

CHAPTER-IV
STAMP DUTY

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4.1 Tax administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act 1899, (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed there-under as applicable in Himachal Pradesh and are administered at the Government level by the Principal Secretary (Revenue). The Inspector General of Registration (IGR) is the head of the Revenue Department who is empowered with the task of superintendence and administration of registration work. He is assisted by the 12 Deputy Commissioners and 117 *Tehsildars/Naib-Tehsildars* acting as the Registrars and Sub-Registrars (SRs) respectively.

4.2 Results of audit

In 2014-15, test check of records of 59 units of the Revenue Department, showed non/short levy of stamp duty and registration fee, non/short realization of lease money, irregular exemption on housing loan and other irregularities amounting to ₹26.80 crore in 118 cases, which fall under the following categories given in **Table 4.1** below:

Table 4.1

Sr. No.	Categories	₹ in crore	
		Number of cases	Amount
1.	Incorrect determination of market value of property and irregular exemption on housing loan	19	1.27
2.	Non/short levy of stamp duty and registration fee	57	0.69
3.	Non/short recovery of lease money	11	24.53
4.	Other irregularities	31	0.31
Total		118	26.80

During the course of the year, the Department accepted underassessment and other deficiencies of ₹2.48 crore in 115 cases, which were pointed out in earlier years out of which an amount of ₹1.20 crore was realised in 85 cases of which ₹0.36 crore in 77 cases pertain to earlier years and ₹0.84 crore in eight cases for the year 2014-15.

A few illustrative cases involving ₹17.59 crore are discussed in the following paragraphs.

4.3 Incorrect preparation of valuation report by *Patwaris*

There was short realisation of stamp duty and registration fee of ₹1.82 lakh due to incorrect preparation of valuation reports by Patwaris in 171 cases.

As per clarifications issued by the Inspector General of Registration (IGR) in July 1997 and June 1998, market value of land is to be worked out on the basis of mutations done during the preceding 12 months. Under the Indian Stamp (IS) Act, the market value of land for levy of stamp duty and registration fee is assessed on the basis of classification of land and is calculated in accordance with the procedure given in Appendix-XXI of the Himachal Pradesh Land

Record Manual 1992. The registering officer is also required to verify the consideration amount shown in the sale deeds with valuation reports prepared by the concerned *patwaris*. In October 2004, the IGR, further, clarified that the average price should be based on the consideration amount or market value whichever is higher. Besides, as per the notifications of January 2012 and June 2013, the consideration amount or market value of land is to be worked on the basis of circle rates fixed by the Collector of the district and stamp duty and registration fee on such documents presented for registration shall be levied accordingly.

4.3.1 Audit test checked the documents of sale deeds of 17 Sub-Registrars (SRs)¹ between June 2014 and January 2015 and noticed that the valuation reports prepared by the *patwaris* were incorrect as the *patwaris* while preparing the valuation reports had taken incorrect/lower value of the land instead of higher value mentioned in the mutations done during preceding 12 months. Consequently, Registering Officers while registering 171 documents, registered these for ₹14.10 crore during 2011-12 and 2012-13 at lower rates whereas the actual market value of these properties as per the correct rates was ₹22.80 crore which resulted in short realisation of stamp duty of ₹42.24 lakh and registration fee of ₹9.58 lakh².

On these being pointed out between June 2014 and January 2015, the IGR intimated in May 2015 that out of ₹22.46 lakh, an amount of ₹6.43 lakh³ had been recovered in respect of five SRs. The replies from remaining SRs had not been received (December 2015).

The matter was reported to the Government between August 2014 and February 2015, the replies have not been received (December 2015).

¹ Baldwara, Bhatiyat, Bilaspur, Churah, Haroli, Indora, Jaisinghpur, Jhanduta, Kangra, Kullu, Nahan, Nalagarh, Padhar, Palampur, Sarkaghat, Shimla (Rural) and Solan

² Baldwara: 10 cases: ₹3.01 lakh, Bhatiyat: six cases: ₹5.70 lakh, Bilaspur: 10 cases: ₹0.85 lakh, Churah: five cases: ₹0.42 lakh, Haroli: eight cases: ₹0.99 lakh, Indora: six cases: ₹4.09 lakh, Jaisinghpur: seven cases: ₹1.17 lakh, Jhanduta: four cases: ₹1.33 lakh, Kangra: five cases: ₹4.22 lakh, Kullu: 35 cases: ₹9.06 lakh, Nahan: five cases: ₹0.81 lakh, Nalagarh: 26 cases: ₹8.28 lakh, Padhar: six cases: ₹0.56 lakh, Palampur: nine cases: ₹5.33 lakh, Sarkaghat: six cases: ₹2.88 lakh, Shimla (Rural): 17 cases: ₹2.86 lakh and Solan: six cases: ₹0.26 lakh

³ Baldwara: ₹0.91 lakh, Jhanduta: ₹1.34 lakh, Kangra: ₹1.44 lakh, Kullu: ₹2.08 lakh and Palampur: ₹0.66 lakh

4.3.2 Short levy of stamp duty and registration fee by taking lower consideration value

While registering 18 documents, the registering officers had taken lower consideration amount of properties which resulted in short realisation of stamp duty and registration fee of ₹29.06 lakh.

