

**CHAPTER-IV**

**PUBLIC OFFICES**

Failure to check the records of public offices

Registrar of Firms

Debt Recovery Tribunal

Non-registration of lease deed by RIICO

Registrar of Companies

## CHAPTER - IV

### Public Offices

The Government had declared (December 1997) all offices as public offices wherein instruments are presented. These offices were required to bring unstamped instruments to the notice of the Collectors (Stamps).

#### 4. Failure to check the records of public offices

As per Section 37 (3) of the RS Act, 1998, the State may determine what offices shall be deemed to be public offices and who shall be deemed to be persons in charge of public offices. Rule 64 (1) of the RS Rules, 2004 provides that where an unstamped or under stamped instrument is detected in course of inspection or otherwise by a public officer, a report, therefore, shall be made forthwith to the Collector. The IG directed (January 1998) the DIGs/ Collector (Stamps) to inspect the records of public offices to see whether stamp duty was being paid by the public correctly. Further, vide circular dated 23 December 2009 the IG reiterated that the inspection of public offices was not being conducted effectively by the DIGs/ Additional Collector (Stamps) resulting revenue loss to the State and directed the DIGs/Additional Collector (Stamps)/SRs to prepare a list of public offices under their jurisdiction and chalk-out an inspection programme in such a manner that the inspection of every public office could be carried out once in a quarter.

We observed that the DIGs/Additional Collector (Stamps)/SRs did not conduct prescribed inspections, which resulted in a number of irregularities not being highlighted and consequent non-realisation of revenue to the State.

Our scrutiny in respect of a few public offices revealed non-realisation of stamp duty and registration fees ₹ 20.74 crore in the following cases.

#### 4.1 Registrar of Firms

##### 4.1.1 Non-registration of transfer of lease by way of assignment

As per Article 55 of the Schedule appended to the RS Act, 1998, in case of instrument of transfer of lease by way of assignment, the stamp duty is leviable as a conveyance on the market value of the property which is the subject matter of transfer. The IG, by issue of circular no. 6/09, clarified that the instrument executed for change in the partnership will come in the category of transfer of lease by way of assignment. Section 17 of the Registration Act, 1908 provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of ₹ 100 and above to or in immovable property, are required to be compulsorily registered. Further, stamp duty and registration fees are also payable at the prescribed rates

We noticed (May 2011) that in two partnership firms, the partners in existence were retired from the firms and remaining partners continued in the firms. The firm paid the retiring partners (assignor) the capital amount in lieu of their assets. Hence, the immovable property possessed by the retiring partners was also transferred to other partners (assignees) of the firm. The assignors transferred 1,238.485 square metre land valuing ₹ 11.19 crore to assignees. However, the instrument of change in partnership were not stamped and registered. It resulted in non-recovery of stamp duty and registration fees aggregating ₹ 56.45 lakh.

When we pointed out (May 2011), the SR Jaipur-I replied (July 2011) that notices had been issued to the firms for recovery. Further, reply was awaited (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the SR Jaipur-I had been directed (September 2011) either to recover the stamp duty or get register the cases under reference.

## **4.2 Debt Recovery Tribunal**

### **4.2.1 Non-registration of certificate of sale**

Section 17 of the RS Act, 1998 provides that all instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution or immediately thereafter on the next working day following the day of execution. Further, Section 17 (1) (e) of the Registration Act, 1908 provides that non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property are to be registered compulsorily. Section 23 and 25 of the Registration Act provides that no document other than a Will shall be accepted for registration unless presented to the proper registering officer within four months, which can be extended for next four months on payment of fine equal to ten times of registration fee. As per Article 17 of the Schedule to the RS Act, 1998, a certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue court or Collector or other Revenue Officer, the stamp duty as on a conveyance is to be charged for consideration equal to the amount of the purchase money. Registration fees are also payable at the rate of one *per cent* on the value set forth in the certificate of sale subject to maximum of ₹ 25,000.

Our scrutiny in the Debt Recovery Tribunal (DRT) office revealed that due to failure in repayment of loans, the properties of five loanees were attached and auctioned by the DRT. The DRT granted certificate of sale to the successful bidder/purchaser. However, the purchasers did not register the Certificate of

Sale in the registering offices despite a lapse of period ranging from six to 74 months after the prescribed time limit.

Non-registration of certificate of sale resulted in non-levy of stamp duty and registration fees aggregating ₹ 6.60 crore on the purchase money as per details given in **Annexure-1**.

The matter was pointed out (May 2011) to the concerned SR/ DIGs to whom a copy of certificate of sale were endorsed by DRT. Replies have not been received (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the concerned DIG's (Stamps) have been directed (September 2011) either to obtain the copy of registered certificate of sale deeds for confirmation or recover the stamp duty.

