

THIRTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2014-2016)**

NINETY FIFTH REPORT

(Presented on 30th June, 2015)



**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2015**

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NINETY FIFTH REPORT

On

**Paragraphs relating to Taxes Department contained in the Report of the
Comptroller and Auditor General of India for the year ended
31st March, 2010 (Revenue Receipts)**

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INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report, on its behalf present the 95th Report on paragraphs relating to Taxes Department contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2010 (Revenue Receipts).

The Report of the Comptroller and Auditor General of India for the year ended 31st March, 2010 (Revenue Receipts) was laid on the Table of the House on 28th June, 2011.

The Committee considered and finalised this Report at the meeting held on 3rd June, 2015.

The Committee place on record its appreciation of the assistance rendered to them by the Accountant General in the Examination of the Audit Report.

Thiruvananthapuram,
30th June, 2015.

DR. T. M. THOMAS ISAAC,
Chairman,
Committee on Public Accounts.

REPORT
REGISTRATION DEPARTMENT
STAMP DUTY AND REGISTRATION FEES

Audit Paragraph

TAX ADMINISTRATION

Registration Department is under the control of Principal Secretary, Taxes at Government level and the Inspector General of Registration is the head of the Department. Instruments affecting immovable property are to be presented for registration in the office of Sub Registrar within whose jurisdiction the whole or some portion of the property is situated.

Trend of Receipts

Actual receipts from Stamp duty and Registration fee during the last five years (2005-06 to 2009-10) along with the budget estimates during the same period is exhibited in the following table:

(Rupees in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	89527	1,101.41	(+) 206.14	(+) 23.03	9,778.62	1126
2006-07	1,400.37	1,519.93	(+) 119.56	(+) 8.54	11,941.82	1273
2007-08	1,524.12	2,027.97	(+) 503.85	(+) 33.06	13,658.95	1484
2008-09	2,420.56	2,002.99	(-) 417.57	(-) 17.25	15,990.18	1253
2009-10	2,728.63	1,896.41	(-) 832.22	(-) 30.50	17,625.02	1076

We noticed that except in 2006-07 there was significant variation between budget estimates and actual receipts.

We recommend the department to streamline the budgeting process to make more realistic budget estimates.

Cost of collection

The gross collection of revenue receipts under the head Stamps and registration fees, expenditure incurred on collection and the percentage of expenditure to gross collection during 2005-06 to 2009-10 along with the all India

average percentage of expenditure on collection to gross collection for relevant years are mentioned below:

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average percentage
	(Rupees in crore)			
2005-06	1048.03	46.81	4.47	2.87
2006-07	1470.73	59.06	4.02	2.33
2007-08	1946.08	77.64	3.99	2.09
2008-09	1931.75	82.97	4.30	2.77
2009-10	1812.89	100.70	5.55	Not available

We noticed that the expenditure on collection in respect of stamp duty and registration fees was higher than the all India average.

We recommend the Government to examine the reasons for such high costs of collection and make efforts to bring it down.

Working of Internal Audit Wing

Internal audit wing at the zone and district level is working under the Inspector General of Registration (IGR). The District Registrar (DR) (Audit) is in-charge of internal audit in Sub Registry level. The department has not prepared a separate internal audit manual. The Finance Officer monitors the internal audit wing with the assistance of seven staff at headquarters level and 14 DRs (Audit) with two staff at each district. During the year 2009-10, inspection of 14 DROs and 14 SROs were fixed as target for the IGR and DR (Audit) respectively.

The Kerala Registration Manual stipulates inspection of SROs by the Registrar twice a year. Considering the total number of 14 DROs and 309 SROs in Kerala, the target fixed for inspection was much lower. As per the information given by the department, 5172 paragraphs involving ₹ 1.02 crore relating to 1819 internal audit inspection reports remained outstanding at the end of March 2010.

During 2009-10, IAW had issued 464 inspection reports involving money value of ₹ 29.30 lakh which is very low compared to revenue of ₹ 1896.41 crore generated. Remedial action and the amount, if any collected based on the performance of internal audit wing are not available.

Results of audit

We test checked the records of 161 units relating to Registration Department. We detected under assessment of tax and other irregularities involving ₹ 9.04 crore in 258 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1	Undervaluation of documents	228	4.27
2	Short levy due to non-registration of lease deeds	1	3.18
3	Other lapses	29	1.59
Total		258	9.04

The department accepted undervaluation and other deficiencies of ₹ 3.02 crore in 176 cases, of which 72 cases involving ₹ 1.72 crore were pointed out in audit during the year 2009-10 and the rest in earlier years. An amount of ₹ 3.29 lakh was realised in 54 cases during the year 2009-10. A few illustrative observations involving ₹ 4.37 crore are mentioned in the succeeding paragraphs.

Audit observations

We scrutinised the records of various registration offices and found several cases of non-compliance of the provisions of the Indian Stamp Act, 1899 and Kerala Stamp Act, 1959 (KS Act) and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Sub-Registrars (SRs) are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit.

Non-compliance of provisions of Act/Rules

The provisions of the KS Act and Registration Rules require:

- (i) initiating action in cases where documents were undervalued; and
- (ii) correct classification of documents.

We noticed that the SRs did not observe some of the above provisions at the time of registration of the documents. This resulted in short levy/evasion of stamp duty of ₹ 4.37 crore as mentioned in the succeeding paragraphs.

Short levy due to non-registration of lease deeds

[PWD (NH) and Roads and Bridges Development Corporation of Kerala (RBDCK), Greater Cochin Development Authority (GCDA) and Kannur Municipality; March 2010]

We conducted scrutiny of records of 28 contract agreements in the above offices in March 2010 for collection of tolls from year to year. We found that the documents were executed on non-judicial stamp paper of ₹ 50/100. These agreements were covered by the Registration Act and should have been registered with the Sub Registry Offices. The non-registration of the lease agreements by the offices of PWD/RBDCK/GCDA/Municipality had resulted in short levy of stamp duty and registration fees of ₹ 3.18 crore.

