

**GOVERNMENT OF TELANGANA
REGISTRATION AND STAMPS DEPARTMENT**

**Office of the Commissioner and Inspector General of
Registration and Stamps, Telangana, Hyderabad.**

Circular Memo: IAR/4245/2018

Dated:16.07.2020

Sub: Registration and Stamps Department – AG Audit – Suggestion to review Internal – Audit System – Committee constituted to suggest changes /improvements – Committee submitted Report – Instructions/clarifications issued to the field – 2nd spell of clarifications on different subjects - Regarding.

Ref: 1) Proceedings No.IAR/4245/2018, Dated: 25.07.2018 on the recommendation of the AG, Hyderabad observations.
2) TREDA representations dated:3.7.2018, 1.3.2019 and various other representations received from industry bodies and individuals for clarifications.
3) Government Memo No.26255/Regn.I/A1/217, date:15.3.2018, 13.8.2018 and various meetings convened by the Special Chief Secretary to the Government with the industry bodies.
4) C&IG Office Minutes of the Meeting with TREDA and department officers dated:11.7.2018.
5) Government Memo.No.21998/Regn.I/A2/2019, dated:30.11.2019.
6) Report of the Committee dated: 10.1.2019 and subsequent several meetings held with the Members and select field officers, latest being dated: 4.1.2020.
7) This Office Memo No. No.IAR/4245/2018, Dated:3.7.2020.

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Attention of all the Officers and SRs is invited to the reference 7th cited, wherein certain clarifications are issued on important issues. In continuation of the same, clarifications in respect of some other important issues are given below.

I) Development agreements - Supplemental Deeds - Chargeability:

Sale, settlement and mortgages are covered under section 4 of Indian Stamp Act, 1899. But, through executive instructions, Development Agreements and other documents are implicitly brought into the ambit of supplemental deeds, of late. There are many aspect to be looked into with regard to treating the agreement (executed subsequently in pursuance of the previously registered development agreement) as fresh development agreements or supplemental deeds. Keeping them in view the above, the following instructions are issued:

- i) When a new property is added while the parties are the same:**
The stamp duty shall be collected on the value of portion of land newly added through supplemental deed.
- ii) When new parties joined as landlords or consenting parties where the scheduled property is unchanged:**
It shall be treated as supplemental deed only.
- iii) When new parties joined as landlords or consenting parties where the scheduled property is totally changed:**
It shall be treated as fresh instrument and required to be charged afresh.
- iv) When new parties joined as landlords or consenting parties where the scheduled property is partially changed by way of addition or reduction:**
It shall be charged on the value of the extent added only.
It shall be treated as supplemental if the extent is reduced.
- v) When new parties joined as co-developer or substitution for the earlier developer:**
It shall be treated as fresh instrument of development agreement/ construction agreement and shall be charged afresh.
- vi) When the parties under different development agreements for the purpose of convenience and/or better project development execute a supplemental deed mentioning the sharing ratios and/or the units to be apportioned among the developer and various landlords after such development if no new parties or new property is added other than covered under the earlier registered development agreements:**
It shall be treated as supplemental deed.

- vii) When the parties under different development agreements for the purpose of convenience and/or better project development execute a supplemental deed mentioning the sharing ratios and/or the units to be apportioned among the developer and various landlords after such development if new parties and/or new property is added other than covered under the earlier registered development agreements:**

If new properties are added without change in the Developer(s), the differential stamp duty under Article 6(B) shall be collected. If new Developer(s) are joined, the instrument shall be charged afresh under Article 6(B).

- viii) When legal heirs execute supplemental deed without any amendments ratifying the action of the deceased party under the principal development agreement:**

It shall be treated as supplemental deed.

- ix) When the ratio of apportionment of developed area or structure among the parties is changed, if there is a consideration for such change:**

Duty shall be levied as conveyance on the value of such differential area or construction resulted due to such agreement.

- x) When the ratio of apportionment of developed area or structure among the parties is changed, if there is no consideration for such change.**

Duty shall be levied under Article 6(b) of the Schedule IA on the value of such differential area or construction resulted due to such agreement.

