

The logo consists of the letters 'ELP' in a white, serif font, enclosed within a red square border. The background of the entire slide is a low-angle photograph of several modern skyscrapers reaching towards a sky with soft, colorful clouds in shades of blue, purple, and orange, suggesting a sunset or sunrise.

ELP

ECONOMIC  
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# IMPORTANT JUDGMENTS UNDER SARFAESI ACT, DRBT ACT & IBC



**Important Judgments Under SARFAESI ACT,  
DRBT ACT & IBC  
on the Issue of Priority of Secured  
Creditors, Sale of Secured Assets and  
Jurisdiction of the Civil Courts**



## SUPREME COURT JUDGMENTS THAT HAVE HELD THAT CROWN DEBTS (UNSECURED) HAVE NO PRIORITY OVER THE SECURED DUES OF THE SECURED CREDITORS/ PAWNEE/ BAILEE

M/s. Builders Supply Corporation  
v. The Union of India & Ors. [AIR  
1965 SC 1061]

*“In making a provision for recovery of arrears of tax, it cannot be said that section 46 deals with or provides for the principal of priority of tax dues at all; and so, it is impossible to accede to the argument that section 46 in terms displaces the application of the said doctrine in the present proceedings”.*

Bank of Bihar v. State of Bihar –  
[(1972) 3 SCC 196]

*“The Pawnee has special property and a lien which is not of ordinary nature on the goods and so long as his claim is not satisfied no other creditor of the pawnor has any right to take away the goods or its price. After the goods had been seized by the Government it was bound to pay the amount due to the plaintiff and the balance could have been made available to satisfy the claim of other creditors of the pawnor. But by a mere act of lawful seizure the Government could not deprive the plaintiff of the amount which was secured by the pledge of the goods to it”.*

O. Konavalov vs. Commander, Coast  
Guard Region and others  
(2006 (4) SCC 620)

*“The lien of a pawnee traceable to Sections 172, 173 and 176 of the Contract Act is capable of satisfaction from property in the hands of the Government obtained even by lawful seizure”.*

## Central Bank of India v. Siriguppa Sugurs & Chemicals Ltd. [(2007) 8 SCC 353]

*“Thus, going by the principles governing the matter, propounded by this Court there cannot be any doubt that the rights of the appellant-bank over the pawned sugar had precedence over the claims of the Cane Commissioner and that of the workmen”.*

## Rana Girders Ltd. v. Union of India [(2012) 10 SCC 746]

*“Statutory liabilities arising out of the land and building could be in the form of property tax or other types of cess relating to property etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax etc. payable on the said machinery. As far as the dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note at all by the High Court”.*

## Union of India v. SICOM Ltd. [(2009) 2 SCC 121]

*“A bare perusal of the aforementioned provision clearly goes to show that the right to recover must start with the sale of excisable goods. It is only when the dues of the Central Excise Department are not satisfied by sale of such excisable goods, proceedings may be initiated to recover the dues as land revenue”.*

**Sitani Textiles and Fabrics (Pvt.)  
Ltd. v. Assistant Collector of  
Customs & Central Excise [1998  
SCC Online Andhra Pradesh 416]**

*“In the present case, the State Financial Corporations Act, 1951 is special enactment whereas the Central Excise and Salt Act is a general enactment. However, in view of Section 46-B, the State Financial Corporation Act prevails over the other enactments”.*

**UTI Bank Ltd. v. Dy. Commissioner  
Central Excise [2006 SCC OnLine  
Madras 1182 (Full Bench)]**

*“Since there is no specific provision claiming "first charge" in the Central Excise Act and the Customs Act, the claim of the Central Excise Department cannot have precedence over the claim of secured creditor, viz., the petitioner Bank”.*

**Krishna Lifestyle Technologies Ltd.  
v. Union of India  
[2008 SCC OnLine Bombay 137]**

*“From the above discussions, we are of the opinion that though assets were sold, sale of assets by itself would not be transfer of business in whole or in part. There must be material on record to show that the business has been transferred to the Petitioner and consequent thereto the Petitioner has succeeded in said business. Respondent Nos. 2 and 3 on the facts of this case have not proceeded under the proviso to Section 11 of the Central Excise Act”.*

# Supreme Court- Rajasthan State Financial Corporation V. Official Liquidator Appeal (civil) 4055 of 1998

The Court examined the grievance of Rajasthan State Financial Corporation in the context of conflict between the SFC Act and the Companies Act

*"After carefully considering a plethora of previous judgments from this Court in the case of, it was held that a financial corporation has the right to proceed under Section 29 of the SFC Act against a debtor, if it is a company, only so long as there is no order of winding up."*

*"When the debtor is a company in winding up, the provisions of Sections 529 and 529A of the Companies Act would affect the rights of financial corporations because of a "pari passu" charge in favor of the workmen. In respect of such dues of the workmen the Official Liquidator has to be accepted as their representative".*

# State of M.P. & Anr. v. State Bank of Indore - (2002) 10 SCC 441



Priority of state dues over the secured creditor



*This case followed the judgment of Dena Bank Vs Bhikhabhai Prabhudas Parekh 25.04.2000*



# Central Bank of India v. Siriguppa Sugars & Chemicals Ltd. [(2007) 8 SCC 353]

Priority of secured creditor upheld vis-à-vis order of the Cane Commissioner for workmen dues

A certain quantity of sugar was pledged with the appellant bank for securing a loan of the first respondent. The loan however was not repaid. The goods were forcibly taken possession of at the instance of the revenue recovery authority from the custody of the pawnee, the appellant-bank.

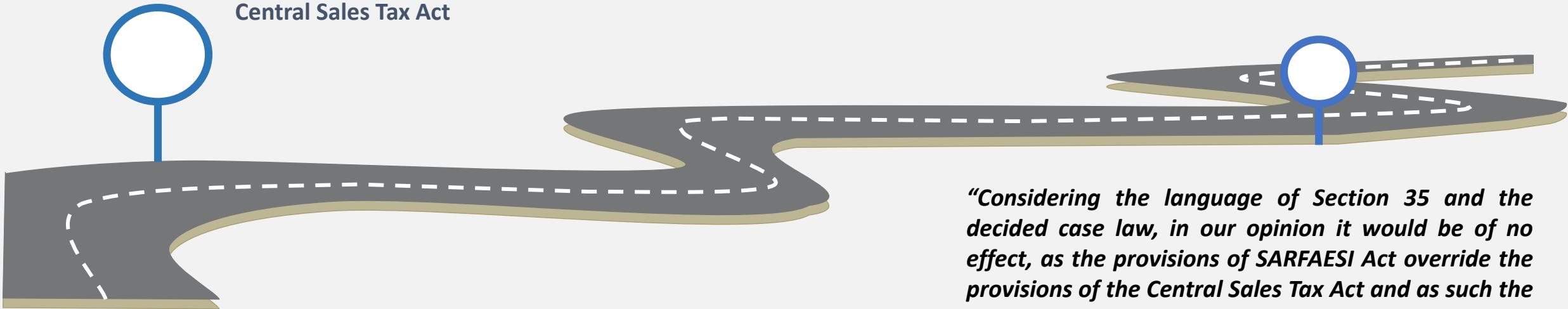
*The Court held that “In view of the fact that the goods were validly pawned to the appellant bank, the rights of the appellant-bank as pawnee cannot be affected by the orders of the Cane Commissioner or the demands made by him or the demands made on behalf of the workmen”.*





# Bombay High Court in Krishna Lifestyle Technologies Ltd. v. Union of India [2008 SCC OnLine Bombay 137]

Provisions of SARFAESI Act overrides the provisions of the Central Sales Tax Act



*“Considering the language of Section 35 and the decided case law, in our opinion it would be of no effect, as the provisions of SARFAESI Act override the provisions of the Central Sales Tax Act and as such the priority given to a secured creditor would override Crown dues or the State dues”.*

# Union of India v. SICOM Ltd. [(2009) 2 SCC 121]

Whether realization of the duty under the Central Excise Act will have priority over the secured debts in terms of the State Financial Corporation Act, 1951?

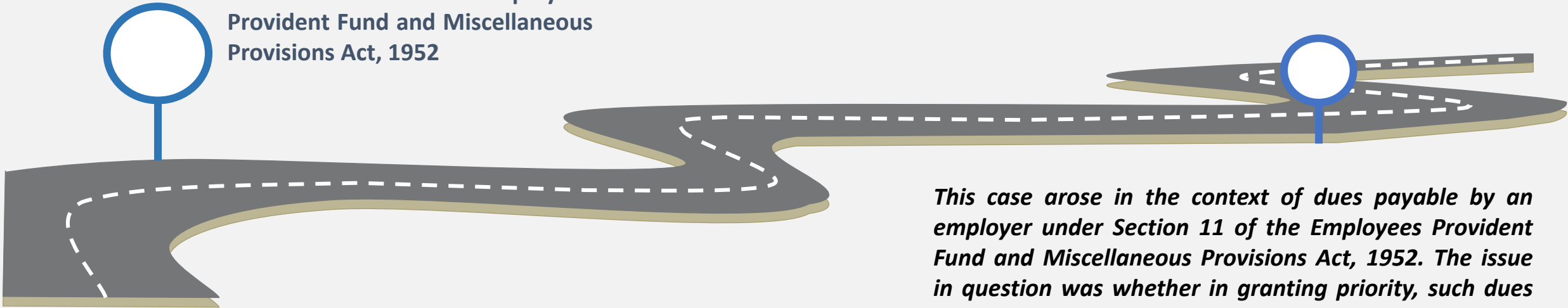
The Court held that generally, the rights of the crown to recover the debt would prevail over the right of a subject. Crown debt means the debts due to the State or the king; debts which a prerogative entitles the Crown to claim priority for before all other creditors. *[See Advanced Law Lexicon by P. Ramanatha Aiyer (3rd Edn.) p. 1147]*. Such creditors, however, must be held to mean unsecured creditors.

