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Verification of License & Easement in Valuation of Real Estate Assets:

Introduction:

Right of way and section 52:
Licenses under Indian Easements
Act 1882:-LICENSE:

License is defined as where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immovable property of the grantor, something which would in the absence of such rights, be unlawful and such right does not amount to an easement or an interest in the property, the right is called License. Any person having transferable interest in immovable property can grant License.

The Licensor need not be the absolute owner. A tenant can License. The License may be granted expressly or impliedly mere conduct is enough to grant License. Example: Permission for cutting trees, etc.

Kinds of License: There are two kinds:

- a. License
- b. Accessory License

Personal Privilege:

It is open to the granter to withdraw the permission, if the license is a revocable license. Whether it is revocable or irrevocable, a license is nothing more than a personal privilege.

A license is in nature of a positive right and not a preventive right. The license is transferable in some cases and not transferable in some cases. A license to attend a place of public entertainment is transferrable and other license are not transferrable.

License how granted: (Sec 54)

The grant of a license may be expressed or implied from the conduct of the grantor and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create license. No writing or registration is necessary for the creation of a license, the conduct of parties may lead to the presumption that the license has been granted. All license necessary for the enjoyment of any interest or the exercise of any right, are implied in the constitution of such interests or rights. Such license are called necessary licenses.

Duties of Grantor: (Sec 57)

1. The grantor of License is bound to disclose to the licensee any defect in the property affected by the license likely to be dangerous to the person or property of the licensee of which the grantor is and the licensee is not aware.

2. Sec 58 lays down the grantor duty not to tender the property by doing anything likely to render the property unsafe. Sec 59 says the license is a personal privilege. If the property is transferred by the grantor, the transferee is not affected by the license nor is he bound by it as the license is determined on the transfer of the property.

Easement:

Easement is a right which the owner OR occupier of Land possess as such for the beneficial enjoyment of the land, to do & continue to do as something OR to prevent and continue to prevent something being done in OR upon OR in respect of certain other land not his own. The land for the beneficial enjoyment of which the right exists is called the dominant heritage and the owner OR occupier there off is the dominant owner.

The land on which the liability is imposed is called the servient heritage, and the owner/occupier there off is called servient owner.

Characteristics of Easement:

1. There must be a dominant and servient tenement

2. The Easement must accommodate the dominant tenement

3. The dominant and servient tenements must not be both owned and occupied by the same person.

4. The easement must be capable of forming the subject matter of a grant.

Dominant and Servient Tenement:

An easement is annexed to land. The concept of belonging for more beneficial enjoyment of the parent property is essential. So on a transfer of a dominant tenement, the easement will pass with the land. Hence the occupier for the time being, including a lessee can enjoy it.

Easement must accommodate the dominant tenement:

Easement is for the beneficial enjoyment of the dominant tenement. So the right to easement cannot exist unless it confers a benefit on the dominant tenement. To establish an easementary right, the plaintiff must prove that he is the owner/occupier of land. It is necessary that dominant and servient owner shall be different persons.

The right of easement must be capable of forming the subject of grant. Neither writing nor registration is necessary for the creation or extinguishment of an easement.

Duration of Easement:(Sec 6)

- a. Permanent for a term of years
- b. For a particular purpose
- c. Conditions

Restriction of certain rights:

- a. Exclusive right to enjoy: The exclusive right of every owner of immovable property to enjoy without disturbance by the another
- b. Right to advantages arising from situation
- c. Right to build: The owner of a property has a right to build upto the limits of his property
- d. Right to free air: The owner of land has a right that the air passing there to is not polluted by others
- e. Right to comfortable living: The physical comfort of an owner shall not be interfered by noise or vibration caused by any other person.



g. Right to support: The owner has right that his land shall have the support of the sub/adjacent soil of another person. There is no right to support of one building by another

h. Right to pollution of free water: Every owner of land has a right to use the water that passes or percolates through his land without polluted by others.

i. Right to flow of natural stream: A land owner has a right over the water that flows as a stream and he can use it without interruption and without altering the quantity.

Difference between Lease & License:

The Supreme Court laid down the following propositions to find out whether a particular transaction is lease or license:

1. To ascertain whether a document creates a license OR Lease, the substance of the document must be preferred to form.

2. The real test is the intention of the parties, whether they intended to create a lease or License.

3. If the document creates an interest in the property, it is a lease, but if it only permits another to make

use of the property, of which the legal possession continues with the owner, it is a license.

4. If under the document a party gets excessive possession of the property, prima facie he is considered to be tenant. So although a person who is let into exclusive possession is prima facie to be considered to be a tenant nevertheless he will not be held to be so, if the circumstances negative any intention to create a tenancy.

Conclusion:

In Real estate Valuation, while perceiving the documents and during site inspection it is very essential for valuers to verify the licenses, leases and any easements in the property, which affect the value of Real estate assets. And one needs to understand the difference between license, lease and easement, especially any easements in the property has to be thoroughly verified and shall be factored accordingly as per its impact on the valuation of the property. So, it is pertinent to the valuers, that these legal issues are to be carefully verified & analyzed properly during the valuation of the properties.

Ref: My book "Valuation of Immovable Property"



Hence we have to construct the document to find out whether it is a lease or license

SL. NO.	LICENSE	EASEMENT
1.	Originates in permission	Originates in Grant/prescriptive user
2.	A purely personal privilege wholly unconnected with ownership	It is right appurtenant to immovable property
3.	Not transferrable except in the case of licensee to enter place of entertainment	It passes with property in whom so ever names it is transferred
4.	It does not create an interest in immovable property and hence a license is not entered to sue in his own name	It creates an interest in immovable property and therefore an owner as well as an occupier is entitled to sue for an infringement of his rights in his own name
5.	It does not create an interest in immovable property and hence a license is not entered to sue in his own name	It creates an interest in immovable property and therefore an owner as well as an occupier is entitled to sue for an infringement of his rights in his own name
6.	There cannot be a license to prevent someone else from dealing with his property in & way	There can be easement of that nature