- xi) Goodwill or non-refundable advance - CHARGEABILITY: C&IG in Lr.No.LAR-1/2164/2011, Dt.17-09-2011 to the AG on audit para pertaining to RR district in a case where there is a mention of payment of Goodwill to the land owner and the audit party remarked that it attracts stamp duty @5% as conveyance. The C&IG opined that as there is no conveyance involved in this deed it shall be charged with SD under article 6B of Schedule-IA to IS Act 1899 read with notifications issued by the Government reducing SD payable to 1%.**

- xii) Development agreement – chargeability on amenities, club house etc:**

The SR shall ascertain the value of development or construction of all amenities, club house, gym, theatre, swimming pool, indoor stadium, if any and arrive at the chargeable value as per the Article. Some of the SRs are

calculating the chargeable value on the proposed saleable area only resulting in loss of revenue.

xiii) Terrace Rights – Development Agreement: Terrace is part of development agreement, as such it does not require additional stamp duty.

xiv) Development Agreements – Certain litigations – Precautions:

Mentioning clearly unit numbers like flat, villa, plot numbers with their extent, floor wise breakup of proposed construction, parking lots falling to the respective shares of Developer or Landlord – The SRs shall ensure that development/construction agreement either in the main body of the document or as annexure (part of the document) contain these details so that subsequent sales happen by the respective party without any confusion or litigation. If such details are not recorded in the development agreement or construction agreement due to any reason, the SRs to ensure these details are incorporated in the supplemental deed. If a subsequent sale deed on the strength of such Agreement is executed by both the parties, insistence of supplemental deed is not needed.

II) Fees for Private attendance, if more than one person:

The relevant Standing Orders concerning the subject are extracted hereunder:

“S.O.665. When in the course of attendance at a private residence the registering officer records under the provisions of Registration Rule 45 (iii) in respect of the same document, the admission of persons not entitled to the concession, an attendance fee shall be levied in respect of each such person. S.O.666. For an attendance at the private residence both for the registration of a document under the Indian Registration Act and for the attestation of power-of-attorney as a Notary Public, two attendance fees are leviable.”

Therefore, the fee is leviable for each person whose admission of execution is obtained during the private attendance by the SR as per law.

III) Consenting party in the Sale Deed:

Instances have come to the notice that a sale deed executed by the agreement holder as one of the vendors or as confirming is being treated as an instrument comprising two sales. It is clarified as per Section 28(3) of the Indian Stamp Act, 1899, when a person contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the Sub-purchaser, the conveyance shall be chargeable with ad valorem duty in respect of the consideration for the sale by the original purchaser to sub-purchaser.

Such transactions are not plural transactions. Therefore, a single stamp duty is leviable on such transactions.

IV) ADOPTION / ASSESSMENT OF MARKET VALUES

i) Chargeability - Terrace Rights:

When UDS is mentioned in the instrument, the market value shall be arrived at taking UDS plus plinth area of the floor under transaction. If no UDS is mentioned, the market value of the terrace rights shall be arrived at calculating the plinth area of the floor which is under transaction. Example: Terrace rights over and above the third floor of the building having 3000 Sq. ft is under transaction. The UDS is mentioned In the instrument is 50 Sq. Yards. Market Value of the land in the area is Rs.10000/- per yard. The Market Value of the terrace rights is: $50 \times 10000 = 500000/-$ + 3000 Sq.Ft. X Rs.760/- (municipal area, 3rd floor) = 2280000/- total MV = Rs.2780000/-.

If no UDS is mentioned explicitly in the instrument, it means there is no transfer of any share in the land but only rights are created in terrace for a specific purpose. Taking above example, the market value is Rs.2280000/-. Stamp duty shall be levied on the market value or consideration, whichever is higher.

Earlier instructions issued on the subject are hereby modified accordingly.

ii) Poultry sheds/allied activities for agriculture, etc.,:

Poultry and other allied activities of agriculture require structures and internal roads. As these activities are allied activities of agriculture, existence of sheds and roads should not change the nature of the land. Therefore, whenever sheds or any structure is transacted, the following example shall be followed for arriving at the market value of the property.