*Principle of Crown debt as such pertains to the common law principle. A common law which is a law within the meaning of Article 13 of the Constitution is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into force of the Constitution of India, are saved by reason of the aforementioned provision. A debt which is secured or which (by reason of the provisions of a statute) becomes the first charge over the property (with regards to the plain meaning of Article 372 of the Constitution of India) must be held to prevail over the Crown debt which is an unsecured one.*



# Employees Provident Fund Commissioner v. Official Liquidator - (2011) 10 SCC 727

Dues payable by an employer  
under Section 11 of the Employees  
Provident Fund and Miscellaneous  
Provisions Act, 1952



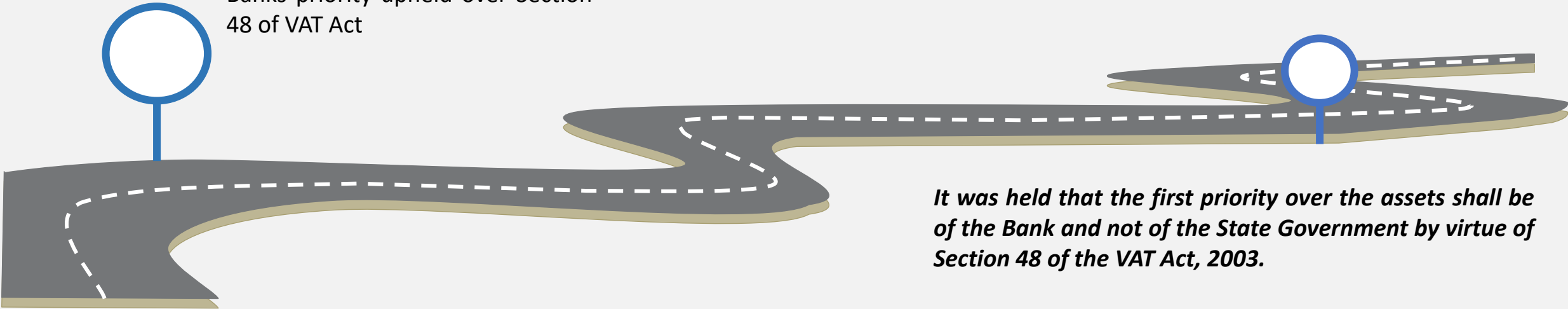
*This case arose in the context of dues payable by an employer under Section 11 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The issue in question was whether in granting priority, such dues would be subject to Section 529A of the Companies Act. The answer was in the affirmative, i.e., the Companies Act would, in this matter hold its field as there is no situation of conflict.*





# Bank of Baroda v. State of Gujarat and - Ors MANU/GJ/188512019

Banks priority upheld over Section 48 of VAT Act

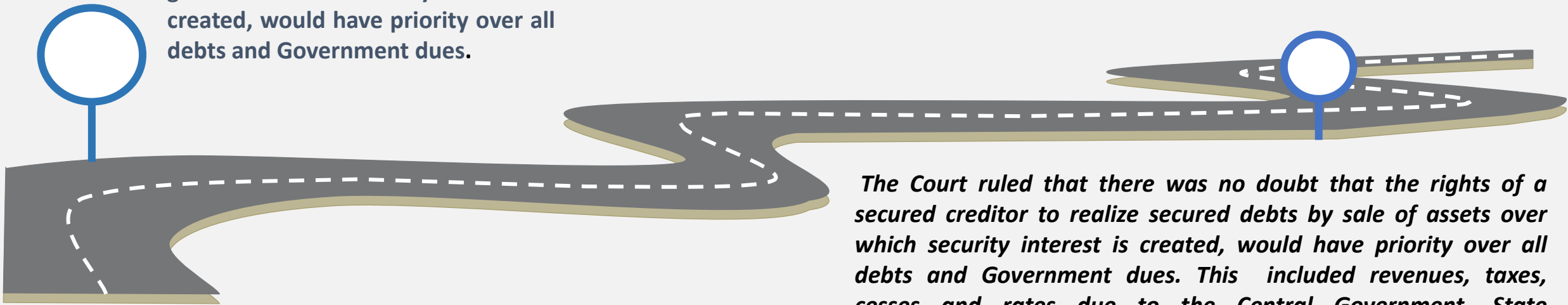


*It was held that the first priority over the assets shall be of the Bank and not of the State Government by virtue of Section 48 of the VAT Act, 2003.*



# The Assistant Commissioner (CT), Anna Salai-III Assessment Circle v. The Indian Overseas Bank and Ors. MANU/TN/3743/2016

Right of a secured creditor over good on which security interest is created, would have priority over all debts and Government dues.



*The Court ruled that there was no doubt that the rights of a secured creditor to realize secured debts by sale of assets over which security interest is created, would have priority over all debts and Government dues. This included revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with "notwithstanding" clause and has come into force from 01.09.2016.*

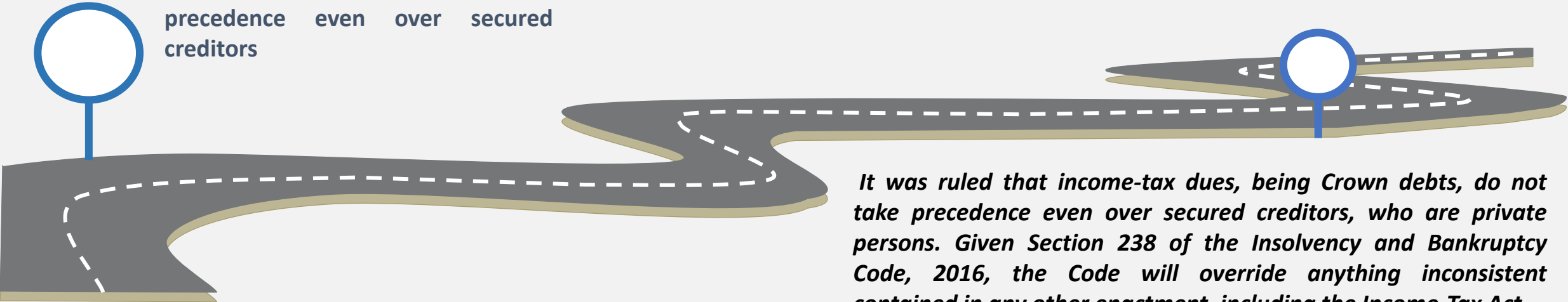
# Bank of Baroda v. Commissioner of Sales Tax, Indore and Ors. MANU/MP/0331/20185

Right of secured creditors to realize secured dues will have priority over all other debts and government dues.

*It was ruled that enforcement of Security Interest and Recovery of Debts and Loans and Miscellaneous Provision (Amendment) Act, 2016 came into force w.e.f. 01.09.2016. By virtue of the said amendment, the right of secured creditors to realize secured dues and debts dues, which are payable to secured creditors by sale of assets over which security has been created, has priority over all other debts and government dues including revenue, taxes, cesses and rates due to Central Government, State Government and local authorities.*



# Principal Commissioner of Income Tax v. Monnet Ispat & Energy Ltd (2018) 18 SCC 786.



Income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors

*It was ruled that income-tax dues, being Crown debts, do not take precedence even over secured creditors, who are private persons. Given Section 238 of the Insolvency and Bankruptcy Code, 2016, the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.*

# Bhanu Ram and Ors. v. HBN Dairies and Allied Ltd.

## MANU/ND/7107/2019

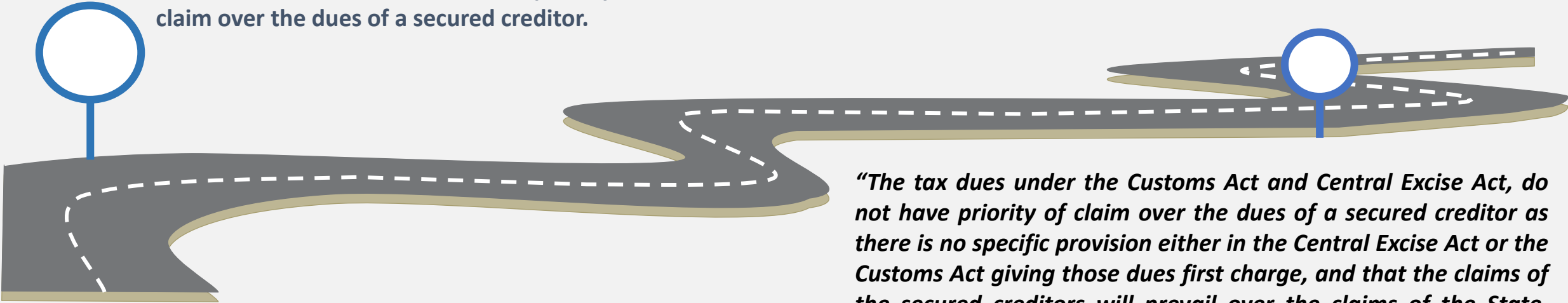
### SEBI VS SARFAESI

NCLT Delhi Principal Bench ruled that the provisions of Section 11 and 11 B of the SEBI Act read with Regulation 65 of the SEBI (Collective Investment Scheme) Regulations, 1999 would be directly in conflict with Section 238 as well as Sections 14, 15, 17, 18 & 25 of the Insolvency and Bankruptcy Code, 2016.

