



CHAPTER – VI
STAMPS AND
REGISTRATION FEES

EXECUTIVE SUMMARY

What we have highlighted in this Chapter	<p>In this Chapter, we present a Paragraph on “Levy of Stamp duty on development agreements and mortgage deeds of developing land” and other illustrative cases involving revenue impact of ₹ 173.05crore selected from observations noticed during our test check of records relating tonon/short realisation of revenue, incorrect exemption etc. of Stamp duty and Registration fees in the office of the Sub Registrars (SRs) where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is a matter of concern that though similar omissions have been pointed out by us repeatedly in the previous Audit Reports.The Department has not taken corrective action.</p>
Trend of receipts	<p>In 2012-13, the collection from Stamps and Registration fees increased by 20.09 <i>per cent</i> over the previous year due to registration of more documents and increase in the market value of immovable properties as reported by the Department.</p>
Status of compliance to outstanding Inspection Reports (2007-08 to 2011-12)	<p>During the period 2007-08 to 2011-12, through our Inspection Reports we had pointed out non/short levy, non/short realisation, underassessment of Stamp duty and Registration fees due to incorrect determination of market value of properties, misclassification of documents, irregular exemption, inordinate delay in finalisation of cases referred by SRs, etc. with revenue implication of ₹ 212.91 crore in 22,998 cases. Of these, the Department/Government had accepted audit observations in 16,738 cases involving ₹ 82.59 crore and had since recovered ₹ 13 crore in 1,681 cases.</p>
Status of compliance to Inspection Reports 2012-13	<p>In 2012-13, we test checked the records of 101 units relating to Stamps and Registration fees and found non realisation of revenue due to inordinate delay in finalisation of cases, short-realisation of stamp duty and registration fees, incorrect exemption and other observationinvolving ₹ 188.74crore in 2,299 cases.</p> <p>The Department accepted underassessment and other deficiencies of ₹ 154.99 crore in 1,578 cases, which were pointed out by us during the year 2012-13. An amount of ₹ 3.51 lakh had been recovered in 12 cases pointed out in audit during 2012-13.</p>
Our conclusion	<p>The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.</p> <p>It also needs to initiate immediate action to recover the amount on account of non/short levy of Stamp duty and Registration fees pointed out by us.</p>

CHAPTER-VI STAMPS AND REGISTRATION FEES

6.1 Tax administration

Stamps and Registration Department is under the Commercial Tax Department headed by the Principal Secretary. The Inspector General, Registration and Superintendent of Stamps, Madhya Pradesh (IGR) is the head of the Department. Two Joint Inspectors General, Registration (JIGR), one Deputy Inspector General Registration (DIGR), one Senior District Registrar (SDR), one District Registrar (DR) and one Accounts officer (AO) are deployed at the headquarters. There are 50 Registration Districts notified in the State. There is a SDR in 15 Registration districts and a DR in the remaining districts. There are 233 Sub Registrar (SR) offices in the State. Instruments are registered in SR offices. Collector is the head of Registration administration at the district level. There are two major components of receipts of the Registration Department in Madhya Pradesh viz: Stamp duty and Registration fees, the collection of which is regulated under the provisions of the following Acts, Rules and notifications issued thereunder:

- Indian Stamp Act, 1899 (IS Act);
- The Registration Act, 1908;
- Indian Stamp (Madhya Pradesh Prevention of Undervaluation of Instruments) Rules, 1975;
- Madhya Pradesh Preparation and Revision of Market Value Guidelines Rules, 2000;
- Madhya Pradesh Stamp Rules, 1942;
- Madhya Pradesh Municipal Corporation Act, 1956;
- Madhya Pradesh Municipalities Act, 1961;
- Madhya Pradesh *Panchayat Raj Adhiniyam*, 1993; and
- Madhya Pradesh *Upkar Adhiniyam*, 1982.

6.2 Trend of receipts

According to para A-15 read with para 6.6.1 of Madhya Pradesh Budget Manual (Manual), 2012 the estimates of revenue receipts should include/project the actual demand including arrears due for the past years and probability of their realisation during the year. According to Rule 192 of Madhya Pradesh Financial Code, the Finance Department is required to prepare the estimates of revenue after obtaining necessary information/data from the respective Department/Government.

Actual receipts from Stamps and Registration fees during the period 2008-09 to 2012-13 along with the total tax receipts during the same period are exhibited in the table no. 6.1:

Table No. 6.1

(₹ in crore)

Year	Revised budget estimates (REs)	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual tax receipts vis-a-vis total tax receipts
1.	2.	3.	4.	5.	6.	7.
2008-09	1700.00	1479.29	(-) 220.71	(-) 12.98	13613.50	10.87
2009-10	1650.00	1783.15	(+) 133.15	(+) 8.07	17272.77	10.32
2010-11	2200.00	2514.27	(+) 314.27	(+) 14.29	21419.33	11.74
2011-12	2800.00	3284.41	(+) 484.41	(+) 17.30	26973.44	12.18
2012-13	3450.00	3944.24	(+) 494.24	(+) 14.33	30581.70	12.90

(Source: Budget estimates and Finance Accounts of the Government of Madhya Pradesh)

It may be seen that though there was an increasing trend in receipts during the years from 2008-09 to 2012-13, the percentage of variation between the REs and the actual receipts ranged between (-) 12.98 per cent and (+) 17.30 per cent. The revenue under this head is growing at a compounded annual rate of 18.55 per cent over past five years. In 2012-13, the collection from Stamps and Registration fees increased by ₹ 659.83 crore (20.09 per cent) over the previous year, which was attributed by the Department to increase in market value of the immovable properties as well as in the number of registered documents.

6.3 Cost of collection

The gross collection from Stamps and Registration Fees, expenditure incurred on its collection and the percentage of expenditure to gross collection during 2010-11, 2011-12 and 2012-13 along with the relevant all India average percentage of expenditure on collection for the previous year are mentioned in the table no. 6.2:

Table No. 6.2

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the previous year
1.	2.	3.	4.	5.
2010-11	2,514.27	52.22	2.08	2.47
2011-12	3,284.41	63.71	1.94	1.60
2012-13	3,944.24	79.00	2.00	1.89

(Source: Finance Accounts of the Government of Madhya Pradesh)

The percentage of expenditure on collection was considerably below the all India average during the year 2010-11. However, the same was higher than the all India average during the years 2011-12 and 2012-13.

