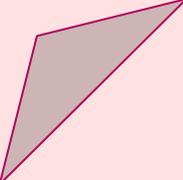


**Chapter V**  
**Stamp duty and**  
**Registration fees**





## CHAPTER - V STAMP DUTY AND REGISTRATION FEES

### 5.1 Tax Administration

Receipts from Stamp Duty and Registration Fees are regulated under the Indian Stamp Act, 1899, Kerala Stamp Act, 1959, Indian Registration Act, 1908, and the rules framed thereunder. Registration law governs documents rather than transactions. The Registration department is one of the oldest departments in the State. The services rendered in the department include registration of documents, issue of encumbrance certificates, registration of marriages, levy and collection of stamp duty and registration fee etc. Department is administered at Government level by the Secretary to Government, Taxes department and the Inspector General of Registration is the head of the Registration department.

### 5.2 Internal Audit

The Inspector General of Registration monitors the functioning of the Internal Audit Wing (IAW) of department at the State level and the Zonal Deputy Inspector Generals are responsible for monitoring it at the district level. The District Registrars (Audit) of the respective districts conduct the internal audit of Sub Registrar Offices (SROs). The internal audit team consists of one District Registrar and three senior clerks for each district. The auditee offices are selected giving higher weightage to the pendency of internal audit and anticipated retirement of staff in the respective offices. During 2022-23, out of the 323 units planned for audit, the IAW audited 304 units. During 2022-23, out of the 3,925 outstanding observations, department cleared 2,233 Audit observations (56.89 *per cent*).

### 5.3 Results of Audit

During the year 2022-23, out of the total 335 offices in the Registration department, 86 offices were test-checked. Short levy of Stamp Duty and Registration Fees due to misclassification of property, splitting up of property, undervaluation of buildings, non-consideration of fair value of mother survey number and other irregularities amounting to ₹52.91 crore were detected in 220 cases as given in **Table – 5.1**.

**Table – 5.1: Details of non/ short levy of Stamp Duty and Registration Fees and other irregularities**

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1	Short levy of Stamp Duty and Registration Fees due to misclassification of property	20	1.21
2	Short levy of Stamp Duty and Registration Fees due to undervaluation of buildings	81	43.45
3	Short levy of Stamp Duty and Registration Fees due to splitting up of property	7	0.35
4	Short levy of Stamp Duty and Registration Fees due to non-consideration of fair value of mother survey number	15	0.69
5	Others	97	7.21
<b>Total</b>		<b>220</b>	<b>52.91</b>

Source: Compiled by AG (Audit II).

During the course of the year, department accepted under-valuation and other deficiencies involving ₹0.86 crore in 33 cases. An amount of ₹0.10 crore pointed out in 27 cases was realised during the year 2022-23.

A few illustrative cases involving ₹0.39 crore are given in the following paragraphs.

#### **5.4 Short collection/ loss of revenue due to misclassification of land**

**Misclassification of Commercially important plot as residential plot and residential plot with PWD road access as residential plot with *panchayath* road access resulted in short collection of stamp duty and registration fees amounting to ₹0.33 crore.**

As per Section 45A (1) of the Kerala Stamp Act (KSA), 1959, while registering an instrument transferring any land, the registering officer shall verify whether the value of the land is the fair value of that land. Government of Kerala fixed the fair value of land and notified (March 2010) by classifying entire land in 15 categories<sup>71</sup> based on usage of land. The fair value has been subsequently revised six times<sup>72</sup>, the latest being in 2022 and 2023.

Section 45B of KSA, 1959, states that if the Registering Officer, while registering any instrument transferring any property, has reason to believe that the value of the property has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value.

<sup>71</sup> Commercially important plot, Residential plot with NH/ PWD road access, Residential plot with Corporation/ Municipality/ *Panchayath* road access, Residential plot with private road access, Residential plot without vehicular access, Garden land with road access, Garden land without road access, coastal belt, water logged land, rocky land, waste land, wet land, Hill tract with road access, Hill tract without road access, and Government Property.

<sup>72</sup> The earlier revisions were in 2014, 2018, 2019 and 2020.

Inspector General of Registrations directed<sup>73</sup> that, where new subdivisions are carved out of existing subdivisions or survey numbers without fixing their classification-by-use and fair values, the Sub Registrars should adopt the fair value of mother subdivision or any other subdivision in mother survey number, whose classification-by-use matches with that of the newly created subdivision.

#### 5.4.1 Misclassification of commercially important plot

On Audit scrutiny (November and December 2021) of sale deeds in six Sub Registrar Offices<sup>74</sup>, Audit observed that, even though the category of land as recited in the registered documents was ‘commercially important plot’, the fair value as applicable to that category was not taken by the Sub Registrars while registering the documents. Further, the Sub Registrar did not comply with Section 45B of KSA, 1959 and failed to report the undervaluation. The misclassification of commercially important plot resulted in undervaluation of the property and resultant short levy of stamp duty and registration fees amounting to ₹0.27 crore in respect of 16 cases, as detailed in **Appendix – XXVI**.

