

## CHAPTER-V: OTHER TAX RECEIPTS

### 5.1 Results of audit

Our test check of the records of the following receipts, conducted during the year 2009-10, revealed underassessment of tax, fee, duty and loss of revenue *etc.* of ₹ 54.73 crore in 411 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
<b>A. Stamp duty and registration fees</b>			
1.	Levy and collection of Stamp duty and Registration fee (A review)	01	1.48
2.	Blocking of Government revenue due to non-disposal of referred cases	26	1.77
3.	Blocking of Government revenue due to non-disposal of impound cases	11	0.57
4.	Short levy due to misclassification of documents	09	0.89
5.	Short realisation of stamp duty and registration fees due to late receipt of revised rates	18	1.05
6.	Other cases	27	1.12
<b>Total</b>		<b>92</b>	<b>6.88</b>
<b>B. Land revenue</b>			
1.	Non/short levy of cess and/or interest on arrears of cess	37	13.27
2.	Non-settlement of vested lands	33	8.85
3.	Non-settlement of <i>sairats</i>	08	0.05
4.	Other cases	241	25.68
<b>Total</b>		<b>319</b>	<b>47.85</b>
<b>Grand total</b>		<b>411</b>	<b>54.73</b>

During the year 2009-10, the concerned departments accepted underassessment and other deficiencies *etc.* involving ₹ 50.83 crore in 371 cases out of which 357 cases involving ₹ 50.02 crore were pointed out during the year 2009-10 and the rest during the earlier years. The Departments concerned have also reported recovery of ₹ 15.44 lakh in nine cases.

Audit findings of a review on the 'Levy and collection of Stamp duty and Registration fee' with financial impact of ₹ 1.48 crore is mentioned in the following paragraphs.

## Stamp Duty and Registration Fees

### 5.2 Levy and Collection of Stamp Duty and Registration Fee

#### Highlights

Lack of co-ordination between the Registration Department and other public offices resulted in non-levy of stamp duty and registration fee of ₹ 1.42 crore in the test checked districts during 2004-05 to 2008-09.

(Paragraph 5.2.8)

Due to pendency in the disposal of referred cases and non-pursuance of the execution of deeds, the deficit stamp duty from finalised, referred and impounded cases could not be realised, leading to consequential blocking of Government revenue of ₹ 8.57 crore.

(Paragraph 5.2.10)

The internal audit was weak as evidenced by the low quantum of departmental inspections and absence of internal audit.

(Paragraph 5.2.12)

#### 5.2.1 Introduction

Receipts from stamp duty and registration fee in the State are regulated under the Indian Stamp (IS) Act, 1899, Bihar Stamp Rules, 1991 and Bihar Stamp (Prevention of Under-Valuation of Instruments) Rules, 1995 as amended from time to time. The stamp duty is paid by the executors of the instrument<sup>1</sup> on or after the first day of July, 1899 either on impressed stamp paper or by fixing stamps or by remitting stamp duty directly in the Government account under the head "0030 - Stamps and Registration fees" through challan.

The Registration Act, 1908 consolidated the enactments relating to registration of documents. The levy of registration fee is governed by Sections 78 to 80 read with Sections 17 and 18 of the Registration Act and the Registration (Bihar Amendment) Act as amended from time to time. The State Government was required to prepare a table of fees payable for registration of documents, searching of registers, making or granting copies of reasons, entries or documents etc. The fees shall be calculated on *ad valorem* scale according to the value of the right, title and interest expressed in the documents.

#### 5.2.2 Organisational set up

The levy and collection of stamp duty, registration fee, penalties and other dues under the Acts and Rules is administered by the Registration Department headed by the Inspector General, Registration (IGR). The Department functions under the administrative control of the Secretary of Registration Department who is the chief revenue controlling authority. The IGR is assisted by a Joint Secretary, two Deputy Inspector General (DIGs) and four Assistant Inspector General (AIGs) at the Headquarters level. Further, there are nine Inspector of Registration Office (IROs) at the divisional level. Thirty eight

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<sup>1</sup> "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

District Registrars (DRs), 38 District Sub Registrars (DSRs) and 72 Sub Registrars (SRs) at the district/primary units are responsible for levy and collection of stamp duty and registration fee.