The Government may take appropriate measures to bring down the cost of collection.

6.4 Working of internal audit wing

Four posts of Internal Audit Officer, one post of Accounts Officer and one post of Treasury Officer have been sanctioned for the internal audit wing (IAW) of the Department against which one Internal Audit Officer, one Accounts Officer and one Treasury Officer are working in the IAW. Internal Audit is conducted in accordance with the roster prepared for each year.

Out of 233 units of the Department, 73 units were planned for internal audit and 26 units could be inspected by the IAW. Objections related with misclassification of documents and undervaluation of properties were raised during the internal audit. The information regarding number of observations raised and amount involved was not furnished by the Department despite request. The Department issued instructions to the units to take action for rectification of discrepancies noticed by the IAW.

6.5 Arrears of revenue

Position of arrears of stamp duty and registration fees during the period 2008-09 to 2012-13, as furnished by the Registration Department, is given in the table no. 6.3:

Table No. 6.3

(₹ in crore)					
Year	Opening balance	Addition during the year	Total	Recovery during the year	Closing balance
1.	2.	3.	4.	5.	6.
2008-09	49.59	25.78	75.37	12.63	62.74
2009-10	62.74	19.99	82.73	15.63	67.10
2010-11	67.10	23.35	90.45	18.28	72.17
2011-12	72.17	19.46	91.63	19.25	72.38
2012-13	72.38	33.44	105.82	20.50	85.32

(Source: Information furnished by the Department)

Arrears of ₹ 32.67 crore were pending in courts. Besides, ₹ 34.25 crore were in arrears for more than five years as at the end of March 2013. There was no time bound programme with the Department to reduce the arrears.

We recommend that the Department should take appropriate steps to reduce the arrears by fixing target for recovery.

6.6 Impact of audit

6.6.1 Status of compliance to outstanding Inspection Reports (2007-08 to 2011-12)

During the period 2007-08 to 2011-12, through our Inspection Reports (IRs) we had pointed out non/short levy, non/short realisation, underassessment/loss of Stamp duty and Registration fees due to incorrect determination of market value of properties, misclassification of documents, irregular exemption, inordinate delay in finalisation of cases referred by SRs, etc. with revenue

implication of ₹ 212.91 crore in 22,998 cases. Of these, the Department/ Government had accepted audit observations in 16,738 cases involving ₹ 82.59 crore and reported recovery of ₹ 13 crore in 1,681 cases (as on 31 March 2013). The details are shown in the table no. 6.4:

Table No. 6.4

(₹ in crore)

Year of Inspection Reports	No. of units audited	Objected		Accepted		Recovered		Percentage of recovery to amount accepted
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	
1.	2.	3.	4.	5.	6.	7.	8.	9.
2007-08	66	3,021	16.10	1,607	5.40	537	1.49	27.59
2008-09	82	10,113	52.42	8,374	29.96	698	7.87	26.27
2009-10	64	5,809	31.95	4,415	8.05	154	0.85	10.56
2010-11	64	2,188	52.28	1,474	27.61	287	0.81	2.93
2011-12	51	1,867	60.16	868	11.57	5	1.98	17.11
Total		22,998	212.91	16,738	82.59	1,681	13.00	

(Source: Information furnished by the Department)

The percentage of recovery as compared to the accepted cases has been low during the last five years. We brought this issue to the notice of the head of the Department as well as the Finance Secretary of the Government (August 2013).

We recommend that the Government should take appropriate steps to improve the recovery position at least against the accepted cases.

6.6.2 Status of compliance to Inspection Reports (2012-13)

Test check of the records of 101 units relating to Stamps and Registration fees during the year 2012-13 indicated non realisation of revenue due to inordinate delay in finalisation of cases, short realisation of Stamp duty and Registration fees, incorrect exemption and other observations involving ₹ 188.74 crore in 2,299 cases which fall under the following categories depicted in the table no. 6.5:

Table No. 6.5

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	2.	3.	4.
1	“Levy of stamp duty on development agreements and mortgage deeds of developing land”	1	138.23
2.	Non realisation of revenue due to inordinate delay in finalisation of cases	765	10.01
3.	Short realisation of Stamp duty and Registration fees due to undervaluation of properties/incorrect exemption	933	13.33
4.	Incorrect exemption from payment of stamp duty and registration fee	67	0.24
5.	Short realisation of revenue due to misclassification of instruments	24	0.30
6.	Other observations	509	26.63
Total		2,299	188.74

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 154.99 crore in 1,578 cases, which were pointed out in audit during the year 2012-13. An amount of ₹ 3.51 lakh had been recovered in 12 cases pointed out in audit during 2012-13.

A paragraph on **“Levy of stamp duty on development agreements and mortgage deeds of developing land”** and a few other illustrative audit observations involving revenue impact of ₹ 173.05 crore are mentioned in succeeding paragraphs.

6.7 Audit observations

We scrutinised the records of various Registration offices and found several cases of non observance of the provisions of the Acts/Rules/Government notifications/instructions leading to non/short realisation of Stamp duty and Registration fees and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of the registering authorities have been pointed out in earlier Audit Reports. Reference to paragraphs included in this report and having similar observations raised earlier is given in **Annexure-I**, but not only do these irregularities continue to persist, these remain undetected till audit is conducted. There is need for the Government to improve the internal control system so that such omissions can be avoided.

6.8 “Levy of stamp duty on development agreements and mortgage deeds of developing land”

6.8.1 Introduction

Article 5(d) of Schedule 1-A under the Indian Stamp Act, 1899 (IS Act) provides for levy of stamp duty on the instruments of agreements relating to the development of land for construction of building on a land by a person other than the owner or lessee of such land at the rate prescribed from time to time.