Audit test checked the records of six SRs⁴ between July and December 2014 and noticed that consideration amount of properties set forth in 18 documents registered between 2012 and 2013 was ₹1.90 crore which was much below the market value of ₹7.96 crore shown in the valuation report prepared by the concerned *patwaris*. While registering these documents, the registering officers were supposed to consider the higher value of properties of ₹7.96 crore for levy of stamp duty and registration fee but they registered the above documents on lower consideration amount and levied stamp duty of ₹11.35 lakh and registration fee of ₹2.56 lakh instead of ₹39.79 lakh and ₹3.18 lakh. This resulted in short realization of stamp duty of ₹28.44 lakh and registration fee of ₹0.62 lakh.

On this being pointed out (between July and December 2014), the IGR, Shimla intimated in August 2015 that an amount of ₹0.07 lakh had been recovered by the SR, Jawalamukhi. The replies from remaining SRs had not been received.

The matter was reported to the Government between August 2014 and January 2015; replies have not been received (December 2015).

4.4 Non/short recovery of lease money due to non-execution/renewal of lease deeds

The lease deeds were not executed/renewed within the period specified in the lease agreement and lease money was not fixed/revised as per prescribed rates on the basis of prevailing market value of the land. This resulted in non-realisation of lease money ₹12.47 crore in four cases.

Under the Himachal Pradesh Lease Rules (HPLR) 1993, Government land can be granted on lease to individual/private companies for various purposes in the interest of the development of the State. Section 8 (1) of lease rules provides that lease money is required to be revised after the period as specified in the lease agreement and is calculated at the rate of five/eight/18 *per cent* of the latest highest market value of land leased or double the average market value of five years whichever is less. These lease rules were revised/amended in September 2011, which provide that lease money is to be calculated at the rate of five *per cent* of the latest highest market value of land leased or double the average market value of five years whichever is less and rules, further, revised in March 2014 which stipulate that the lease amount shall be charged from the lessee at the rate of 10 *per cent* of the current circle rate in respect of hydroelectric

⁴SRs Baldwara: one case ₹3.11 lakh, Indora: six cases: ₹7.55 lakh, Junga: one case: ₹0.41 lakh, Jawalamukhi: three cases: ₹7.61 lakh, Sinhunta: three cases: ₹0.88 lakh and Sundernagar: four cases: ₹9.50 lakh

projects. Section 13 of these rules, further, stipulates that when a lease is sanctioned, the Collector shall execute and cause to execute a lease in Form-B within a period of six months from the date of sanction of lease by Competent Authority. Rules, further, provide that possession of the land shall not be given to the applicant until the lease deeds has been registered.

Audit test checked the records of three SRs⁵ between September and October 2014 and noticed that sanction for transfer of 1,643.01-18 *bighas* of Government land for establishment of hydroelectric projects⁶ in Chamba District was accorded in favour of four Power Project companies between 2001 and 2014 for the period of 40 years. As per lease Rules these lease deeds were required to be executed after the period specified in the lease agreement which were not executed by the concerned SRs. Consequently, the consideration amount of lease money of ₹12.47 crore was not realised by the Revenue Department for want of finalisation of these lease deeds as details given in the **Appendix-V**.

On this being pointed out the SR, Holi (Chamba) stated in January 2015 that lease deed was not executed; hence, no recovery could be effected. Whereas SR Churah stated (September 2015) that ₹84.09 lakh had been recovered. The remaining SRs stated that action would be taken as per the provisions of the Act/ Rules.

The matter was reported to the Government in November 2014; their replies have not been received (December 2015).

4.5 Short recovery of lease money

Non-fixation of lease rent on the basis of prevailing market value of the land resulted in short realisation of lease money of ₹4.24 crore in three cases.

Under the Himachal Pradesh Lease Rule (HPLR) 1993, government land can be leased out to individual/companies for various purposes. As per condition of the lease deed, the lease is required to be renewed after every 10 years on the basis of prevailing market rates of the land. The rule 8(1) of Himachal Pradesh Lease (Amended) Rules, 2012 provides that the lease money is required to be revised after the period specified in the lease agreement and is calculated at the rate of five/eight *per cent* of the latest highest market value of land leased or double the average market value of five years whichever is less in the case of individuals, private companies and educational institutions. Rule 8 (2), further, provides that the lease amount shall be increased every five years by 10 *per cent* of existing lease amount or lease value calculated on current value of the land whichever is less.

4.5.1 Audit scrutiny of records of two SRs⁷, between September and December 2014 showed that sanction for the transfer of government land measuring 30,984

⁵ SRs Bharmour, Kangra and Holi at Chamba

⁶ M/s Lanco Hydro Power Project a Hydro-electric company, Chirchind Hydroelectric Company in Bharmour, I.A. Energy, D-7 Lane-I, Sector-1, New Shimla, Hydroelectric Company and G.M.R. Energy Pvt. Ltd.

