

***CHAPTER-IV***  
***STAMP DUTY***



## **CHAPTER-IV STAMP DUTY**

### **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 12 Deputy Commissioners and 117 *Tehsildars/Naib-Tehsildars* acting as the Registrars and Sub-Registrars (SRs) respectively.

### **4.2 Results of audit**

In 2015-16, test check of records of 77 units of the Revenue Department brought out irregular exemption on housing loan, non/short levy of stamp duty and registration fee, non-execution/renewal of lease deeds, non/short recovery of lease money and other irregularities amounting to ₹218.02 crore in 322 cases as categorized in **Table-4.1** below.

**Table-4.1: Results of Audit**

(₹in crore)			
Sr. No.	Categories	Number of cases	Amount
<b>Receipt Head-0029-Land Revenue</b>			
1.	Non-execution/renewal of lease deeds	29	198.12
2.	Non/ short recovery of lease money	69	16.32
<b>Receipt Head-0030-Stamp and Registration</b>			
1.	Incorrect determination of market value of property and irregular exemption on housing loan	69	3.00
2.	Non / short levy of Stamp Duty and Registration Fee	55	0.46
3.	Other irregularities	100	0.12
<b>Total</b>		<b>322</b>	<b>218.02</b>

During the year 2015-16, the Department had accepted under-assessments and other deficiencies with revenue implication of ₹61.83 crore in 139 cases, out of which an amount of ₹1.43 crore was realised in 94 cases of which ₹36.57 lakh in 73 cases relates to earlier years and ₹1.06 crore in 21 cases relates to the year 2015-16.

Significant cases involving ₹103.58 crore are discussed in the following paragraphs.

### 4.3 Grant of Government land on lease and realisation of lease money

*The State Government failed to ensure adherence and enforcement of statutory and regulatory provisions while leasing land to users for various purposes resulting in short or non-recovery of revenue totaling ₹101.80 crore. The ability of the Department to monitor and properly manage leases were also undermined by non-maintenance of a centralized data of land and allotments made on lease basis. Lease deeds were not executed/renewed within the specified period, lease money was not fixed/revised as per prescribed rates on the basis of prevailing market value of the land and the Department had not taken any action to resume the land in favour of Government or cancel the lease deeds.*

#### 4.3.1 Introduction

The Himachal Pradesh Government has framed Lease Rules known as Himachal Pradesh Lease Rules (HPLRs), 1993 as amended in 2011, 2012 and 2013. As per Rule 3 (1) of HPLRs, land may be granted on lease to eligible institutions and persons mentioned in Rule 6 with the sanction of the competent authority. Rule 8(1) provides that the lease amount shall be charged from the eligible institutions and persons per annum as per the applicable rates. A brief on procedure/system regarding 'Grant of Government land on lease and realisation of lease money' is given in the **Appendix-II**.

An audit of 'Grant of Government land on lease and realisation of lease money' covering the period from 2012-13 to 2014-15 was conducted between July 2015 and December 2015 through test check of the records maintained in the offices of the eight District Collectors (DCs) Offices<sup>1</sup> out of 12 DCs. The audit findings are brought out below.

#### 4.3.2 Non-maintenance of centralized database of leased land

As per Rule 9 of HPLRs, a list of Government land excluding land acquired for public purposes, *Nazul* Land<sup>2</sup> and encamping grounds in each District shall be maintained by the Collector and he shall send a report of the same to the State Government every year in the prescribed proforma/register. The State Government shall determine from time to time as to which of the land specified in Rule 10 (1) shall be available for leasing out. An online lease register District wise and Tehsil wise of the leased land shall also be maintained by the Collector in the prescribed format.

Test check of records of eight DCs revealed that the year-wise centralized data of lease deeds was not maintained in four DC offices. In other four Districts,<sup>3</sup> the lease registers were incomplete and did not indicate the date of grant of lease, date of agreement and terms and conditions, name of *mohal*, total land leased out and date of renewal. In the absence of these details, audit could not ascertain the number of leases granted and lease amount realised there against.

<sup>1</sup> Chamba, Kangra, Kullu, Hamirpur, Mandi, Shimla, Solan and Una

<sup>2</sup> The land situated beyond two miles of the Municipal limits, which has escheated to the State Government and has not already been appropriated by the State Government for any purpose.

