

CHAPTER III
REGISTRATION
&
STAMPS

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‘Stamp duty’ is payable on certain documents specified by statute to make them legally effective. ‘Registration fee’ refers to the fee levied and collected by the State Government for registration of documents. ‘Transfer duty’ means the duty for transfer of property leviable as per the statute.

There are 321 auditable units in the Department of Registration & Stamps. Of these, audit test-checked records in 45 units (14.01 *per cent*) during 2021-22. Audit brought out instances of non-levy or short levy of duties/fees, *etc.*, in 278 cases involving an amount of ₹ 68.45 crore.

Significant cases of non-compliance with the provisions of the Acts/Rules by the Registering Authorities (RA) as detailed in the following paragraphs resulted in short realisation of Stamp Duty and Registration fee of ₹ 58.97 crore. Government/ Department has accepted audit observations involving ₹ 4.45 crore and recovered an amount of ₹ 0.13 crore.

Schedule 1-A of Indian Stamp Act, 1899 (IS Act) stipulated the duties to be levied on documents based on their category. As per the provisions of various Articles of Schedule 1-A to IS Act, Stamp duty, Registration fee and Transfer duty leviable on chargeable value of registered documents on which observations were made by Audit are detailed in **Table-3.1**.

Table-3.1: Duties and fee to be leviable under various Articles of Schedule 1-A to IS Act

| Article of Schedule 1-A | Nature of the deed | Stamp duty ⁸⁸ leviable | Registration fee ⁸⁹ leviable | Transfer Duty ⁹⁰ leviable |
|-------------------------|--|-----------------------------------|---|--------------------------------------|
| Article 6B | Agreements relating to sale of property without possession, Development / Construction Agreement | 0.5 <i>per cent</i> | 0.5 <i>per cent</i> (subject to a minimum of ₹ 1,000 and maximum of ₹ 20,000) | -Nil- |
| | Agreement to sell with General Power of Attorney (AGPA) | 5 <i>per cent</i> | ₹ 2,000 | -Nil- |
| | Development agreement-cum- GPA | 1 <i>per cent</i> | 0.5 <i>per cent</i> (subject to a maximum of ₹ 20,000) | -Nil- |

⁸⁸ G.O. Ms. No. 1128 of Revenue (Registration-I) Department, dated 13 June 2005
G.O. Ms. No. 581 of Revenue (Registration-I) Department, dated 30 November 2013
G.O. Ms. No.582 of Revenue (Registration-I) Department, dated 30 November 2013
G.O. Ms. No.583 of Revenue (Registration-I) Department, dated 30 November 2013 &
G.O. Ms. No. 395 of Revenue (Registration-I) Department, dated 26 November 2014

⁸⁹ G.O. Ms. No. 463 of Revenue (Registration-I) Department, dated 17 August 2013

⁹⁰ G.O. Ms. No. 150 of MAU (TC) Department, dated 06 April 2013

| Article of Schedule 1-A | Nature of the deed | Stamp duty ⁸⁸ leviable | Registration fee ⁸⁹ leviable | Transfer Duty ⁹⁰ leviable |
|-------------------------|---|---|--|--------------------------------------|
| Article 7(a) | Deposit of title deeds (DoTD) | 0.5 per cent (subject to maximum of ₹ 50,000) | 0.1 per cent (subject to maximum of ₹ 10,000) | -Nil- |
| Article 20 (c) | Conveyance | 4 per cent | 0.5 per cent | -Nil- |
| Article 29 | Gift in favour of family members | 2 per cent | 0.5 per cent (subject to a minimum of ₹ 1,000 and maximum of ₹ 10,000) | 1.5 per cent |
| Article 35 (b) | Simple mortgage | 0.5 per cent | 0.1 per cent | -Nil- |
| Article 40 | Partition among family member | 1 per cent | ₹ 1,000 | -Nil- |
| Article 40 (ii) | Partition among others | 2 per cent | | -Nil- |
| Article 42 (g) | General Power of Attorney (GPA) in favour of others | 1 per cent | 0.5 per cent (subject to a minimum of ₹ 1,000 and maximum of ₹ 20,000) | -Nil- |
| Article 46(A) | Release | 3 per cent | 0.5 per cent (subject to a minimum of ₹ 1,000 and maximum of ₹ 10,000) | -Nil- |
| Article 47-A | Sale deed | 5 per cent | 1 per cent | 1.5 per cent |
| Article 49-A (a) | Settlement to family members | 2 per cent | 0.5 per cent (subject to a minimum of ₹ 1,000 and maximum of ₹ 10,000) | -Nil- |
| Article 49-A (b) | Settlement to others | 3 per cent | | -Nil- |

Source: IS Act and Government Orders issued from time to time

Audit observations are detailed in subsequent paragraphs.