Further, in terms of Rule 12 of Madhya Pradesh *Nagar Palika (Coloniser ka Registrikaran, Nirbandhan tatha Sharten) Niyam*, 1998 (MPNPN) and Madhya Pradesh *Gram Panchayat (Coloniser ka Registrikaran, Nirbandhan tatha Sharten) Niyam* 1999 (MPGPN), a coloniser has to develop the land in accordance with the norms prescribed therein and has to mortgage 25 per cent of the land/plot in favour of local authorities as a security against the expenditure on development of the land. Section 17 of the Registration Act, 1908, provides that registration of such mortgage deed and instruments of agreement relating to development/construction on a land by a person other than owner/lessee is compulsory.

We conducted an audit of “**Levy of stamp duty on development agreements and mortgage deeds of developing land**” to ascertain whether proper stamp duty and registration fees were levied on development agreements and mortgage deeds of developing land with reference to estimated development expenditure, provisions of Act/Rules/Notification/Orders issued by the Department have been followed and Internal Control mechanism was adequate to safeguard Government revenue with respect to development agreement/mortgage deeds.

We examined the records relating to the period from 2008-09 to 2012-13 of SR offices, Municipal Corporations, Development Authority and offices of Sub Divisional Officer (Revenue) in six districts¹ based on major revenue receipts in Sub Registrar offices out of 14 Municipal Corporation districts between April and July 2013. An entry conference was held on 22 May 2013 with the IGR and Deputy Secretary (Commercial Tax Department). Exit conference to discuss the audit findings was held on 4 September 2013. The audit revealed a number of system and compliance deficiencies that have been mentioned in succeeding paragraphs. The Department during the exit conference accepted audit observation and stated (September 2013) that DRs had been instructed to register all the cases pointed out in audit and to decide

¹ **District/Municipal Corporation** Bhopal, Dewas, Gwalior, Jabalpur, Indore and Ujjain.

SDOs: Badnagar (Ujjain), Bagli (Dewas), Bairasia (Bhopal), Bhicholihapsi (Indore), Depalpur (Indore), Dewas, Ghatiya (Ujjain), Gwalior, Hatod (Indore), Huzur (Bhopal), Jabalpur, Kanadiya (Indore), Kasba Indore, Mahidpur (Ujjain), Mhow (Indore), Nagda (Ujjain), Patan (Jabalpur), Rau (Indore), Sanver (Indore), Sihora (Jabalpur), Sonkachh (Dewas) and Ujjain.

SR Offices: Bhopal, Dewas, Nagda (Ujjain), Navlakha (Indore), Sukhaliya (Indore) and Ujjain.

Development Authority, Indore.

these cases within three months. Further, all the DRs were instructed to inspect public offices² effectively and regularly and Regional DIGs to supervise the inspection of DRs every month.

6.8.2 Effectiveness of scrutiny of records of public offices and lack of co-ordination with other Departments

Section 33 of the IS Act provides that it would be obligatory on every public officer to impound instrument which are unduly stamped* and initiate action under Section 38 of the Act. As per para 469 of *Karyapalik Anudesh* (executive instructions) of Registration Department, the DR is required to inspect the records of public offices to see whether stamp duty was being paid correctly and the documents which require registration are submitted in SR offices.

* Instruments not stamped with proper value.

We observed during scrutiny of information provided by DR Indore that inspection of Municipal Corporation, Indore Development Authority and Tahsil office Indore were conducted in May 2010. The inspection note revealed that the objections of routine nature³ only were raised and no case of loss of revenue was pointed out. Further, the information/details about inspection conducted of the Public offices was neither furnished by the respective

DRs nor by the Public offices of five districts⁴ despite request.

Similar observations were also pointed out in Para no. 5.2.9 of Audit Report 2007-08 in response to which the IGR and the Government had stated (between July and October 2008) that the DRs were directed to conduct more inspections of public offices. We, however, did not find any evidence that the DRs except DR, Indore, undertook inspection of the public offices.

We also observed that the Department did not prescribe any reports or returns detailing the documents presented to the public offices to be furnished by the Public Officers to the DRs to watch the timely and correct payment of stamp duty. As a result, substantial revenue remained unrealised which is highlighted in the subsequent paragraphs.

The Government may consider prescribing a periodic return by the public offices to the DRs which contain details of documents presented before them to safeguard the leakage of leviable stamp duty.

² Government Departments, Housing Boards, Local Bodies, Corporations and Banks were declared as public offices for the purpose of the IS Act vide notification no. 196-six-SR-80 dated 20 March 1980

³ During inspection of Municipal Corporation and IDA only instructions regarding necessity of registration of various type of instruments were issued by the DR while in Tahsil offices *namantaran* cases were pointed out. No revenue loss was pointed out.

⁴ Bhopal, Dewas, Gwalior, Jabalpur and Ujjain

6.8.3 Short levy of stamp duty on development/builder agreement

Article 5(d) of Schedule 1-A under the IS Act provides that stamp duty at the rate of two *per cent* of market value of land was leviable up to 31 March 2011 on the instruments of agreements relating to the development of land for construction of building on a land by a person other than the owner or lessee of such land.

The stamp duty was not levied in accordance with the market value of land to be developed.

according to market value guidelines of respective districts as worked out by audit amounted to ₹ 341.60 crore on which stamp duty at a rate of two *per cent* was leviable. This resulted in non realisation of stamp duty of ₹ 6.83 crore. We further, observed that these documents were also not got registered, which resulted in non realisation of registration fees of ₹ 2.73 crore.

From April 2011, stamp duty is charged at the rate prescribed under Article 5(d) of Schedule 1-A to the IS Act on the basis of estimated development and construction expenditure mentioned in the instrument. Rule 2 of *Madhya Pradesh Nagar Palika Niyam* and *Madhya Pradesh Gram Panchayat Niyam* provides that the development expenditure means the expenditure incurred on developing the land in accordance with the norms prescribed therein under the approval of the competent authority (Municipal Commissioner/Sub Divisional Officer).