*The only one condition imposed by the Hon'ble Supreme Court (Monnet Ispat Case) is that the code is to override anything inconsistent by any other enactment.*

# Full Bench of the Madras High Court in UTI Bank Ltd. v. Deputy Commissioner of C. Excise, Chennai-II

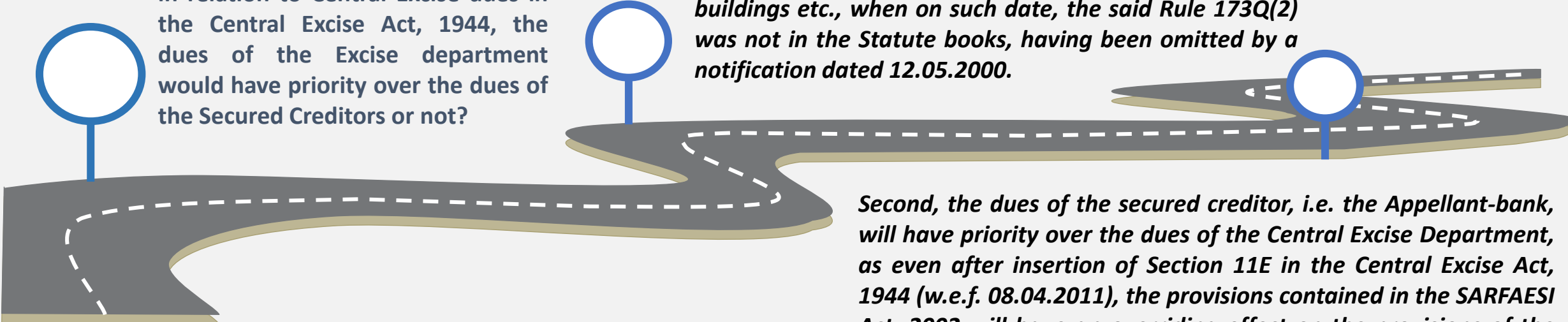
The tax dues under the Customs Act and Central Excise Act, do not have priority of claim over the dues of a secured creditor.



*“The tax dues under the Customs Act and Central Excise Act, do not have priority of claim over the dues of a secured creditor as there is no specific provision either in the Central Excise Act or the Customs Act giving those dues first charge, and that the claims of the secured creditors will prevail over the claims of the State. Considering the law declared by the Apex Court in the matter of priority of state debts as already discussed and the provision of Section 35 of SARFAESI Act we are in respectful agreement with the view taken by the Madras High Court”.*



## Punjab National Bank v. Union of India and Others - 2022 SCC OnLine 227



Whether in the absence of any provisions providing for First Charge in relation to Central Excise dues in the Central Excise Act, 1944, the dues of the Excise department would have priority over the dues of the Secured Creditors or not?

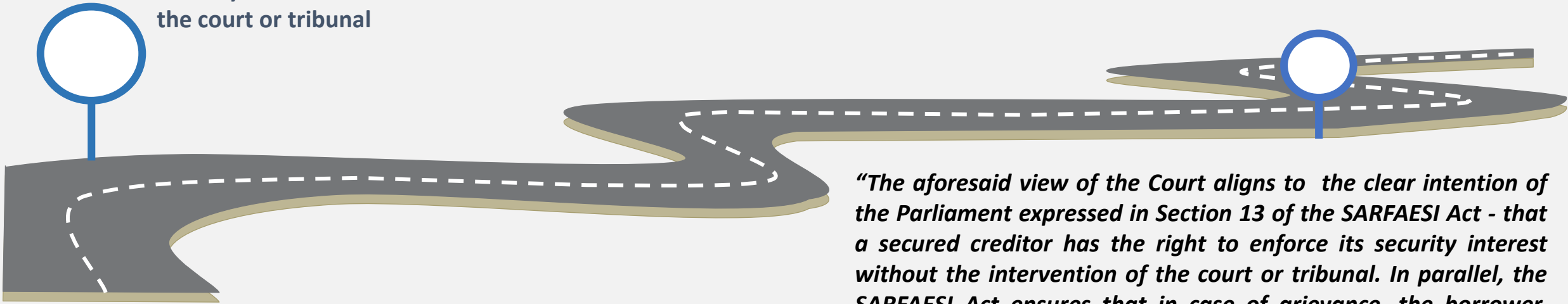
*The Court ruled that the Commissioner of Customs and Central Excise could not have invoked the powers under Rule 173Q(2) of the Central Excise Rules, 1944 on 26.03.2007 and 29.03.2007 for confiscation of land, buildings etc., when on such date, the said Rule 173Q(2) was not in the Statute books, having been omitted by a notification dated 12.05.2000.*

*Second, the dues of the secured creditor, i.e. the Appellant-bank, will have priority over the dues of the Central Excise Department, as even after insertion of Section 11E in the Central Excise Act, 1944 (w.e.f. 08.04.2011), the provisions contained in the SARFAESI Act, 2002 will have an overriding effect on the provisions of the Central Excise Act of 1944.*



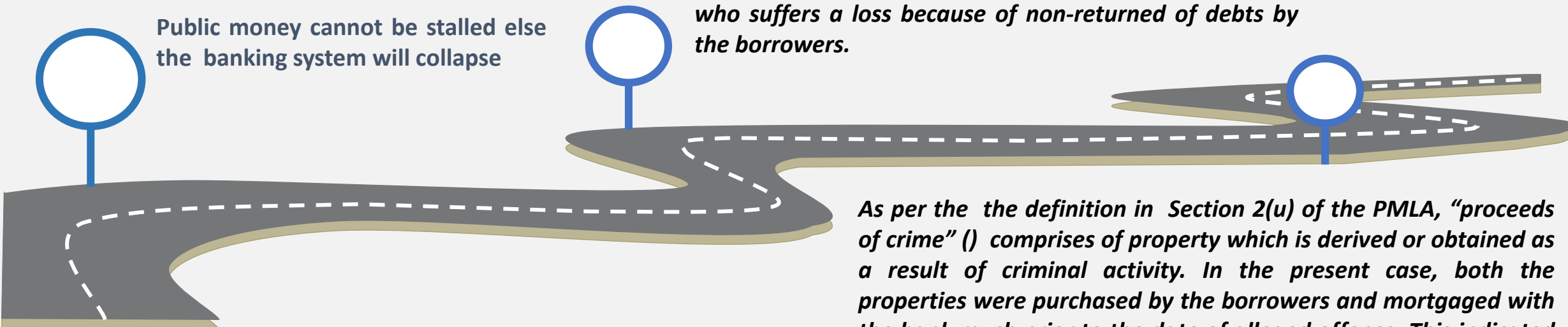
# Pegasus Assets Reconstruction Private Limited v. M/s Haryana Concast Limited and Anr. (2016) 4 SCC 47

A secured creditor has the right to enforce its security interest without the intervention of the court or tribunal



*“The aforesaid view of the Court aligns to the clear intention of the Parliament expressed in Section 13 of the SARFAESI Act - that a secured creditor has the right to enforce its security interest without the intervention of the court or tribunal. In parallel, the SARFAESI Act ensures that in case of grievance, the borrower, which in the case of a company under liquidation would mean the liquidator, will have the right of seeking redressal under Sections 17 and 18 of the SARFAESI Act”.*

# Bank of Baroda v. The Deputy Director- Karnataka High Court *PMLA Vs SARFAESI* FPA-PMLA-2115/ MUM/ 2017



Public money cannot be stalled else the banking system will collapse

*The HC ruled that public money cannot be stalled, else the banking system would collapse. The said provision has also been amended under PMLA - where the attachment of assets can be lifted in the case of a victim who suffers a loss because of non-returned of debts by the borrowers.*

*As per the the definition in Section 2(u) of the PMLA, “proceeds of crime” () comprises of property which is derived or obtained as a result of criminal activity. In the present case, both the properties were purchased by the borrowers and mortgaged with the bank much prior to the date of alleged offence. This indicated that no proceeds of crime are involved in the acquiring of the property and hence the same cannot be attached.*