3.1 Short collection of Registration Fee on instruments creating *Paripassu* charge

Registration fee of ₹ 52.37 crore was not levied in five cases due to non-consideration of ‘Paripassu’ charge created on Deposit of Title Deeds.

As per the definition of ‘Charge’ under Section 100 of Transfer of Property Act, 1882 where an immovable property of one person is shown as security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property.

Government, in their orders⁹¹ (August 2013) prescribed registration fee of 0.5 per cent on the amount of loan secured on instrument creating charge on ‘Paripassu’⁹² basis. Commissioner and Inspector General of Registration and Stamps (C&IGRS) in his proceedings⁹³, clarified that the ‘Paripassu’ agreements come into existence when an industrial firm/ company obtains credit facilities from more than one financial

⁹¹ G.O. Ms. No. 463 of Revenue (Registration-I) Department, dated 17 August 2013

⁹² *Paripassu* is a Latin phrase meaning ‘equal footing’; As per Companies Act, when a security is shared between two or more lenders in proportion to their outstanding loan amount it is called ‘Paripassu’ charge

⁹³ CIGR Proceedings No. S2/24846/82, dated 15 October 1982

institution by offering securities on ‘Paripassu’ basis on all or any of the securities viz., ‘Simple Mortgage’, ‘Mortgage by Deposit of Title Deeds (DoTD)’ and ‘Hypothecation of movable properties’.

Audit test-checked records in one District Registrar (DR) and three Sub-Registrar (SR) offices⁹⁴ and observed⁹⁵ that in five cases the borrowers had deposited title deeds of immovable property in favour of different banks and secured loans by creating charge on ‘Paripassu’ basis on their properties. However, the registering authorities levied registration fee of ₹ 1.73 lakh in one case related to SR, Sarpavaram. It was noticed in Audit that, as per recitals of the registered document, loan of ₹ 2,226.40 crore was given by Rabo bank, HDFC bank and ECB (External commercial borrowings) term lenders on first charge ranking equally in proportion to their respective loan amounts. Further, loan of ₹ 7,200 crore was given by SBI and new Working Capital lenders on second charge ranking equally in proportion to their respective loan amounts. In remaining cases, ₹ 10,000 was levied by treating the documents as DoTD instead of charging under ‘Paripassu’. This resulted in short collection of registration fee of ₹ 52.37 crore as detailed in **Appendix-3.1**. Despite specific instructions for levying registration fee at 0.5 per cent in ‘Paripassu’ agreements, non-compliance with the instructions and treating the documents as DoTD has resulted in undue benefit to the parties.

DR, Kakinada in one case relating to SR, Sarpavaram replied (February 2023) that as per recitals the document registered was a Memorandum of Deposit of Title deeds relating to immovable properties to secure the loan amount availed by the borrower. Further, stated that there was no mention of paripassu in the recitals. Reply is not acceptable as this will come under paripassu as per the clarification issued by C&IGRS.

Government in their reply (January 2023) accepted audit observation in two cases (viz., DR, Kurnool and SR, Dharmavaram) and stated that deficit amount of ₹ 3.23 crore would be collected from the parties concerned.

3.2 Short levy of duties and fees due to undervaluation of properties

Valuing the properties at lesser rate than applicable market rate, non-adoption of composite rates, considering acreage rate instead of square yard rate and considering lesser area of the properties by the registering authorities resulted in short levy of duties of ₹ 2.15 crore.

Section 27 of IS Act stipulates that an instrument should contain details like consideration, market value (MV) of the property, all other facts and circumstances affecting the levy of duty on it without any suppression. As per Rule 7 of AP Revision of MV Guidelines Rules, 1998, different values have been fixed for agricultural lands fit for house sites/ residential localities⁹⁶.

⁹⁴ DR Kurnool; SRs: Dharmavaram, Sarpavaram and Stonehousepet

⁹⁵ between January 2022 and March 2022

⁹⁶ For urban properties: Form I (as per classification of properties) and Form II (as per Door No. of the properties); for Rural properties Form III (as per classification of properties) and Form IV (as per survey no. of the properties)

Further, Government Orders (G.O.) of July 2010⁹⁷ stipulated to consider composite rates (per sft.) for valuation of apartments/ flats/ portion of multistoried buildings/ part of such structures. Circular instructions of C&IGRS dated 10 October 2013, mandated to adopt composite rate for multistoried buildings/ apartments whose stage of construction was complete.