### 5.2.3 Audit objectives

We conducted the review to ascertain whether:

- the Acts/Rules and departmental instructions pertaining to levy and collection of stamp duty and registration fee are consistent, and adequate to ensure collection of revenue;
- the provisions of the IS Act, Registration Act and rules made thereunder were being implemented effectively; and
- the internal control mechanism of the Department was effective and sufficient controls were in place to safeguard the collection of duty and fees on instruments.

### 5.2.4 Audit criteria

We referred to the following Acts and Rules during the review:

- The Indian Stamp Act, 1899
- The Registration Act, 1908
- The Bihar Stamp Rules, 1991
- The Bihar Stamp (Prevention of Under-Valuation of Instruments) Rules, 1995
- The Bihar Registration Manual
- The Bihar Budget Procedures
- The Bihar Financial Rules
- Orders and notifications issued by the Government from time to time.
- Departmental instructions, circulars and executive orders, made from time to time.

### 5.2.5 Scope of audit and methodology

For the purpose of the review we test checked the records in the office of IG (Registration), three<sup>2</sup> out of nine IROs and 11<sup>3</sup> out of 38 offices of DSRs for the period from 2004-05 to 2008-09. Information in respect of instruments was also obtained from public offices<sup>4</sup> of the test checked districts to verify the proper realisation of duty and fee.

The selection of 10 districts was based on simple random sampling with replacement and population proportionate sampling with replacement method

<sup>2</sup> Bhagalpur, Muzaffarpur, Patna.

<sup>3</sup> Bhagalpur, East Champaran, Gaya, Gopalganj, Jamui, Madhubani, Muzaffarpur, Nalanda, Patna, Purnea and Siwan.

<sup>4</sup> Bihar Rajya Pul Nirman Nigam, Bihar State Electricity Board, District Fisheries offices, District *Nazarat*, General Insurance Company, Municipalities/*Nagar parishad* and Superintendent of Police offices of the concerned districts.

on the basis of revenue collected in the year 2008-09 and Patna district was selected on the basis of highest revenue potential. Samples were drawn on the basis of cumulative total of revenue and random numbers.

### **5.2.6 Acknowledgement**

We acknowledge the co-operation of the Registration Department in providing necessary information and records for audit. An entry conference was held with the Secretary, Registration Department in March 2010 wherein the scope of audit, methodology and audit objectives including sampling technique adopted were explained to the Department. An exit conference was held in September 2010 with the Secretary to the Government and the views of the Government were incorporated in the review report.

### **Audit findings**

The review on the assessment and levy of stamp duty and registration fee revealed a number of deficiencies as mentioned in the succeeding paragraphs :

### **5.2.7 Trend of revenue**

#### **Formulation of Budget**

Under the provisions of Rule-54 of the Bihar Budget Procedures, the estimates of revenue and receipts should show the amounts expected to be realised within the year. The arrear and current demands should be shown separately and reasons given, if full realisation cannot be expected and should be based on the estimates furnished by the Department.

Further, the Bihar Budget Procedures provide that accuracy in the budgeting must start upward from the lowest stage of estimating. The rule for all estimating officers should be to provide in the budget for everything that can be foreseen and to provide only as much as necessary.

A comparison of the budget estimates (BEs)/revised BEs, actual realisation of revenue as per the Finance Accounts and those furnished by the Department in respect of stamp duty and registration fee for the years 2004-05 to 2008-09 were as given in the following table:

(₹ in crore)

Year	Budget Estimates	Revised Budget Estimate	Revenue collection		Variation between Departmental figure and Finance Accounts (5-4)	Variation between revenue collection as per Finance Accounts and Budget Estimates	
			As per Finance Accounts	As furnished by the Department		Amount (4-2)	Percentage
2004-05	500.00	500.00	429.14	487.80	(+) 58.66	(-) 70.86	(-) 14.17
2005-06	600.00	550.00	505.29	586.80	(+) 81.51	(-) 94.71	(-) 15.79
2006-07	700.00	700.00	455.02	559.13	(+) 104.11	(-) 244.98	(-) 35.00
2007-08	720.00	550.00	654.15	717.06	(+) 62.91	(-) 65.85	(-) 9.15
2008-09	581.02	700.00	716.19	755.29	(+) 39.10	(+) 135.17	(+) 23.26

(Source: Information furnished by the Department)

As per the provisions of the Bihar Financial Rules, the controlling officer is required to ensure timely reconciliation between the departmental figures of revenue and those appearing in the Finance Accounts.