We brought the matter to the attention of the Principal Secretary to the Government and Chief Engineer (NH) in March 2010. We have not received any reply so far (December 2010).

Registration of documents relating to leases of immovable property is compulsory as per Section 17(d) of Registration Act, 1985. Lease of immovable property including instruments by which tolls of any description are let would come under lease as defined in the Indian Stamp Act/Kerala Stamp Act. Stamp duty and registration fees are leviable on the premium received as well as amount of average annual rent.

Loss of revenue due to erroneous order

(District Registrar, Thrissur; November 2009)

We observed the following facts in respect of an impounded document viz. P1/2007. Vendor (i) who was the absolute owner of 1.3842 hectares of property executed an unregistered agreement in February 2007 for sale of this property to vendor, (ii) within the validity period of July 2007. Before this transaction of sale materialised, vendor (i) and vendor (ii), jointly executed a sale deed

vide document number P1/2007 of SRO, Ayyanthole for a consideration of ₹ 21.37 crore. The consideration was apportioned between vendor (i) for ₹ 13.67 crore and vendor (ii) for ₹ 7.69 crore. When this sale deed was presented for registration in June 2007, the Sub Registrar, Ayyanthole impounded the document on the opinion that an earlier hidden transaction of making vendor (ii) a co-owner in the property with share value of ₹ 7.69 crore was evident from the recital of the document which attracted stamp duty at 13.5 per cent of that value. The matter finally came up before the Commissioner of Land Revenue for a final decision after the decision of District Registrars in favour of revenue. The Commissioner of Land Revenue had concluded that vendor (ii) had got possession of the property described in the document as he had made developments in the property and the agreement dated 1st February, 2007 can be treated as a conveyance of value ₹ 7.69 crore. Further he had decided that the deemed sale value involved in the transfer of right by vendor (i) to vendor (ii) shall also be included in the final transaction conducted in this document. But contrary to the above conclusion, he ordered that adequate consideration is depicted in the document and the stamp duty paid is sufficient. This ruling is erroneous as it was contrary to his own findings and against provisions of Section 17(1) (b) of Registration Act and Section 5 of Kerala Stamp Act referred earlier. This resulted in short levy of stamp duty and registration fee of ₹ 1.19 crore.

We pointed out the matter to the department in November 2009 and reported to the Government in February 2010. We have not received their reply so far (December 2010).

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, of the value of one hundred rupees and above shall compulsorily be registered as per Section 17(1) (b) of the Registration Act, 1908. Any instrument comprising or relating to formal 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 charged under the Act as per Section 5 of the Kerala Stamp Act.

**Undervaluation of property to avoid payment of stamp duty and registration fee
(SRO, Trikkakara; December 2009)**

We noticed that a builder had acquired 34.246 cents of land for ₹ 30.64 lakh in October 2008 and sold the same property without improvement within one month for ₹ 5.48 crore. Thus, the first document was undervalued to avoid

payment of stamp duty and registration fee. The extent to which the same was undervalued could not be established due to non-fixation of fair value of land by the Government. The SR also did not report the case to the higher authorities as undervaluation case.

We also noticed such cases of undervaluation in other SR offices as mentioned in paragraphs 4.7.3.2 to 4.7.3.5 discussed below:

(SRO, Thalayolaparambu; October 2009)

We noticed that of 72.99 are of land purchased for ₹ 54 lakh by paying stamp duty and registration fee of ₹ 6.48 lakh in November 2007 was sold for ₹ 1.50 crore in February 2008.

(SRO, Kondotty; December 2009)

We noticed that an executant sold 58.12 cents of land for a consideration of ₹ 30.50 lakh in May 2008. But on the same day the executant sold another plot measuring 16 cents adjacent to the above property having common boundary for ₹ 27 lakh.

(SRO, Rajapuram; March 2009)

We noticed that the details of four sale deeds of landed property lying in the same survey number and adjacent to one another are as given below:

Document No.	Date of sale deed	Area (cent)	Consideration in ₹	Rate per cent*
2872/06	22 December, 2006	300	7 lakh	2,333.33
2873/06	22 December, 2006	316	7.5 lakh	2,373.42
2935/06	22 December, 2006	190	9.7 lakh	5,105.26
2645/07	12 December, 2007	373	7.6 lakh	2,037.53

As such the executant undervalued the properties in the document Nos. 2872/06, 2873/06 and 2645/07 when compared to document number 2935/06 to the extent of ₹ 28.89 lakh.

After we pointed out the mistake, the department stated (between July 2009 and March 2010) that the document number 2935 comprising of 190 cents of landed property with a small house contains rubber and coconut trees with

* Cent denotes the measurement of land equal to 435.6 sq.ft.

better yield and hence the price of this property cannot be compared to that of the undervalued properties and that the transaction having highest value is not a reference for valuing other transactions. The reply is not tenable as there is no mention in the document about rubber trees and coconut trees as well as their yield. Moreover, the value of the house was valued separately in the document. We have not received any further information from the department (December 2010).

(SRO, Malayinkizhu; December 2009)

A sale deed for 12.11 are of land was registered vide a document in April 2008 for a consideration of ₹ 2.70 lakh. However, we found that 11.34 are of land of the above property was sold in June 2008 vide two other documents for a consideration of ₹ 22.40 lakh.

We pointed out these cases to the department between November 2009 and January 2010, we have not received their reply except in case at paragraph 4.3.7.4 above. We reported these cases to the Government between February 2009 and April 2010. We have not received their reply (December 2010).

We have pointed out such cases in our earlier Audit Reports. However, the Government is yet to fix the fair value of the land.

We recommend that the Government may fix the fair value of land to avoid loss of revenue.

Section 45B of the KS Act stipulates that SR may refer to District Collector those instruments in which the executant has not truly set forth the consideration. Further the Collector may, suo motu, call for any instruments and determine the consideration and duty payable, within two years of registration. As the Government has not fixed any fair value for land in the State, wide scale undervaluation of documents is taking place all along the State.

[Audit paragraphs 4.1 to 4.7 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts)]

Notes furnished by Government on the above audit paragraphs is included as Appendix II.

