

CHAPTER-IV: STAMP DUTY AND REGISTRATION FEE AND LAND REVENUE

4.1 Results of audit

Test check of the records of the Departments of Registration and Stamps and Land Revenue conducted during the year 2008-09 revealed short realisation of stamp duty and registration fee and underassessment and loss of land revenue amounting to Rs. 55.38 crore in 9,955 cases which broadly fall under the following categories:-

(Rupees in crore)			
Sl. no.	Category	Number of cases	Amount
A. Stamp Duty and Registration Fee			
1.	Undervaluation of properties	7,532	9.69
2.	Misclassification of documents	24	0.06
3.	Other irregularities	1,070	33.38
B. Land Revenue			
4.	Non-regularisation of cases of trespassers on Government land	329	0.14
5.	Non-recovery of conversion charges from <i>khatedars</i>	182	0.43
6.	Non-recovery of premium and rent from Central/State Government departments/undertakings	105	3.55
7.	Non-recovery of price of command/uncommand/custodian ceiling land <i>etc.</i>	193	1.22
8.	Other irregularities	520	6.91
Total		9,955	55.38

During the year 2008-09, the departments accepted underassessment and other deficiencies amounting to Rs. 33.68 crore pertaining to 3,434 cases, out of which 849 cases involving Rs. 19.47 crore were pointed out during 2008-09 and the rest in the earlier years. The department recovered Rs. 9.33 crore in 2,103 cases, out of which 219 cases involving Rs. 19.81 lakh related to the year 2008-09 and the rest to earlier years.

After the issue of two draft paragraphs of Land Revenue department, the Government intimated (July 2009) recovery of Rs. 1.13 crore pertaining to these observations.

A few illustrative audit observations involving Rs. 10.47 crore are discussed in the following paragraphs.

Stamp Duty and Registration Fee

4.2 Audit observations

Scrutiny of records of various registration offices revealed several cases of non-compliance of the provisions of the Rajasthan Stamp Act, 1998 (RS Act) and Indian Registration Act, 1908 as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions are pointed out in audit each year, but not only did the irregularities persist, these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that occurrence of such cases can be avoided.

4.3 Non-realisation of stamp duty and registration fee

The Rajasthan Housing Board and Urban Improvement trusts, as public offices, did not bring unstamped documents to the notice of the Collector (Stamps) resulting in non-realisation of revenue of Rs. 8.40 crore.

Under section 17(1) (d) of the Registration Act, 1908, leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent shall be compulsorily registered. Further, under Article 33 (c)(ii) of the schedule of the Rajasthan Stamp Act, 1998 where lease purports to be for a term in excess of twenty years, the stamp duty is chargeable as on conveyance on the market value of the property which is the subject matter of the lease. As per Government Notification, stamp duty is chargeable on consideration instead of market value in cases of allocation by way of sale/auction/allotment by Rajasthan Housing Board (RHB) and Urban Improvement Trusts (UITs). The Government had declared (December 1997) RHB & UITs as public offices to bring unstamped documents to the notice of the Collector (Stamps).

Scrutiny of records of eight offices¹ for the year 2003-04 to 2007-08 between August 2008 and March 2009, revealed that in 40 cases, where properties were allotted by these institutions, lease deeds of immovable properties were not registered even though the lease term were for more than 20 years. Though the RHB and the UITs were declared public offices yet they did not bring the matter of non-registration to the notice of the Collector (Stamps). This resulted in non-realisation of stamp duty of Rs. 8.33 crore and registration fee of Rs. 6.67 lakh aggregating to Rs. 8.40 crore.

After this was pointed out by audit between October 2008 and March 2009, the department stated in July 2009 that out of eight cases of lease deeds in respect of sub-registrar Kota-II, in three cases, the documents have been registered with the sub-registrar Kota-II. The remaining five cases pertaining to Kota, as well as four cases of Jaipur have been registered with the Collector (Stamps) for adjudication. In remaining cases replies have not been received (October 2009).