## Authorized Officer, State Bank of Travancore & Anr. v. Mathew K.C (2018) 3 SCC 85

On passing of stay orders by the High Courts. Bank loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public

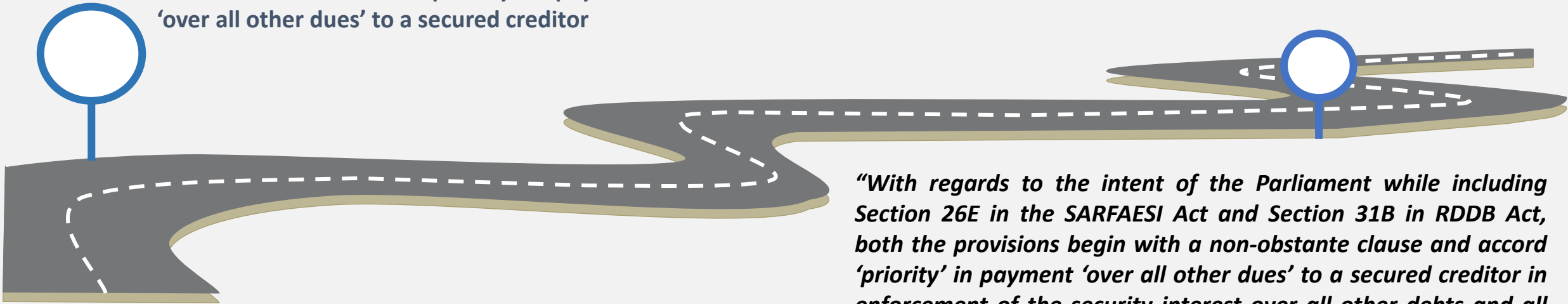
*The Court ruled that it is its solemn duty to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons of the case falling under a defined exception, duly discussed, after noticing the relevant law. In financial matters, grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved party has the remedy to move for vacating the interim order.*

*Loans by financial institutions are granted from public money generated at the tax payers expense. This loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate other loans. Circulation of money cannot be permitted to be blocked by frivolous litigation.*



# Jalgaon Janta Sahakari Bank Ltd. & Anr. v. Joint Commissioner- Bombay High Court -WP (C) 2935 of 2018

Section 26E in the SARFAESI Act and Section 31B in RDDB Act accord 'priority' in payment 'over all other dues' to a secured creditor



*“With regards to the intent of the Parliament while including Section 26E in the SARFAESI Act and Section 31B in RDDB Act, both the provisions begin with a non-obstante clause and accord ‘priority’ in payment ‘over all other dues’ to a secured creditor in enforcement of the security interest over all other debts and all revenues, taxes, cesses and other rates payable to the central government or state government or local authorities”.*

## Deputy Director Directorate of Enforcement Delhi v. Axis Bank & Ors- Delhi High Court - 2019 SCC OnLine Del 7854

### PMLA Vs SARFAESI

*"If it is shown , by cogent evidence, by the bonafide third party claimant (as aforesaid), staking interest in an alternative attachable property (or deemed tainted property) claiming that it had acquired the same at a time anterior to the commission of the proscribed criminal activity, the property to the extent of such interest of the third party will not be subjected to confiscation so long as the charge or encumbrance of such third party subsists, the attachment under PMLA being valid or operative subject to satisfaction of the charge or encumbrance of such third party and restricted to such part of the value of the property as is in excess of the claim of the said third party.*

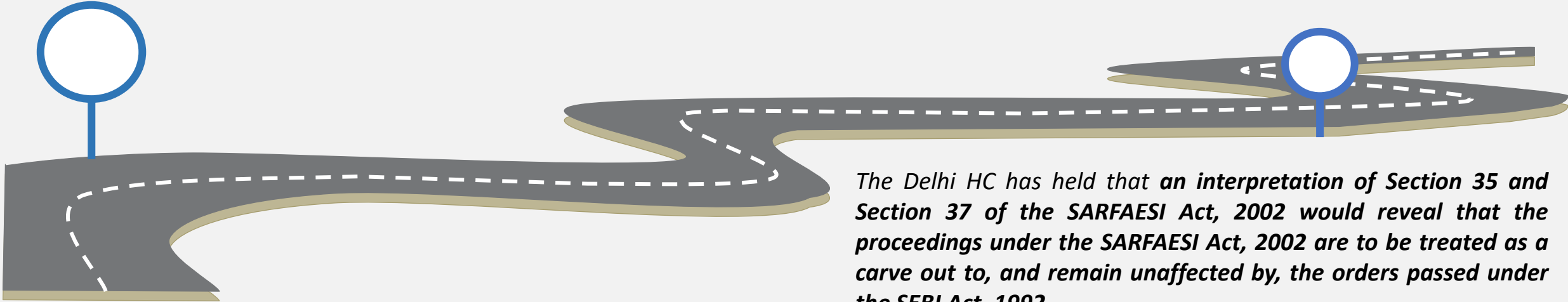
*(xv). If the bonafide third party is a claimant (as aforesaid) and is a "secured creditor", pursuing enforcement of "security interest" in the property (secured asset) sought to be attached, and if the property is an alternative attachable property (or deemed tainted property), having acquired such interest from person(s) accused of (or charged with) the offence of money-laundering (or his abettor), or from any other person through such transaction (or inter-connected transactions) as involve(s) criminal activity relating to a scheduled offence, then this third party (secured creditor) having initiated action, in accordance with law for enforcement of such interest prior to the order of attachment under PMLA, the directions of such attachment under PMLA shall be valid and operative subject to satisfaction of the charge or encumbrance of such third party and restricted to such part of the value of the property as is in excess of the claim of the said third party".*





# ICICI Bank Limited Vs DGM SEBI & Ors. W.P.(C) 3796/2022- Decided on 21.07.2023

## SARFAESI VS SEBI Act

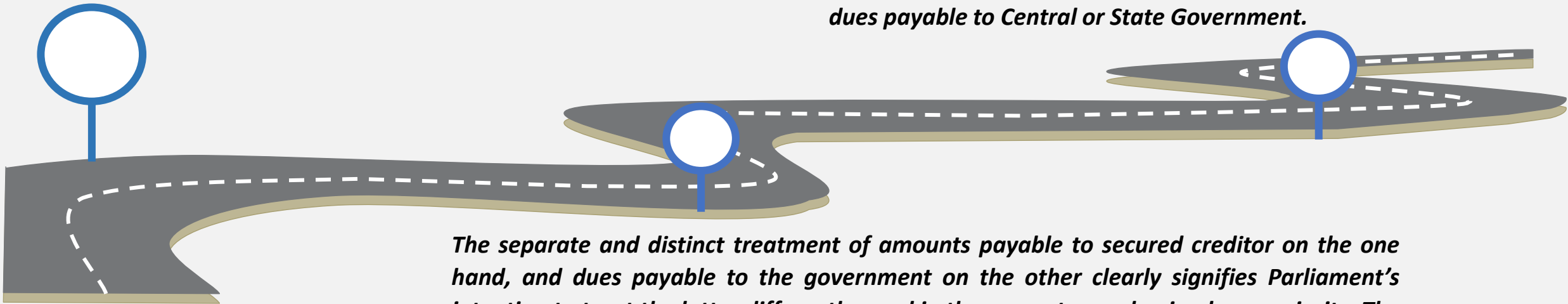


*The Delhi HC has held that **an interpretation of Section 35 and Section 37 of the SARFAESI Act, 2002 would reveal that the proceedings under the SARFAESI Act, 2002 are to be treated as a carve out to, and remain unaffected by, the orders passed under the SEBI Act, 1992.***

# Paschimanchal Vidhut Vtran Nigam Ltd v. Raman Ispat Pvt Ltd Secured - Creditor Vs Government Dues

*The Judgment has clarified the legal position under section 53 of the Code by observing that the decision of Rainbow Papers did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors.*

*The Apex Court has emphasized that the careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings are paid. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.*



*The separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament's intention to treat the latter differently - and in the present case, having lower priority. The Court further clarified that this intention is also evident from a reading of the preamble to the Act itself.*

## Key Judgments in the context of IBC & Its Overriding Effect

- **Innoventive Industries, CIT v. Monnet Ispat & Energy Ltd.**
- **Duncans Industries Ltd. v. AJ Agrochem**
- **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs**
- **Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.**