During test check of records⁹⁸ in the offices of eight DR and five SR offices⁹⁹, we observed that in 32¹⁰⁰ documents the registering authorities adopted lower market values than applicable/ lesser area of the properties which resulted in short levy of duties amounting to ₹ 2.15 crore as detailed in **Appendix-3.2**.

In response to audit observation on non-considering composite rate for completed multistoried buildings, in two cases relating to DR, Tirupati and SR, Madanapalle, Deputy Inspector General, Chittoor replied (March 2022) that the property contained multiple floors which was being used for commercial purpose and there were no separate dwelling units located in the said structure. Hence, commercial rate fixed for land and value of the structure were taken into consideration. Reply of the Department is not acceptable. As per the G.O., composite values are to be considered for the structures to which AP Apartments (Promotion of construction and ownership) Act, 1987 are applicable. Further, as per the Act, apartment can be used for residence, office, practice of any profession, *etc.* Hence, composite values are applicable to commercial units also.

SR, Proddatur replied (June 2022), in a case¹⁰¹ (out of six cases) that, the structure is multistoried building with five floors. Since AP Apartment Act/ Rules are not applicable to the structures erected on common walls, structure rates were applicable in the instant case. Reply is not acceptable. As seen from the recitals of the document, vendor has sold completed structure for which composite rate is applicable as per the G.O. The audited unit accepted audit observation in the remaining five cases involving ₹ 10.44 lakh.

DR, Vijayawada replied (March 2022) that survey Nos.127-2A and 127-2C of Nuziveedu village were not included in Classification-(5) of Form-IV. Reply is not acceptable. As per C&IGRS circular¹⁰² (October 2013), agriculture land bearing a survey number whose rate is not found in Form-IV, land rate mentioned in Form-III as per classification is to be adopted. The Department, however, had not considered the value included in Form III.

⁹⁷ G.O. Ms. No. 720 of Revenue (Registration-I) Department, dated 30 July 2010

⁹⁸ between September 2021 and March 2022

⁹⁹ **DRs:** Anakapalli, Bhimavaram, Kurnool, Nellore, Proddatur, Tirupati, Vijayawada and Vizianagaram

SRs: Ananthapuramu Rural, Dwarakanagar, Gannavaram, Madanapalle and Vizianagaram West

¹⁰⁰ Four AGPA deeds, 19 Sale Deeds, three Settlement Deeds, four DGPA Deeds, one GPA Deed and one Gift Deed

¹⁰¹ Document No. 8208/ 2019

¹⁰² No. MVI/8483/2013-2, dated 10 October 2013

SR, Ananthapuramu Rural replied (October 2022) that, sale deed was executed for 14 plots only and not for roads or open spaces. Reply is not acceptable. As seen from recitals, all plots in Ac.1.15 cents area were sold in the sale deed. Further, plan approval details of plots and extent of area left for roads/ gifted to local bodies was not forthcoming from recitals. Hence, it is evident that entire extent of land was sold and same is to be considered for chargeable value. The Department accepted audit observation (between April 2022 and December 2022) in four¹⁰³ cases having money value of ₹ 54.19 lakh.

The matter was referred to the Government (November 2022 and May 2024); their reply has not been received (December 2024).

3.3 Irregular exemption of duties leviable in sale deeds

Irregular exemption of stamp duty, registration fee and transfer duty in sale deeds contrary to Government Order on ‘Gannavaram Airport Land Pooling Scheme’ resulted in short levy of duties amounting to ₹ 96.39 lakh in 27 sale deeds.

As per Section 27 of IS Act an instrument should contain details like consideration, market value of the property and all other facts and circumstances affecting the levy of duty on it without any suppression. The registering officer or any other officer appointed under the Registration Act, may inspect the related property, make necessary local enquiries, call for and examine all the records and satisfy himself/herself that the provisions of this section are complied with. As per Rule 7 of AP Revision of Market Value Guidelines Rules, 1998, different values have been fixed for agricultural lands fit for house sites/ residential localities. Accordingly, acreage rate for agricultural land and square yard rate for non-agricultural land have to be adopted for levy of stamp duty.

Further, instruments of sale deeds are chargeable at 7.5 per cent¹⁰⁴ on the consideration/ market value of property whichever is higher.