Our scrutiny of records revealed the following discrepancies:

- During the period 2004-09, there was variation of ₹ 346.29 crore in total receipts as appearing in the Finance Accounts under the head “0030 - Stamps and Registration fees” and those furnished by the Department to audit. This indicates that timely reconciliation of the figures as required under the existing rules was not done.

The Department replied (October 2010) that the main reason for difference in the two sets of figures was due to non-reconciliation as follows:

(a) The Finance Accounts figures are based on treasury figures whereas the figures furnished by the Department are based on actual collection.

(b) The refund of stamp duty and registration fee to the executants and the refund of additional stamp duty to local bodies and authorities were deducted from the total collection while preparing the budget. The reply is not correct as we reviewed the records of the Deputy Collectors (stamps) of six test checked districts<sup>5</sup> (**Annexure-IV**) where the Collectors ordered to refund the value of unused stamp amounting to ₹ 96.05 lakh after deducting 10 per cent. The refunded value of unused stamp under the orders of the Collector remained outside the budget proposal of the Department as the Department did not prescribe any report/return to be submitted by the Deputy Collector (Stamps) in respect of refunds of stamps. While preparing the revenue budget, the Department did not consider the amount of refund made during the year for unused stamps as well as refund of additional stamp duty to the local bodies resulting in inflated budget proposal by the Department.

- In absence of any proposal from the Registration Department, the Finance Department revised the revenue receipt budget for the year

<sup>5</sup> Bhagalpur, Gaya, Gopalganj, Muzaffarpur, Nalanda and Siwan.

2005-06 from ₹ 600 crore to ₹ 550 crore, for 2007-08 from ₹ 720 crore to ₹ 550 crore and for 2008-09 from ₹ 581.02 crore to ₹ 700 crore.

- We observed substantial variation ranging between (-) 35 *per cent* and 23.26 *per cent* in the actual realisation against the budget estimates which was due to non-consideration of the departmental figures by the Finance Department.

The Department accepted the audit observation and stated (October 2010) that action would be taken to reconcile the figures of the Finance Department from the actual deposit in Government Account under the head “0030 Stamps and Registration fees”. The Department would consider issuing a direction to all Collectors to report all refunds of stamp duty and registration fee, so that this may be taken into account while preparing the budget.

The Department further added that the audit observations shall be communicated to the Finance Department and effective steps after consultation with the Finance Department would be taken for ensuring timely reconciliation of the Department’s revenue figures with those of the Finance Department.

**The Finance Department should prepare budget estimates in co-ordination with the Registration Department. The Government should ensure adherence to the provisions of the budget manual while preparing the BEs. The Government may also take effective steps for ensuring timely reconciliation of the departmental revenue figures with those of the Finance Accounts.**

**A. Levy****5.2.8 Lack of inter departmental co-ordination**

Under the provisions of section 3 of the IS Act, the State Government levies stamp duty vide item no. 35 of Schedule 1A and registration fee as per section 17 of the Indian Registration Act on lease instruments. Further, section 73 of the IS Act provides that every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable time permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings. The Chief Secretary to the State Government has also issued directives in August 2002 to Secretaries of all Departments, Heads of the Departments, Chairman, Bihar State Electricity Board, Commissioners, Managing Directors of all Corporations, District Magistrates, Sub Divisional Officers, Circle Officers and Block Development Officers to levy stamp duty on all lease documents (*Hat, Bazar, Ghat, Jalkar*, bus stand and *Mela* ground) and get them registered where the lease period relates to more than one year.

We noticed that no system to watch the compliance of the instructions of the Chief Secretary was framed. Further, the Registration Department had not fixed any norm or target for the inspection of public offices by the Collector (DR).

Besides, reports/ returns were also not prescribed by the Department to monitor the inspections conducted by the DR as per provisions of section 73 of the IS Act.