<sup>3</sup> Chamba, Kangra, Kullu and Shimla

On this being pointed out, the Government intimated (September 2016) that necessary directions had been issued to all the concerned field offices (DCs) to maintain centralized data of all Government land leases with full description/details.

### **4.3.3 Transfer of government land without execution of lease deeds**

Scrutiny of records revealed that government land was granted in seven Districts<sup>4</sup> (November 1999 to December 2014) on lease basis for establishing HEPs, schools, boards and trusts for periods ranging from 15 to 99 years. However, no lease deed was executed before handing over of possession of land nor had lease money of ₹160.64 crore been recovered upto 31 March 2016 though activities had commenced on the leased land.

On this being pointed out, the Department intimated (September 2016) that an amount of ₹0.67 crore out of ₹58.21 crore had been recovered in Kullu and Shimla and efforts were being made to recover the balance amount. The replies for recovery of ₹12.02 crore from the remaining units were awaited (November 2016).

### **4.3.4 Non-renewal of lease deeds**

Rule 25 of HPLRs provides that on the expiry of the lease, the Government may resume the whole of the land or any portion of it. Failing such resumption, the lessee may be entitled to a renewal of the lease for such term and on such conditions as to the amount of land revenue and rent or lease money and other charges to be paid by him as the competent authority may determine.

Scrutiny of records in three Districts<sup>5</sup> revealed that sanctions for granting of Government land measuring 84-61-48 *hectare* on lease basis was accorded in favour of twelve lessees for periods ranging from five to 30 years for establishment of handicraft centre (March 1978), storage and sale of petroleum products (1996) and mining and crushing activities (between 2007-08 and 2012-13). The lease deeds expired between May 2008 and April 2014. However, neither was the lease deeds renewed nor was the land taken back by the Government. This resulted in non-realisation of lease amount of ₹14.25 crore.

On this being pointed out, the Department intimated (September 2016) that an amount of ₹26.55 lakh had been recovered by DC Kullu and efforts were being made to recover the balance amount. The replies from the remaining units were awaited (November 2016).

### **4.3.5 Short fixation of lease money**

Rule 8 (1) of HPLR provides that lease money is to be realised at the rate of five or eight or 18 *per cent* of the prevalent market value of land leased or double the average market value of five years whichever is less in case of individuals, private companies and educational institutions respectively. Further, lease money shall be revised after the period as specified in the lease agreement on the latest highest market value of land leased or double the average market value of five years

<sup>4</sup> Chamba, Kangra, Kullu, Hamirpur, Mandi, Shimla and Solan

<sup>5</sup> Kullu, Kangra and Shimla

whichever is less. Further, the lease amount of fresh or renewal of existing lease shall be charged at the rate of 10 *per cent* of the current circle rate per annum. Rule 17(3) of HPLRs provides that if the lessee commits any breach of any of the conditions of the lease deed at any time, his lease shall be terminated by the competent authority.

Audit observed cases of short fixation or non-revision of lease charges amounting to ₹12.24 crore as brought out below.

(a) Audit scrutiny of lease records of five Districts<sup>6</sup> revealed that sanction for lease of Government land measuring 16-60-81 *hectare* was accorded in favour of 13 lessees. These lease deeds were executed between January 1987 and October 2014 for period ranging from 20 to 99 years. The market value of the land on the basis of prevailing market rates was ₹13.55 crore and the lease charges amounted to ₹3.31 crore at the prescribed rates. The Department, however, fixed the lease charges on the basis of rates lower than prevailing markets rates and realised lease money of ₹21 lakh. This resulted in short realization of lease money of ₹3.10 crore.

(b) Scrutiny of lease records of eight Districts<sup>7</sup> revealed that Government land measuring 31-19-17 *hectare* was granted on lease in favour of twenty eight lessees for the period ranging from 10 to 99 years. These lease deeds were executed between January 1984 and September 2009. The leases were due for renewal between 1993-94 and 2014-15 at an interval of 5/10 years. The market value of land on the prevailing market rates worked out to be ₹26.99 crore on which lease charges of ₹9.26 crore was payable for the period 1993-94 to 2014-15 i.e. when the lease was due for revision as per lease agreement. Out of this, the lessees in four cases paid lease money of ₹11.74 lakh while the remaining lessees did not pay lease money. The Department neither took action to realize the revised lease money nor terminated their leases. This resulted in non-recovery of lease money of ₹9.14 crore.