During scrutiny of records in the office of SR, Gannavaram, Audit noticed (March 2022) that, in 27 sale deeds, the scheduled properties covered under the scheme *viz.*, Expansion of Gannavaram Airport, were sold by the owners to the vendees for consideration and the instruments were registered without levying any stamp duty, registration fee and transfer duty. It was recited in the document that the duties were exempted based on G.O.¹⁰⁵ dated 27 August 2015. As verified from the G.O. no exemption to stamp duty, registration fee and transfer duty can be given to these transactions. However, as per Gannavaram Airport Development Land Pooling Scheme (Formulation and Implementation) Rules, 2015 referred to in the G.O., stamp

¹⁰³ DR, Anakapalli (Doc. No.: 1300/2021), DR, Bhimavaram (Doc. No.: 1175/2020) and DR, Nellore (two cases Doc. No.: 9497/2019 (an amount of ₹ 4.00 lakh (against ₹ 5.95 lakh) was collected in this case); Doc. No.: 9214/2019)

¹⁰⁴ Stamp Duty: 5 per cent; Registration fee: 1 per cent; Transfer Duty: 1.5 per cent

¹⁰⁵ G.O. Ms. No.190 of MA&UD (M2) Department, dated 27 August 2015

duty and registration fee would be exempted to landowner for registering agreements with competent authority¹⁰⁶ for Development under Land Pooling Scheme (LPS). The instruments of sale deeds in the instant case were however, not between landowner and competent authority. Hence, exemption of ₹ 96.39 lakh (as detailed in **Appendix-3.3**) allowed in these cases was irregular.

The matter was referred to the Government (November 2022 and May 2024); their reply has not been received (December 2024).

3.4 Short levy of stamp duty in Development Agreement-cum-General Power of Attorney deeds

Due to incorrect adoption of development cost and non-considering distinct matters in DGPA deeds by the registering authorities resulted in short levy of duties amounting to ₹ 92.10 lakh in 29 documents.

As per Article 6-B of schedule 1-A to IS Act, stamp duty on Development Agreement-cum-General Power of Attorney (DGPA) leviable¹⁰⁷ at one *per cent* on the market value or the estimated cost of the proposed construction/ development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates approved by C&IGRS.

As per Section 5 of IS Act, any instrument comprising or relating to several distinct matters¹⁰⁸ shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

During test check of DGPA deeds Audit observed that the registering authorities adopted development cost incorrectly and not considered distinct matters while levying duties as detailed below:

(a) Incorrect adoption of development cost: During scrutiny (between September 2019 and March 2022) of records in five DR and five SR offices¹⁰⁹, Audit observed, from the recitals of 10 DGPA deeds registered between the years 2018 and 2020, that the registering authorities not considered the total extent of land given for development purpose.

Further, in two of the 10 cases relating to DR, Bhimavaram and SR, Tadepalligudem, non-refundable advance paid to landowners which form part of development cost was also not taken into account while levying duties. This resulted in short levy of stamp duty amounting to ₹ 39.90 lakh in these 10 cases (details are given in **Appendix-3.4**).

¹⁰⁶ 'Competent authority' means Commissioner, CRDA, District Collector, Joint Collector, Revenue Divisional Officer and includes any other officer not below the rank of Deputy Collector appointed by the Government of Andhra Pradesh

¹⁰⁷ Read with G.O. Ms. No. 568 of Revenue (Registration-I) Department, dated 01 April 2008

¹⁰⁸ Transactions which were not interdependent and stand distinctly by themselves embodied in a document

¹⁰⁹ **DRs:** Bhimavaram, Gunadala, Kakinada, Kurnool and Tirupati; **SRs:** Anandapuram, Ananthapuramu Rural, Kadiri, Patamata and Tadepalligudem

SR, Ananthapuramu Rural replied (October 2022) that extent of land given for development was Ac. 1.40 cents only (against Ac. 2.50 cents mentioned in the recitals). Reply is not acceptable. As per the document the developer has to provide amenities like drainage system, roads, overhead tank *etc.*, to the proposed residential complex. Hence, entire extent of Ac. 2.50 cents was to be considered for calculating development cost.

In two cases relating to DR, Gunadala and SR, Patamata, Department accepted audit observation and replied (October and December 2022) that deficit stamp duty (₹ 9.96 lakh) would be collected. In the case of SR, Kadiri, the Department accepted (April 2024) the audit observation and recovered the deficit amount (₹ 1.75 lakh).

The matter was referred to the Government (September/ December 2022 and May 2024); their reply has not been received (December 2024).

(b) Non-levy/ short levy of duties on distinct matters: During test check of records (between October 2019 and March 2022) in five DR and eight SR offices¹¹⁰, Audit noticed that registering authorities did not levy/ short levied duties/ fee amounting to ₹ 52.20 lakh on distinct matters in 19 DGPA documents as detailed in the **Appendix-3.5**.