Instruments were incorrectly executed on stamp paper worth ₹ 10 to ₹ 100 only without mention of estimated development/ construction expenditure in 145 cases.

expenditure worked by audit on the basis of rates applicable⁸ by respective Municipal Corporations and Madhya Pradesh Housing Board amounted to ₹ 1,514.77 crore. Failure to levy stamp duty on the basis of the estimated development/construction expenditure on these instruments resulted in short levy of ₹ 47.56 crore. We also noticed that these documents were not got registered. This resulted in non levy of registration fees of ₹ 13.99 crore.

6.8.3.1 In Municipal Corporation, Bhopal and Ujjain, two development agreements were incorrectly executed on stamp paper worth ₹ 100 and ₹ 500 in April 2008 and September 2010 respectively for development of land measuring 9.963 hectare. The market value of land

6.8.3.2 During scrutiny of the instruments of development/ construction agreements⁵ in 10 SDOs⁶ and two Municipal Corporation offices⁷, we noticed that in 145 cases involving land measuring 640.910 hectares, the instruments were incorrectly executed on stamp paper worth ₹ 10 to ₹ 100 only without mention of estimated development/ construction expenditure. The estimated development/ construction

⁵ Executed between April 2011 and March 2013

⁶ SDOs: Bhicholihapsi, Depalpur, Ghatiya, Hatod, Huzur, Indore, Kanadia, Kasba Indore, Mhow and Sanver

⁷ Municipal Corporation: Bhopal and Ujjain.

⁸ Development rates have been prescribed by Municipal Corporation Bhopal and Indore. Where there is no rate prescribed by Municipal Corporations and SDOs (revenue), rates of respective Housing Board have been applied. Construction rates have been taken from Market value guidelines of the district regarding market value of constructed properties.

According to Rule 8 of Madhya Pradesh *Nagar Palika (Coloniser ka Registrakaran, Nirbandhan tatha Sharten) Niyam, 1998 (MPNPN)* and *Madhya Pradesh Gram Panchayat (Coloniser ka Registrakaran, Nirbandhan tatha Sharten), Niyam 1999 (MPGPN)*, a coloniser has to submit application for development of colony in the prescribed form. The developer/coloniser is required to submit details regarding title and interest in the property to which the permission about development is sought by him.

Development permission obtained but the development agreements neither executed nor got registered.

There is no prescribed mechanism to check the correctness of estimated development expenditure mentioned in the instruments by the developers.

permission for development as well as construction and in two cases permission only for construction was granted. In these cases, the estimated development and construction cost as worked out by audit was ₹ 251.59 crore on the basis of rates prescribed by MPHB and market value guidelines of respective districts. We, however, noticed that instruments regarding development and construction were neither executed nor got registered. This resulted in non levy/realisation of ₹ 8.11 crore (stamp duty of ₹ 6.09 crore and registration fee of ₹ 2.02 crore).

6.8.3.4 During scrutiny of records in five offices¹⁰, we noticed that in 17 instruments of development agreements registered between April 2011 and March 2013, land measuring 28.487 hectare was to be developed. We observed that stamp duty of ₹ 43.04 lakh and registration fees of ₹ 13.75 lakh only was levied on ₹ 21.35 crore mentioned in the documents as development expenditure by the developers/colonisers. Since there is provision in the Act to levy stamp duty and registration fee on the basis of estimated development expenditure mentioned in the instruments, there is a possibility/tendency to understate the estimated development expenditure by the developers. The estimated development expenditure in the above 17 cases was worked out by audit to ₹ 129.63 crore on the basis of rates applicable in Municipal Corporation/MPHB which involved stamp duty of ₹ 2.29 crore and registration fee of ₹ 66 lakh. Audit observed that there is no prescribed provision in the Act or Rules to check the correctness of estimated expenditure even though it was a necessary requirement as the levy of stamp duty depends on such estimated expenditure.

The Government may consider prescribing a periodic return on the number of documents presented and found not duly stamped by the public offices for submission to the DRs. Government may prescribe the

⁹ Bicholi Hapsi, Hatod, Huzur, Mhow and Sanver.

¹⁰ Municipal Corporation Bhopal and Jabalpur, SDO Jabalpur, SR Bhopal and Ujjain.

rates for development of land in the 'Market Value guidelines'¹¹ of respective districts for the purpose of stamp duty and registration fee. Since the public offices grant permission for development/construction they may also be made accountable to ensure the correct payment of stamp duty. In addition, norms for regular inspection of public offices by the DRs may be laid down.

6.8.4 Misclassification of documents

The instrument titled as development agreement were not got registered by the executant. Further, recital of these instruments indicated that right to sell was transferred in these cases and as such these were required to be classified as conveyance deed which has not been done.

21 instruments were registered as development agreement. However, recital of these instruments indicated that right to sale was transferred in these cases and as such these were required to be classified as conveyance deed which has not been done.

In terms of amended Article 5(d) of IS Act effective from 1 April 2011, stamp duty was leviable at the rate of three *per cent* of the market value equal to the estimated cost of the proposed construction or development. Departmental instructions issued in April 2013 provide that where power to sell the land is given by owner to the developer, the instruments captioned under developer agreement shall be charged as conveyance on payment of stamp duty at rate of five *per cent*. The instructions further provides for review of all such instruments registered from April 2011. Section 33 of the IS Act provides that it would be obligatory on every Public Officer to impound cases which are unduly stamped and initiate action under Section 38 of the Act.

6.8.4.1 We observed from the records of four offices¹² that 133 instruments styled as development agreement were incorrectly executed on stamp paper of ₹ 100 to ₹ 1000 between April 2011 and July 2012. The recitals of these instruments revealed that right to sell the land measuring 47.934 hectare were transferred by the owner of land to the developer. Therefore, these instruments were chargeable as conveyance and

accordingly stamp duty of ₹ 3.28 crore was leviable. Further, these instruments were also not got registered though it was mandatory. Consequently registration fees of ₹ 52.78 lakh remained unrealised. Thus the Government was deprived of revenue of ₹ 3.81 crore. The Public Officers also did not exercise their duty for determination of proper duty leviable on these documents in accordance with provisions of the IS Act.