The Committee noticed that there has been a considerable variation between budget estimates and actual receipts. The Committee enquired the methodology adopted by the department for the preparation of budget, since the budget estimate for the year 2007-08 i.e., ₹ 1524.12 crore, which was ₹ 5 crore more than the actual receipt for the year 2006-07 i.e., ₹ 1519.12 crore and also

the reason for shortfall during 2008-09 and 2009-10. The Secretary, Taxes Department submitted that there was a decreasing trend in collection of stamp duty for the last two years. He informed that before the introduction of fair value system, the Sub Registrar assigned the land value prevailing at the point of time by about 15-20 percentages. For the last few years the target was fixed at 35% and it was being fixed on the presumption of appreciating land value of about 20% and anticipating the number of registration would naturally increase during the course of the year. In the meantime the witness, Inspector General, Registration Department informed that against the prediction of 12 lakh documents would be registered, sometimes the actual figure would be 11 lakh only and the revenue would be much less than that anticipated. In this regard the Committee opined that stamp duty being advalorem, purchase is depending on value rather than number of documents. Then the Secretary, Taxes Department replied that percentage of value would be reflected in the stamp duty and even in that aspect revenue from stamp duty was less. The Committee opined that budget should be prepared more realistically and directed the Registration Department to take conscientious efforts in this regard.

2. The Committee observed that average cost of collection is high in Kerala when compared to all India average and urged to furnish split up details of components, which came under the cost of collection. Then the Secretary, Taxes Department apprised that cost towards establishment charges like employees salary, rent of building, electricity charges, investment made for computerization, etc. which will naturally be high. The Committee suggested that the Taxes Department should take effective measures to bring down the cost of collection.

3. To a query of the Committee the witness, Inspector General, Registration Department replied that the manual for Internal Audit had not been prepared and opined that had the Accountant General issued a standardized format for the formulation of the manual, the Registration Department could have acted accordingly. Then the official from the Office of the Accountant General informed that the Administrative Departments are bound to formulate their own manual. The Inspector General, Registration Department continued that the department was running with limited staff pattern and if the officers of the District/Sub Registrar Officers were entrusted with the audit works, it would adversely affect the revenue collection. At present personnel from the Office of the Inspector General of Registration were deputed for external inspection. Also a team of officers was entrusted with Audit under the control of the District Registrar who was expected to cover at least 25% of the institutions. To a query of the Committee the witness, Inspector General, Registration Department assured to furnish a report detailing the latest position of pendency towards objection raised by the Audit.

4. Citing the example of Tamil Nadu, where computerization was implemented years back, the witness, Secretary, Taxes Department apprised that with the computerization of the Taxes Department more services in this field could be facilitated online in this field and after that the existing staff could be re-deployed more effectively. Then the Committee opined that proper auditing is essential for the effective functioning of machinery and urged the Registration Department that whatever be the constraints, necessary steps should be taken to set-up an internal audit wing in the department.

5. Regarding the audit paragraph, the official from the Office of the Accountant General invited the attention of the Committee that out of the 258 cases of misappropriation to the tune of ₹ 9 crore pointed out by Audit, the department admitted only ₹ 3 crore in 176 cases and still could realise ₹ 3.29 lakh only in 54 cases. Then the witness, Inspector General, Registration Department submitted that in undervaluation cases the amount turned out at the time of clearance would be much less than that actually imposed at the time of assessment. He also submitted that short levy of stamp duty, if any, found out after registration; liability would be fixed against the registering officer and entered into the liability register and the amount would be recovered from the DCRG of the delinquent as per rules. The Committee admitted the argument of department regarding amount and enquired the reason for variation in number of cases. In this regard the Secretary, Taxes Department brought to the notice of the Committee that in undervaluation cases if a charge is framed against an officer, the case persistently remained in his name until it would get cleared by the Committee, even though the undervaluation case is settled in the meantime. He submitted that even though the department had taken up the matter with Accountant General, reply was not in favour for clearing the liability and AG's stand was that once the report was laid on the Table of the House, it is the Committee to decide whether a person is to be left scot-free or the liability is to be recovered. Then the official from the Office of the Accountant General interfered to inform that fixing liability is not a matter of concern for the Accountant General. Had the department settled the case after levying the short levied amount in one or other mode, it could clear off the liability against the officer involved in the case.

6. Considering all aspects, the Committee opined that enduring with the liability against an officer even after the case itself is disposed is non-justifiable. It urged the Taxes Department to furnish a detailed report in this regard to the Committee so that it could be recommended upon on what stand should be taken against the personnel in such cases.

7. The Committee also noticed that undervaluation cases since 1986 were pending to be settled. So it suggested that the Accountant General should furnish a detailed report on the undervaluation cases in which penalty imposed is to be realized.

8. The Committee noticed that the Public Works Department had executed a lease agreement in a stamp paper instead of registering the document which incurred a loss to the tune of ₹ 3.18 crore to the exchequer. In this regard, the Secretary, Taxes Department deposed that the panchayaths were following the practice of executing lease agreement in the stamp paper costing ₹ 50 and to check this, the district registrars were not empowered with conducting inspections at that time. Now district registrars were conducting inspections as they were authorized to conduct the same. Also all institutions were being issued notice to remit the loss incurred due to non-registration of the lease documents. He continued that the matter was taken up with Local Self Government Department, which had issued a circular directing to consider the license itself as a lease. He assured before the Committee that after making a consensus between the Registration and Local Self Government Departments appropriate action would be taken to rectify such mistakes. Then the Committee urged the Registration Department to furnish a detailed report in this regard to it at the earliest. It also decided to recommend that necessary direction to all Administrative Departments to impound stamp duty on deeds of such kind, if any, undertaken by the departments.

9. To a query of the Committee, an official from the Registration Department apprised that the section 29 (3) of the Stamp Act provided that such transactions could be made which need single taxation and registration of sale agreement was not compulsory at the time when audit raised objection. Then the official from the Office of the Accountant General invited the attention of the Committee over the fact that unless there was a hidden transaction, the second vendor would not care received ₹ 7.69 crore as his share value. In this regard, the Secretary, Taxes Department interfered to inform that necessary amendment had been brought to the prevailing rules in order to prevent such evasion of stamp duty and to include agreement as a document for which registration is compulsory. The Committee urged the Taxes Department to take effective measures to avoid such mistakes in future.