Department accepted (May/ August/ September/ October 2022) audit observation in five cases¹¹¹ and stated that deficit amount (₹ 14.21 lakh) would be collected. Of this an amount of ₹ 5.10 lakh in case of DR, Kakinada was collected (February 2023).

In three cases¹¹² the authorities concerned replied (April, June and July 2022) that, DGPA deeds are executed by landowners and developer with certain conditions relating to incur expenditure, share developed property and other incidental matters. Further, as per C&IG's clarification vide Memo No. S1/5124/2013 dated 07 June 2013, distinct matter of partition does not arise in DGPA cases. Reply is not acceptable. As per C&IGRS memo, there is no need for partition between landowners and developers being business partners. In the cases pointed out by Audit, landowners held land jointly and gave it for development. The property after development is to be shared in the agreed ratio between landowners and the developer. However, the landowners received individual shares through DGPA. Hence, this is to be treated as distinct matter of partition.

In one case relating to SR, Madhurawada it was replied (May 2022) that, allotment of one flat to one of the landowners was agreed by other owners without any objection. Further, there was no mention about conveying 44.66 sq. yd. of land in the recitals. Reply is not acceptable. The landowner received excess share of developed area along with 66.66 sq. yd. of land against 22 sq. yd. contributed. Hence, excess share received is to be treated as conveyance.

¹¹⁰ **DRs:** Anakapalli, Bhimavaram, Kakinada, Rajamahendravaram and Tirupati; **SRs:** Bheemunipatnam, Dwarakanagar, Gopalapatnam, Madhurawada, Nallapadu, Pendurti, Pidimgoyya and Vizianagaram West

¹¹¹ DR Anakapalli (two cases: Doc. Nos. 7092/2019 and 4778/2020), DR Tirupati (Doc. No. 4746/2019), DR Kakinada (Doc. No. 5313/2020) and SR Gopalapatnam (Doc. No. 1254/2019)

¹¹² **DR** Bhimavaram; **SRs:** Gopalapatnam and Nallapadu

The matter was referred to the Government (December 2022 and May 2024); their reply has not been received (December 2024).

3.5 Split of sale transactions of apartments

Treating sale transactions of apartments by the registering authorities as sale of undivided portion of land and construction agreements for the structure to be built resulted in non-realisation of revenue of ₹ 91.35 lakh in 58 cases.

As per clause (d) of Article 47 A of Schedule 1-A to IS Act, if the sale of property relates to multi-unit house or apartment *etc.*, then the provisions of Andhra Pradesh Apartment (Promotion of Construction and Ownership) Act, 1987 are applicable on such structures.

As per clause (b) of Section 4 of the Andhra Pradesh (Promotion of Construction and Ownership) Amendment Act, 1993 no promoter shall transfer merely the undivided share in the land, in exclusion of the apartment and all other common area and facilities appurtenant thereto.

Government order¹¹³ dated 13 June 2005 effective from 1 July 2005 specified that stamp duty be levied on sale of flats/ apartments including semi-finished structures. The transactions of sale under Article 47-A of Schedule 1-A to IS Act attract stamp duty, registration fee and transfer duty at an aggregate rate of 7.5 *per cent* on the total sale consideration, whereas construction agreements under Article 6(B) of IS Act attract stamp duty of 0.5 *per cent* only.

Further, as per Hon'ble Supreme Court's judgement of 2011¹¹⁴, sale agreements, General power of Attorney or will transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as complete transfers or conveyances and continue to be treated as existing agreements only.

During test check of records in DR, Visakhapatnam and six SR offices¹¹⁵, Audit observed¹¹⁶ that in 58 cases the vendor/ developers had got approval from authorities for construction of apartments/ residential complexes. It was also observed that the developers had subsequently executed sale of undivided land along with construction agreements on the same day in favour of purchasers. The sale transactions were however, split into two separate transactions *viz.*, sale of undivided portion of land and construction agreements for the structure to be built. Since construction agreements in DGPA's are not to be treated as transfers, the transaction cannot confer purchasers' right on the apartment.

The registering officers could not refuse registration of these documents as two separate transactions though they were aware of sale of apartments only on the reason

¹¹³ G.O. Ms. No.1127 of Revenue (Registration-I) Department, dated 13 June 2005

¹¹⁴ SLP (C) 13917 of 2009 Suraj Lamp & Industries (P) Limited Vs. State of Haryana & others

¹¹⁵ Addanki, Anandapuram, Bheemunipatnam, Madhurawada, Vizianagaram West and Yelamanchili

¹¹⁶ between September 2019 to December 2021

that these two documents were valid documents under Articles 6(B) and 47 A of Schedule 1-A of IS Act.