# **JUDGMENTS IN RESPECT OF SECTION 14 OF SARFAESI ACT**

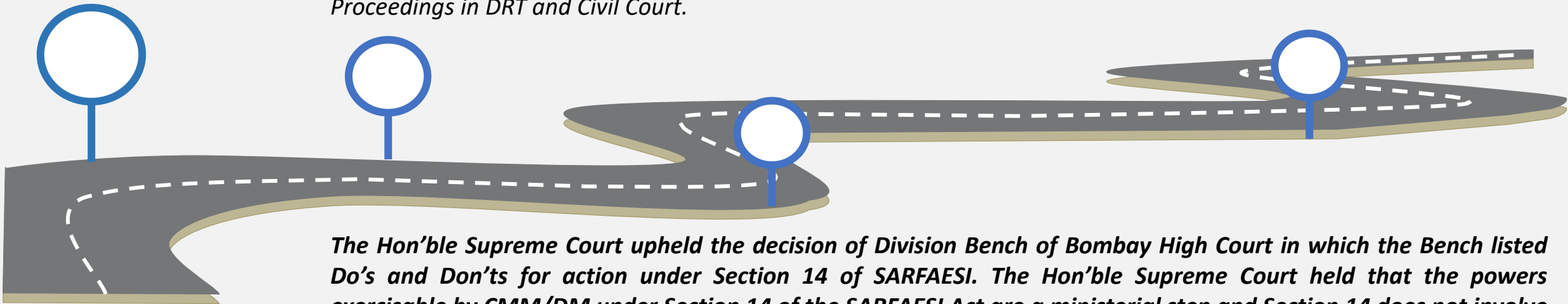


# Balkrishna Rama Tarle Dead thr LRS & Anr v. Phoenix ARC Pvt. Ltd. & Ors.

## Do's and Don'ts for action under Section 14 of SARFAESI

*This was a landmark judgment on a civil suit filed by a Borrower against a Bank/Financial Institution in relation to the proceedings for recovery of debt by a Bank or Financial Institution under RDB Act 1993, Transfer of a suit from Civil Court to a Debts Recovery Tribunal (DRT) and Parallel Proceedings in DRT and Civil Court.*

*At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor (with respect to the secured assets). The aggrieved party is to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal.*

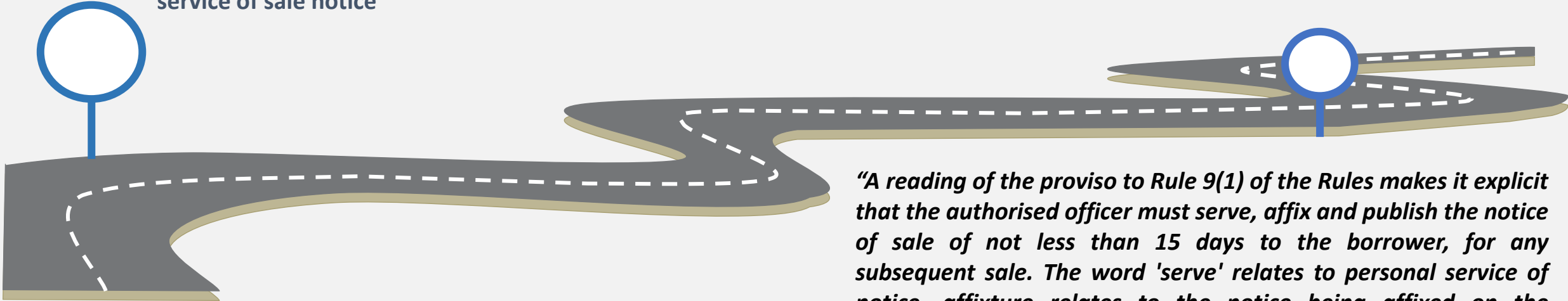


*The Hon'ble Supreme Court upheld the decision of Division Bench of Bombay High Court in which the Bench listed Do's and Don'ts for action under Section 14 of SARFAESI. The Hon'ble Supreme Court held that the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are a ministerial step and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. Against this backdrop, once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner.*

# E.K. Rajan v. The Authorized Officer, Canara Bank

## WP(C) No. 27485 of 2021- Kerala High Court

Mandatory nature of the modes of service of sale notice



*“A reading of the proviso to Rule 9(1) of the Rules makes it explicit that the authorised officer must serve, affix and publish the notice of sale of not less than 15 days to the borrower, for any subsequent sale. The word 'serve' relates to personal service of notice, affixture relates to the notice being affixed on the property and the publication relates to the publication of notice in the newspaper dailies. The conjunction 'and' employed in the proviso also indicate the mandatory nature of all three methods of notice. Further, in spite of the amendment to section 13(8) of the Act, the proviso to Rule 9(1) mandates the three methods of serve, affix and publish the notice to be carried out, with 15 days clear notice”.*





# Kotak Mahindra Bank Limited v. Girnar Corrugators Pvt. Ltd. & Ors. 2023 SCC OnLine SC 15

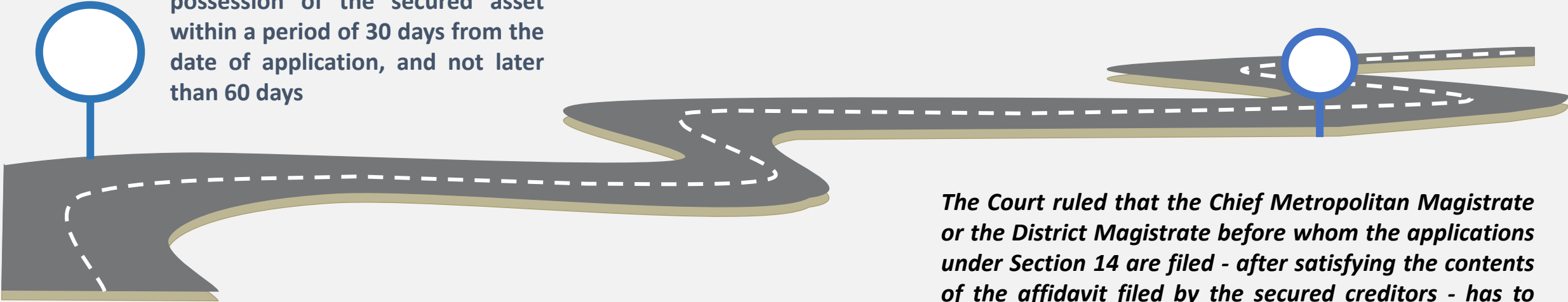
District Magistrate has no jurisdiction and/or District Magistrate and/or even the Chief Metropolitan Magistrate has no jurisdiction to adjudicate the dispute between secured creditor and debtor

*“While exercising power under [Section 14](#) of the SARFAESI Act, even the District Magistrate has no jurisdiction and/or District Magistrate and/or even the Chief Metropolitan Magistrate has no jurisdiction to adjudicate the dispute between secured creditor and debtor. Under [Section 14](#) of the SARFAESI Act, the District Magistrate or the Chief Metropolitan Magistrate as the case may be, is required to assist the secured creditor in getting the possession of secured assets. Under [Section 14](#) of the SARFAESI Act, neither the District Magistrate nor Metropolitan Magistrate would have any jurisdiction to adjudicate and/or decide the dispute even between the secured creditor and the debtor.*

*If any person is aggrieved by the steps under [Section 13\(4\)](#) / order passed under [Section 14](#), then the aggrieved person has to approach the Debts Recovery Tribunal by way of appeal / application under [Section 17](#) of the SARFAESI Act. Therefore, the order passed by the Naib Tehsildar refusing to take the possession pursuant to the order passed by the District Magistrate under [Section 14](#) of the SARFAESI Act was wholly without jurisdiction and therefore also the same was liable to be set aside”.*

# Kalupur Commercial Co-operative Bank Ltd v. State of Gujarat

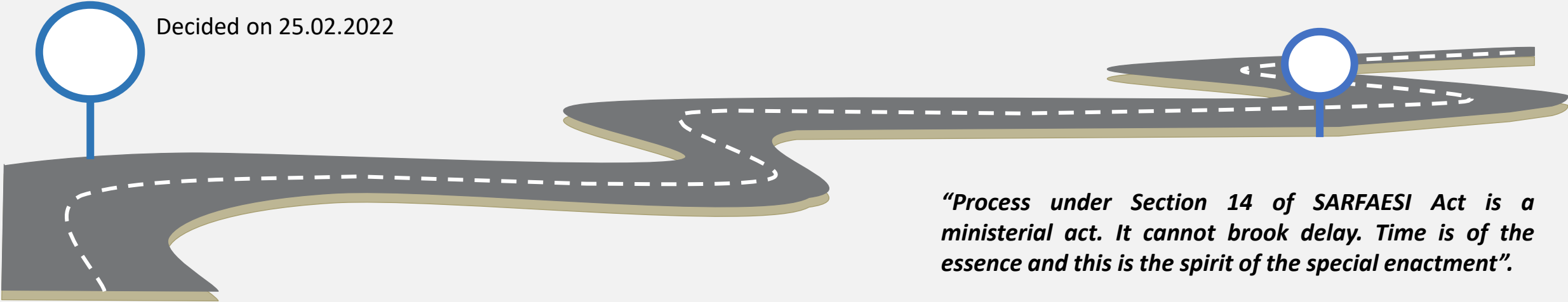
## 019 SCC Online Guj 1892



CMM has to pass appropriate orders for the purpose of taking possession of the secured asset within a period of 30 days from the date of application, and not later than 60 days