10. Regarding the audit paragraph 'Undervaluation of property to avoid payment of stamp duty and registration fee', the witness, Inspector General, Registration Department deposed that there is no rule prevailing to empower the registering officers to initiate undervaluation proceedings against a pre registered document if there is variation in values when compared with the values shown

in subsequent transactions. He substantiated that amount registered is much higher than fair value fixed on subsequent date and so the registration could not be considered as fraud.

11. To a query of the Committee, the Secretary, Taxes Department informed that different land having the same survey number might have different market value. He added that realisation of short levied amount would not be practical in this case since the registered amount is much higher than the fair value of that particular site. As solution for such scams article 21 & 22 of the Stamp rules had been amended so that subsequent transaction of a land within three or six months would be imposed with additional amount. The Committee accepted the explanation of the department. Also it remarked that the fixation of fair value is not justifiable and for many land the fair value fixed is much lesser than the prevailing rate. The Committee directed the Registration Department to look into the matter.

Conclusion/Recommendation

12. When noticed that there is huge variance between estimates and actual receipts, the Committee remarks that the methodology adopted by the Taxes Department for the preparation of budget is outdated. It suggests that budget should be prepared with a realistic approach and directs the Registration Department to take sincere efforts in this regard.

13. Taking into account of the fact that the average cost of collection in our State is much higher than other states and all India average the Committee suggests that the Registration Department should take necessary steps to bring down the cost of collection.

14. The Committee expresses its displeasure over the irresponsible attitude of the department in not furnishing the latest pendency position on the audit objections, and urges to furnish the same at the earliest.

15. The Committee views that proper auditing is essential for the effective functioning of every department and recommends the Registration Department that whatever be the constraints, necessary steps should be taken to set-up an internal audit wing in the department.

16. When the official from the Taxes Department brought into the notice of the Committee the pathetic situation that even after a discrepancy case was settled at the department level the official responsible could not be discharged until the case was disposed off by the Committee. The Committee views that the liability against an officer stands even after the settlement of the case is non-justifiable. It urges the Registration Department to furnish a detailed report in this regard to the Committee.

17. The Committee also notices that there are some undervaluation cases since 1986, which are pending to be settled. So it suggests that the Accountant General should furnish a detailed report regarding these cases.

18. The Committee understands that some departments and local bodies have been executing lease agreement in 50-rupee stamp paper instead of registering the document and thereby incurring huge loss to the exchequer. Regarding short levy due to non-registration of lease deed, the Committee urges the Taxes Department to furnish a detailed report in this regard. It also recommends to issue necessary guidelines to all administrative departments to impound stamp duty in the case of such deeds.

19. In the matter of undervaluation of property to avoid payment of stamp duty and registration fee in SRO, Kondotty, the Committee accepted the explanation of the Department and remarks that in some areas fair value fixed is very lower than the market rate. The Committee directs the Revenue Department to look into the matter.

Thiruvananthapuram,
30th June, 2015.

DR. T. M. THOMAS ISAAC,
Chairman,
Committee on Public Accounts.

APPENDIX I

SUMMARY OF MAIN CONCLUSION/RECOMMENDATION

<i>Sl. No.</i>	<i>Para No.</i>	<i>Department concerned</i>	<i>Conclusion/Recommendation</i>
(1)	(2)	(3)	(4)
1	12	Taxes (Registration)	When noticed that there is huge variance between estimates and actual receipts, the Committee remarks that the methodology adopted by the Taxes Department for the preparation of budget is outdated. It suggests that budget should be prepared with a realistic approach and directs the Registration Department to take sincere efforts in this regard.
2	13	"	Taking into account of the fact that the average cost of collection in our State is much higher than other states and all India average the Committee suggests that the Registration Department should take necessary steps to bring down the cost of collection.
3	14	"	The Committee expresses its displeasure over the irresponsible attitude of the department in not furnishing the latest pendency position on the audit objections, and urges to furnish the same at the earliest.
4	15	"	The Committee views that proper auditing is essential for the effective functioning of every department and recommends the Registration Department that whatever be the constraints, necessary steps should be taken to set-up an internal audit wing in the department.

(1)	(2)	(3)	(4)
5	16	Taxes (Registration)	<p>When the official from the Taxes Department brought into the notice of the Committee the pathetic situation that even after a discrepancy case was settled at the department level the official responsible could not be discharged until the case was disposed off by the Committee. The Committee views that the liability against an officer stands even after the settlement of the case is non-justifiable. It urges the Registration Department to furnish a detailed report in this regard to the Committee.</p>
6	17	”	<p>The Committee also notices that there are some undervaluation cases since 1986, which are pending to be settled. So it suggests that the Accountant General should furnish a detailed report regarding these cases.</p>
7	18	”	<p>The Committee understands that some departments and local bodies have been executing lease agreement in 50-rupee stamp paper instead of registering the document and thereby incurring huge loss to the exchequer. Regarding short levy due to non-registration of lease deed, the Committee urges the Taxes Department to furnish a detailed report in this regard. It also recommends to issue necessary guidelines to all Administrative Departments to impound stamp duty in the case of such deeds.</p>

(1)	(2)	(3)	(4)
8	19	Taxes (Registration)	In the matter of undervaluation of property to avoid payment of stamp duty and registration fee in SRO, Kondotty, the Committee accepted the explanation of the Department and remarks that in some areas fair value fixed is very lower than the market rate. The Committee directs the Revenue Department to look into the matter.