### 4.3 RIICO Limited

#### 4.3.1 Non-registration of lease deeds

Section 17 of the Registration Act, 1908 provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of ₹ 100 and above to or in immovable property, are required to be compulsorily registered. Further, stamp duty and registration fees are also payable at the prescribed rates.

As per information collected (May 2011) from the Rajasthan State Industrial Development and Investment Corporation Limited (RIICO), Jaipur, the RIICO allotted/sold, during July 1988 to March 2010, 1499 industrial plots of 28,05,019.41 square metre land valuing ₹ 189.87 crore to various firms to establish industries. The lease deeds of these plots were to be registered within 90 days from the date of deposition of full amount of development

charges. Despite, issue of notices to the firms, lease deeds of the plots were not got executed and registered (August 2011). This resulted in non-recovery of stamp duty and registration fees aggregating ₹ 13.32 crore as per details given in **Annexure-2**.

The Deputy Secretary (Finance) replied (December 2011) that the all concerned DIG's (Stamps) have been directed (September 2011) to inspect the RIICO offices and initiate action to get lease deeds registered.

#### 4.4 Registrar of Companies

##### 4.4.1 Non-levy of stamp duty on instruments of amalgamation of companies

Article 21 (iii) of the Schedule to the RS Act, 1998 provides for the levy of stamp duty at the rate of four *per cent* on the instrument relating to amalgamation of companies by the order of the High Court under Section 394 of the Companies Act, 1956. Registration fees are also to be charged at the rate of one *per cent* subject to maximum ₹ 25,000.

We noticed (May 2011) from the information collected from the Registrar of Companies (ROC), Rajasthan, Jaipur, that in five cases, the transferee companies did not pay stamp duty of ₹ 14.54 lakh and registration fees or ₹ 1.03 lakh payable on orders issued by the High Court for amalgamation. This resulted

in non-levy of stamp duty and registration fees ₹ 15.57 lakh.

We pointed out (May 2011) the matter to the ROC, reply has not been received (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the Additional Collector (Stamps) Jaipur had been directed (September 2011) either to recover the stamp duty or get register the cases under reference.

##### 4.4.2 Short levy of stamp duty on increase in authorised share capital of companies

As per Article 11 (i) of the Schedule to the RS Act, 1998, SD on instrument of amendment in Article of Association of a company relating to increase in authorised share capital is chargeable at 0.5 *per cent* of the increase in authorised share capital from 27 May 2004. Prior to 27 May 2004, SD on such instruments was chargeable at 0.2 *per cent* subject to maximum of ₹ 2 lakh vide notification dated 14 January, 2004 issued under the Rajasthan Stamp Law (Adaption) Act, 1952, which was repealed on 27 May 2004.

Information collected from the ROC Rajasthan, Jaipur, we noticed that a private limited company at Jaipur had increased its share capital by ₹ 17.00 crore in March 2009 (from ₹ 5.00 crore to ₹ 22.00 crore). The ROC incorrectly accepted the instruments stamped at ₹ 3.40 lakh at the lower rate i.e. 0.2 *per cent* instead of ₹ 8.50 lakh at the rate of 0.5 *per cent* leviable under the RS Act, 1998.

This resulted in short realisation of stamp duty ₹ 5.10 lakh.

The matter was pointed out (May 2011) to ROC, reply was awaited (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the stamp duty was recovered as per notification dated 14 January 2004. We do not accept the

reply as this notification dated 14 January 2004 was declared (21 January 2010) inconsistent to RS Act, 1998 by the Finance (Tax) Department.

#### 4.4.3 Non-levy of stamp duty on share allotment by companies through IPO

As per Article 18 of the Schedule to the RS Act, 1998, stamp duty on a certificate or other document, evidencing the right or title of the holder thereof or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate to become proprietor of shares, script or stock in or any such company or body, is leviable at the rate of one rupee for every thousand rupees (0.1 *per cent*) or a part thereof, of the face value of the shares, scrip or stock

From the information collected from the ROC, Jaipur, we noticed (May 2011) that three companies having registered offices in Rajasthan had raised their funds through Initial Public Offer (IPO) and issued 2,30,41,157 shares having face value of ₹ 23.04 crore

to general public, institutional buyers *etc.* during February 2007 to July 2008. Information on whether Stamp Duty was paid by these companies was awaited (₹ 2.30 lakh).

The matter was pointed out (May 2011) to the ROC, reply was awaited (January 2012).

The Deputy Secretary (Finance) replied (December 2011) that the Additional Collector (Stamps) Jaipur had been directed (September 2011) to initiate action for recovery of stamp duty as per the provisions of the RS Act, 1998.

#### Recommendations

- **Government may issue instructions to the public offices to be more vigilant to ensure that instruments produced before them are duly stamped and if not, to take prompt action to inform the cases to the Collector (Stamps) for proper realisation of stamp duty and registration fees.**
- **The Government may also consider prescribing a periodical return to be furnished by the public offices to the Department on the number and nature of documents presented before them and SD paid by the executants.**