Since construction of the structures by the developers were as per the developer/ vendor plans, it is clear that the developer/ vendor was selling the flats. Hence, the amount paid by the purchaser had to be treated as cost of flats. Stamp duty and registration fee was to be levied accordingly to protect the right of the owner on the flat. The sale of flats had been disguised as sale of undivided land followed by construction agreements resulted in non-realisation of duties amounting to ₹ 91.35 lakh in 58 transactions (details are given in **Appendix-3.6**).

In response, SR, Addanki replied (October 2020) that the documents (in 44 cases) are merely ‘Agreements of construction’ and no transfer was created by these documents. In two cases relating to SR, Yelamanchili, Department replied (July 2022) that stamp duty has been levied as per Article 6(B) of Schedule 1-A of IS Act.

Replies are not acceptable since no promoter shall transfer merely the undivided share in the land, in exclusion of the apartment and all other common area and facilities appurtenant thereto and as per Supreme Court judgment, agreements are not to be treated as transfers. Thus, action of the Registering Authorities to register undivided share of land in exclusion of the apartment was not in order.

The matter was referred to the Government (August 2022 and May 2024); their reply has not been received (December 2024).

3.6 Loss of revenue due to non-registration of compulsorily registerable documents

Authorities while registering documents did not consider compulsorily registerable documents mentioned in the recitals of eight deeds as link documents. This had resulted in non-realisation of revenue of ₹ 67.00 lakh.

Under Section 17 (1) of Registration Act 1908, non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent in immovable property, agreements of sale of immovable property of the value of one hundred rupees and upwards¹¹⁷, leases of immovable property, *etc.*, are to be registered compulsorily. While registering the documents, applicable duties/ fee are required to be levied and collected based on the nature of document.

During test check of records in three DR and four SR offices¹¹⁸, Audit observed (between November 2018 and January 2022) from the recitals of eight deeds that one development agreement, one partition deed, one sale deed and five agreements of sale had been entered into prior to the dates of registration¹¹⁹ of these deeds. However, none of the above documents was registered though they were compulsorily

¹¹⁷ AP Amendment Act No. 4 of 1999

¹¹⁸ **DRs:** Gunadala, Hindupur and Rajamahendravaram; **SRs:** Gopalapatnam, Kadiyam, Patamata and Vizianagaram West

¹¹⁹ during the years 2017 to 2020

registerable under Section 17(1). Non-registration of above documents resulted in non-realisation of revenue to the extent of ₹ 67.00 lakh as detailed in **Appendix-3.7**.

Government/ Department in their reply accepted (September 2020/ August 2022/ January 2023) audit observation in six cases (*viz.*, DR, Rajamahendravaram and SRs Gunadala, Hindupur, Patamata, Vizianagaram West) and stated that instructions were issued to collect the deficit duties of ₹ 20.87 lakh. Response in respect of other cases were however, not furnished.

3.7 Misclassification of Mortgage deeds as Deposit of Title Deeds

Stamp duty on loan amount was short levied due to non-consideration of charge created on the properties mentioned in schedules of documents amounting to ₹ 8.43 lakh in four documents.

As per Section 58(b) of Transfer of Property Act, 1882 (TP Act), where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, in payment of the mortgage-money, the transaction is called a simple mortgage.

Section 58(f) of TP Act states that where a person delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds (DoTD).

During verification of DoTD documents in two DR and two SR offices¹²⁰, Audit observed (between October 2018 and May 2022) that in four documents the parties obtained loans by securing their properties which come under the provisions of 58(b) of TP Act and hence to be treated as simple mortgage. It was however, noticed that the authorities registered the documents as DoTD which resulted in short levy of duties amounting to ₹ 8.43 lakh as detailed in **Appendix-3.8**.

In response, Department accepted (September 2022) audit observation in case of DR, Nellore involving deficit duty of ₹ 3.49 lakh.

The matter was referred to the Government (July 2022 and May 2024) and their reply has not been received (December 2024).

3.8 Short/ non-levy of duties on distinct matters in registered deeds

Authorities did not consider distinct matters in five registered documents which resulted in short levy of stamp duty of ₹ 32.04 lakh.