*The Court ruled that the Chief Metropolitan Magistrate or the District Magistrate before whom the applications under Section 14 are filed - after satisfying the contents of the affidavit filed by the secured creditors - has to pass appropriate orders for the purpose of taking possession of the secured asset within a period of 30 days from the date of application, and not later than 60 days.*

# NKGSB Cooperative Bank Limited v. Subir Chakravarty & Ors. (Civil Appeal 12 No. 1637 / 2022)



Decided on 25.02.2022

*“Process under Section 14 of SARFAESI Act is a ministerial act. It cannot brook delay. Time is of the essence and this is the spirit of the special enactment”.*

# NKGSB Cooperative Bank Ltd Vs Subir Chakravarty & Ors

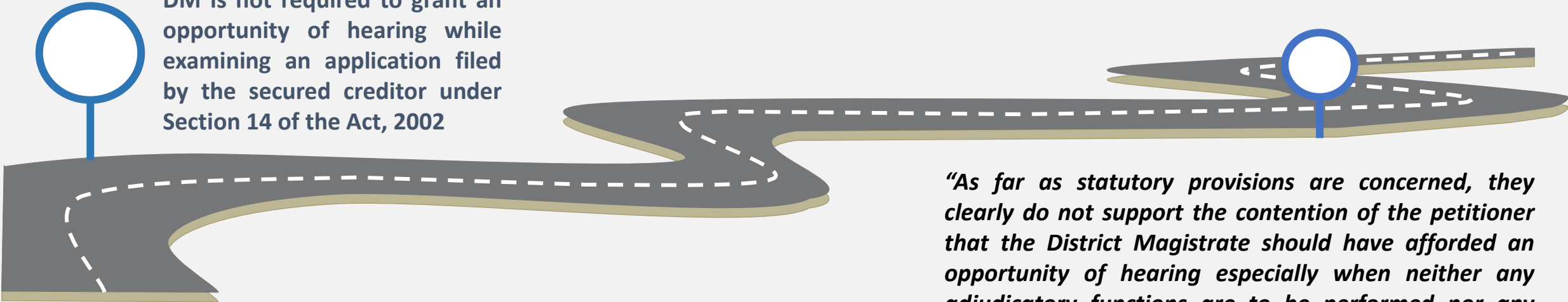
## Supreme Court

CMM/DM can appoint an advocate in exercise of powers under section 14(1A) of SARFAESI Act

*"It is well established that an advocate is a guardian of constitutional morality and justice equally with the Judge. Sub-Section (1A) of Section 14 of the 2002 Act is no impediment for the CMM/DM to engage services of an advocate (an officer of the court)- only for taking possession of secured assets and documents relating thereto and to forward the same to the secured creditor in furtherance of the orders passed by the CMM/DM under Section 14(1) of the 2002 Act in that regard."*

*If an advocate is appointed as commissioner for execution of the orders passed by the CMM/DM under Section 14(10) of the 2002 Act, that responsibility and duty will be discharged honestly and in accordance with rule of law. In our view, in law, an advocate is an officer of the Court and, thus, subordinate to the CMM/DM".*

M/s. Maa Kalika Bhandar & Ors.  
v. The Collector and District Magistrate, Khordha & Ors.-  
W.P.(c) No.26500 of 2021-Orissa High Court



DM is not required to grant an opportunity of hearing while examining an application filed by the secured creditor under Section 14 of the Act, 2002

*“As far as statutory provisions are concerned, they clearly do not support the contention of the petitioner that the District Magistrate should have afforded an opportunity of hearing especially when neither any adjudicatory functions are to be performed nor any right inter-se the parties are to be determined by the District Magistrate. The only remedy available with the petitioners is to challenge the action of the bank by filing of an application before the DRT under section 17 of the Act, 2002”.*

# Mr. Prateek Pradeep Agarwal v. Union of India- Bombay High Court- WRIT PETITION (L) NO. 5858 OF 2020

It is necessary to read into Rule 8(8) - that sale by private treaty can be conducted only after the sale by inviting tenders from the public or by holding public auction fails

*“ It is possible that as a result of the amended Rule 8(8), the sale of secured asset by private treaty can be conducted, even at the first instance, without making attempts to sell the same by public auction or by inviting public tender. Thus allowing sale by private treaty without failure of sale by method of public auction or by inviting public tender will be violative of the object of the said Act and said Rules of ensuring receipt of maximum possible price by sale of the secured asset. In that case, the said amended Rule 8(8) will become unconstitutional as unfettered and arbitrary powers are conferred on the secured creditor/authorised officer to that extent. Said amended Rule 8(8) is not per se unconstitutional.*

*If the said Rule is invoked at the first instance, then in view of absence of public notice as public participation is denied, the same will amount to conferring unfettered, arbitrary and excessive powers on the secured creditor/ authorised officer resulting into destroying the object of the said Act and said Rules. Thus to save the said amended Rule 8(8) from unconstitutionality on the ground that unfettered and arbitrary powers are given to secured creditors/authorised officer it is necessary to read into said Rule 8(8) that sale by private treaty can be conducted only after the sale by inviting tenders from the public or by holding public auction fails”.*



## EVICTION OF TENANT FROM THE SECURED ASSETS



# Harshad Govardhan Sondagar v. International Assets Reconstruction Company Ltd- (2014) 6 SCC 1- Supreme Court

Right of a tenant of secured assets

**(a) Tenant who was inducted into the property before it was mortgaged to the Bank:**

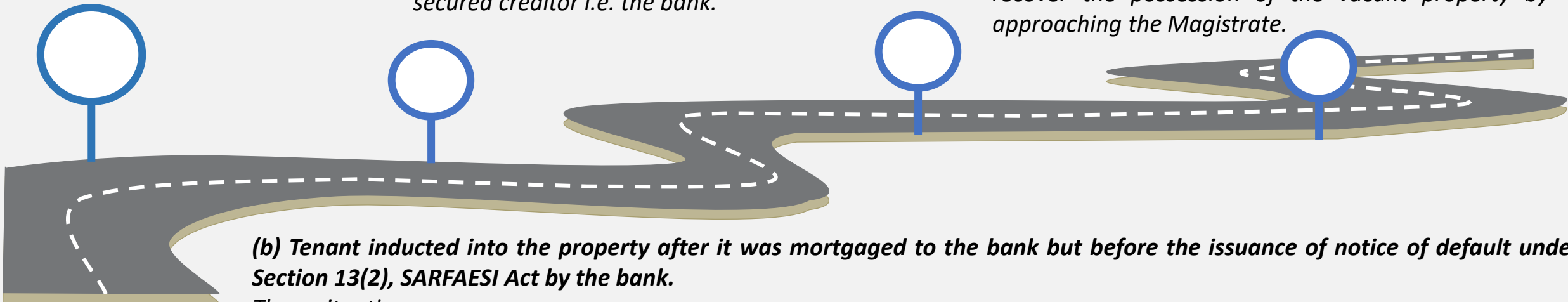
*Tenancy would be binding on the secured creditor i.e. the bank.*

- **A lease that is in contravention with the provisions of Section 65A, TOPA:** A lease created after the mortgage but in contravention to the terms of Section 65A, TOPA, will be invalid, thus allowing the bank to recover the possession of the vacant property by approaching the Magistrate.

**(b) Tenant inducted into the property after it was mortgaged to the bank but before the issuance of notice of default under Section 13(2), SARFAESI Act by the bank.**

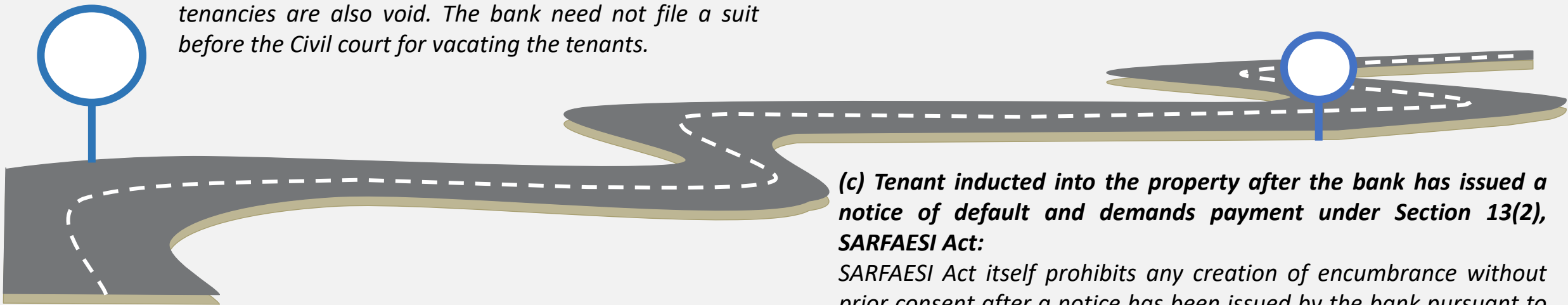
*Three situations:*

- **A lease that complies with the provisions of Section 65A, TOPA and is not in contravention with the terms and conditions of the mortgage:** Tenants cannot be deprived of enjoying their property by the banks, until and unless their leases have expired or have been terminated in accordance with the terms of the lease. It would be desirable for the banks to give a notice to the tenants after taking over the ownership rights under the SARFAESI Act, ceasing the alleged lease that can be asserted with a 15 days prior notice being without prejudice to the bank's assertion that there is no legitimate lease at all.



