Vinstfördelning vid servitutsförrättningar

Johan Cedergren
Veronica Karlsson

Examinator: Klas Ernald Borges,
Avdelningen för fastighetsvetenskap

Handledare: Professor Ulf Jensen,
Avdelningen för fastighetsvetenskap

Avdelningen för fastighetsvetenskap
Lunds Tekniska Högskola
Lunds Universitet

Departement of Real Estate Science
Lund Institute of Technology
Lund University, Sweden
Summary

This thesis discusses how to divide the profit between a dominate estate and a servient estate when an easement is formed, relocated or cancelled. At this moment there is no clear standard on how the profit is supposed to be divided between the estates. Furthermore there is no clarity in how cadastral surveyors are dividing the profit in their work. The purpose of this thesis is to try to clarify how profit is supposed to be divided and which principles that are supposed to be used in the different cadastral procedures regarding easements.

The questions that this thesis is trying to answer are the following:

- How did the legislator intend for the profit to be divided?
- How do the cadastral surveyors divide the profit?
- Are there any explanations on how the profit has been divided in the cadastral records?
- How are the courts dividing the profit?
- Which principles are used in which situations?
- Is it possible to clarify the norm that is being used to divide the profit?

The thesis starts with a chapter on theory that describes the current law system concerning emolument. The chapter also include discussion relevant literature on the subject. After this chapter a study on court practise concerning profit and easements follows. Then a study of surveying records is presented. The thesis ends with a chapter with analysis and conclusion. The difficulties with the thesis have been that most of the literature on the subject has been written by the same authors which give a narrow perspective. The studies are not complete. The cases were taken from a database the cadastral authority provides. The database does not contain all cases but only those that are important and interesting for some particular reason. Furthermore the specific cadastral records regarding easements are hard to find in the cadastral archives and the records in the thesis were sent by different cadastral surveyors around the country that specialise in the field of valuation and emolument in cadastral procedures. Another problem is that the parties often seem to agree upon the emolument. Due to these agreements only a few cases concerning easements are settled in the courts.

If an easement is formed, relocated or cancelled in a compulsory way a profit has to be assured from the cadastral procedure. The current law system says that the profit is supposed to be divided in an equitable way between the parties. The division is supposed to resemble a voluntary transfer between two estates. Those are the only instructions given. This is not much to rely on when a profit needs to be divided between two estates. This means that profit can be divided very differently in situations that are similar to each other and still be considered to be “right” according to the law, which is not fair.

There are two methods that can be used for dividing profit, the direct method and the indirect method. The direct method consists of five steps. In the first step the decrease in property value of the servient estate is calculated. In the second step the increase in property value of the dominate estate is calculated. After the property values have been calculated the profit is calculated in step three by subtracting the decrease in value from...
the increase in value. In step four the profit is divided between the estates and in the last step the costs of the cadastral procedure are divided between the estates. The costs are supposed to be divided between the estates considering what each estate is benefitting from the cadastral procedure.

The indirect method is often used when the decrease in property value is low since no exact calculation on the changes in property values is done. Instead the profit is divided by deciding a reallocation compensation for the easement. This is done without any exact knowledge of the changes in the property values. After that the costs are divided between the estates.

At this point in time there are four different principles on how to divide the profit. They are presented below in no particular order.

In the first principle the profit is split equally between the estates. This principle is considered fair since the participation of both estates are necessary to form the easement. In the second principle the profit is divided depending on how much the estates benefit from the cadastral procedure. The third principle compensates the servient estate with its decrease in value and an extra percentage is added to that value to give the servient estate a part of the profit. The percentage is not decided in advance and can be different in every case depending on the circumstances. The last principle derives from a case from the Supreme Court regarding land transmission, where it was decided that every square meter of a property is given the same value regardless of where on the property the right to build is located. This principle is also possible to use on easements that resemble a surface, for example a road.

Conclusion

The cadastral records usually contain an explanation on how the profit has been divided. Sometimes a more detailed record would be preferable to clarify how and why the profit has been divided in a certain way. Since the law does not give to many directions on how to divide the profit it would be preferable if there were clear norm to rely on.

The results from the study of cases and cadastral procedures are the following:

It was very hard to find a principle for every kind of easement since the spread of cases in the study was very large. The following conclusions could be made. An easement that is no longer benefiting the dominant estate should not be compensated for if the easement is cancelled according a case from the Supreme Court 1981. In other cases where easements are cancelled it is common to use the principle that divides the profit considering how much each estate is benefiting from the cadastral procedure. The principle can also be used when one of the estates is benefiting a lot more than the other estate is from the cadastral procedure. As mentioned earlier the profit for easements that resembles a surface is supposed to be divided as the last principle described above. The study shows that the principle is mostly used when the easement is a road. The principle where the decrease in value is compensated for at first and then added with a percentage is usually used when the decrease in value is small or difficult to decide. Sometimes the gain in precision is very small compared to the time and effort that has to be put in the procedure.
and in the last

The costs are

is benefitting

low since no

profit is divided

without any exact

divided between

the profit. They

is principle is

the easement.

estates benefit

estate with its

servient estate

different in every

case from the

square meter

ty the right to

that resemble a

been divided.

why the profit

ections on how

ing:

instead of cases in

easement that is

ere easements

considering how

can also be

estate is from the

resembles a

study shows

easement where the

age is usually

the gain in

the procedure

and with that taken in to account the results from the principle is good enough. The
downside with this principle is that it does not really give any more information on how
to divide the profit than the law does. The principle where the profit is equally divided
between the estates can be used in most types of easement procedures. An equal division
of the profit is usually looked upon as fair and is shown to be the principle most often
used in a voluntary transfer. The most important thing to remember is that each and every
easement is special and the profit should be divided in an equitable way whatever
principle is being used.