APPENDIX II

NOTES RECEIVED FROM GOVERNMENT

**STATEMENT OF ACTION TAKEN ON THE REPORT OF THE
COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE
YEAR ENDED 31.03.2010 (RR)**

I	a)	Name of the Department	REGISTRATION
	b)	Subject/Title of the Review/ Paragraph	Non Compliance of Provisions of Kerala Stamp Act and Rules.
	c)	Paragraph Number	4.7.1
	d)	Report No /Year	Report of The Comptroller And Auditor General of India for the Year Ended 31.03.2010 (RR)
II	a)	Date of receipt of the Draft Para	03.05.2010 RR/DP-3918/2010-2011
	b)	Date of Department Reply	16.06.2010
III		Gist of Paragraph	<u>Short Levy due to non registration of Lease Deeds:</u> PWD (NH) and RBDCK, GCDA and Kannur Municipality. Scrutiny of records of 28 contract agreements in the above offices in March 2010 for collection of tolls from the year to year reveals that the documents were executed on non-judicial stamp paper of ₹. 50/100. These agreements were covered by the Registration Act and should have been registered with the Sub Registrar offices. The non-registration of the lease agreements by the offices of PWD/RBDCK/GCDA/Municipality had resulted in a short levy of SD and RF of ₹. 3.18 Crore.
IV	a)	Does the Department agree the fact and figures included in the paragraph	Partially.
	b)	If not please indicate the areas of disagreement	Registration Law governs documents rather than transactions. The main objects of the Law of registration are to provide a conclusive proof of the genuineness of documents, to afford publicity to transactions, to prevent fraud, to afford facility for ascertaining whether a property has already been dealt with and to afford security of title deeds and facility of proving titles in case the original deeds are lost or destroyed.

			<p>The Registration department is registering documents that are voluntarily brought by parties for registration. No Registering officer has a power either to compel the parties to bring documents for registration or for suggesting "model drafts" of lease deeds in respect of toll collection. He is expected to see whether the document brought to him for registration voluntarily by parties has been duly stamped. So also he is expected to levy proper registration fee on such instruments.</p> <p>Section 17 of the Kerala Stamp Act, 1959 states that "All instruments chargeable with duty and executed by any person in the State of Kerala shall be stamped before or at the time of execution" by the persons who are liable to pay stamp duty under section 30 of the Kerala Stamp Act, 1959. Hence the Registration Department has no action to pursue with regard to the audit objection.</p> <p>The Concerned departments (PWD, RBDCK, GCDA, and Municipality) has to take necessary steps to register agreements/lease related to the collection of toll on BOT basis or executing contracts on annual basis. Hence the Registration Department has no action to pursue on the audit objection.</p>
V	a)	Does the Department agree with the Audit Conclusion	Partially.
	b)	If not please indicate the areas of disagreement	<p>Role of officers of Registration department with regard to administration of the Kerala Stamp Act, 1959 is limited only to see whether the instruments, produced or comes in the performance of their functions is duly stamped or not. They are expected to administer the law as it stands at any particular point of time. The officers are only competent to take action against document, for not being duly stamped, if it was presented before him or it was referred to them under relevant sections of the Kerala Stamp Act, 1959.</p>
VI		Remedial Action taken	Action has already been taken from this end to bring the matter to the attention of the concerned departments.

		through the Government of Kerala and to avoid non registration of these types of lease agreements. In these circumstances the above para may be dropped from the report.
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**STATEMENT OF ACTION TAKEN ON THE REPORT OF THE
COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE
YEAR ENDED 31.03.2010 (RR)**

I	a)	Name of the Department	REGISTRATION
	b)	Subject/Title of the Review/ Paragraph	Non Compliance of Provisions of Kerala Stamp Act and Rules.
	c)	Paragraph Number	4.7.2
	d)	Report No /Year	Report of The Comptroller And Auditor General of India for the Year Ended 31.03.2010 (RR)
II	a)	Date of receipt of the Draft Para	08.06.2010 RR/DP-3921/2010-2011
	b)	Date of Department Reply	23.06.2010
III		Gist of Paragraph	<u>Loss of Revenue due to Erroneous Order</u> Vendor 1 who was the absolute owner of 1.3842 hectares of property executed an unregistered agreement in February 2007 for a sale of this property to vendor 2 within the validity period of July 2007. Before this transaction of the sale materialized, vendor 1 and 2 jointly executed a sale deed vide document number P1/2007 of SRO Ayyanthole for a consideration of ₹. 21.37/- crore. The consideration was apportioned between vendor 1 for ₹. 13.67/- crore and vendor 2 for ₹.7.69/- crore. When this sale deed was presented for registration, the Sub Registrar, Ayyanthole impounded the document on the opinion that an earlier hidden transaction of making vendor 2 a co-owner in the property with share value of ₹.7.69/- crore was evident from the recital of the document attract the Stamp Duty at 13.5 % of that value. The matter finally came up before the Commissioner of Land Revenue. The CLR had concluded that vendor 2 had got possession of the property described in the document as he had made developments, and can be treated as a conveyance of value ₹.7.69/- crore. Further he had decided that the deemed sale value involved in the transfer of right by vendor 1 to vendor 2 shall also be

			included in the final transaction. But contrary to the above conclusion, he ordered adequate consideration is depicted in the document and the Stamp Duty paid is sufficient. This ruling is erroneous as it was contrary to his own findings and thus results a short levy of Stamp Duty & Registration Fee of ₹.1.19/- crore.
IV	a)	Does the Department agree the fact and figures included in the paragraph	Partially
	b)	If not please indicate the areas of disagreement	<p>As far as Registration department is concerned and as per section 54 (1) of Kerala Stamp Act, the powers exercisable by a Collector/Registrar under chapter IV, V and under clause (a) of the first proviso to section 27 shall in all cases be subject to the control of Government or such other authority as may be specified by the Government. Since District Registrar and this office felt doubt about the duty chargeable in the above instrument, forwarded the same to the Land Revenue Commissioner for final decision as per section 54 (2) of Kerala Stamp Act.</p> <p>Land Revenue commissioner after verifying the details and arrive at a conclusion that the agreement could not be considered as a separate conveyance and ordered that the above document is duly stamped. Here the decision of Land Revenue Commissioner is final. Based on the final decision Collector / Registrar acted as per the provision-section 54(3) of Kerala Stamp Act. Section 54(3) of the Act is as follows:</p> <p>"The Government or such authority shall consider the case and sent a copy of its decision to the Collector, who shall proceed to assess and charge the duty, if any in conformity with such decisions".</p> <p>This Department acted as per rules and laws prevailing, and there occur no irregularities or omission on the part of Registration Department regarding the Audit finding on the loss of revenue to the Government. As far as Registration Department is concerned, the decision of the Land Revenue Commissioner is final in the above case referred to.</p> <p>Based on this order District Registrar certified by endorsement that it is duly stamped as per the provision of Section 39(1) (a) of Kerala Stamp Act 1959, and the Sub Registrar registered the document</p>