As per Section 5 of IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

¹²⁰ **DRs:** Kurnool and Nellore; **SRs:** Adoni and Bhimadole

Audit test-checked records (between September 2021 and March 2022) in two DR and three SR offices and noticed that in five documents there was short levy of duties and fee amounting to ₹ 32.04 lakh on distinct transactions as detailed in **Table-3.2**.

Table-3.2: Non-levy/ Short levy of duties on distinct matters in registered deeds

| SI. No. | Name of the office | Document No. / year | Nature of distinct matter | Value of distinct matter/ Property (₹) | SD to be levied (₹ in lakh) | Duties levied (₹ in lakh) | Total Short levy (₹ in lakh) |
|---------|---------------------------------------|---------------------|---|--|-----------------------------|---------------------------|------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 = 6 - 7 |
| 1 | District Registrar, Rajamahendravaram | 4431/2018 | Release at the time of reconstitution of firm | 7,49,40,390 | 22.48 (at 3%) | - | 22.48 |
| 2 | District Registrar, Visakhapatnam | 4101/2019 | Release to other landowners | VSS: 4,80,90,667 (SD at 2%) Release: 80,92,334 (SD at 3%) | 12.05 | 8.81 | 3.24 |
| 3 | Sub-Registrar, Dwarakanagar | 3689/2019 | Release by other co-parceners | 85,66,375 | 2.57 (at 3%) | - | 2.57 |
| 4 | Sub-Registrar, Patamata | 186/2020 | Release to other landowners | 81,52,000 | 2.45 (at 3%) | - | 2.45 |
| 5 | Sub-Registrar, Stonehousepet | 3283/2019 | Release to other landowners | 43,67,131 | 1.31 (at 3%) | - | 1.31 |
| | | | | Total | 40.85 | 8.81 | 32.04 |

Source: Test-checked documents of audited units

VSS: Value of Separated Share;

SD: Stamp Duty

In one case of SR, Patamata the Department accepted (August 2022) audit observation. The matter was referred to the Government (December 2022 and May 2024); their reply has not been received (December 2024).

3.9 Short levy of duties and fees due to misclassification of registered documents

Misclassification of registered documents resulted in short levy of stamp duty of ₹ 31.45 lakh in nine cases.

Schedule I-A to IS Act provides rates of duties and fees to be levied based on classification of documents. As per C&IGRS instructions¹²¹ (October 2000) the SRs should scrutinise the recitals of the document presented for registration thoroughly to arrive at the correct classification of the document for adoption of the applicable rates of duties and fees.

Audit test-checked records (between April 2019 and April 2022) in three DR and five SR offices and noticed that in nine documents there was short levy of duties and fees due to misclassification of transactions, amounting to ₹ 31.45 lakh as detailed in **Table-3.3**.

¹²¹ Memo No. FR1/1A/4946/96 dated, 16 October 2000

Table-3.3: Misclassification of registered documents

(₹ in lakh)

| Sl. No. | Name of the office | Document No./ Year | Document registered as | Document actual classification | Stamp duty short levied |
|--------------|----------------------------------|--------------------|---------------------------------|-----------------------------------|-------------------------|
| 1 | District Registrar, Gunadala | 4001/2018 | Settlement among family members | Settlement to others | 1.40 |
| 2 | District Registrar, Hindupur | 12573/2019 | Partition among family members | Settlement to family members | 1.15 |
| 3 | District Registrar, Vizianagaram | 6498/2018 | Partition deed | Partition-cum-release | 1.78 |
| 4 | District Registrar, Vizianagaram | 6045/2018 | Partition deed | Conveyance deed | 12.77 |
| 5 | Sub-Registrar, Anandapuram | 1624/2020 | Partition among family members | Settlement to family members | 1.08 |
| 6 | Sub-Registrar, Gannavaram | 6179/2018 | Rectification deed | Conveyance deed | 3.04 |
| 7 | Sub-Registrar, Rayadurg | 3543/2020 | Partition among family members | Settlement to family members | 6.38 |
| 8 | Sub-Registrar, Tirupati Rural | 1776/2017 | GPA in favour of family members | GPA in favour of others | 2.54 |
| 9 | Sub-Registrar, Yalamanchili | 1358/2021 | Supplementary deed | Conveyance-cum-supplementary deed | 1.31 |
| Total | | | | | 31.45 |

Source: Test-checked documents of audited units

DR, Anakapalli replied (May 2022) in one case relating to SR, Yalamanchili (Sl. No. 9 of the table) that plinth area has been changed due to modifications in plans. This resulted in change in plinth area allocation and ratios which was agreed by landowners and builders in supplementary agreement. Hence, changes to that effect cannot be construed as 'Conveyance'. Reply is not acceptable. In the original DGPA deed it was agreed to share developed area in the ratio of 40:60 between landowners and developer. As seen from recitals of the supplementary deed, the parties had shared flats as per revised plans which deviated agreed sharing pattern. Since, as per clause 26 of original agreement, any supplementary agreement should be in conformity with the spirit of the main agreement, the excess area (2,250 sft.) along with undivided share of land (72.80 sq. yd.) received by the developer (over and above 60 per cent of share) is to be treated as conveyance under Article 20(a) of schedule 1-A of IS Act.