On being pointed out, the DC, Mandi intimated (August 2016) that an amount of ₹1.96 lakh had been recovered from the lessees and DCs, Kullu and Shimla intimated (June 2016) that notices had been issued to the concerned field offices to recover the lease amount from the defaulters. The remaining DCs had not furnished any reply.

#### **4.3.6 Non/short realisation of lease money on lump-sum basis**

Rule 8(2) of the HPLR provides that the competent authority may charge the prevalent market value or double the average market value of five years whichever is less in lump sum and charge ₹1/- as token lease money per month for the period for which the land is granted on lease.

**4.3.6.1** Audit scrutiny of the records of five DCs<sup>8</sup> revealed that sanction for grant of Government land of 36-51-07 *hectare* on lease basis was accorded during April 1980 and December 2010 in favour of five lessees for period ranging from 40 to 99 years on lump sum basis. The Department recovered token lease money at the rate of ₹1/- per month from the lessees but did not recover lump sum lease money resulting in non-recovery of lease money of ₹4.78 crore.

---

<sup>6</sup> Chamba, Hamirpur, Kangra, Kullu and Shimla

<sup>7</sup> Chamba, Hamirpur, Kangra, Kullu, Mandi, Shimla, Solan and Una

<sup>8</sup> Chamba, Kangra, Hamirpur, Solan and Una

**4.3.6.2** Audit scrutiny of records of four DCs<sup>9</sup> revealed that Government land leased measuring 09-48-07 *hectare* (between January 1994 and March 2001) in favour of five lessees for period ranging from 30 to 99 years on lump-sum basis. The Department had worked out and recovered the lump-sum amount of ₹28.67 lakh instead of ₹58.29 lakh resulting in loss of revenue of ₹29.62 lakh.

#### **4.3.7 Conclusion**

Receipts from lease of government land are an important source of revenue of the State Government. However, the Government failed to ensure adherence and enforcement of the statutory and regulatory provisions while leasing land to users for various purposes resulting in short or non-recovery of revenue totaling ₹101.80 crore. The ability of the Department to monitor and properly manage leases were also undermined by non-maintenance of a centralized data of land and allotments made on lease basis.

The Government intimated (September 2016) that necessary directions had been issued to all the concerned DCs/HoD for taking necessary action.

#### **4.4 Short recovery of Stamp Duty and Registration Fee on built up structure**

*Incorrect adoption of market rate for built up structure of ₹10.99 crore resulted in short realisation of Stamp Duty and Registration Fee of ₹0.79 crore.*

Rule 4 (c) of the Himachal Pradesh Stamp (Prevention of Under-valuation of Instruments) Amendment Rules, 1992, as amended vide notification dated 26 June 2013, stipulates that certain factors shall be taken into consideration for fixing the rates of valuation of residential/non-residential buildings such as (i) classification of the buildings into *Pucca, Semi Pucca and Kutcha*, (ii) area in which buildings are located, (iii) latest plinth area rates notified by the Himachal Pradesh Public Works Department, (iv) premium for annual increase and (v) land area occupied by the structure. The Deputy Commissioners of the Districts shall finalise the rates for calculating stamp duty and registration fee for any transaction. The registering officer is also required to verify the consideration amount shown in the sale deeds with reference to the rates fixed by the DC for the purpose. The Stamp Duty and Registration Fee will be charged as per the Revenue Department's notifications dated 12 January 2012 and 27 January 2014.

Test check of records of 20 Sub-Registrars (SRs)<sup>10</sup> brought out that 171 documents of sale deeds were registered between July 2013 and December 2014 for a consideration of ₹10.20 crore on the basis of valuations of properties prepared by private architects which was not based on the present market/notification rates of built up structures. The actual value of property including value of built up