6.8.4.2 We observed from the records of six offices¹³ that 21 instruments were registered under caption of development agreement between October 2011 and February 2013, according to which the land measuring 46.909 hectare was to be developed by the developer. The recital of the instruments indicated that the owner of the land transferred the right to sell the land measuring 22.589 hectare in favour of the developer. As such, these instruments were chargeable

¹¹ "Market value guidelines" means the set of values of immovable properties in different villages, Municipalities, Corporations and other local areas in the State, arrived at by the respective committee from time to time in terms of Madhya Pradesh Preparation and Revision of Market Value Guideline Rules, 2000

¹² Indore Development Authority, SDO: Gwalior and Kasba Indore and SR, Ujjain.

¹³ Municipal Corporation: Jabalpur and Ujjain, SDO Huzur, SR Bhopal, Dewas and Nagda.

as conveyance and stamp duty of ₹ 1.56 crore and registration fee of ₹ 20.37 lakh was leviable. We, however, noticed that stamp duty of ₹ 36.64 lakh and registration fees of ₹ 10.07 lakh only was levied treating the instruments as development agreement instead of conveyance. This resulted in short levy of ₹ 1.30 crore (stamp duty of ₹ 1.19 crore and registration fees of ₹ 10.51 lakh). The Public Officers as well as respective SR's¹⁴ failed in respect of levy of correct stamp duty and registration fees.

An instrument titled as power of attorney was not got registered by the executant. Further, recital of the document indicated that right to develop the land was given and as such this was required to be classified as development agreement which has not been done.

Departmental instruction issued in December 2011 regarding misclassification of document provide that where in an instrument of power of attorney, the rights of development or/and construction are given to the attorney, such instrument shall be charged as development agreement. It was further provided in the instructions of IGR dated 14 December 2011 that the instruments executed/registered from 1 April 2011 onwards were to be reviewed by the SRs/DRs.

6.8.4.3 We observed from the records of SDO, Mhow in June 2013 that in one instrument of power of attorney was executed (on stamp paper worth ₹ 100) in June 2012. The recitals of the instrument revealed that the right for development of land measuring 9.768 hectare and construction on 7551 square meter were given to the attorney and as such the instrument was required to be classified as development agreement on which stamp

duty of ₹ 25.40 lakh was leviable which has not been done. The instrument was also not got registered though it was compulsory. The SDO in this case neither insisted the parties to get the document registered nor the SR initiated any action as per the instructions of the Department issued in December 2011. Consequently registration fees of ₹ 11.86 lakh also remained unrealised.

Five instruments were registered as power of attorney. However, recital of these instruments indicated that right to develop was given in these cases and as such these were required to be classified as development agreement which has not been done.

6.8.4.4 We observed from the records of three offices¹⁵ that five instruments of power of attorney were registered (on stamp paper worth ₹ 1100 including registration fees of ₹ 100 in each case) between April 2011 and October 2012. The recitals of the instrument revealed that the right for development of land measuring 8.281 hectare were given to the attorney and as such the instrument was required to be classified as development agreement on which stamp duty of ₹ 34.38 lakh and registration fees of ₹ 10.36 lakh was leviable, which has not been done. The SR did not initiate any action as per the instructions of the Department issued in December 2011. This resulted in short levy of stamp duty and registration fees of ₹ 44.74 lakh.

¹⁴ Bhopal, Dewas, Jabalpur, Nagda (Ujjain) and Ujjain

¹⁵ SDO - Bairasiya and Huzur, and Municipal Corporation, Jabalpur.

6.8.5 Non/short realisation of stamp duty and registration fee on mortgage deeds executed by colonisers/developers

Stamp duty and Registration fees was levied on instruments of mortgage deeds on the basis of amounts mentioned in the instruments by the colonisers themselves instead of development expenditure on which supervision charges was recovered by these Municipal Corporations from the developers.

Stamp duty was charged on the market value of 25 per cent of the land mortgaged instead of the entire estimated development expenditure.

Article 38(b) of Schedule 1-A to IS Act read with Government Notification dated 24 September 2007 and Section 75 of the Madhya Pradesh *Panchayat Raj Adhiniyam*, 1993 provides for levy of duty on a mortgage deed (without possession) at the rate of one per cent of the amount secured by such deed. Further, under Rule 12 of *Madhya Pradesh Nagar Palika Niyam* and *Madhya Pradesh Gram Panchayat Niyam*, a coloniser has to develop the land in accordance with the norms prescribed therein and has to mortgage 25 per cent of the land/plot in favour of local authorities as a security against the expenditure on development of the land. In such cases, development expenditure on which two per cent supervision charge is recovered from the developers would be the secured amount. Further, Section 17 of the Registration Act, 1908, provides that registration of such mortgage deed is compulsory.

6.8.5.1 We observed from the records of Municipal Corporation, Bhopal and Indore that in case of 118 instruments of mortgage deed executed by the colonisers registered between April 2008 and March 2013, the registering authorities finalised the levy of stamp duty and registration fees on the basis of amounts mentioned in the instruments by the colonisers themselves instead of development expenditure on which supervision charges was recovered by these Municipal Corporations from the developers. This resulted in short

realisation of stamp duty of ₹ 4.45 crore and registration fee of ₹ 5.21 crore.

6.8.5.2 We observed from the records of 19 offices¹⁶ that in 301 instruments registered between May 2008 and March 2013, the stamp duty was charged on the market value of 25 per cent of the land mortgaged instead of the entire estimated development expenditure. The registered value of these instruments was ₹ 206.48 crore. However, the estimated total development expenditure was worked out to ₹ 2063.34 crore by audit on the basis of rates applicable in MPHB. This resulted in short realisation of stamp duty of ₹ 13.20 crore and registration fees of ₹ 14.87 crore.