Our scrutiny of records of public offices in the test checked districts revealed that in the absence of any prescribed report/return to be submitted by them, the Department was unaware of the extent to which stamp duty and registration fee on the instruments

presented in the public offices was to be levied or had been levied. Some of the discrepancies we noticed are discussed in the following paragraphs:

### 5.2.8.1 Non-levy of stamp duty and registration fee due to misclassification of instruments

As per section 33 and 38 (2) of IS Act, any instrument produced before any Public Officer, which is chargeable with duty in his opinion and if it appears to him that such instruments are not duly stamped, can impound the same and send it in original to the Collector for adjudication of the appropriate stamp duty.

While scrutinising the records of Municipal Corporations/*Nagar Parishads* in nine<sup>6</sup> test checked districts, we observed that nine<sup>7</sup> mobile tower companies had applied for No Objection Certificate for erection of mobile towers in their jurisdiction and entered into agreements with the land/building owners for five to

twenty years on ₹ 100 stamp paper. On perusal of the instruments, we noticed that these agreements came under the category of lease<sup>8</sup> documents for lease period of more than one year which attracted stamp duty and registration fee. But the Executive Officer of the Municipal Corporation/*Nagar Parishad* failed to comply with the provisions of the IS Act for adjudicating the appropriate stamp duty by the Collector which resulted in non-levy of stamp duty and registration fee amounting to ₹ 33.83 lakh.

The Department stated (October 2010) that the matter is being examined and if necessary the stamp duty shall be realised. The Department further said that registration fee becomes chargeable only when a document is registered under the Registration Act and issued instructions to the Collectors for implementation of the provision of Section 73 of the IS Act as suggested by us. We await further replies (December 2010).

<sup>6</sup> Gaya, Gopalganj, Madhubani, Motihari, Muzaffarpur, Nalanda, Patna, Purnea and Siwan.

<sup>7</sup> Dish Net Wireless Ltd., Bharti Tele Venture Ltd., Tower Vision India Pvt. Ltd, Bharti Infratel Ltd, Idea Cellular Infrastructure Service Ltd., Tata Tele Services Ltd., Essar Telecom Infrastructure Pvt. Ltd., Wireless T. T. Info Service Ltd. and Aditya Birla Telecom Ltd.

<sup>8</sup> "Lease" means a lease of immovable property and also includes -

(a) a *patta*;

(b) a *quabuliyat* (The word '*quabiuliyat*' or '*kabuliyat*,') is an undertaking to cultivate or occupy, and an agreement to lease or other undertaking in writing, not being a counterpart of lease, to cultivate, occupy, or pay or deliver rent for, immovable property;

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for a lease intended to signify that the application is granted.



### 5.2.8.2 Non-levy of stamp duty on *Jalkars*

As per section 7 (xii) (f) of the *Bihar Jalkar Management Act 2006*, the District Fisheries Officer was required to cancel the fishing order in cases where the agreements were not registered.

In nine<sup>9</sup> District Fisheries offices, we noticed that *Jalkars*<sup>10</sup> were settled to different lessees in 149 circles on yearly basis for the period 2004-05 to

2008-09 but stamp duty at the rate of three *per cent* and registration fee at the rate of four *per cent* (up to 2006-07) were not levied on the lessees. Non-levy of stamp duty amounting to ₹ 17.44 lakh and registration fee of ₹ 10.73 lakh resulted in loss of Government revenue of ₹ 28.17 lakh. The District Fisheries Officer also did not initiate any action to adhere to the above provision of the Act.

The Department accepted the audit observation and stated (October 2010) that the matter would be examined and stamp duty would be realised. We await further replies (December 2010).

### 5.2.8.3 Non-levy of stamp duty on settled *sairats*

In nine<sup>11</sup> test checked districts we scrutinised *Sairat*<sup>12</sup> registers and files of the Municipal Corporations/*Nagar Parishads* and found that stamp duty at the rate of three *per cent* was not levied during the period from 2004-05 to 2008-09 which led to loss of Government revenue of ₹ 31.26 lakh on 110 settled *sairats* for one year. Thus the administrator of the Municipal Corporations/*Nagar Parishads* failed to comply with the instructions of the CS to levy stamp duty on lease documents.

The Department stated (October 2010) that the matter would be examined and stamp duty would be realised. We await further reply (December 2010).