<sup>9</sup> Hamirpur, Shimla, Solan and Una

<sup>10</sup> Baddi: 42 cases: ₹14.71 lakh, Baijnath: three cases: ₹0.40 lakh, Bangana: nine cases: ₹1.32 lakh, Bharari: six cases: ₹2.50 lakh, Chachyot: one case: ₹2.10 lakh, Chamba: 13 cases: ₹11.11 lakh, Dalhousie: six cases: ₹2.71 lakh, Dehra: eight cases: ₹1.82 lakh, Dharamshala: three cases: ₹2.85 lakh, Dhira: four cases: ₹1.10 lakh, Galore: nine cases: ₹1.23 lakh, Kasba Kotla: four cases: ₹0.84 lakh, Kumarsain: two cases: ₹1.02 lakh, Kasauli: four cases: ₹1.99 lakh, Manali: 10 cases: ₹7.22 lakh, Mandi: 14 cases: ₹5.01 lakh, Nadaun: six cases: ₹2.14 lakh, Paonta Sahib: 20 cases: ₹15.74 lakh, Salooni: three cases: ₹0.56 lakh and Shimla (U): four cases: ₹2.65 lakh

structure (₹10.99 crore) worked out to ₹21.19 crore on the basis of market rates fixed by the DCs in June 2013. While registering these sale deeds, the SRs did not verify the consideration amount with reference to the rates fixed by the DC for the built up structure resulting in short recovery of Stamp Duty and Registration Fee of ₹0.79 crore. Further, these rates which were required to be revised w.e.f. 1<sup>st</sup> April 2014 were not revised till March 2015.

On this being pointed out, the Department intimated between January and September 2016 that out of ₹0.79 crore, an amount of ₹9.86 lakh had been recovered by the seven SRs<sup>11</sup>. The remaining SRs stated that cases would be reviewed.

The matter was reported to the Government between September 2015 and April 2016; its reply was awaited (November 2016).

#### **4.5 Short determination of market value of properties**

***Incorrect valuation on the basis of affidavits regarding distance of the land from road filed by purchasers resulted in short realisation of Stamp Duty and Registration Fee of ₹0.56 crore. In addition, penalty of ₹27.94 lakh was also leviable.***

The valuation of land for the purpose of registration of sale deeds, both in the case of rural and urban areas, is made on the basis of classification of land and in accordance with the Himachal Pradesh Land Record Manual 1992. A notification issued in January 2012 categorized classification of land in rural areas for valuation purpose is into three categories viz. (i) property in which any point of the concerned *Khasra Number* (Kh. No.) or part thereof abuts any road, (ii) property not falling in (i) above in which any point of the concerned Kh. No. or part thereof is up to a distance of 50 metres from the road, and (iii) property not falling in (i) above in which no point of the concerned Kh No. or part thereof is within 50 metres from such road. In case of land falling in urban areas, the limit of 25 metres is applicable as against 50 metres in rural areas. The roads are categorised as National Highway (NH), State Highway (SH) and Other Road (OR). The purchaser will be required to file affidavit stating the distance of the relevant land or holding from a State Highway (SH) and National Highway (NH) or Other Road (OR) which will be the basis for the rate to be used for Stamp Duty calculation. If the affidavit of purchaser found false, penalty of upto 50 per cent of the applicable Stamp Duty/Registration Fee may be levied and recovered.

Audit scrutiny of the records of nine SRs<sup>12</sup> revealed that 55 documents were registered between 2013 and 2014 for a consideration amount of ₹8.89 crore on the basis of affidavits filed by the purchasers regarding the distance of the properties from different categories of roads. The land was classified by measuring incorrect distance of land or holding from NH and SH or OR. The SRs while registering these sale deeds did not verify the actual distance of land or holding from the roads but relied on the affidavits filed by the purchasers which had incorrect particulars. This resulted in adopting valuation of ₹8.89 crore as against the actual valuation of ₹16.95 crore based on the actual distance in each

---

<sup>11</sup> SRs Bangana: ₹0.86 lakh, Bharari: ₹0.94 lakh, Chamba: ₹3.63 lakh, Dalhousie: ₹2.19 lakh, Galore: ₹1.02 lakh, Mandi: ₹0.83 lakh and Salooni: ₹0.39 lakh

<sup>12</sup> SRs Dehra, Dharamshala, Jawali, Nurpur, Paonta Sahib, Rajgarh, Shahpur, Theog and Thural

case and short realization of Stamp Duty and Registration Fee of ₹0.56 crore<sup>13</sup>. In addition, the penalty of ₹27.94 lakh at the rate 50 per cent of Stamp Duty/Registration Fee was also leviable.