On this being pointed out (November 2022), Government stated (August 2023) that the remarks of the Accountant General are agreed with and *suo motu* undervaluation proceedings have been initiated under Section 45B (3) of Kerala Stamp Act in respect of Sl. No. 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 15 and 16 of the Appendix XXVI. In respect of Sl. No. 3, 4 and 5, though Government accepted the audit observation, it was stated that, as the time period of five years has elapsed, *suo motu* undervaluation proceedings could not be initiated. The reply is vague because no action was initiated for fixing responsibility on the Registering Officer as directed in Rule 189 of Registration Rules (Kerala), 1958, which states that the Registering Officer will be liable for any loss to Government which may arise from neglect on his/ her part in the registration of a document.

In respect of sale deed 639/2016 (Sl. No.14), it was stated that the value set forth at the time of registration is correct because in the document there was no mention that the building is a shop. Further, the Registering Officer is not liable to visit the site to verify and assess the ground reality. The reply is not tenable as there was recital in the document about the existence of a terrace building which is rented out to KSEB, for commercial purposes. In addition, in the part where the category of land by its usage was described, it was recited that a building of commercial and residential usage is situated. The document also mentioned the building number assigned by Local Body. In the building assessment details of Local Body, which can be accessed online, it was clearly stated that the building is more than 15 years old and is used for commercial purposes. Hence, the Registering Authority, without any site visit, had enough data about the property being a commercially important plot. Moreover, a Joint Physical Verification conducted (December 2021) by the Audit Party and Sub Registrar revealed that the property is situated in the main commercial area of

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<sup>73</sup> Circular No. RR-9/20442/2014 dated 01 January 2015.

<sup>74</sup> SROs - Edakkara, Uduma, Ollukkara, Kattoor, Wadakkancherry and Perinthalmanna.

Kattoor Bazar and there is an entrance to the property from PWD road. Further remarks awaited (November 2024).

Thus, due to the failure on the part of Registering Authorities to report undervaluation within the stipulated period of five years, Government had sustained a loss of ₹0.03 crore in three cases and the registering authority failed to either report undervaluation or to ascertain the accurate fair value of land in 13 cases which resulted in short collection of revenue amounting to ₹0.24 crore.

#### **5.4.2 Misclassification of residential plot with PWD road access**

On scrutiny (January 2022) of the sale deeds in the Sub Registrar Office, Ollukkara, Thrissur, Audit observed that a sale deed (Doc No. 626/1/2017) was executed (31 March 2017), comprising of 16.19 Ares of land in Panancheri village of Thrissur district by Sri. Shivaprasad in favour of Sri. A.L. Mathunni. The property was classified as ‘Residential plot with *Panchayath* road access’ at a total consideration of ₹15.00 lakh.

Audit revealed that, as per the document, the property has PWD road access on the Northern side. Being so, the correct classification of the property should be ‘Residential plot with PWD road access’ instead it was incorrectly categorised as ‘Residential plot with *Panchayath* road access’. Further, the Sub Registrar did not comply with Section 45B of KSA, 1959, and failed to report the undervaluation. The incorrect classification resulted in undervaluation and short collection of stamp duty and registration fee amounting to ₹2.14 lakh as detailed in **Appendix – XXVII**.

On this being pointed out (November 2022), Government stated (August 2023) that, though the audit observation is agreed with, *suo motu* undervaluation proceedings could not be initiated as the time period of five years has elapsed.

The reply is not acceptable because action should have been taken against the Registering Officer, fixing responsibility for the loss as stipulated in Rule 189 of Registration Rules (Kerala), 1958, which states that the Registering Officer will be liable for any loss to Government which may arise from neglect on his/her part in the registration of a document.

Thus, the failure of the Registering Officer to ascertain the accurate fair value of land resulted in loss of revenue amounting to ₹2.14 lakh.

#### **5.4.3 Misclassification of Residential plot with NH road access and a commercially important plot**

Scrutiny of sale deeds (July 2022) at Sub Registrar Office, Edappally, Ernakulam, revealed that a sale deed<sup>75</sup> was executed (February 2019) by Sri. Abdul Salim in favour of M/s Double Tree Properties LLP conveying 21.18 Ares of land<sup>76</sup> with residential building in Edappally South Village for a total

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<sup>75</sup> Doc. No. 528/1/2019 dated 22 February 2019.

<sup>76</sup> In Survey Nos. 86 (Subdivision nos. 13/6, 13/7, 12A/2, 12A/3, 12B/2) and 85 (Subdivision No. 16B/3) of Edappally South Village, Kanayannur *Taluk*, Ernakulam District.

consideration of ₹7.59 crore<sup>77</sup>. The conveyed property consisted of two scheduled properties, schedule ‘A’ and schedule ‘B’.