In the case of SR, Rayadurg, the Department replied (September 2022) that the property partitioned had been received by the owner (mother of the family) through a will and enjoyed jointly by the family. The reply is not acceptable. As per Hindu Succession Act, 1956 property acquired by female Hindu in any manner is to be treated as her absolute property.

The matter was referred to the Government (November/December 2022 and May 2024); their reply has not been received (December 2024).

3.10 Short levy of duties in Partition Deeds

Non-considering the portion of properties set apart as distinct share in five partition deeds and levy of incorrect rate of stamp duty in one partition deed resulted in non-realisation of revenue of ₹ 15.35 lakh.

As per the standing order 405 (g), properties set apart for common enjoyment, whether the respective shares are specified or not and whether agreed to be divided in future or not, have to be treated as one distinct share.

During scrutiny (between October 2021 and January 2022) of records in three DR and two SR offices¹²², Audit observed, from the recitals of six partition deed documents registered between 2016 to 2020, that stamp duty was short levied due to non-considering the aspects like portion of property set apart as a distinct share in five cases and treating partition among others as partition among family members in one case. This resulted in short levy of stamp duty of ₹ 15.35 lakh in these six cases (details are given in *Appendix-3.9*).

On this being pointed, out in one case DR, Guntur replied (March 2022) that an extent of 1,452 sq. yd. was left for internal roads and same was clearly mentioned as ‘40ft road on South side boundary’ in the recitals. Reply of the Department is not acceptable as the right on leftover portion of land (measuring 1,452 sq. yd.) was with the owner as on date of registration and this portion of land is to be treated as a distinct share.

In the cases of DR, Gunadala and SR, Rayadurg, Department replied (August/September 2022) that, values of the property mentioned in partition deed was calculated as per market value guidelines register and there is no such provision for adoption of the market value for the leftover properties. Reply is not acceptable. As per C&IGRS Circular Memo No. CCRA 3/1184/2007, dated 29 May 2007, all the properties in which the coparceners/co-owners having the interest are required to be included in the instrument. Hence, left over portion is to be treated as one schedule while arriving chargeable value of the partition deed.

The matter was referred to the Government (September 2022 and May 2024); their reply has not been received (December 2024).

3.11 Short levy of duties in lease deeds

Registering authorities did not take into account Goods and Services Tax payable by the lessee on behalf of the lessor for computation of average annual rent this resulted in short levy of stamp duty of ₹ 10.57 lakh.

As per Article 31 of Schedule 1-A to IS Act, read with Government orders¹²³, the rates of stamp duty on lease deeds are to be decided on the basis of tenure of lease and lease rentals. Further, as per explanation to the article *ibid*, if the lessee undertakes to pay

¹²² **DRs:** Gunadala, Guntur and Kurnool; **SRs:** Rayadurg and Stonehousepet

¹²³ G.O. Ms. No. 588 Revenue (Registration-1) Department, dated 04 December 2013 and G.O. Ms. No. 463 Revenue (Registration-1) Department, dated: 17 August 2013

any recurring charge on behalf of the lessor including taxes / fees due to the Government, it should be taken to be part of the rent and duties are to be levied accordingly. Besides stamp duty, registration fee at 0.1 *per cent* is also to be levied on the value of average annual rent (AAR) according to the provisions of Registration Act, 1908.

During test check of records in the offices of DR, Kurnool and SR, Sarpavaram, Audit observed¹²⁴ that in seven lease deed cases, the registering authorities did not take into account Goods and Services Tax payable by the lessee on behalf of the lessor for computation of AAR for levying the stamp duty and registration fee which resulted in short levy of duties amounting to ₹ 10.57 lakh (details are given in **Appendix-3.10**).

Government in their reply (January 2023) accepted audit observation in two cases of DR, Kurnool and stated that notice would be issued to the parties concerned for remittance of deficit amount of ₹ 3.09 lakh. Response in respect of other cases were, however, not furnished.

¹²⁴ between January 2022 and February 2022