### 5.2.8.4 Non-levy of stamp duty on bridge toll plazas

During scrutiny of records of the Bihar *Rajya Pul Nirman Nigam*, Patna we observed that stamp duty at the rate of three *per cent* was not levied during the period from 2004-05 to 2008-09 on all *bandobasti*<sup>13</sup> of bridge toll plazas which were settled on a yearly basis. Failure on the part of the administrator of the Bihar *Rajya Pul Nirman Nigam*, Patna to comply with the instructions of the Chief Secretary to levy stamp duty on the lease documents resulted in loss of revenue amounting to ₹ 48.99 lakh as detailed below:

<sup>9</sup> Bhagalpur, Gaya, Gopalganj, Jamui, Madhubani, Muzaffarpur, Nalanda, Patna and Siwan.

<sup>10</sup> *Jalkar* – *Jalkar* means tank, *Pokhar*, *Ahar*, river, water course channel, '*Chaur*', '*Dhav*', reservoir Lake, Ox-bow lake etc. under the Department of Animal Husbandry and Fisheries, Bihar, in which *Makhana*, *Singhara* and fish is reared.

<sup>11</sup> Gaya, Gopalganj, Jamui, Madhubani, Motihari, Muzaffarpur, Nalanda, Purnea and Siwan.

<sup>12</sup> *Sairat* means the income derived by leasing out fisheries, *hats*, *Melas*, *Toddy Mahals* and ferry rights.

<sup>13</sup> Settlement of lease.

(₹ in lakh)

Sl. No.	Year	No. of districts in which bridges were settled	Bid amount	Stamp duty at the rate of three per cent
1	2004-05	12	157.32	4.72
2	2005-06	14	139.69	4.19
3	2006-07	23	475.68	14.27
4	2007-08	14	457.46	13.72
5	2008-09	14	403.11	12.09
<b>Total</b>		<b>77</b>	<b>1633.26</b>	<b>48.99</b>

The Department accepted the audit observation and stated (October 2010) that the matter would be examined and stamp duty realised. We await further reply (December 2010).

**The Government may consider fixing norms for periodical inspection of all public offices and prescribing periodic reports/returns to be submitted for monitoring the levy of stamp duty and registration fee through a compliance framework for implementation of the Chief Secretary's instruction.**

### 5.2.9 Short levy of stamp duty on *sairat*

Under the provisions of section 3 of the IS Act, the State Government levied stamp duty vide item no. 35 of Schedule 1A on lease instruments.

While reviewing the *sairat* registers and statement of settled *sairats* in two districts<sup>14</sup>, we observed that 20 *sairats* were found to have been settled, but the stamp

duty was short levied as shown below:

(Amount in ₹)

Name of units	Stamp duty leviable	Stamp duty levied	Difference (short levy of stamp duty)
<i>Nagar Parishad</i> , Nalanda	4,51,251	58,395	3,92,856
<i>Nagar Parishad</i> , Gopalganj	4,680	3,219	1,461
<b>Total</b>	<b>4,55,931</b>	<b>61,614</b>	<b>3,94,317</b>

Thus stamp duty amounting to ₹ 3.94 lakh was short levied.

The Department stated (October 2010) that the matter would be examined and stamp duty would be realised. We await further replies (December 2010).

<sup>14</sup> Nalanda : 7 and Gopalganj : 13

## B. Collection

### 5.2.10 Absence of provisions for time limit in the Acts and Rules

Under section 33 (1) of the IS Act, every person in charge of a public office, before whom any instrument is produced shall, if it appears to him that such instrument is not duly stamped, impound the same and as per section 38(2) of the said Act, shall send it in original to the Collector. The stamp duty payable shall be realised by the Collector together with a penalty of ₹ five or an amount not exceeding ten times the amount of proper duty and return it to the impounding officer.

Further, section 48 of the IS Act provides that all duties, penalties and other sums required to be paid under the Act may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force, for recovery of arrears of land revenue.

We noticed that the Rules do not prescribe any time frame for initiation of revenue recovery certificate. Also, there is no provision in the Act/Rules for production of proof of permanent residential address of the executants at the time of presenting the documents and its verification in DSR/SR offices. Further, there is no provision in the Rules to enforce the execution of sale deed by the parties and to recover stamp duty and registration fee finalised by the Collector. No time limit has been fixed in the Acts/Rules or instructions of the Department for

sending the cases by the DSR/SR to the Collector/IRO for necessary action.