## CONT....

- ***A lease that is in contravention to the terms of the mortgage, forbidding the mortgagor from creating any leasing of the property:*** The banks have an option to directly approach the Magistrate to seek recovery by evicting the alleged tenants from the property as their tenancies are also void. The bank need not file a suit before the Civil court for vacating the tenants.



***(c) Tenant inducted into the property after the bank has issued a notice of default and demands payment under Section 13(2), SARFAESI Act:***

*SARFAESI Act itself prohibits any creation of encumbrance without prior consent after a notice has been issued by the bank pursuant to Section 13(13) of the Act. Thus, even in such situations, banks don't need to get the tenants evicted by filing a lawsuit in a civil court, nor can they be compelled to sell the property with such tenants in possession. The bank can simply get the tenants evicted and recover the possession of the vacant property by directly approaching the magistrate.*

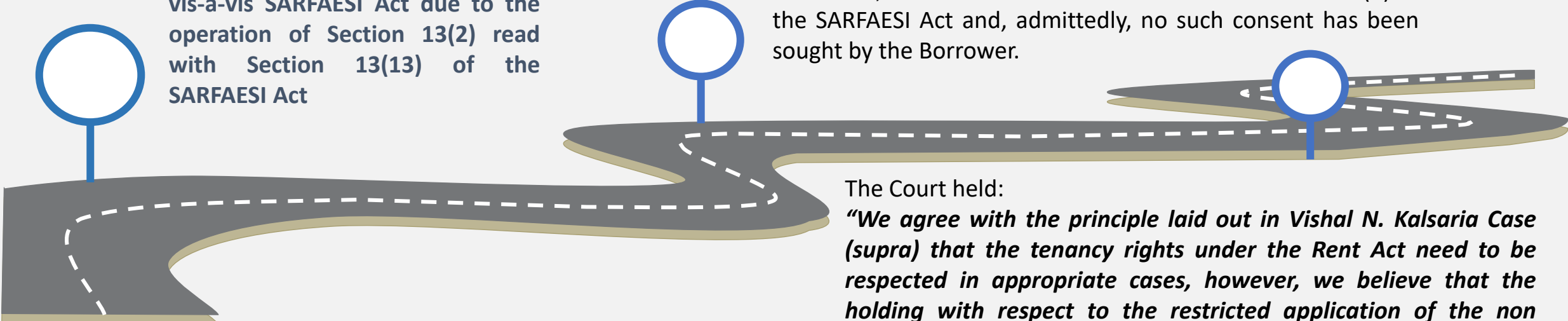
# Vishal N Kalsaria v. Bank of India & Ors. on January 20, 2016

Once tenancy is created, a tenant can be evicted only after following the due process of law

*“As far as granting leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken. We have already taken this view in the case of Harshad Govardhan Sondagar (supra). We have not stated anything to the effect that the tenancy created after mortgaging the property must necessarily be registered under the provisions of the Registration Act and the Stamp Act.*

*It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act. The expression ‘any other law for the time being in force’ as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State legislatures. It can only extend to the laws operating in the same field”.*

# Bajarang Shyamsunder Agarwal vs Central Bank Of India on September 11, 2019 - CA NO. 1371 OF 2019-Supreme Court (Arising out of SLP (CRL.) NO. 9590/2015)



Rent Act would not come to the aid of a “tenant-in-sufferance” vis-à-vis SARFAESI Act due to the operation of Section 13(2) read with Section 13(13) of the SARFAESI Act

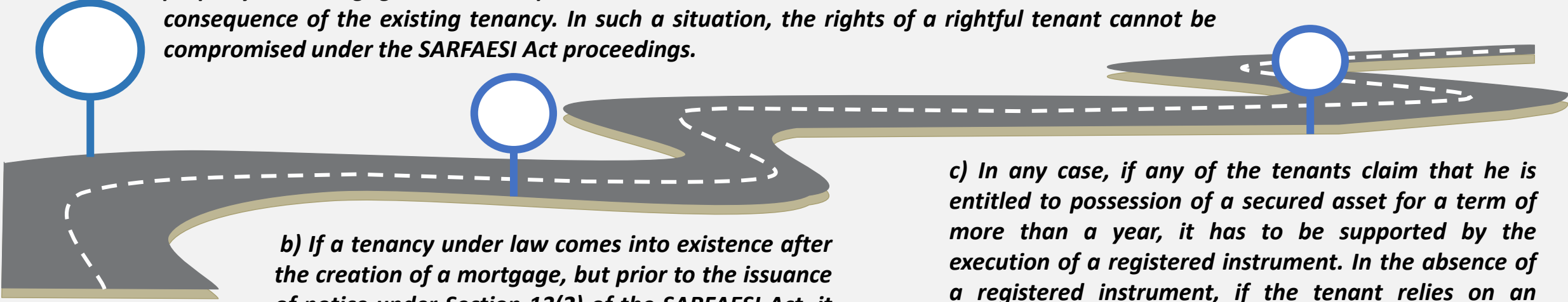
Even if the tenancy had been claimed to be renewed in terms of Section 13(13) of the SARFAESI Act, the Borrower would be required to seek the consent of the secured creditor for transfer of the Secured Asset by way of sale, lease or otherwise, after issuance of the notice under Section 13(2) of the SARFAESI Act and, admittedly, no such consent has been sought by the Borrower.

The Court held:

***“We agree with the principle laid out in Vishal N. Kalsaria Case (supra) that the tenancy rights under the Rent Act need to be respected in appropriate cases, however, we believe that the holding with respect to the restricted application of the non obstante clause under section 35 of SARFAESI Act, to only apply to the laws operating in the same field is too narrow and such a proposition does not follow from the ruling of this Court in Harshad Govardhan Case (supra). In our view, the objective of SARFAESI Act, coupled with the T.P. Act and the Rent Act are required to be reconciled herein in the following manner.*”**

## CONT....

*a) If a valid tenancy under law is in existence even prior to the creation of the mortgage, the tenant's possession cannot be disturbed by the secured creditor by taking possession of the property. The lease has to be determined in accordance with Section 111 of the TP Act for determination of leases. As the existence of a prior existing lease inevitably affects the risk undertaken by the bank while providing the loan, it is expected of Banks/Creditors to have conducted a standard due diligence in this regard. Where the bank has proceeded to accept such a property as mortgage, it will be presumed that it has consented to the risk that comes as a consequence of the existing tenancy. In such a situation, the rights of a rightful tenant cannot be compromised under the SARFAESI Act proceedings.*



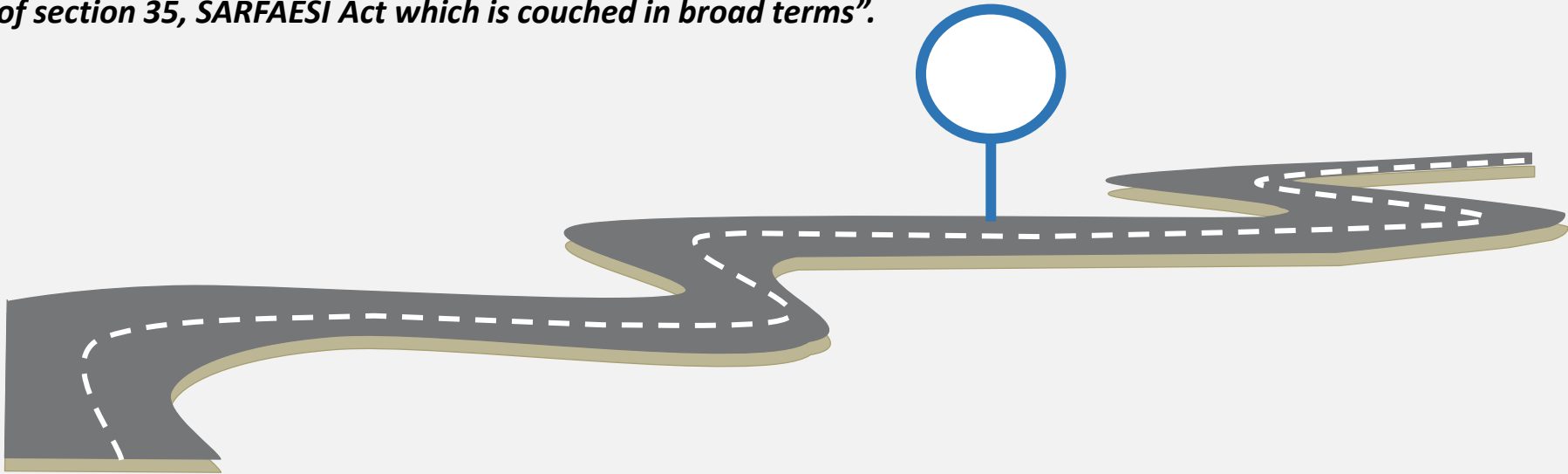
*b) If a tenancy under law comes into existence after the creation of a mortgage, but prior to the issuance of notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65-A of the T.P. Act.*