			<p>numbered as 6888 of 2007.</p> <p>In this regard it may be noted that it forms no part of a registering officer's duty to enquire in the validity of a document.</p> <p>The Kerala Registration Manual Order No.220 regarding the nature of the documents stated that "in determining the nature of a document for assessment of stamp and fee, a registering officer need not go beyond what is expressed on the document. He is not bound to consider the effect or implications thereof.</p>
V	a)	Does the Department agree with the Audit Conclusion	Partially.
	b)	If not please indicate the areas of disagreement	As per section 17(1) (b) of Indian Registration Act 1908 compulsory registration is required for 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 of the value of one hundred rupees and upwards to or in immovable property. Here the Agreement will not come within the provision of the above section and do not require compulsory registration.
VI		Remedial Action taken	In order to prevent the evasion of stamp duty and to include agreement as a document for which registration is compulsory a proposal has been submitted to Central Government for acquiring the permission from Central Government for the amendment of section 17 of Indian Registration Act 1908 since it is a Central Act. Central Government decision is awaited in the matter. Hence the above para may be dropped from the report.

**STATEMENT OF ACTION TAKEN ON THE REPORT OF THE
COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE
YEAR ENDED 31.03.2010 (RR)**

I	a)	Name of the Department	REGISTRATION
	b)	Subject/Title of the Review/ Paragraph	Undervaluation of Property to avoid payment of Stamp Duty and Registration fee.
	c)	Paragraph Number	4.7.3.1
	d)	Report No /Year	Report of The Comptroller And Auditor General of India for the Year Ended 31.03.2010 (RR)
II	a)	Date of receipt of the Draft Para	26.05.2010 RR/DP-3882/2010-2011
	b)	Date of Department Reply	23.06.2010
III		Gist of Paragraph	<u>4.7.3.1.</u> <u>UV of Property- SRO Trikkakara.</u> A Builder had acquired 34.246 cents of land for ₹.30.64/- lakh in October 2008 and sold the same property without improvement with in one month for ₹.5.48/- crore. Thus the first document was undervalued to avoid payment of Stamp Duty and Registration Fee. The extent to which the same was undervalued could not be established due to non fixation of fair value of land by Government. The Sub Registra also did not report the case to the higher authorities as Under Valuation case.
IV	a)	Does the Department agree the fact and figures included in the paragraph	Yes
	b)	It not please indicate the areas of disagreement	Not applicable.
V	a)	Does the Department agree with the Audit Conclusion	Yes
	b)	It not please indicate the areas of disagreement	Not applicable

VI	Remedial Action taken	<p>The District Registrar has taken Suo-Motu action against the documents' 2723/2008, 2724/2008, 2725/2008 and 2707/2008 of SRO Trikkakkara. Kerala Government introduced one time settlement compounding scheme vide GO (P0 No.57/2009/TD dated 27.03.2009 to settle all pending undervaluation cases referred to the District Registrar or called for by him under sections 45 A, 45 B, 45 C of the Kerala Stamp Act, 1959 which includes the cases that were finally disposed off and referred for revenue recovery proceedings for recovering the deficient stamp duty. Separate slabs were introduced with respect of extent of transactions. (Copy attached)</p> <p><u>The aforesaid documents also deserve the benefit of the scheme and thus the documents have been settled through this scheme. An amount of ₹.4000/- (₹.1000/- each) has been collected as deficit Stamp Duty vide receipt Nos. 72, 82, 83, 84 dated 21.05.2009 and 17.05.2010. Hence the above Para may be dropped from this report.</u></p>
I	a) Name of the Department	REGISTRATION
	b) Subject/Title of the Review/ Paragraph	Undervaluation of Property to avoid payment of Stamp Duty and Registration fee.
	c) Paragraph Number	4.7.3.2
	d) Report No /Year	Report of The Comptroller And Auditor General of India for the Year Ended 31.03.2010 (RR)
II	a) Date of receipt of the Draft Para	26.05.2010 RR/DP-3883/2010-2011
	b) Date of Department Reply	3.06.2010
III	Gist of Paragraph	<p><u>4.7.3.2</u></p> <p><u>UV of Property- SRO Talavolannparambu.</u></p> <p>72.99 are of land purchased for ₹.54/- lakh by paying Stamp Duty and Registration Fees of ₹.6.48/- lakh in November 2007 (32.53 Are for ₹. 24, lakh through document 3985/2007 and 40.46 Are for ₹. 30 lakh</p>

			through document 3984/2007) was sold for ₹.1.50/- crore in February 2008 through document 641/2008. Short levy ₹.11.50/- lakh.
IV	a)	Does the Department agree the fact and figures included in the paragraph.	No
	b)	If not please indicate the areas of disagreement	<p>Subsequent documents bearing higher value than the previous document is a common phenomenon. The Department of Registration is also insisting sub-ordinate officers to encourage the parties to set forth higher values to achieve Revenue target given by the Government. Any undervaluation action on the previous document comparing, with subsequent higher value document will adversely affect the mindset of parties as well as the revenue collection. Comparing the previous document with subsequent document and assuming the former as undervalued is not fair. No Registering officer can foresee any considerable increase of price in the subsequent transactions while registering the documents.</p> <p>Inclusion of the details of improvements made in the land like erection of compound wall, widening of pathway, leveling of land and renovation made in the buildings is not common while drafting the documents. So by merely comparing the recitals of the two documents we cannot rule out any possibility of further improvements within a period of 3 months. The above aspects fetching a higher price in the subsequent transaction could not be ruled out. Also in the subsequent document the claimant is one limited company and it would be the company's interest to buy the property paying a charming price. The Government also expressed the same opinion vide GO(Rt) No.354/10/TD dated 13-04-2010.</p>
V	a)	Does the Department agree with the Audit Conclusion	No
	b)	If not please indicate the areas of disagreement	<p>The registering officer is not entitled to take into account the market value while "Fair Value" is not prevalent in the state. There is no rule prevailing that empower the registering officer to initiate undervaluation proceedings against a pre document if there is variation in values when compared with the values shown in subsequent transactions.</p> <p>The time gap of 3 months is enough for</p>

making improvements like erection of compound wall, widening of pathway, levelling of land and renovation made in the buildings etc.

