised by former owners or their heirs, has been in force since November 1997 and it was introduced in relation with the work on a draft of the Act on Reprivatization [Petryna 2002]. Release of land for sale is possible only in a situation when a former owner or their heirs presented a notary declaration that they will not seek the return of the property in nature. It seems that the problem of claims raised by former owners and the sale of property from the Agricultural Property Stock of the State Treasury is going to be solved only after the Act on Reprivatization comes to force, although work on its passage has already taken many years.

At the end of 2007 almost 1 million 840 thousand ha were leased (at the end of 2006 it was 1 million 920 thousand ha). Last year the Agency released only less than 42 thousand ha to be leased (in 2006 it was 80 thousand ha). The area of leased land has been decreasing for several years now. This is caused by the depletion of larger organized agricultural property in the Stock and the fact that farmers, despite high prices, are increasingly interested in the purchase of land. Last year nation-wide there were approx. 51 thousand auctions, including over 46 thousand to sell and almost 4 800 to lease land from the Agricultural Property Stock of the State Treasury [Raport... 2006].

CONCLUSIONS

Presented considerations concerning sale and lease give rise to several remarks.

First of all it needs to be stated that, apart from the commonly bidding law, the Guidelines of the President of the Agency have a significant effect on management forms of property from the Agricultural Property Stock of the State Treasury. An example in this respect may be e.g. a ban on sale of property covered by claims of former owners imposed in 1997. Such a state of limbo is disadvantageous both for the former owners, the Agency, and for leaseholders, who may not purchase the leased arable land. Moreover, the establishment of universal guidelines binding nation-wide is disputable. There are opinions that the introduced rules do not meet the needs of individual regions. However, it needs to be remembered that APA is a trustee legal person and in its actions needs also to consider the interest of the owner, i.e. the State Treasury, and its statutory tasks.

As far as lease is concerned, obviously the best solution would be to finally realise the postulate, raised in the doctrine for many years now, and create regulations concerning agricultural lease. It seems that legislative work concerning the development of regulations on the lease of arable land should be conducted simultaneously with the work on the Act on the Reform of APA. Postulates concerning a thorough modernisation of the Agency have been raised for a long time now. Some of them even assumed the institution should be dissolved. Solutions contained in some drafts of legal acts seem to be disadvantageous, e.g. the Act on the reform of agriculture, agrarian reform and family farms³ and the Act on the financing of local government units⁴. These drafts assumed the elimination of the Agricultural Property Agency of the State Treasury (presently APA) and as result either the conclusion of property leases or the introduction of new stipulations to the concluded lease contracts. A better solution for the maintenance of continuation of farming activity seems for the agricultural property, comprising the Agricultural Property Stock of the State Treasury, to continue to remain there. APA has an over 16-year experience in the management of agricultural property and it would be more advantageous rather to modernise it than e.g. release land comprising the Agricultural Property Stock of the State Treasury.

REFERENCES

- Dzierżawa nieruchomości Zasobu Własności Rolnej Skarbu Państwa. 2003. Agencja Nieruchomości Rolnych, Zespół Gospodarowania Zasobem, Warszawa, 30-32.
- Petryna F., 2002. Uprawnienia byłych właścicieli. *Agroprzemiany* 9, 8-9.
- Prutis S., 1997. Gospodarowanie nieruchomościami rolnymi Skarbu Państwa. *Temida* 2, Białystok, 99-101.
- Raport z działalności za rok 2006. 2007. Agencja Nieruchomości Rolnych. www.anr.gov.pl.
- Ustawa z dnia 15 czerwca 2007 r. o zmianie ustawy o gospodarowaniu nieruchomościami rolnymi Skarbu Państwa. 2007. *Dz. U. RP* 173, poz. 1218.
- Ustawa z dnia 11 kwietnia 2003 r. o kształtowaniu ustroju rolnego. 2003. *Dz. U. RP* 64, poz. 592.
- Ustawa z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców. Tekst jednolity. 2004 a. *Dz. U. RP* 167, poz. 1758, z późniejszymi zmianami.
- Ustawa z dnia 19 października 1991 r. o gospodarowaniu nieruchomościami rolnymi Skarbu Państwa. Tekst jednolity. 2004 b. *Dz. U. RP* 208, poz. 2128, z późniejszymi zmianami.

³ The draft was submitted at the Parliament on 17.01. 2001 (Form no. 2665). It assumed the liquidation of the Agricultural Property Agency of the State Treasury and the creation of the Main Land Office. According to this draft lease contracts for property from the Agricultural Property Stock of the State Treasury were to be terminated after the Act on the reform of agriculture, agrarian reform and family farms comes into force.

⁴ In concordance with the original version of the draft, submitted at the Parliament in May 2001, the Agricultural Property Agency of the State Treasury was to transfer by the 31st December 2001 property of the State Treasury remaining at its disposal to respective heads of the district offices. Previous leaseholders were to arrange a possible continuation of their land lease with the heads of the district offices.

FORMY ZAGOSPODAROWANIA MIENIA ZASOBU WŁASNOŚCI ROLNEJ SKARBU PAŃSTWA

Streszczenie. Agencja Nieruchomości Rolnych (poprzednia nazwa: Agencja Własności Rolnej Skarbu Państwa) istnieje już ponad 16 lat. W artykule przedstawiono formy zagospodarowania mienia z Zasobu WRSP, szczególnie dzierżawę i sprzedaż. Zaprezentowano problemy, z jakimi styka się obecnie Agencja Nieruchomości Rolnych oraz producenci rolni zainteresowani nabyciem czy zawarciem umowy dzierżawy gruntów z Zasobu WRSP. Należy zaliczyć do nich nierozwiązany problem reprivatyzacji, co łączy się z zakazem sprzedaży gruntów objętych roszczeniami byłych właścicieli, prawo odkupu gruntów, procedurę przedłużania dzierżawy, zabezpieczenie wierzytelności Agencji. W artykule zaprezentowano także problematykę nabywania gruntów rolnych przez cudzoziemców.

Słowa kluczowe: Zasób Własności Rolnej Skarbu Państwa, sprzedaż, dzierżawa

Accepted for print – Zaakceptowano do druku: 10.04.2008

For citation – Do cytowania: Suchoń A., 2008. Forms of management of the Agricultural Property Stock of the State Treasury. J. Agribus. Rural Dev. 2(8), 145-153.