6.8.5.3 We observed from the records and information collected in 19 offices¹⁷ that permission for development of land was granted by Municipal Corporation and SDOs (Revenue) to the colonisers in 193 cases between April 2008 and May 2013, according to which land measuring 1092.04 hectare involving estimated development expenditure of ₹ 1012.61 crore based on rates applicable in MPHB was to be developed by the colonisers. Though the

¹⁶ SDO - Badnagar, Bhicholihaspi, Depalpur, Gwalior, Huzur, Jabalpur, Kasba Indore, Mhow, Rau, Sanver and Ujjain, Municipal Corporation - Dewas, Gwalior, Jabalpur and Ujjain, SR Office - Bhopal, Mahidpur, Navlakha (Indore) and Sukhliya (Indore).

¹⁷ Municipal Corporation, Jabalpur, SDO - Bairasiya, Bhicholihaspi, Depalpur, Dewas, Ghatiya, Gwalior, Hatod, Jabalpur, Kasba Indore, Kanadiya, Mahidpur, Mhow, Nagda, Patan, Rau, Sanver, Sihora and Ujjain.

Mortgage deeds were executed but not got registered.

Development permission obtained but mortgage deeds neither executed nor got registered.

colonisers had mortgaged 25 *per cent* of plots during this period, the instruments of mortgage deeds were incorrectly executed on the stamp paper worth between ₹ 10 and ₹ 100 without mention of development expenditure. Thus, neither was the applicable stamp duty paid by the colonisers nor did they get these instruments of mortgage deed registered. This resulted in short realisation of stamp duty of ₹ 7.25 crore and registration fees of ₹ 8.10 crore.

6.8.5.4 We observed in 33 cases that the permission of development of 575.890 hectare land was granted by the Municipal Corporation Ujjain, Indore and ten SDO (Revenue)¹⁸, to the colonisers between October 2006 and March 2013. They also recovered the supervision charges in 26 out of 33 cases. We further noticed that instruments of mortgage deeds of 25 *per cent* of plots were not executed and got registered though it was required before granting the permission for development. The estimated total development expenditure was worked out to ₹ 489.26 crore by audit on the basis of rates applicable in MPH. On these instruments, stamp duty of ₹ 2.06 crore and registration fee of ₹ 3.91 crore was leviable. Thus, non execution of instruments of mortgage deeds resulted in non-realisation of stamp duty and registration fee of ₹ 5.97 crore.

The Government may consider prescribing rates of development of land in the Market value guidelines for determining estimated development expenditure and a mechanism to ensure that the development expenditure is correctly assessed in mortgage deed, to avoid the leakage of Government revenue. It may also consider ensuring that mortgage deeds are registered and duly stamped before issuing permission for development.

¹⁸ Badnagar, Bagli, Bhicholihapsi, Dewas, Jabalpur, Mhow, Nagda, Patan, Sanver and Sonkachh

6.9 Short levy of Stamp duty and registration fees on instruments of lease deeds/non-levy of penalty

According to the instructions issued (March 1993) by the Government of Madhya Pradesh, Mineral Resources Department, in case of agreement for mining leases, the royalty payable for expected quantity of minerals as shown in the application or in the mining plan, whichever is more, is to be considered for calculation of Stamp duty under Article 33 of Schedule 1-A of IS Act. Further, Section 23 of Registration Act provides that no document except will deed shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. If the delay in presentation is more than one month of the initial grace period of four months, but less than two months, penalty of four times of the leviable Registration fees shall be chargeable according to Article XV (b) of the table of Registration fees.

During scrutiny of documents registered in Sub Registrar office Katni and Satna and information collected from respective District Mining offices between October and November 2012, we observed that five mining leases executed between January 2011 and February 2012 were registered between October 2011 and March 2012. We noticed that the Stamp duty of ₹ 2.75 crore and Registration fees of ₹ 2.05 crore as against ₹ 12.49 crore¹⁹ (Stamp duty of ₹ 7.29 crore and Registration fees of ₹ 5.20 crore) was levied on these instruments due to

incorrect assessment of estimated royalty by taking the average of estimated royalty for five years only instead of the entire lease period by the Department. This resulted in short levy of Stamp Duty of ₹ 4.54 crore and Registration fees of ₹ 3.15 crore as mentioned in the table no. 6.6:

¹⁹ Leviable Stamp duty on 30 years lease deeds executed before 1 April 2011 at the rate of 7.5 per cent of five times the average estimated yearly royalty, from 1 April 2011 at the rate 5 per cent of five times the average estimated yearly royalty; Cess duty- 5 per cent of the amount of Stamp duty; and Registration fees : three-fourth of the amount of Stamp duty.

Table No. 6.6

(₹ in lakh)

Sl. No	Sub Registrar/ Period of audit	No. of Lease/ Period of lease	Date of registration/ execution of lease deed	Average estimated yearly royalty		Stamp duty/Cess/Registration Fees					
				As per Mining Plan	Determined by Department	Leviable	Levied	Short Levied			
1.	2.	3.	4.	5.	6.	7.	8.	9.			
1.	Katni October and November 2012	2 30 years	8-2-12	1394.88	581.49	348.72	152.65	196.07			
			31-1-12			17.44	Nil	17.44			
			7-3-12	40.84	13.84	10.11	3.65	6.46			
			13-2-12			0.50	Nil	0.50			
						7.58	2.74	4.84			
2.	Satna October 2012	3 30 years	21-10-2011	665.15	210.92	249.43	83.05	166.38			
			20-1-2011			12.47	Nil	12.47			
									187.07	62.29	124.78
			15-12-2011	284.20	130.21	71.05	34.18	36.87			
			5-9-2011			3.55	0.34	3.21			
									53.29	25.64	27.65
						14.58	0.78	13.80			
						0.73	Nil	0.73			
						10.93	0.58	10.35			
						693.89	274.31	419.58			
						34.69	0.34	34.35			
						520.41	205.73	314.68			
Grand Total						1248.99	480.38	768.61			

Further, we also observed that one lease deed executed on 20 January 2011 was presented by the lessee for registration on 19 July 2011 in SR Satna. Though the lease deed was presented for registration after a lapse of one month and 29 days beyond the initial grace period of four months, yet the registering authority did not impose penalty of ₹ 7.48 crore being four times the leviable Registration fees of ₹ 1.87 crore.