On this being pointed out between July 2015 and January 2016, the Department intimated (September 2016) that out of ₹3.07 lakh, an amount of ₹0.16 lakh had been recovered by the SR Jawali and notices had been issued to recover the balance amount. The replies from remaining SRs were awaited.

The matter was reported to the Government between September 2015 and March 2016; its reply was awaited (November 2016).

#### **4.6 Short recovery of Stamp Duty due to application of incorrect rates**

*Application of incorrect rates of Stamp Duty in sale deeds resulted in short realisation of Stamp Duty of ₹31.87 lakh in 400 cases.*

The Revenue Department vide notification dated 27 January 2014 revised the rates of Stamp Duty from five to six per cent where such instruments were registered in favour of other persons under Articles 23, 33 and 40 of Schedule I-A of the Indian Stamp Act, 1899.

Test check of records of 10 SRs<sup>14</sup> brought out that 400 documents were registered between 27 January 2014 and 23 February 2014 for a consideration amount of ₹31.86 crore. The SRs levied Stamp Duty of ₹1.59 crore on the basis of old rates instead of ₹1.91 crore required to be levied on the revised rates notified in January 2014. This resulted in short realisation of Stamp Duty of ₹31.87 lakh.

On this being pointed out, the Department intimated (February 2016) that out of ₹6.85 lakh an amount of ₹0.19 lakh had been recovered by SR, Nurpur and notices had been issued to recover the balance amount. Whereas SR, Baddi had intimated (November 2015) that under recovery of Stamp Duty was made owing to defect in software and as such the entire cases registered after January 2014 be reviewed and under recoveries of Stamp Duty be affected. The remaining nine SRs stated that cases would be reviewed.

The matter was reported to the Government between September 2015 and April 2016; its reply was awaited (November 2016).

<sup>13</sup> SRs Dehra: two cases ₹3.10 lakh, Dharamshala: 10 cases: ₹16.14 lakh, Jawali: five cases: ₹3.07 lakh, Nurpur: four cases: ₹5.30 lakh, Paonta Sahib: two cases: ₹1.89 lakh, Rajgarh: five cases: ₹14.90 lakh, Shahpur: two cases: ₹0.19 lakh, Theog: eight cases: ₹9.56 lakh and Thural: 17 cases: ₹1.74 lakh

<sup>14</sup> Amb: 59 cases: ₹6.38 lakh, Baddi: 34 cases: ₹6.96 lakh, Baijnath: 20 cases: ₹1.41 lakh, Dehra: 25 cases: ₹1.34 lakh, Manali: 11 cases: ₹1.17 lakh, Nadaun: 42 cases: ₹1.01 lakh, Nurpur: 97 cases: ₹6.85 lakh, Paonta Sahib: 76 cases: ₹5.46 lakh, Srinaina Devi: 17 cases: ₹0.89 lakh and Touni Devi: 19 cases: ₹0.40 lakh

#### **4.7 Short realisation of Stamp Duty and Registration Fee on lease deed**

***Non-adopting of prevailing market rates on lease deeds resulted in short recovery of Stamp Duty and Registration Fee of ₹10.64 lakh.***

The Revenue Department vide notification dated 12 January 2012 prescribed the rates of Stamp duty of five *percent* and Registration Fee of two *per cent* of the market value of the property or consideration amount whichever is higher.

Audit scrutiny of the records of three SRs<sup>15</sup> revealed that in seven cases, land was leased out between 08 February 2013 and 21 February 2014 for period ranging from five to 99 years. SRs levied stamp duty and registration of ₹2.70 lakh on the consideration amount of ₹186.80 lakh instead of ₹13.34 lakh on market value of ₹6.77 crore. This resulted in short realisation of Stamp Duty and Registration Fee of ₹10.64 lakh.

On being pointed out (between July 2015 and September 2015), the Department intimated (August 2016) that an amount of ₹0.47 lakh had been recovered by the SR, Mandi and efforts were being made to recover the balance amount. The remaining SRs intimated that cases would be reviewed.

The matter was reported to the Government in September 2015; its reply was awaited (November 2016).

---

<sup>15</sup> SR Anni: one case: ₹0.42 lakh, Dharamshala: two cases: ₹6.74 lakh and Mandi: four cases: ₹3.48 lakh