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Editorial

Recently Supreme Court of India on November 25, 2016 have pronounced a judgement where it has held that banks can sell tribal land to non-tribals, even if prohibited by State law. The perception and reality contradicts and this is the example. Till now, general impression is that tribal land cannot be transferred to non-tribals by any means. But going through the Judgement, it is clear that some provision is there in some central legislation which empowers the mortgagee to realize Debt through sell of mortgaged property.

The case in brief is as follows. A Bank had notified to sell the mortgaged property belonging to the Scheduled Tribe community and on auction the successful purchasers are not from the Tribal groups. It was contented in the Hon'ble Gauhati High Court that the sale notification issued by the Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was in infraction of Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960. The provisions under Tripura Act lay embargo on the sale of mortgaged properties by the Bank to any person who is not a member of a Scheduled Tribe.

Gauhati High Court by the impugned order answered the writ petition in favour of the Tribal mortgagee on the ground that the Tripura Act of 1960 being included in the Ninth Schedule to the Constitution and, therefore, enjoying protection of Section 31-B of the Constitution, would prevail over the Act of 2002 so as to invalidate the sale as the same being contrary to the provisions of the Section 187 of the Tripura Act of 1960. It is noteworthy

to quote the observation of the Supreme Court. "It will not require much appreciation or scrutiny to come to the conclusion that the High Court was wholly incorrect in answering the writ petition and striking down the sale Notification dated 26.06.2012 on the above basis. Article 31-B of the Constitution, on the very face of the language contained therein, is self explanatory and provides protection / immunity to a legislation from challenge on the ground that it violates any of the provisions of Part III of the Constitution. Inclusion of the Tripura Act of 1960 in the Ninth Schedule by itself, would, therefore, not confer immunity to the said legislation from being overridden by the provisions of a Parliamentary statute. This is a question, therefore, that this Court will have to deal with notwithstanding the fact that the proceedings before the High Court did not proceed on the aforesaid basis. We had, therefore, permitted the learned counsels of both sides to address us on the core question arising in the present appeals, namely, whether the Act of 2002 insofar as it provides for sale of immovable properties offered as security for a loan advanced, without any restriction as to the class or category of buyers, would prevail notwithstanding the restrictive provision in this regard under Section 187 of the Tripura Act of 1960."

Further, one of the observations may be quoted. "The Act of 2002 is relatable to the Entry of banking which is included in List I of the Seventh Schedule. Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking. The object of the State Act, as already noted, is an attempt to consolidate the land revenue law in the State and also to provide measures of

agrarian reforms. The field of encroachment made by the State legislature is in the area of banking. So long there did not exist any parallel Central Act dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, operated validly. However, the moment Parliament stepped in by enacting such a law traceable to Entry 45 and dealing exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the Act of 2002, must give way. The dominant legislating being the Parliamentary legislation, the provisions of the Tripura Act of 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the Act of 2002, which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realization of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act of 1960.”

However, the following have emerged from the Judgement:

1. In normal circumstance, tribal land cannot be transferred to non-tribals with the

exception that Banks/mortgagees are empowered to sell the mortgaged land (immovable land offered as security against loan advanced) to anybody.

2. The Banks now cannot refuse financial assistance to a tribal citing the reason that their immovable property cannot be taken as a security. This will facilitate the tribals to have an access to the financial assistance from the Banks.

3. The restriction which was seen as a deterrent from becoming an entrepreneur as no financial assistance from banks were forthcoming even if the immovable property was offered as a security. The soft or any financial assistance from Banks were kept beyond the reach of the tribals citing the existence of such restrictive provisions.

4. There will be no difference in valuation of the immovable property of tribals and non-tribals. The tribals will also realize the true market value of their land particularly in the urban areas.

5. The window of possibility is opened now for the transfer of immovable property of the tribals to the non-tribals but in the case of default in making payment of loan.

Folklore of the Santal Parganas

Translated by **Cecil Henry Bompas** of the Indian Civil Service, 1909

{ASECA CHANNEL intends to publish the stories in order to familiarize the stories among the general public for their better appreciation}

{Continued from November 2016 issue}

Now there was a poor man who was a very brave shikari of big game, and cunning into the bargain, and he offered to go and kill the tiger. They questioned him carefully, and when they saw that he was in earnest they took him to the Raja to hear from the Raja's lips what his reward should be; and the Raja promised him half his kingdom, and wrote a bond to that effect, for he thought that the tiger would surely kill the man. Then the shikari said that he would start the next morning and return the next

day either with the dead tiger or with bits of its ears and claws to show that he had killed it. The Raja told the people to watch carefully and see that the shikari did not cheat by taking the claws and ears of a tiger with him.

The next morning the shikari started off and all he took with him was a looking-glass and three pictures of a tiger drawn on three pieces of paper and a hatchet; he went to the road which the tiger frequented and climbed a banyan tree and spent the

night in it. The tiger did not pass by at all that night but in the morning it appeared and called out "Who is up in the tree?" The shikari said "It is I." "Come down quickly," said the tiger, "I have been looking for you." "Wait a minute," answered the shikari, "I have been looking for you also."