Audit noticed that both properties had NH Bypass Road access on the eastern side. The mother subdivisions of schedule ‘A’ property was classified as ‘residential plot’, and that of schedule ‘B’ property was classified as ‘commercially important plot’. As such, the correct classification of schedule ‘A’ property should be ‘Residential plot with NH road access’ while that of schedule ‘B’ should be ‘commercially important plot’. Failure to classify the properties accordingly had resulted in undervaluation and short collection of stamp duty and registration fees by ₹3.71 lakh, as shown in **Appendix – XXVIII**.

The case was reported to Government (July 2023). Government accepted the observation and replied (August 2023) that, since the property has NH Bypass Road access on the eastern side, the classification should have been ‘Residential plot with NH/ PWD Road access’. Hence, the Registering Officer should have booked the document for undervaluation under Section 45B of Kerala Stamp Act, 1959, after completing the registration. It was further stated that the District Registrar (General) has initiated *suo motu* action under Section 45B(3) of Kerala Stamp Act, 1959, to make good the loss to Government.

*It is recommended that at the time of registration of land, due attention must be given to the classification of land to avoid misclassification. Responsibility must be fixed on the Registering Officer for causing loss to the exchequer.*

### **5.5 Short levy of Stamp Duty and Registration Fees caused by error in fixation of fair value**

**The Revenue Divisional Officer without specifying sub-division fixed two fair values for a commercially important land situated in a single re-survey number. Error in fixation of fair value of land resulted in short levy of Stamp duty and Registration fees amounting to ₹7.44 lakh.**

Section 28A of the Kerala Stamp Act, 1959, provides that every Revenue Divisional Officer (RDO) shall fix the fair value of land situated within the area of his jurisdiction, for the purpose of determining the duty chargeable at the time of registration of instrument involving land. Accordingly, Government of Kerala notified (March 2010) the fair value of land fixed by Revenue Divisional Officers of Kerala, classifying them into 15 classifications based on usage of land.

As per Rule 4 of the Kerala Stamp (Fixation of Fair Value of Land) Rules, 1995, after fixing, the fair value is to be published by a notification. In Form ‘A’ of the notification, each piece of land, with reference to survey/ resurvey number, is to be classified according to their use by selecting one of the 15 prescribed classifications.

<sup>77</sup> Land - ₹7,50,00,000; Building – ₹9,00,000.

Scrutiny of sale deeds (April 2022) at Sub Registrar Office, Kattappana revealed that a sale deed (Doc. No. 1339/1/2016) was executed in May 2016 at a sale consideration of ₹47.00 lakh for conveying 10.12 Ares of land. The land was originally a part of resurvey number 52 in Block 58 of Kattappana Village, which was subsequently carved out and assigned sub-division number 52/2. It is recited in the document that the property is part of “commercial important plot”. Hence, as per IGR directions, the Sub Registrar should levy stamp duty and registration fee based on the fair value for “commercial important plot” in Resurvey number 52.

The Revenue Authorities fixed two different fair values in resurvey number 52 for the classification “commercially important plot” viz., ₹8.00 lakh per Are and ₹3.00 lakh per Are. The fair value was subsequently revised and on the date of registration (12 May 2016), the fair value was ₹12.00 lakh per Are and ₹4.50 lakh per Are.

Audit noticed that instead of considering land value of ₹121.44 lakh (at the rate of ₹12.00 lakh per Are) for levying stamp duty and registration fees, the Sub Registrar made the levy on the sale consideration put forth in the document, i.e., ₹47.00 lakh. This resulted in undervaluation of land by ₹74.44 lakh and short levy of stamp duty and registration fees by ₹7.44 lakh as shown in **Appendix – XXIX**.

The case was reported to Government (July 2023) and it was replied (August 2023) that two fair values existed in the mother survey number, and the total consideration set-forth in the document is in accordance with one of the values in the Gazette notification. Therefore, the Registering Officer has no reason to believe that the value of property has not been truly set forth in the instrument, and hence, no reference was made for undervaluation under Section 45B of Kerala Stamp Act, 1959.

The reply is not acceptable. It is the duty and responsibility of each Government servant entrusted with collection of revenue to protect the interest of the Government exchequer. As two fair values were fixed by the Revenue Divisional Officer for lands classified as “commercially important plot” in Resurvey number 52, without specifying subdivision numbers, the Sub Registrar had reasons to believe that the value of property has not been truly set forth in the instrument. Hence, he should have referred the document to the Collector/ District Registrar under Section 45B of Kerala Stamp Act, 1959, for determination of value and duty leviable thereupon.

Failure of the Registering Authority to refer the document to the collector for determination of correct fair value had resulted in short levy of revenue of ₹7.44 lakh.

*It is recommended that at the time of registration of land, due attention must be given to the fair value fixed for the land and if any ambiguity arises, the case may be reported to Collector to determine the value of the land.*