Since the fair value was not prevalent in the state, there is no other option in front of the registering officer, but to accept the document for registration. He has to agree with the consideration passed between the parties and set forth in the document. A number of judgments (case laws) uphold the above aspect.

The Audit team made remarks that the extent of undervaluation could not be established due to the absence of fair value.

It may kindly be noted that the Fair value fixed by the Government on 14.12.2009 and came to force on April 2010 (i.e. after 2 years of the audit remark and registration of 3985/07 document) to the Re Survey number 128/10 of Kulasekharamangalam village is only ₹.16,000/- per Acre for Residential plot with Mun/ Panjayath road access, which is remarkably low when compared with the value set forth (₹.73,778/- per Acre) in the document numbered 3985/07.

Fair value fixed by the Government on 14.12.2009 and came to force on April 2010 (i.e. after 2 years of the audit remark and registration of 3984/07 document) for the Re Survey number 128/1, 128/5, 128/6 of Kulasekharamangalam village is only ₹.62,500/- per Acre for Residential plot with PWD road access, which is remarkably low when compared to the value set forth (₹.74,147/- per Acre) in the document numbered 3984/07

From this comparison it is very clear that there is no revenue loss to Government as mentioned by the audit team and there is only revenue gain occurred while registering the documents 3984/07 and 3985/07.

Further more the concerned Sub Registrar who registered the documents, retired on superannuation and expired. Considering the above facts the Para may be dropped from the report.

VI		Remedial Action taken	Not applicable
I	a)	Name of the Department	REGISTRATION
	b)	Subject/Title of the Review/ Paragraph	Undervaluation of Property to avoid payment of Stamp Duty and Registration fee.
	c)	Paragraph Number	4.7.3.3
	d)	Report.No /Year	Report of The Comptroller And Auditor General of India for the Year Ended 31.03.2010 (RR)
II	a)	Date of receipt of the Draft Para	03.06.2010 RR/DP-3896/2010-2011
	b)	Date of Department Reply	06.10.2010
III		Gist of Paragraph	<u>4.7.3.3</u> <u>Under Valuation of Property- SRO Koadetty.</u> An executant sold 58.12 cents of land for a consideration of ₹.30.50/- lakh in may 2008. But on the same day the executant sold another plot measuring 16 cents adjacent to the above property having common boundary for ₹.27/- lakh and this resulted a short levy of SD and RF of ₹.8.11/- lakh.
IV	a)	Does the Department agree the fact and figures included in the paragraph	No
	b)	It not please indicate the areas of disagreement	The audit team, comparing the document numbered 2383/08 with other the document numbered 2385/08 comprising the same Re-Survey numbers made remarks that the later is undervalued for an amount of ₹. 67.57 lakh resulting in a short levy of SD and RF of ₹. 8.11/- lakh. On verification it is found that both the documents were executed by different executants and the properties are acquired by different pre documents. (even though some pre documents are similar) It is common that the value of the property varies from place to place depending on geography and topography. The development of the area is another factor determining the value of property even though there is similarity in R.S. Number. It is a fact that no absolute and accurate higher or minimum value can be pre determined. Value of a

			<p>property is decided by the buyer and seller and there is no provision in the Kerala Stamp Act or the law made there under, to determine the value of the property based on the value of the other adjacent properties in the same survey numbers.</p> <p><u>The concerned Sub Registrar reported that he has no reason to believe that the document 2385/2008 is undervalued because it is one of the highest valued document registered in 2008 at Kondotty SRO.</u></p> <p>There is no rule prevailing that empowers the registering officer to check the market value at the time of presentation and to refuse to register the document on the ground that the document was not stamped on the basis of the market value.</p> <p>Since the fair value was not prevalent in the state, there is no other option in front of the registering officer, but to accept the document for registration. He has to agree with the consideration passed between the parties and set forth in the document.</p> <p>A number of judgments (case laws) uphold the above aspect. Instructions were issued to subordinate officers not to refer document showing higher value than the guideline value for undervaluation.</p>
V	a)	Does the Department agree with the Audit Conclusion	No
	b)	It not please indicate the areas of disagreement	<p>The Audit team made remarks that the extent of undervaluation could not be established due to the absence of fair value.</p> <p>It may kindly be noted that the Fair value fixed by the Government on 14.12.2009 and came to force on April 2010 (i.e. after two year of the audit remark and registration of 2385/2008 document) for the Re Survey number 20/3 of Kondotty village of Eranadu thaluk is only ₹.30,000/- per Acre for Residential plot with Mau/ Panjayath road access, <u>which is remarkably low when compared with the value set forth (₹.1,29,621/- per Acre) in the document numbered 2385/2008.</u></p> <p>From this comparison it is very clear that there is no revenue loss to Government as mentioned by the</p>