The Government, to whom the matter was reported between December 2008 and March 2009, confirmed (September 2009) the reply of the department in

¹ RHB Circle I and III Jaipur, Jodhpur, Kota, Udaipur and UIT, Jodhpur, Udaipur and District Collector Udaipur.

respect of Kota and Jaipur. In remaining cases their replies have not been received (October 2009).

4.4 Non-compliance of provisions of the Acts/Rules

The provisions of the Rajasthan Stamp Act, 1998 (RS Act) and Indian Registration Act, 1908 require:

- (i) levy of duty as on conveyance on the market value of the property in cases of lease deeds pertaining to period of more than 20 years;
- (ii) levy of duty on market value of the property; and
- (iii) levy of duty on market value of the property on developer agreements.

The registering authorities did not observe some of the above provisions at the time of registration of documents in cases mentioned in the paragraph 4.4.1 to 4.4.3. This resulted in short levy/evasion of Stamp Duty of Rs. 2.07 crore.

4.4.1 Short levy of stamp duty and registration fee on registration of lease deeds

4.4.1.1 Under the Rajasthan Stamp Act, 1998, where a lease purports to be for a term in excess of 20 years, stamp duty is chargeable as on conveyance on the market value of the property. The term of a lease shall include not only the period stated in the document but shall be deemed to be the sum of such stated period alongwith all immediately preceding period without a break for which the lessee and lessor remained the same. Further as per clarification issued under Government circular No. 8/2004, for computing period of more than 20 years, the periods of renewal shall also be counted. Registration fee was to be charged at the rate of one *per cent* of the value or consideration subject to maximum of Rs. 25,000 as per notification dated 21 March 1998.

In three sub registrar offices (SROs), test checked between October 2008 and December 2008, it was noticed that in six cases of lease deeds pertaining to a period of more than 20 years registered between June 2005 and December 2007, stamp duty was recovered on the basis of average rent instead of as on conveyance on the market value of property. This resulted in short levy of stamp duty and registration fee aggregating to Rs. 56.61 lakh as per the details given in the table:

(Rupees in lakh)

Sl. no.	Name of SROs/ No. of documents	Name of lessee	Market value	Value adopted	SD and RF		Short levy of SD and RF
					Leviable	Levied	
1	2	3	4	5	6	7	8
1.	Udaipur-I 2	(i) Takshila Vidyapeeth Sansthan	155.80	3.00	10.38	0.09	10.29
		(ii) Udaipur Mahila Samradhi Urban Co-operative Bank Ltd.	156.78	2.65	10.44	0.08	10.36
Remarks:- (i) Lease deed for 19 years and to be extended for 11 years. (ii) Lease of 13 years expired on 31.3.07 and new lease for another 12 years extended from 1.4.2007.							

1	2	3	4	5	6	7	8
2.	<u>Kotkhavda</u> (Jaipur) 3	(1) IBP Company Limited, Calcutta (2) Sunil Jain s/o late Shri Phool Chand Jain	173.63 170.08	2.50 5.60	14.14 14.11	0.08 0.17	14.06 13.94
Remarks:- (i) Lease deed of 19 years and 11 months to be automatically renewed for a further period of five years. (ii) Lease deed for 10 years 11 months with effect from 17.1.2024 but its possession was given on 15.6.2005. (iii) Lease deeds for 19 years and 11 months and another lease extended for the same property for future renewal for next 10 years and 11 months.							
3.	<u>Jodhpur-I</u> 1	Vijaya Bank, Jodhpur	120.79	4.72	8.10	0.14	7.96
Remarks:- Lease deed for 10 years from 1.11.06 to 30.10.2016 with option to continue for another 10 years. Further the lessee was already a tenant on the same property with effect from 22.11.1984.							
Total			777.08	18.47	57.17	0.56	56.61

After this was pointed out between December 2008 and March 2009, the Government stated in September 2009 that all cases had been registered with the court of Collector (Stamps) for adjudication.