Example:- Total 2 acres of land. Market Value of the agricultural land per acre is Rs.500000/- . Market Value of the Land in the village (GP) per Sq.Yard is Rs.500/- Structure is existing in 5000 Sq. ft.

The market value of the property is as follows:

- i) $5000 \text{ Sq.ft} / 9 = 556 \text{ Sq. Yards} \times \text{Rs.}500/- = \text{Rs.}278000/-$
- ii) $2 \text{ Acres} (4840 \text{ Sq.Yards} \times 2 = 9680) - 556 \text{ Sq.Yards} = \text{Ac.}1.35 \text{ Guntas} \times \text{Rs.}500000/- = \text{Rs.}937500/-$
- iii) $5000 \text{ Sq.ft Poultry Shed} \times \text{Rs.}265/- = \text{Rs.}1325000/-$

Total Market Value is Rs.2540500/-

iii) **Applicability of composite value :**

When the whole structure consisting of 5 or more units or entire building is sold under a single document, there is no UDS in land but entire land as a single schedule is transacted, composite value is not applicable.

iv) **Farm Land Units/ Farm plots /Plantation units:**

When farm units are made with internal roads and other developments, square yard value of the nearest house or ward/block shall be adopted, if the value fixed for the survey number in question is lesser than the site rate.

v) **Adoption of Market Value for the properties abutting leading commercial/main roads or National/State Highways though not mentioned in the Form II or Form IV respectively:**

There are instances wherein urban properties abutting leading/commercial roads are registered with residential value citing the reason the property is not mentioned in the Form II. Likewise, the agricultural lands abutting National Highway/State Highway or any leading road are valued with general agricultural rate of the village. This is resulting in huge loss of revenue. Whenever, the SR finds that the property is abutting to the above roads, but such property identifier (door number/survey number) is not listed in Form II or Form IV respectively, he shall select the correct locality (like road name, national highway/state highway, etc.) from Form I or Form III respectively and assess the market value. This will ensure proper chargeable value and collection of proper stamp duty. The SRs shall not blindly adopt the lower rate just because the property identifier is not figured in the Form II or Form IV.

In C&IG Circular No.MV1/8483/2013, Dated 10.10.2013 it was instructed that the market value of the main Door Number/main Survey Number, having higher value (Form II and Form IV) shall be applied for all the bi-numbers.

But, in C&IG Circular No.MV1/8483/2013, Dated 17.02.2014, it was clarified that the value of door number which is not figured in Form II is not applicable if they are not abutting to main road. Likewise, value of the sub-division survey numbers or other survey numbers if not situated on the National Highway/State Highway/ Any Road shall not be assessed by applying higher value. For the sake of understanding the following illustrations are given:

- 1) Survey No.110 of a village is abutting National Highway and find place in Form IV with a value of Rs.1000000/- per acre. Whereas other agricultural lands situated inside the Highway got the value of Rs.500000/- per acre. The survey number in

question is 110/B and it is not abutting to National Highway and as per the village map it is clearly seen as situated inside. Therefore, the market value applicable in this case is Rs.500000/- per acre.

2) Survey No.111 of a village is abutting National Highway and did not find place in Form IV. The survey numbers abutting National Highway are listed in Form IV with a value of Rs.10 lakhs, but this survey number was not listed erroneously. Even though Survey Number 111 is not there in Form IV, the SR shall select the classification "Abutting to National Highway" in Form III and assess with Rs.10 lakh per acre.

3) Survey No.112/1 of a village is abutting National Highway and find place in Form IV with a value of Rs.1000000/- per acre. Whereas other agricultural lands situated inside the Highway got the value of Rs.500000/- per acre. The survey number in question is 112 (not in form IV) and it is not abutting to National Highway; and as per the village map it is clearly seen as situated inside. Therefore, the market value applicable in this case is Rs.500000/- per acre.