⁷ SRs Palampur (Kangra) and Sundernagar

sq. meter (9,682 and 21,212 sq. meter) was accorded in favour of two lessees⁸ for the period of 45 and 99 years for establishment of Dental College in Mohal Pung and construction of Electricity Sub-station at Palampur and these leases were executed during December 1994 and December 1998. As per conditions of lease deeds, these lease deeds were required to be renewed during December 2004 and December 2008 respectively but the same had not been renewed. The market value of the land on the prevailing market rates worked out to ₹798.44 lakh and lease money required to be fixed to ₹63.13 lakh per annum at the rate of five/eight *per cent* on market value. Therefore, lease amount to ₹444.21 lakh was required to be paid by these lessees for the period from 2004-05 to 2014-15. The department, incorrectly fixed the annual lease amount to ₹3.09 lakh instead of prevailing market rates, which worked out to ₹61.88 lakh in case of SR Sundernagar whereas in SR, Palampur, the annual lease amount was assessed correctly as ₹1.25 lakh but the lease money was not realised as per the assessment made and lessee had paid lease amount of ₹21.71 lakh only. This resulted in short realisation of lease money of ₹4.24 crore (₹11.08 lakh and ₹413.00 lakh) as detailed in the **Appendix-VI**.

On this being pointed out (December 2014) the IGR, Shimla intimated (January 2015) that in respect of SR Palampur, the necessary direction had been issued to the HPSEB to deposit the lease amount whereas SR, Sundernagar had not furnished any reply (December 2015).

4.5.2 Administrative failure to take back the possession of the land/ Non- renewal of lease deeds

Test check of the records of the SR, Palampur (Kangra) in December 2014 and noticed that sanction for the transfer of government land measuring 480.00 sq. meter was accorded in favour of Rajput Kalyan Sabha for establishment of Maharana Partap Bhawan (Marriage place) for a period of 10 years (i.e. 14 May 2002 to 13 May 2012) and lessee has paid lump-sum lease money of ₹2,534 subsequently, ₹ one per month was fixed as token lease money after execution of the lease deed. As per condition five of the sanction orders (14 May 2002), the lessee shall renew the lease after the expiry of lease period failing which lessee would vacate the possession of the said land. Condition six empowered the Revenue Officer to take back the possession of the land, if, lease was not renewed. Scrutiny, further, showed that the provisions of the above conditions were not complied with by the lessee and the SR also neither got the mutation of said land in favour of Government nor took back possession of the land from the lessee. Thus, inaction on the part of the department resulted in unauthorized occupation of Government land.

On this being pointed out (December 2014) the IGR, Shimla intimated (January 2015) that the lessee had been directed to deposit the amount and the detailed report of the case was also called for from the *Kanongoo/Patwari* concerned.

The matter was reported to the Government between October 2014 and January 2015; their replies have not been received (December 2015).

⁸ M/s Himachal Pradesh Electricity Board (HPSEB) and Dr. Puran Chand, Medical Charitable Trust, Yamunanagar

4.6 Short recovery of stamp duty and registration fee on lease deed

The SRs while registering nine industrial units during 2012 and 2013 levied stamp duty and registration fee of ₹1.70 lakh instead of ₹8.55 lakh which resulted in short realisation of SD and RF of ₹6.85 lakh.

Article 35 of schedule-I of IS Act, 1899, provides that where a lease is granted for a fine or premium or for money advanced in addition to rent received, the stamp duty as applicable to conveyance (No. 23), is chargeable. As per the Indian Stamp (Himachal Pradesh Amendment) Act 1970, where lease purports to be for a term exceeding 10 years but not exceeding 100 years, stamp duty is chargeable at the rate of three *per cent*. Besides, registration fee at the rate of two *per cent* is leviable in terms of Government of Himachal Pradesh, Department of Revenue notification dated 18 March 2002. The Revenue Department vide notification dated 12 January 2012 has, further, revised the rates of stamp duty from three to five *per cent* and registration fee of two *per cent* of the market value of the property or consideration amount as the case may be, whichever is higher.

Audit test checked the documents of lease deeds of four SRs⁹ between September and November 2014 and noticed that in nine cases, land was leased out during 2012 and 2013 for the period ranging 10 to 95 years and registered these lease deeds at the consideration amount of premium of ₹1.23 crore. Audit scrutiny, further, showed that the SRs while registering these documents did not levy the stamp duty and registration fee on the prevailing market value of property of ₹2.39 crore on which stamp duty and registration fee of ₹8.55 lakh was leviable against which ₹1.70 lakh levied. This resulted in short realisation of stamp duty and registration fee of ₹6.85 lakh.

On this being pointed out (between September and November 2014), the IGR intimated in May 2015 that out of ₹2.22 lakh, an amount of ₹3724 had been recovered in respect of SR, Baldwara and efforts were being made to recover the balance amount. The reply from remaining SRs was awaited.

The matter was reported to the Government between October and December 2014; their replies have not been received (December 2015).

⁹ SR Baldwara: Five cases: ₹2.22 lakh, Churah: One case: ₹0.92 lakh, Fatehpur: One case: ₹1.63 lakh and Indora: Two cases: ₹2.08 lakh