### 5.2.10.1 Non-disposal of impounded cases

Under sections 38(2) and 40 of the IS Act, when any instrument sent in original to the Collector after impounding the same, if he is of the opinion that such instrument is chargeable with duty and is not duly stamped, the stamp duty payable shall be realised by the Collector together with a penalty of ₹ five or an amount not exceeding ten times of the amount of proper duty and return it to the impounding officer. Further, Section 48 of the IS Act provides that all duties, penalties and other sums required to be paid may be recovered by the Collector by distress and sale of movable property of the person from whom the same are due, or by any other process for the time being in force. This action may be initiated after issuing notices to the person concerned and instituting cases against them under the Public Demands Recovery (PDR) Act.

During test check of records along with the registers of impounded cases, we observed that 16 impounded cases by three<sup>15</sup> DSRs during 2006-09 were sent to the Collectors for adjudication. All these cases were pending disposal till the date of audit due to the absence of provisions of time frame in the Acts/Rules. Non-disposal of impounded cases resulted in blocking of Government revenue amounting to ₹ 4.71 lakh.

The Department stated (October 2010) that at the instance of audit,

instructions had been issued (September 2010) for fixing the time limit of one month for disposal of referred and impounded cases.

### 5.2.10.2 Non-realisation of revenue in finalised and impounded cases

We cross checked the registers of impounded cases and statements made available by two DSRs and one Deputy Collector (Stamp)<sup>16</sup> for the period 2004-05 to 2008-09 and found that 81 cases impounded by the DSRs for adjudication of stamp duty were finalised by the Collectors. The Collectors adjudicated those cases and imposed stamp duty and penalties amounting to ₹ 7.51 lakh. Notices were issued/being issued to the executants. Further action was not initiated against the executants for realisation of stamp duty and penalty as per provisions of the Act.

Thus, due to lack of provision of a time limit in the Rules or in Departmental instructions for issue of Revenue Recovery Certificate (RRC) in established demands, no case was instituted under RRC.

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<sup>15</sup> Bhagalpur (9 cases - ₹ 3.84 lakh), Gaya (4 cases - ₹ 36,840) and Gopalganj (3 cases - ₹ 49,960).

<sup>16</sup> Gopalganj (25 cases - ₹ 4.11 lakh), Motihari (54 cases - ₹ 2.79 lakh) and Deputy Collector (Stamp) Bhagalpur (2 cases - ₹ 60,859).

### 5.2.10.3 Delay in execution of referred cases

Under section 47(A) of IS Act, 1899, where the registering authority has reason to believe that the market value of the property has not been rightly set forth in the instrument, he may refer the same to the Collector for determining its market value. Further, the Commissioner cum Secretary and Inspector General of Registration Department, Government of Bihar instructed on 20 May 2006 all Collectors to transfer the cases referred under section 47(A) to the IRO concerned for speedy disposal within 90 days.

During scrutiny of records of nine<sup>17</sup> test checked districts, we observed that 616 cases involving a sum of ₹ 1.67 crore presented between October 1997 and March 2009 were referred (between December 2002 and March 2009) by the DSR/SR to

the Collector/IRO for determination of market value of the properties as required under section 47 (A) of IS Act, after delays ranging from one to 3,233 days. This resulted in non-execution of referred cases. The delay in referring cases and their timely disposal also caused hardship to the executant public.

### 5.2.10.4 Non-realisation of deficit stamp duty from finalised referred cases

During cross verification of the registers of referred cases and statements made available by three<sup>18</sup> IROs and five<sup>19</sup> DSRs for the period 2004-05 to 2008-09 we observed that out of the cases referred to DR/IRO for valuation of land/property under section 47 (A) of IS Act, 1565 cases were finalised by the Collectors/IROs and sent back between November 2004 and February 2008 to the DSR/SR for execution of deeds which remained pending with them. This resulted in non-realisation of Government revenue amounting to ₹ 5.24 crore based on the statement furnished by the IROs/DSRs.

The Department stated (October 2010) that instructions had been issued for speedy disposal of referred and impounded cases. We await further reply (December 2010).

