

<b>CHAPTER-V</b>
<b>IMPLEMENTATION OF SCHEMES AND LACUNAE IN THE ACT</b>
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## CHAPTER-V

### Implementation of Schemes and Lacunae in the Act

#### 5.1 Non-inclusion of premium value of Shares for Stamp Duty

Section 23 of the RS Act, 1998 provides that where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument. Article 18 of the schedule to the RS Act, 1998 provides allotment of shares, scrip or stock to general public, institutional buyers *etc.* and stamp duty is leviable at the rate of one rupee for every thousand rupees (i.e. 0.1 *per cent*) or a part thereof, of the face value of the shares, scrip or stock.

Information collected from the ROC, Jaipur revealed that three companies issued 2,30,41,157 numbers of shares for ₹ 23.04 crore to general public and institutional buyers as per details given in **Annexure-3**.

We observed that the companies paid stamp duty on the face value of shares excluding premium amount received by these companies amounting to

₹ 32.95 crore. Non-inclusion of premium value of shares for stamp duty purposes has resulted in loss of stamp duty of ₹ 3.29 lakh.

The Secretary (Finance) replied during Exit Conference held on 17 January 2012 that matter shall be looked into.

**The Government may consider amendments to the Article 18 of the Schedule to the RS Act, 1998 as done by other States, like the State of Maharashtra<sup>1</sup> (Article 17 of Schedule I) and clarify that the face value of shares includes the amount of premium, if any.**

#### 5.2 Evasion of stamp duty and registration fees due to non-fixing of rate for barbed wire fencing

As per Article 21 (i) of the Schedule to the RS Act, 1998, stamp duty on the instrument of conveyance relating to immovable property shall be levied on the market value of the property. Rule 58 of the RS Rules, 2004 provides that the market value of land shall be assessed on the basis of the rates recommended by the District Level Committee or the rates approved by the IG, whichever is higher.

We observed in SR Jaipur-II that a sale deed was registered (March 2009), wherein, vendor sold 13.85 bigha irrigated agriculture land duly fenced with iron angle and barbed wires situated at village Macharkhani, Tehsil Sambhar, District Jaipur to vendees for ₹ 29.88 lakh.

<sup>1</sup> The State of Maharashtra clarified vide explanation inserted w.e.f. 1 May 1995 under Article 17 of Bombay Stamp Act, 1958 that the value of shares, scrip or stock includes the amount of premium, if any.

The agricultural land was fenced with iron angle and barbed wires but the cost of fencing was not included in the valuation of land for the purpose of levy of stamp duty and registration fees. Though the rates for *Pakki/Kacchi* boundary wall had been fixed ₹ 300 and ₹ 100 per running metre respectively and no rates are prescribed for barbed wire fencing. This resulted in evasion of stamp duty and registration fees due to non-fixing of rate for fencing by the department.

**The Government may consider by fixing the cost of iron angle and barbed wire fencing in running metre.**

### 5.3 Non-fixing of composite floor area rates for flats

As per circular no. 1/09 issued by the IG Registration and Stamps, the cost of flats in the residential apartment having more than three stories should be determined by the District Level Committee. The rates should be fixed per square feet floor area including the cost of land, constructions and common facilities.

During scrutiny of the records of two SR offices (Kota-I and Udaipur-II) for the period 2009-2010, we found that three instruments for sale of flats in multi-story apartments having more than three stories were registered. The valuation of the flats were incorrectly assessed by the SRs as per

circular no. 2/2004<sup>2</sup> issued by the IG stamps which relate to valuation of residential flats in apartments upto three stories. Incorrect application of circular no. 2/2004 and absence of determination of composite floor area rate by the District Level Committee resulted in short levy of stamp duty and registration fees aggregating ₹ 0.23 lakh calculated on the amount of consideration shown in the document.

**The Government may ensure that composite floor area rates are fixed by DLCs in respect of flats in residential apartments having more than three stories as per circular no. 1/09 so that proper stamp duty and registration fees is realised.**

### 5.4 Implementation of Anywhere Registration Scheme

The "Anywhere Registration Scheme within District" launched by GOR (March 2007). The Scheme envisages that a person, at his own convenience, can get register of his instrument in any SR office situated within the district. As per Section 64 (1) of the Registration Act, 1908, every SR on registering a non-testamentary document relating to immovable property not wholly situate in his jurisdiction shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other SR in whose jurisdiction any part of such property is situate, and such SR shall file the memorandum in his Book No. I.

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<sup>2</sup> The cost of land is to be shared by the purchaser if flat is sold without ceiling on the ground floor 80 per cent, at first floor 70 per cent, at second floor 60 per cent, at third floor 50 per cent and at the basement 50 per cent. The valuation of construction was to be determined as per Government notification no. F.12(2) FD/tax 05-221 dated 24 July 2005. i.e. for RCC construction ₹ 400 per square foot and ₹ 200 per square foot for *patti* posh construction. These rates were revised to ₹ 600 and ₹ 400 from 08 December 2009 for RCC and *patti* posh respectively.

