

CHAPTER 5
STAMPS AND
REGISTRATION FEES

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5.1 Tax administration

The levy and collection of Stamp duty and Registration fees in the State is governed by the provisions of the Indian Stamp Act, 1899, the Registration Act, 1908, the Bihar Stamp Rules, 1991 and the Bihar Stamp (Prevention of Undervaluation of Instruments) Rules, 1995.

The Prohibition, Excise and Registration (Registration) Department is headed by the Inspector General, Registration (IGR). The Department functions under the administrative control of the Secretary of the Registration Department. The IGR is assisted by an Additional Secretary, two Deputy Inspectors General (DIGs) and four Assistant Inspectors General (AIGs) at the Headquarters level. Further, there are nine AIGs at the divisional level. At the field level, 38 District Sub-Registrars (DSRs), 87 Sub-Registrars (SRs) and 26 Joint Sub-Registrars (JSRs) at the districts/primary units are responsible for levy and collection of stamp duty and registration fees.

5.2 Results of audit

During the year 2018-19, Audit test-checked the records of AIG (Registration) Patna. Out of 161 units of the Registration Department, eight units¹ were audited during September and December 2019 while auditing the 'Bihar Society for Computerisation of Registration Offices (BISCORE) and District Society for Computerisation of Registration Offices (DISCORE)' and 1,016 documents were test-checked out of total 3,44,020 documents registered during January 2016 to October 2019. Audit observed short realisation and other irregularities involving ₹ 4.14 crore in five cases during April 2018 to March 2019. Besides, audit of BISCORE and DISCORE revealed irregularities of ₹ 31.73 crore discussed in subsequent paragraphs.

5.3 Illegal provision for collection of service charge in the Bihar Registration Rules, 2008 leading to irregular collection of service charge

The Registration Department illegally made provision for collection of service charge in the Bihar Registration Rules, 2008 and consequently not only collected service charge of ₹ 31.73 crore during 2018-19 by putting undue burden on stakeholders but also kept these in bank accounts instead of the Consolidated Fund of the State.

The Government of Bihar had decided (March 2005) to computerise all the registration offices in the State through System for Computerised Registration (SCORE) software. As per the Bihar Registration Rules, 2008, computerisation was carried out through the State-level society namely Bihar Society for Computerisation of Registration Offices (BISCORE) and one each at the district level namely District Society for Computerisation of Registration Offices (DISCORE). All members of these societies were government officials, where the District Sub Registrar works as Secretary of DISCORE and Inspector General of Registration works as Secretary

¹ Aurangabad, Begusarai, Bettiah, Muzaffarpur, Nalanda, Patna, Sitamarhi and Siwan.

of BISCORE. These societies were registered under the Societies Registration Act, 1860.

Section 69 of the Registration Act, 1908 prescribes the powers of IGR to superintend registration offices and make rules for (a) providing for safe custody of books, papers and documents, (aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other electronic form, (b) declaring what language shall be deemed to be commonly used in each district, etc.

Invoking this section, the IGR with the approval of Government of Bihar (State Cabinet) made the Bihar Registration (BR) Rules, 2008 where in provision was made for levy of service charge on the basis of each page of document registered. However, Section 69 of the Act *ibid* did not authorise the IGR to make provision for levy of any service charge and for keeping this amount in bank account of DISCORE. Thus, the provision for levy of service charge was beyond the legislative intent of Section 69 of the Act and hence illegal.

Audit observed during scrutiny of records of IG Registration that DISCOREs² collected ₹ 31.73 crore as service charges during 2018-19 and were kept in the bank accounts of the concerned DISCOREs. Not depositing the collection from service charges into the Consolidated Fund of the State is a violation of Article 266 (1) of the Constitution of India, which provides that all revenue received by the Government of a State shall be credited into the Consolidated Fund of the State.

Thus, the Government of Bihar illegally framed provision for collection of service charge in the Bihar Registration Rules and allowed collection of service charge to finance the Societies (BISCORE and DISCORE) to undertake its core function which resulted in not only bypassing of legislative oversight in financial matter of the State but also undue burden to stakeholders.

The matter was also pointed out in previous Audit report for the year 2017-18. However, the Department has not taken any action and the same irregularity was persisting till date of audit (September 2020).

In reply, the Department stated (February 2020) that the Bihar Registration Rules, 2008 which provided for levy of service charge was formulated following all due process including due concurrence of the Law Department and the Finance Department and approval of the State Cabinet.

Reply of the Department was incorrect as notification was issued invoking Section 69 (1) (a) and (aa) of the Registration Act, 1908 which did not authorise the State Government to levy any service charge and the Department also did not bring this fact to the notice of the State Cabinet while seeking approval on the Bihar Registration Rules, 2008.

² In all 38 Districts.