Thus, Government was deprived of the revenue of ₹ 15.17 crore due to short levy of Stamp duty of ₹ 4.54 crore, Registration fees of ₹ 3.15 crore and non imposition of the penalty of ₹ 7.48 crore.

The inspection of these offices was also not conducted by the respective DRs.

After we pointed out the cases in October 2012, the Sub Registrar, Satna stated (October 2012) that the estimated royalty was assessed by the Collector, so the lease was registered and duty was charged in accordance with that estimated royalty. The reply was however silent about recovery of short levy of stamp duty and registration fee. In respect of delayed presentation and non levy of penalty, it was stated (October 2012) that the lease deed was registered in compliance of Section 24 of Registration Act, 1908. The reply is not in conformity with the facts on records of Registration and District Mining

Office which indicated that lease deed was executed on 20 January 2011 and presented for registration on 19 July 2011. As such the cases were required to be reviewed to recover the deficit amount from the lessees. In respect of case of Sub Registrar office, Katni, the District Registrar, Katni stated in February 2013 that the case had been registered and notice issued to the lessee. Further progress in the matter has not been received (January 2014).

We reported the matter to the Department and the Government in June 2013; their replies have not been received (January 2014).

6.10 Loss of revenue due to delay in execution and registration of lease deed of *Nazul* Land

The circular of the Government of Madhya Pradesh, Revenue Department issued in July 2009 provides for execution and registration of lease deed within 90 days from the date of the receipt of full payment of premium on account of the allotment of land. Rules are silent about action to be taken in cases of lease deed not executed within stipulated period. The rate of duty on conveyance deed was reduced from 7.5 per cent to 5 per cent of the market value with effect from 1 April 2011. Further, Section 9 of the Madhya Pradesh *Upkar Adhinyam*, 1982 provides that the cess at the rate of five per cent of the Stamp duty is chargeable on lease deeds of 30 years or more. According to Article II of the table of Registration fees, the Registration fee is chargeable at three fourth of the stamp duty levied on the lease deed. Further, para 34 of Revenue Book Circular II-1 provides that the Commissioner of the Division should inspect revenue courts of each Collectorate and Tahsil in two and three year respectively while the Collector should inspect each Tahsil of his district every year.

During scrutiny of files regarding allotment of *Nazul* land²⁰ in *Rajdhani Pariyojna (Nazul)*, Bhopal in March 2013, we observed that Government land measuring 14.88 acre was allotted (April 2008) to a lessee for commercial purpose in consideration of premium of ₹ 335.30 crore. The consideration was to be paid in three installments. The last installment was paid on 31 July 2010. As full payment of premium was received on 31 July 2010, the lease deed was required to be executed between Collector, Bhopal and the lessee within 90 days from 31 July 2010, on which Stamp duty of ₹ 26.40 crore and Registration fees of ₹ 18.86 crore would have been paid. We, however, observed that the lease deed was executed and registered on 22 September 2011 after a lapse of 10 months and 23 days beyond 90 days from

the date of full payment of premium. Since, the rate of duty was reduced from 7.5 per cent to 5 per cent with effect from 1 April 2011, consequently Stamp

²⁰ *Nazul* land-Government land which is used for construction or public utility purpose viz bazar or entertainment places. This land has site value and not agricultural importance

duty of ₹ 17.60 crore and Registration fees of ₹ 12.57 crore was levied. Thus, benefit was given to lessee and the exchequer was deprived of revenue of ₹ 15.09 crore (Stamp duty of ₹ 8.80 crore and Registration fees of ₹ 6.29 crore). The reasons for delayed execution of lease deed were also not found on records. It is worth mentioning here that as per budget speech of the Finance Minister the rate of duty on conveyance was proposed to be reduced from 7.5 per cent to 5 per cent from the year 2011-12. The inspection of this office was also not conducted by the Commissioner of the Division as well as Collector of the district during the years 2009-10 to 2012-13.

After we pointed out the cases, the Tahsildar, *Rajdhani Pariyojana (Nazul)*, Bhopal stated (March 2013) that action would be taken as per rule in the interest of Government revenue after scrutiny of the records. Further development has not been received (January 2014).

We reported the matter to the Department and the Government in June 2013; their replies have not been received (January 2014).

The Government may consider prescribing penal action against the person responsible for delayed execution of lease deed.

6.11 Non finalisation of cases referred by Sub Registrars/ Incorrect determination of market value

Under Section 47-A of the IS Act, if the Registering Officer, while registering any instrument finds that the market value of any property set forth was less than the market value shown in the market value guidelines, he should before registering such instrument, refer the same to the Collector for determination of the correct market value of such property and duty leviable thereon. Further, according to the departmental instructions of July 2004, a maximum period of three months has been prescribed for disposal of cases referred to the Collector by the Sub-registrar (SR) offices for determination of correct market value of properties and duty leviable thereon. Besides, market value of the property is calculated according to rates and provisions prescribed in the market value guidelines.

6.11.1 We observed in five Sub Registrar offices²¹ between March 2012 and January 2013 from the register of cases referred by Sub Registrars that 436 cases were referred by the Sub Registrars to the Collector between August 2008 and March 2012 for determination of the market value of the properties. Out of these, 182 cases had not been finalised even after a period up to 20 months beyond prescribed period of three months. In these cases, the difference of Stamp duty of ₹ 2.25 crore was recoverable on the basis of market value

worked out by the Sub Registrars. The registration fees of ₹ 37 lakh was recoverable on presentation of these documents for registration. Thus, non

²¹ Chhindwara, Indore, Kareli (District Narsinghpur), Katni and Mandasour

finalisation of the cases resulted in non realisation of stamp duty and registration fees of ₹ 2.62 crore.

After we pointed out the cases, the Sub Registrar, Katni stated (May 2013) in respect of 25 cases that ₹ 2.88 lakh were recovered between May and December 2012 in 11 cases and revenue recovery certificate (RRC) of ₹ 10.02 lakh were issued in remaining 14 cases. The District Registrar, Narsinghpur stated in June 2013 in respect of eight cases of Kareli (Narsinghpur) that ₹ 62,500 had been recovered in July 2012 in one case at the instance of audit and remaining seven cases would be disposed as early as possible. In respect of the remaining 149 cases, the respective SRs stated between May 2012 and January 2013 that the Collector of Stamps would be requested for early disposal of the cases. Further progress in the matter has not been received (January 2014).