4.4.1.2 In two sub-registrar offices² test checked in May and November 2008 it was noticed that, in two cases of lease deeds pertaining to a period for more than 20 years registered in April and December 2007, the stamp duty was not recovered as on conveyance on the market value of property. This resulted in short levy of stamp duty and registration fee aggregating to Rs. 25.12 lakh.

After these irregularities were pointed out in December 2008 and March 2009, the Government stated in September 2009 that all cases had been registered with the court of Collector (Stamps) for adjudication. One case of Rs. 19.14 lakh in respect of sub-registrar Pahari (Bharatpur) had been decided on 6.1.09 in favour of the department with the directions to recover the amount.

4.4.1.3 Under the provision of Article 33(c)(i) of the schedule of the Rajasthan Stamp Act, 1998, where the lease purports to be for a term of not more than twenty years and such lease is granted for a fine or premium or for money advanced or development charges advanced or security charges advanced in addition to rent reserved, the stamp duty is chargeable as on conveyance for a consideration equal to the amount or value of such fine premium or advance and amount of average rent of two years as set forth in the lease.

Scrutiny of records of sub-registrar, Neemrana (district Alwar), it was noticed (February 2009) that one lease deed was registered initially for the period of three years on initial fixed rent of Rs. 5.50 lakh per month and security deposit of Rs. 66 lakh. The stamp duty of Rs. 12.87 lakh was chargeable on consideration amount of Rs. 1.98 crore, whereas sub-registrar, Neemrana charged Rs. 1.46 lakh only treating the document liable to stamp duty under Article 35(a)(ii) of the schedule of the Rajasthan Stamp Law (Adaptation) Act 1952. This resulted in short levy of stamp duty of Rs. 11.41 lakh.

² Pahari (Bharatpur), Sambhar lake (Jaipur).

After this was pointed out in April 2009, the Government stated in September 2009 that case had been registered in the court of Collector (Stamps) for adjudication.

4.4.2 Short levy of stamp duty and registration fee due to undervaluation of property

Under provisions of the Rajasthan Stamp Act, 1998 stamp duty on an instrument of conveyance of immovable property shall be chargeable on the market value of the property. Further, as per rule 58 of the Rajasthan Stamps Rules, 2004, the market value of immovable property shall be determined on the basis of the rates recommended by the District Level Committee (DLC) or the rates approved by the Inspector General of Stamps, whichever is higher. Registration fee is also to be charged at the rate of one *per cent* of the value or consideration subject to maximum of Rs. 25,000 as per amendment made vide notification dated 21 March 1998.

Scrutiny of the records of four sub-registrar offices³, between June 2008 and November 2008, revealed that in 12 cases the properties were undervalued by Rs. 5.27 crore. The value of the properties were determined at rates lower than those approved by the DLC. This resulted in short levy of stamp duty and registration fee aggregating Rs. 36.26 lakh.

After these irregularities were pointed out between December 2008 and March 2009, the Government stated in September 2009 that all cases had been registered in the court of Collector (Stamps) for adjudication.

4.4.3 Non-registration of developer agreements

Under provisions of Article 5 (bbbb) of the schedule to the Rajasthan Stamp Act, agreements or memorandum of agreements, if relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on or development of any immovable property are chargeable to stamp duty at the rate of one *per cent* of the market value of the property and registration fee at the prescribed rates.

Test check of the records of sub-registrar (Jaipur-I and Jaipur-V) in September and October 2008 revealed that 12 instruments were executed between venders and vendees for the purchase of ready built flats between January 2007 and December 2007. The recital of the deeds revealed that multistoried flats were constructed by developers and sale proceeds of these were to be shared by the developers and owners of the land. However, neither was any separate agreement registered in this regard nor was duty levied by the sub-registrars on this distinct item. This resulted in non-realisation of revenue of Rs. 77.62 lakh.

After this was pointed out in December 2008, the Government stated in September 2009 that cases have been registered in the court of Collector (Stamps) for adjudication.

³ Deoli (Tonk), Kota-II, Ramgarh (Alwar) and Sojat City (Pali).