### 5.2.10.5 Non-finalisation of referred cases

While reviewing the Register of referred cases and statements made available by two IROs (Muzaffarpur and Patna) and 10<sup>20</sup> DSRs for the period 2004-05 to 2008-09, we observed that out of 3,968 cases referred to Collectors/IROs, 1,034 cases pertaining to the period 2004-05 to 2008-09 for determination of market value of property were pending for disposal till the date of audit, which caused blocking of Government revenue of ₹ 3.21 crore. Besides, 2,934 cases

<sup>17</sup> Bhagalpur, Gaya, Gopalganj, Motihari, Muzaffarpur, Nalanda, Patna, Purnea and Siwan.

<sup>18</sup> Bhagalpur, Muzaffarpur and Patna.

<sup>19</sup> Gaya, Gopalganj, Madhubani, Muzaffarpur and Siwan.

<sup>20</sup> Bhagalpur, Gaya, Gopalganj, Jamui, Motihari, Muzaffarpur, Nalanda, Patna, Purnea and Siwan.

pertaining to the period 1991-92 to 2003-04 involving realisable amount of ₹ 4.29 crore transferred from Collectors to IROs after issue of the order of May 2006 were also pending for disposal.

The Department stated (October 2010) that the Government had issued instructions for speedy disposal of cases and as a remedial measure, had empowered the IROs to function as Collectors for the purpose of section 47(A) of IS Act.

**The Government may take appropriate steps for the speedy disposal of referred cases. The Government may also consider prescribing a time limit for sending the cases for determination of market value and disposal of impounded cases and also for instituting RRCs after the demands have been established.**

### 5.2.11 Non-fixing of incidental expenses

Section 44(2)(iii) of the Bihar Regional Development Authority Act, 1981 and Section 136(2) and (4) of the Bihar and Orissa Municipal Act, 1922, provide that the Registration Department shall collect additional amount of duty equivalent to five *per cent* (upto December 2005) for Bihar Regional Development Authority and two *per cent* for Municipal body/ Notified Area Committee on the value of instruments of sale, gift and usufructuary mortgage of immovable property and all collections resulting from such increase shall be paid to the authority/body after deducting incidental expenses (if any) as may be prescribed by rules made by the State Government.

Scrutiny of records revealed that the Registration Department was utilised for collection and making payment for and on behalf of aforesaid local bodies/ authorities. But in absence of any incidental expenses fixed by the Government/Department, the total amount collected by them had been paid to the bodies/ authorities without deducting the incidental expenses.

Similarly, no incidental expenses were either fixed or realised by the Registration Department on the scanning charges of instruments presented for registration and

collected by the Societies for Computerisation of Registration (SCORE) which is registered under the Societies Registration Act, 1807, although offices of the Registration Department were being utilised for collection of scanning charges.

The Department, while accepting the audit observations, replied (October 2010) that it is a policy matter and would be considered.

**The Government may consider prescribing the rate of incidental expenses for collection of revenue on behalf of a body or authority as fixed for Land Revenue Department. For SCORE the collection charges should be fixed on the basis of utilisation of departmental manpower and infrastructure.**

## 5.2.12 Internal control mechanism

### 5.2.12.1 Internal audit

The internal audit wing of a Department is a vital component of its internal control mechanism and enables the Department to assure itself that the prescribed systems are functioning appropriately.

We noted that there is no separate internal audit wing in the Registration Department. The Finance Department (Audit Cell) works as the Internal Audit Department of the Registration Department. The scope and extent of

internal audit was not made available to us by the Department. Not a single office of the Registration Department was audited during the period 2004-05 to 2008-09, except the office of the DSR Gaya in which only the expenditure aspect was covered.

The Department stated (October 2010) that it is considering developing an internal audit system to strengthen its inspection and IROs are to be empowered to conduct internal audit/inspection.

### 5.2.12.2 Inadequate inspection

Inspection is an important tool of internal control in the hands of the administration for ascertaining that rules and procedures prescribed for the Department are being followed and are sufficient to safeguard proper collection and prevent leakage of revenue. The Bihar Registration Manual provides for inspection of registration offices by the DSRs, DRs, IROs and IG Registration. The DSR will ordinarily inspect each SR office in the district twice a year and his own office once a year. The DR/IRO should inspect every office under his jurisdiction including the district office at least once in a year. The IGR is required to inspect 50 *per cent* of the offices of the DSRs and as many offices as he conveniently can.