V. ISSUES INVOLVING PROCEDURES

(i) Power of Attorney under sections 32 and 33 of the Registration Act, 1908 requires attestation: These provisions are there to ensure proper person to present and admit execution as per law.

Section 32 and 33 of the Act and Rules 49 to 55 are relevant for the subject. The spirit of the law is to ensure that either the executant or his authorized agent who got the attested power of attorney is empowered to present and admit the execution under the law. The claimant is also competent to present the document. If he is not one of the executants under the document, his admission is not required but he can present the document in the capacity of the claimant. The SR shall ensure admission of execution by all the executants though the document is presented by the claimant.

A power of attorney authorizing the agent to present the document and admit execution shall be attested as required under Section 33 and it is not valid if not so attested. If any registration takes place on the basis of invalid power, the registration also become invalid. The presentation and admission of execution by not duly authorized persons are incurable defect under the Registration Law.

Therefore, every care shall be taken by the Sub-Registrars during presentation and admission of execution by power of attorney agents.

(ii) District copies received from other states: This issue got two facets. A) registration and B) stamp duty.

A) **Registration:** As per section 65 of the Registration Act, 1908, the district copies have to be transmitted and received and the follow up action shall be completed so to give full and comprehensive information on immovable properties in the respective jurisdiction office. But, it has been brought to the notice that the procedure is not followed strictly. There are instances where without the order of the DR concerned indexing is being done in the SRO directly on receipt of district copy from other State's Registrar.

B) **Stamp duty: Section 19-A of the Indian Stamp Act, 1899:** As per this provision, the difference in stamp duty if any shall be collected from the parties concerned. For example, in Maharashtra, the stamp duty payable on the instrument is Rs.500/- and the same was paid there when it was executed. And in the State of Telangana for such instrument the stamp duty payable is Rs.1000/-. Now, when the same instrument is received in the State of Telangana as a district copy or otherwise, the DR concerned as Collector under section 19-A and rules made thereunder shall collect the deficit stamp duty of Rs.500/- and send it to the concerned SR following the procedure laid down in section 65 of Registration Act, 1908 and rules made thereunder.

(iii) Huge stamp duty involvement – Documents kept pending: It is observed that certain SRs are keeping the documents pending for various reasons though there is a huge deficit stamp duty on the face value of the document. If there is a dispute regarding market value, the SR concerned shall refer the matter under section 47-A of Indian Stamp Act, 1899 after collection 50% of the differential duty. But, in certain cases the SRs willfully and wantonly keeping the documents pending wherein huge revenue is due from parties resulting in deferment of tax and whose interest may run into crores when actually collected. The SRs shall aware that it is not allowed and every officer shall be careful whether any tactics are played so that revenue is paid subsequently so that interest is saved or for any other reason. Stringent action against the erring SRs is the least action one can expect in such cases.

(iv) Documents/entries with negative numbers:

There are certain documents/entries in the CCA which are with negative numbers. Such Documents have to be audited by the Audit team to find out the reasons for such assignment. If there are any entries without authority, the same shall be brought to the notice of the C&IG at once.

(v) Registration of prohibited properties:

(a) If any SR registers any document affecting prohibited properties intentionally, it will entail severe disciplinary action.

(b) When a survey number or sub-division number is partly prohibited under Section 22-A and when a document in respect of the other part is executed and presented for registration, it may be accepted without raising any objection if the name of the executant is found recorded as owner in the TD-cum-PB and DHARANI (ILRMS).

The officers are asked to explain the SRs the spirit of the clarifications and see that the number of audit paras are reduced while uniformity is ensured across the State on the important issues. These clarifications are aimed at easing the difficulties of common people in getting their documents registered without any hassles/queries by field offices.

Sd/- T.CHIRANJEEVULU,
COMMISSINER AND INSPECTOR GENERAL (R&S),
TELANGANA, HYDERABAD.

To

All the Sub-Registrars including Chit and Audit SRs in the State.

All the Officers in the State with a specific direction to the DIsG and DRs to conduct special meetings to explain the clarifications given above so that all the SRs are on the same page and desired results are achieved in classification of documents and proper chargeability without any audit objections.