"What for?" said the tiger: "Tell me first why you are looking for me," said the man: "To eat you," answered the tiger; then the man said, "Well I have been hunting for you to catch you and take you away. I have caught three or four like you and if you don't believe me, let me get down and I will show you". The tiger got into a fright and said: "Come down and show me." So the shikari climbed down and uncovered his looking glass and told the tiger to look and he reflected in the glass the pictures of the tigers which he had brought and said, "Now I am going to catch you and put you in here also." The tiger asked why he was to be caught and the shikari said that it was because he had made the road unsafe by killing travellers; then the tiger begged and prayed to be let off and promised that he would never kill any travellers again. At last the shikari said that he would let him go, if he would allow him to cut off his claws and the tips of his ears and the tip of his tongue as a pledge of his good faith. The tiger said, "Well, you may cut off one claw from each foot and the very tip of my ears and tongue." So the shikari cut them off with his hatchet and, after again warning the tiger, went back home; and then presented himself with all his friends before the Raja and the Raja gave him the promised reward, But the tiger's tongue festered and, after roaring with pain for a whole day, it died.

XLVII. The Dream.

One night as a man and his wife lay talking in bed, the woman told her husband that she had dreamt that in a certain place she had dug up a pot full of rupees, and she proposed that they should go and look for it and see whether the dream was true. While they talked, it chanced that some thieves, who had climbed on to the roof, overheard the conversation and at once decided to forestall the others. So they went off to the place which the woman had described and began to dig, and after digging a little they were delighted to come on a pot with a lid on.

But when they took off the lid an enormous snake raised its head and hissed at them. At this the thieves cursed the woman who had misled them and agreed to take the snake and drop it through the roof on to the man and his wife as they lay in bed. So they shut the snake up again and carried it off to the house and, making a hole in the thatch, dropped it through. But as it fell the snake changed into a stream of money, which came rattling down on the couple below; the thieves found a snake, but it was not a real snake, it was Thakur; and it was his will to give the money to the man and his wife. When these two had recovered from their astonishment, they gathered up the money, and lived in wealth ever afterwards.

XLVIII. The King of the Bhuyans.

There was once a king of the Bhuyans and near his palace was a village of Santals; he was a kind ruler and both Santals and Bhuyans were very happy under his sway. But when he died, he was succeeded by his son, who was a very severe master and soon fell out with the Santals. If he found any cattle or buffaloes grazing anywhere near his crops, he had the cowherds beaten severely: so that no one dared to take the cattle in that direction.

The Santals were very angry at this and longed to get even with the Raja; they planned to turn the cattle into the Raja's crops at night when no one could see them or catch them, but in the end their courage failed them.

One year after the rice had been cut, but before the millet crop was gathered, the youths and maidens of the Santal village had a dance and danced all night till nearly morning; then they agreed that it was not worthwhile to go to bed and they had better take the cattle out to graze at once.

After grazing their fill, the cattle all collected at the midday resting place and the cowherds were so sleepy after their night's dancing, that they fell fast asleep on the bare ground. After a time the buffaloes began to move again and seeing a nice field of millet belonging to the Raja soon made their way to it and grazed the whole field down. The Raja happened to pass that way and was filled with wrath at the sight; he at once ordered his *sipahis* to go and beat the

cowherds within an inch of their lives and so the *sipahis* ran to the place with sticks. Their approach roused the sleeping cowherds who jumped up and ran off home as hard as they could; all but the servant of the village *paramanik* (assistant headman) he did not run away but went to drive the cattle out of the field; he knew that this was his duty to his master and he was resolved to do his duty even at the cost of his life.

As all the other boys had got away the *sipahis* turned their attention to him, but as they aimed blows at him with the sticks, he caught the blows on his arms and the sticks shivered to atoms without harming him; so then they went to kick him but a great *cibei* snake came rustling up behind them; so they saw it was no use to contend with him and desisted: whereupon he drove all the village cattle home in triumph.

The *sipahis* reported to the Raja how the cowherds had all made good their escape, and how the *paramanik's* herd boy had driven off the cattle. Then the Raja told them to go that afternoon at the time the cattle were brought home for the night and wait at the end of the village street and then give the cowherds the thrashing they deserved; The *sipahis* did as they were ordered and that evening waited for the returning herd boys; and caught them as they came home and thrashed them within an inch of their lives. The others were all left senseless on the ground: but the *sipahis* did not dare to lay hands on the *paramanik's* herd boy, he drove the cattle back into the village, and told the villagers what had been done to their sons. So the villagers went out with beds and carried the wounded boys home; then they assembled and resolved to go and punish the Raja, so they went to him and asked what he meant by killing their children. "Dear me," said the Raja, "are they really dead?" "Well, if not not quite dead, they are very ill," was the answer. "I am sorry," said the

Raja: "I admit that I have done wrong, but if you will forgive me this time, I will undertake to cure them in a minute and make them as well as ever; go and fetch them here."

So the Santals went off to fetch the wounded cowherds and carried them to the Raja, all lying senseless on beds and put them down before him. While they were away the Raja had told his *sipahis* to grind some good hot *chilis*; and when the cowherds were brought to him he told the *sipahis* to thrust the chili paste up their noses; this was done and the smarting soon made the cowherds jump up and run away in a very lively fashion, and that was the way the Raja kept his word and cured them.

XLIX. The Foolish Sons.

There was once a man of the blacksmith caste who had six sons; the sons were all married and the whole family lived together. But the sons' wives took to quarrelling and at last the sons went to their parents and proposed that they should set up separate households, as the women folk could not live in peace.

The blacksmith and his wife did not like the idea at all and pointed out that it would be most inadvisable; while, so far, there was plenty of food and clothing for all, they would find it much more expensive to have seven separate households and split up what was quite enough so long as they lived together, and what was to become of their old parents who were now too old to work? The sons protested that they would support their father and mother as long as they lived, even though the family separated.

(To be continued...)

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