As per the norms laid down by the Bihar Registration Manual, 2105 offices were required to be inspected by the inspecting authorities during 2004-05 to 2008-09. The number of inspections conducted during 2004-05 to 2006-07 was not furnished to us. However, as per the data furnished pertaining to the period 2007-08 and 2008-09, we observed that only 127 offices (15 *per cent*) were inspected by the inspecting authorities against 842 offices

required to be inspected as detailed in the following table:

Year	No. of offices required to be inspected	No. of offices inspected	Shortfall	Percentage of inspection
2004-05	421	Not furnished	-	-
2005-06	421	Not furnished	-	-
2006-07	421	Not furnished	-	-
2007-08	421	53	368	13
2008-09	421	74	347	18

The details of inspections conducted by the inspecting authorities during 2008 and 2009 were as shown below:

Name of inspecting officers	Year					
	2008			2009		
	No. of offices required to be inspected	No. of offices inspected (in per cent)	Shortfall	No. of offices required to be inspected	No. of offices inspected (in per cent)	Shortfall
IGR	19	1 (5)	18	19	4 (21)	15
IRO	110	37 (33)	73	110	63 (57)	47
DR	110	Not furnished	110	110	Not furnished	110
DSR	182	15 (8)	167	182	7 (4)	175
<b>Total</b>	<b>421</b>	<b>53 (13)</b>	<b>368</b>	<b>421</b>	<b>74 (18)</b>	<b>347</b>

The Department stated (October 2010) that it is considering establishing an internal audit system to strengthen its inspection and IROs will be empowered to conduct internal audit/inspections.

**The Government may ensure periodical inspection of all IRO/DSR/SR/Public offices and their internal audit at regular intervals.**

### 5.2.13 Improper exemption of fee under Article 'O'

As per Article 'O' of the table of fee under the Indian Registration Act, when a document remains unclaimed for more than one month after completion of registration, a fee of ₹ five shall be charged for every month or part thereof beyond the first month after such completion. The amount of fee shall not exceed ₹ 100 in any case. The District Registrar is not empowered to waive 'O' fee except in cases of hardship.

From scrutiny of the Fee Book, Delivery Register and Exemption of 'O' Fee Register and files of DSR, Gopalganj, we observed that 8,167 documents relating to the period from 16 July 2003 to 19 July 2004 were

pending for delivery to the persons concerned. The District Registrar, Gopalganj ordered on 21 September 2004 to deliver 5,783 documents without charging 'O' fee of ₹ 2.10 lakh.

The Department stated (October 2010) that the exemption had been given to remove the hardship of the registrant public which was caused due to delay in



signing by the then District Sub Registrar on the final endorsement of the deeds. The Department further added that the District Registrar-cum-Collector had rightly in exercise of power conferred under the note to Article 'O' and 'P', waived 'O' fee only for a month with effect from the date of order. We do not agree because the remission granted did not belong to the category of hardship. Besides, action taken against the erring officer has also not been furnished.

#### **5.2.14 Conclusion**

The review indicated that the systems established by the Department for assessment, levy and collection of stamp duty and registration fee were deficient. Lack of provisions in the Acts/Rules constrained the Department in effecting timely recovery from defaulters.

The Department failed to co-ordinate with other bodies/Departments to collect timely information on the number of documents to be registered leading to substantial loss of stamp duty and registration fee. Moreover, the Department failed to follow various provisions of the Acts/rules resulting in significant amount of non/short assessment and realisation of stamp duty and registration fee.

#### **5.2.15 Summary of recommendations**

The Government/Department may consider implementing the recommendations noted under the respective paragraphs with special attention to the following to rectify the system and compliance deficiencies:

- strictly follow the budgetary procedures under provisions of Rule 54 of the Bihar Budget Procedures in preparation of budget estimates;
- ensure that the internal control mechanism is strengthened and its effectiveness is periodically reviewed;
- fix the norms for periodical inspection of all public offices and prescribe reports/returns to be submitted by them and their periodicity of submission;
- prescribe a time frame for instituting revenue recovery certificates and follow up action thereof;
- prescribe a time limit for sending the referred/impounded cases and its finalisation; and
- prescribe the rate of incidental expenses for collection of revenue on behalf of a body/authority/SCORE.