5.4 Short realisation of Stamp duty and Registration fee due to undervaluation of property

Two Registering Authorities failed to detect undervaluation of properties in two instruments executed during May 2018 to June 2019 which resulted in short levy of Stamp duty and Registration fee of ₹ 90.25 lakh.

As per the Indian Stamp Act, 1899, the consideration/market value of the property and all other facts and circumstances affecting the chargeability of duty is to be fully and truly disclosed in the instrument. In reference to classification of holdings according to Bihar Municipal Property Tax Rules, 2013, where the properties are located on more than one road, Principal Main Road shall prevail over the Main Road i.e. higher category will prevail.

Audit observed (between September and December 2019) during scrutiny of instruments executed during May 2018 and June 2019 that

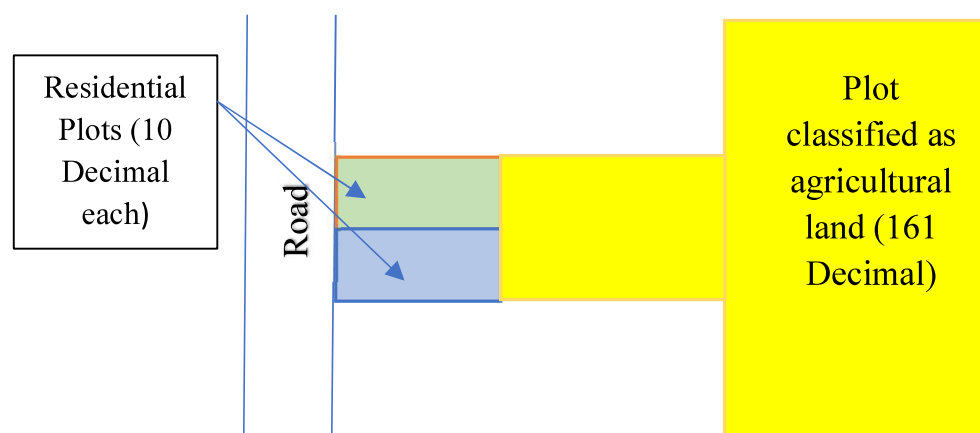
- In one case of sale deed executed under District Sub Registrar (DSR) Patna, the DSR did not detect the splitting of plots for classification of the category under different roads. This led to subsequent misclassification of land as the bigger portion was registered showing them as un-connected from national highway/principal road and thereafter registering the smaller portion adjacent to the bigger portion showing them as situated on national highway/principal road. Both plots were sold by one entity and the same was purchased by single entity through the same deed.

On this being pointed out, the Department replied that audit has treated the whole land (measuring 98 decimal) situated in different *khesras* as situated on Principal Road, although land of *khesra* no. 16 is situated on main road where as land of *khesra* no. 17 is situated on Principal road. The Department further stated that audit incorrectly added value of property of ₹ 7.95 crore twice making the value of property at ₹ 15.89 crore.

The reply of the Department is not acceptable, as both plots were sold through single deed having same seller and same buyer and taking cue from the provisions of classifications relating to properties connected to more than one road, these adjacent plots should have been treated as a single plot connected to road of higher category i.e. principal road, and accordingly stamp duty and registration fee is leviable which resulted in short levy of stamp duty and registration fee of ₹ 44 lakhs.

- In other case of sale deed executed at the DSR Aurangabad, where the DSR considered the classification in three deeds executed by one single purchaser and one seller as three different plots. As a result, two plots of 10 Decimal each were classified as residential plot while the 161 decimal of land adjacent to two residential category plots was classified as an agricultural land. Therefore, these three plots should have been considered as single plot in residential category, as for all the plots buyer and seller are same, and accordingly the stamp duty and registration fee should have been considered on value of ₹ 17.26 crore arrived at on the basis of market value of applicable MVR for residential category instead of consideration

value of ₹ 12.51 crore (two residential and one agricultural), leading to undervaluation of property by ₹ 4.75 crore. This resulted in short levy of stamp duty and registration fee of 46.25 lakh.



On this being pointed out, the Department stated that plot no. 666 (as mentioned in Sale Deed No. 7199 and 7200) was not included in Sale Deed no.7198. Each document contained only one nature of land and none of the *khesra* was categorised in two different categories.

Reply of the Department is not acceptable as it is evident from the documents that these lands were adjacent to each other. In these circumstances, although the lands with different *khesra* numbers situated adjacent to each other should have been treated as one unit rather than in a splitted way, since purchaser of the plots and seller of the plots are same and in this instant case lands were situated within the same boundary. Hence the whole land must be categorised under one category i.e. residential.

These above irregularities resulted in undervaluation of property and consequent short levy of stamp duty and registration fee of ₹ 90.25 lakh as detailed in the **Annexure-13**.