We reported the matter to the Department and the Government in June 2013; their replies have not been received (January 2014).

6.11.2 We observed in 16 Sub Registrar (SR) offices²² between May 2012 and January 2013 that in 158 instruments registered between April 2008 and March 2012, the market value of properties according to market value guidelines for the respective years issued by the Department was ₹ 74.97 crore against the registered value of ₹ 51.63 crore. The SRs did not detect undervaluation of properties in these instruments. This resulted in short levy of Stamp duty of ₹ 1.52 crore and Registration fees of ₹ 18.67 lakh as mentioned in the table no. 6.7:

Table No. 6.7

(₹ in lakh)

Sl. No.	No. of SR offices/ instruments	Period of registration	Nature of irregularities	Stamp duty & Registration fees Leviable/ Levied	Short levy of Stamp duty & Registration fees
1.	2.	3.	4.	5.	6.
1.	<u>9</u> 36	Between 4/2011 and 3/2012	Non-observance of provisions prescribed in guidelines regarding property situated on roadside or corner plots	<u>286.43</u> 204.24	82.19
2.	<u>12</u> 97	Between 4/2008 and 3/2012	Non-observance of provisions prescribed in guidelines regarding land properties situated within municipal limit/ specified urban villages	<u>170.81</u> 112.34	58.47
3.	<u>5</u> 17	Between 5/2008 and 3/2012	Incorrect application of rates regarding House/plot properties	<u>54.54</u> 35.18	19.36
4.	<u>5</u> 8	Between 4/2011 and 2/2012	Irrigated land valued as unirrigated	<u>24.57</u> 14.09	10.48
Total	<u>16</u> 158			<u>536.35</u> 365.85	170.50

²² Bairasia (Bhopal), Begumganj (Raisen), Betul, Bina (Sagar), Chhindwara, Chourai (Chhindwara), Gwalior, Indore, Jabalpur, Kareli (Narsinghpur), Morena, Nasrullahganj (Sehore), Rajpur (Badwani), Sabalgarh (Morena), Ujjain and Vijaypur (Sheopur)

The inspection of 10 SR offices was not conducted by the respective DRs. Though the inspection of remaining six offices²³ was conducted by the respective DRs (between July 2011 and January 2012), the omission was not detected by them.

After we pointed out the cases, the SR Betul stated (August 2012) in respect of four instruments that rates of plots situated at the National Highway were not applied because the land was not situated on National Highway. The reply is not in conformity with the facts on records; it was clearly shown in the boundaries of the land mentioned in the documents that the land was situated at National Highway. SR Jabalpur did not accept the audit objection in respect of two instruments and stated (November 2012) that the land was situated on two different roads; therefore, the rates applicable for these roads were applied proportionately. He also stated that the document would be referred to the Collector of Stamps. We do not agree with the reply as the property was not divided between sellers (Who were also family members) and as such the whole property was to be treated as a single unit. Further, there was no provision in the market value guidelines about proportionate valuation. SR Ujjain stated in December 2012 in respect of one instrument that the land was unirrigated. The reply was not in conformity with the copy of *Khasra* enclosed with the document in which it was clearly indicated that the land was irrigated. As far as remaining 151 instruments are concerned, the respective SRs stated between May 2012 and January 2013 that the cases would be referred to the Collector of Stamps. Further progress has not been received (January 2014).

We reported the matter to the Department and the Government in June 2013; their replies have not been received (January 2014).

6.12 Short levy of stamp duty and registration fees on instruments of power of attorney

Article 45 (d) of Schedule 1-A of the IS Act provides that when power of attorney (POA) is given without consideration and authorising the agent to sell, gift, exchange or permanently alienate any immovable property situated in Madhya Pradesh for a period not exceeding one year, duty of ₹ 1000 (₹ 100 up to March 2011) is chargeable on such instruments. Further, when such rights are given with consideration or without consideration for a period exceeding one year or when it is irrevocable or when it does not purport to be for any definite term, the same duty as a conveyance on the market value of the property is chargeable on such instruments.

We observed in three Sub Registrar offices²⁴ between May and November 2012 that in eight instruments of POA registered /executed between July 2009 and August 2011, though the power to sell immovable property valued at ₹ 3.94 crore as per the market value guidelines of the

²³ Betul, Bina (Sagar), Chourai (Chhindwara), Morena, Nasrullahganj (Sehore) and Ujjain

²⁴ Badnawar (Dhar), Indore and Morena

respective years issued by the Department was given, there was no mention in the documents whether the POA was given for a period not exceeding one year. In these cases, Stamp duty of ₹ 20.04 lakh and Registration fees of ₹ 3.16 lakh was leviable in accordance with the above provisions. We, however, noticed that in all these cases, the instruments were treated as POA to sell without consideration for a period not exceeding one year. The stamp duty of ₹ 7100 and registration fees of ₹ 800 was charged by the Department. This resulted in short levy of ₹ 23.12 lakh (Stamp duty of ₹ 19.97 lakh and Registration fees of ₹ 3.15 lakh). The inspection of SR office, Indore was also not conducted by the DR, Indore while the omission could not be detected by the Department in cases of Morena and Badnawar (Dhar) though the inspection of SR office Morena and Badnawar (Dhar) was conducted between May 2010 and August 2011 which is indicative of ineffective inspection by higher authorities.

After we pointed out the cases, the Sub Registrar Morena and Badnawar stated in respect of seven cases between May and July 2012, that photocopy of documents would be referred to the Collector of Stamps. For remaining one case Sub Registrar, Indore accepted audit objection and stated in November 2012 that the failure to levy the correct duty was due to heavy workload. Further progress in the matter has not been received (January 2014).

We reported the matter to the Department and the Government in June 2013; their replies have not been received (January 2014).