The IG, Registration and Stamps vide circular no. 17/09 dated 23 December 2009 reiterated the directions regarding sending of memorandum/endorsement copy of documents by the registering SR to the SR in whose jurisdiction property situated, forwarding the site inspection report to the registering SR *etc.*

We observed (September to April 2011) in test-checked 36 SR offices that none of the SR offices maintained register/record for documents registered in Anywhere Registration Scheme, sending/receiving memorandum/inspection report *etc.* In absence of registers/records maintained for Anywhere Registration Scheme by the concerned SR offices, we were unable to ascertain the compliance of the instructions and evasion of duty, if any, the number of cases and amount due for realisation of stamp duty and registration fees evades, if any.

The Deputy Secretary (Finance) replied (December 2011) that a fresh order for supervision in terms of circular number 17/09 is being issued.

**The Government may consider prescribing reports/returns for effective monitoring of the scheme.**

### 5.5 Amnesty Scheme of stamp duty

The GOR have been issuing every year Amnesty Scheme under section 9 (1) and 9 A of the Rajasthan Stamp Act, 1998, to provide relief to all executants and with secondary object to recover due stamp duty expeditiously in the cases before instituted/decided by the Collectors (Stamps).

The Amnesty Scheme provides, *inter alia*, rebate/remission of SD, penalty and interest in the cases instituted before the Collector (Stamps) or decided by the Collector (Stamps), on payment of SD (after remission) before a particular date as under:

Sl. no.	Rebate allowed	Rebate applicable to
1	30 per cent of SD	All cases instituted and decided upto the date of notification/prescribed date.
2	30 to 50 per cent of SD	Where instruments executed upto the date of notification/prescribed date and cases instituted on the basis of inspection or <i>suo-motu</i> .
3	100 per cent penalty	In all cases.
4	100 per cent interest	In all cases.

As per Section 30 of the RS Act, 1998, the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth in instruments. Section 75 of RS Act, 1998 provides that any person, who, with intent to defraud the Government, executes any instrument, or takes part in its preparation, without fully and truly setting forth all the facts and circumstances required by section 30 of the RS Act, 1998 is liable to be punished with imprisonment for a period which may extend to three years, or with fine which may extend to ₹ 20,000.

We observed (January 2011) in office of SR Jaisalmer that two instruments relating to transfer of immovable property were executed and submitted for

registration on 3 October 2008 involving consideration amount as set forth in instruments of ₹ 47.00 lakh. The SR kept pending these instruments in the minute book. The SR conducted site inspection on 6 October 2008 and found that true facts about location *etc.* were not described in the document. The SR determined the valuation of property at ₹ 2.39 crore. Accordingly stamp duty ₹ 19.11 lakh and registration fees ₹ 0.50 lakh were payable. Since SD and RF were not deposited by the executants, these cases were instituted before DIG, Jodhpur in April 2009 for adjudication. However, instead of imposing penalty or initiating action for prosecution under Section 75 of the RS Act, the SR permitted the executants to deposit stamp duty of ₹ 14.50 lakh allowing rebate at the rate of 30 *per cent* amounting to ₹ 4.61 lakh under Amnesty Scheme notified on 17 November 2009. This resulted in short levy of stamp duty of ₹ 4.61 lakh.

We are of the opinion that the exemption of ₹ 4.61 lakh given by the Stamp authorities was irregular being not admissible under the Scheme to the executants due to concealment of true consideration and full other facts about location, which affected the chargeability of stamp duty and registration fees. It is evident that Amnesty Scheme in its present form is not in consonance with the provisions of section 75 of the RS Act, 1998 and remission should be allowed in proper cases outstanding for a long period.

The Deputy Secretary (Finance) replied (December 2011) that the proposals for Amnesty Scheme, if issued, shall be sent to the Government in consonance with the Sections 30 and 75 of the RS Act, 1998.

**The Government may consider that the Amnesty Scheme, if issued, should be in consonance with section 30 and 75 of the RS Act, 1998.**

## **5.6 Non-maintenance of database of revenue foregone**

The Government in extending exemptions or remissions forgoes revenue in pursuance of certain defined objectives. A reliable database of revenue foregone is, therefore, a prerequisite for informed decision making and transparency.

The GOR has sanctioned concessions/remission in SD, penalty and interest under various schemes or to specific categories such as female purchaser, physically handicapped person *etc.*

During scrutiny of the records of the 36 SR offices, we found that there was no database or any other records to ascertain the revenue foregone due to allowing concessions and remissions under the Rajasthan Investment Promotion Scheme 2003, for female purchaser and Government's Amnesty Schemes *etc.* The Department could neither furnish the exact number of cases where remissions were allowed nor the numbers of cases in which exemptions were allowed to the industrialists and the money value involved.

The Deputy Secretary (Finance) replied (December 2011) that the efforts for making computer programme for database is being done with the Rajcrest Jaipur.

**The Government may consider proper maintenance of a centralised database of remissions/concessions for effective monitoring and review of the schemes.**