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Agricultural land mortgage problems in India

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Mortgages are quite common in India. It is the basic requirement in case a person is availing a home loan and a very common transaction in case of all other loans availed by any entity.



One of the most laborious and essential business in our country is agriculture. There are more than just a few farmers in the country who cultivate their land and sell the crops as a business for a livelihood. The government takes various steps and introduces diverse schemes from time to time to try to reduce the hardships of these farmers. The farmers as well companies who are in the business of agriculture require loans to raise money for purchase seeds, manure, fuel etc. However, for the farmers and the companies, it is not easy to get such loans. Further, certain states in the country have restrictions on the mortgage of agricultural lands. These restrictions are there to ensure that the practices akin to zamindari systems are kept away but these regulations are not abreast with the update in the agricultural system in the country and cause hindrance for the farmers in raising funds against the mortgage of agricultural lands which is generally the only real asset available with them.

For instance, in Maharashtra, transfer (the term includes mortgage) of agricultural land cannot be done other than for specific purposes which include a transfer for the purposes of agriculture/cultivation and/or educational and charitable purposes only.

To ensure that the lands are able to return crops to their full potential, certain amendments may be made to the existing laws which may include carve out of mortgages only in favour of banks and financial institutions by: (i) farmers having a net-worth beyond a threshold amount, (ii) companies involved in cultivation for the purpose of raising loans for cultivation and ancillary purposes. The central government may also specify rules to ensure that the full potential of the value of the land is taken into consideration while providing loans and that a cap is set to the required asset cover which is normally very high in case of loans being provided in rural areas.

To ensure that the banks have a better recourse in case of defaults the procedures under the statutes like Maharashtra Provision of Facilities for Agricultural Credits by Bank Act, 1974 can be simplified and the similar statute may be provided for all states in India.

The present regulations and the procedures in the country for the transfer or mortgage of cultivable agricultural lands are extremely cumbersome and time gobbling. A simplified and digitalised procedure would ensure that the transactions are completed in a good time and there are no delays in the farmers getting the required financing for the purpose of ensuring that appropriate crops may be cultivated as per the need of the season. This in a long run would also be quite beneficial for ensuring that the inflation of food rates is kept under control.

This has always been a sensitive topic and the regulations will have to be such that in order to curb the practices of the rich grabbing lands from farmers, the interests of the institutions genuinely interested in providing a helping hand is not left unconsidered. The regulations will have to ensure that there is enough comfort for the financial sector to provide ample finances without the requirement of special schemes from the government. The only way to do this is to ensure that the enforcement mechanism available for the banks in case of default by farmers is in line with the other enforcement mechanisms. The regulations may be set in phases and can be made applicable only for state-owned banks in initial stages to ensure that no hasty decisions are taken by private banks for recovery of the money. Empowerment of banks and simplification of the mortgage procedures would also ensure further empowerment of the agricultural sector in the country.

Disclaimer:

This article has been authored by Babu Sivaprakasam, who is a Partner; and Aditya Khadria, who is a Senior Associate at Economic Laws Practice (ELP), Advocates & Solicitors. The information provided in the article is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein.



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