			audit team and there is only revenue gain occurred while registering the document 2385/2008. Hence the above para may be dropped from this report.
VI		Remedial Action taken	Not applicable
I	a)	Name of the Department	REGISTRATION
	b)	Subject/Title of the Review/ Paragraph	Undervaluation of Property to avoid payment of Stamp Duty and Registration fee.
	c)	Paragraph Number	4.7.3.4
	d)	Report No /Year	Report of The Comptroller And Auditor General of India for the Year Ended 31.03.2010 (RR)
II	a)	Date of receipt of the Draft Para	03.06.2010 RR/DP-3898/2010-2011
	b)	Date of Department Reply	12.08.2010
III		Gist of Paragraph	<p><u>4.7.3.4.</u></p> <p><u>IV of Property- SRO Rajapuram.</u></p> <p>On scrutiny of records in SRO Rajapuram in march 2009, it was noticed, that four sale deeds of landed property lying in the same survey and adjacent to one another were sold as per details given below.</p> <p>2872/06 300 cents ₹. 7/- lakh</p> <p>2873/06 316 cents ₹. 7.5/- lakh</p> <p>2935/06 190 cents ₹. 9.7/- lakh</p> <p>2645/07 373 cents ₹. 7.6/- lakh</p> <p>As such the properties in the documents 2872/06, 2873/06, 2645/07 are undervalued to the extent of ₹.28,39/- lakh and the matter is not reported to the District Registrar as cases of undervaluation.</p>
IV	a)	Does the Department agree the fact and figures included in the paragraph	No
	b)	If not please indicate the areas of disagreement	The audit team, comparing the document numbered 2935/06 with other documents numbered 2872/06, 2873/06, 2645/07 comprising the same Re-Survey numbers made remarks that the later documents

			<p>are undervalued for an amount of ₹. 23.39 lakh. On verification it is found that both the documents were executed by different executants. It is common that the value of the property varies from place to place depending on geography and topography.</p> <p>The development of the area is another factor determining the value of property even though there is similarity in R.S. Number. It is a fact that no absolute and accurate higher or minimum value can be pre determined. Value of a property is decided by the buyer and seller and there is no provision in the Kerala Stamp Act or the law made thereunder, to determine the value of the property based on the value of the other adjacent properties in the same survey numbers.</p>
V	a)	Does the Department agree with the Audit Conclusion	No
	b)	It not please indicate the areas of disagreement	<p>The document 2935/2006 comprises an area of 190 cents and a house. In all other documents the extent is more than 300 cents. It is quite natural that large extent of land fetches low price/cent than small extent of land. It is also a fact that there would be topographical and geographical variation in large extent properties than small extent properties. Also the audit team mentioned that all the properties in four documents are in same survey number.</p> <p><u>Through verification of the recitals of document 2873/2006 reveals that in addition to R.S.No.146/1 there is also R.S.No. 143/4, 143/6. (about 141 Cents) This clearly indicates that there is certainly some variation in the nature of land when compared to the land in 2935/06.</u></p> <p><u>Here as per village records the total extent of "Punchakkara" area (R.S.No.146/1) is about 2792.82 Acres. Therefore it is to be admitted that there can be significant difference in geographical and vegetative conditions in this area even though the R.S.No. is same. Also in each document the extent is more than 2 Acres. If the extent is below 10 or 20 cents then there will be similarities with adjacent plots since the survey number is same as pointed out by the audit.</u></p>

			<p>Hence demanding a value for the whole extent of 582 cents in 3 documents (out of 2782.82 Acres) by comparing with 190 cent of land in document 2935/2006 is not logical.</p> <p>The fair value fixed by Government of the RS Number 146/1 Garden land with out Road access (Document number 2935/06. AG fixed as yardstick for comparison. ₹.5105/cent) in Kallar village is ₹. 9000/ Acre in 2010. (ie ₹.3643/cent). By comparing this fair value of 2010 with that of the consideration shown in the documents 2872/06, 2873/06, 2645/07 (average ₹.2300/cent) there occurs no revenue loss as pointed out by the audit because the mentioned documents were registered in 2006-2007 i.e before 4 years.</p> <p>Since the day to day increase of land value is unpredictable now days, a nominal decrease of ₹.1300/cent in 2006 while comparing with the value in 2010 is quite natural. Hence the above para may be dropped from this Report.</p>
VI		Remedial Action taken	Not applicable
I	a)	Name of the Department	REGISTRATION
	b)	Subject/Title of the Review/ Paragraph	Undervaluation of Property to avoid payment of Stamp Duty and Registration fee.
	c)	Paragraph Number	4.7.3.5
	d)	Report No /Year	Report of The Comptroller And Auditor General of India for the Year Ended 31.03.2010 (RE)
II	a)	Date of receipt of the Deptt Para	31.03.2010 RR/DP-3819/2010-2011
	b)	Date of Department Reply	12.04.2010
III		Gist of Paragraph	4.7.3.5 UV of Property- SRO Malaviyakesha.

			<p>A sale deed for 12.11 <i>are</i> of land was registered vide a document in April 2008 for a consideration of ₹.2.70/- <i>lakh</i>. However, it is found that 11.34 <i>are</i> of the above property was sold in June 2008 vide two other documents for a consideration of ₹.22.40/- <i>lakh</i>. As such, the property in the first document was undervalued to the extent of ₹.21.22/- <i>lakh</i> and the matter has not been reported as a case of undervaluation and thus results a short levy of Stamp Duty and Registration Fee of ₹.2.55/- <i>lakh</i>.</p>
IV	a)	Does the Department agree the fact and figures included in the paragraph	Yes
	b)	It not please indicate the areas of disagreement	Not applicable
V	a)	Does the Department agree with the Audit Conclusion	Yes
	b)	It not please indicate the areas of disagreement	Not applicable.
VI		Remedial Action taken	<p>The District Registrar, Thiruvananthapuram has taken Suo-Motu action against the document 2077/2008, of SRO Malayinkeezhu and Form II notice has been issued. Kerala Government introduced one time settlement compounding scheme vide GO (P0 No.57/2009/TD dated 27.03.2009 to settle all pending undervaluation cases referred to the District Registrar or called for by him under sections 45 A, 45 B, 45 C of the Kerala Stamp Act, 1959 which includes the cases that were finally disposed off and referred for revenue recovery proceedings for recovering the deficient stamp duty. Separate slabs were introduced with respect of extent of transactions.</p> <p><u>The aforesaid document 2077/2008 also deserves the benefit of the scheme and thus the case has been settled through this scheme. An amount of ₹.3000/- has been collected as deficit SD vide receipt No. 44 and 59 dated 28.07.2010. Hence the above Para may be dropped from this report.</u></p>

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