*c) In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if the tenant relies on an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under Section 107 of the T.P. Act.*

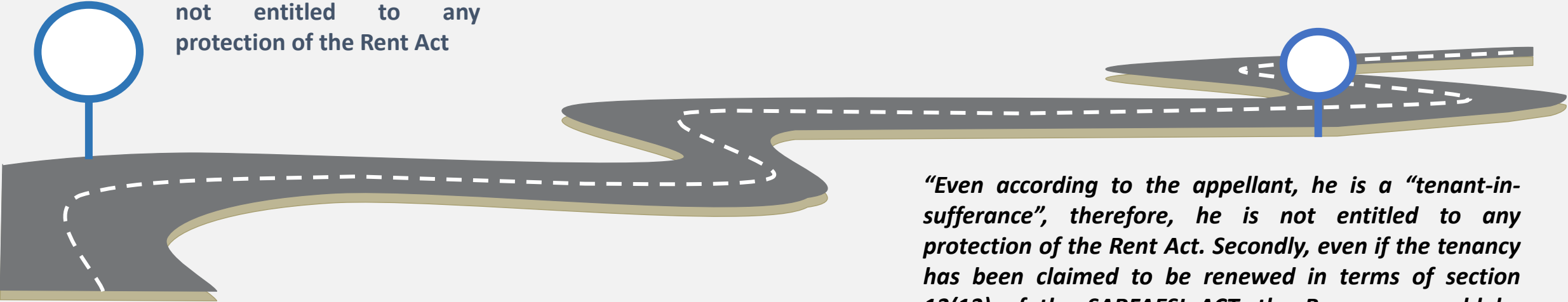


## CONT....

*The operation of the Rent Act cannot be extended to a “tenant-in-sufferance” vis-à-vis the SARFAESI Act, due to the operation of Section 13(2) of the SARFAESI Act. A contrary interpretation would violate the intention of the legislature to provide for section 13(13), which as a valuable role in making SARFAESI Act a self-executory instrument of debts recovery. Moreover, such an interpretation would also violate the mandate of section 35, SARFAESI Act which is couched in broad terms”.*



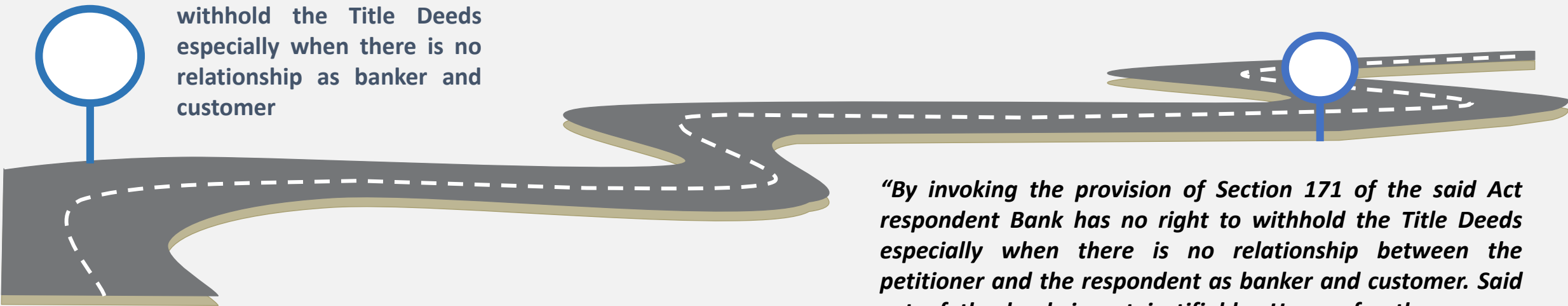
# Hemraj Ratnakar Salian Vs HDFC Bank Ltd & Ors. Criminal Appeal No. (s).843–844 OF 2021- Supreme Court



A “tenant-in-sufferance”, is not entitled to any protection of the Rent Act

*“Even according to the appellant, he is a “tenant-in-sufferance”, therefore, he is not entitled to any protection of the Rent Act. Secondly, even if the tenancy has been claimed to be renewed in terms of section 13(13) of the SARFAESI ACT, the Borrower would be required to seek consent of the secured creditor for transfer of the secured assets”.*

# Mr. Sunil s/o Ratnakar Gutte v. Union Bank of India -WP No.32 OF 2022

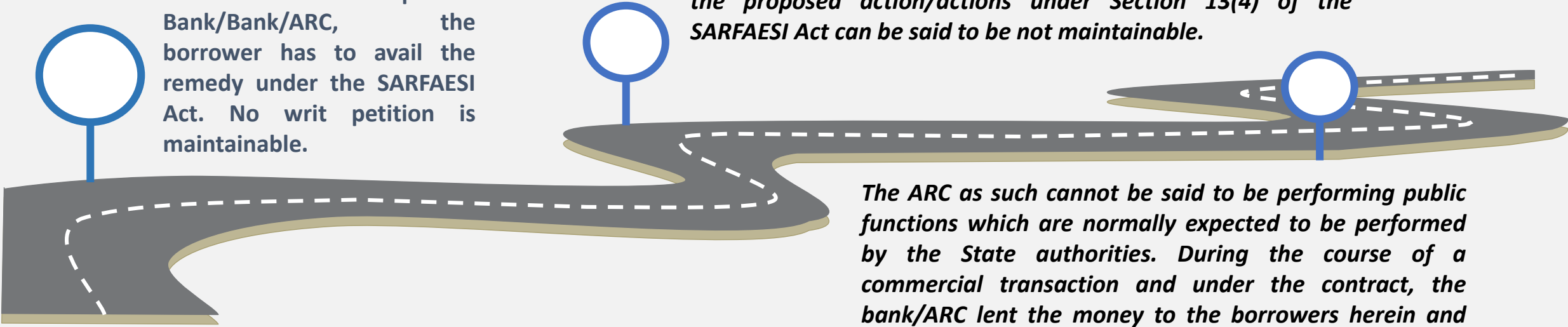


Bank has no right to withhold the Title Deeds especially when there is no relationship as banker and customer

*“By invoking the provision of Section 171 of the said Act respondent Bank has no right to withhold the Title Deeds especially when there is no relationship between the petitioner and the respondent as banker and customer. Said act of the bank is not justifiable. Hence, for the reasons recorded we have no hesitation to hold that the respondent-Bank has no right of general lien over the Title Deeds deposited by the petitioner after the entire loan amount was fully satisfied by the petitioner”.*

**SOME RELATED JUDGMENTS IN THE  
CONTEXT OF SALE UNDER SARFAESI ACT**

# Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir & Ors. - Supreme Court



If aggrieved by any of the actions of the private Bank/Bank/ARC, the borrower has to avail the remedy under the SARFAESI Act. No writ petition is maintainable.

*“In view of the statutory remedy available under Section 17 of the SARFAESI Act, the writ petitions against the notice under Section 13(4) of the SARFAESI Act was not required to be entertained by the High Court.*

*Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC – appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable.*

*The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities”.*

# Standard Chartered Bank v. Noble Kumar & Ors. Supreme Court

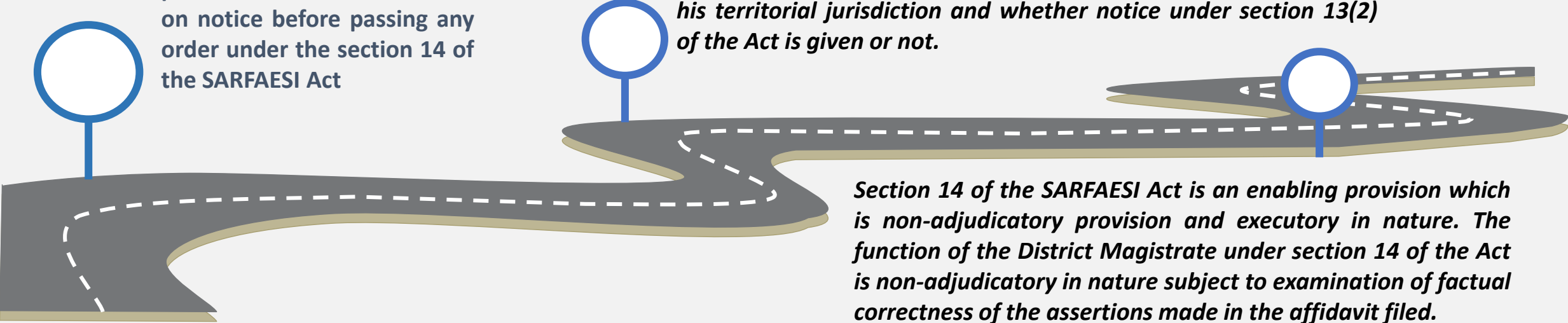
It is not mandatory for the secured creditor to make an attempt to obtain possession on his own before approaching the Magistrate under section 14.

*“No doubt that a secured creditor may initially resort to the procedure under section 13(4) and on facing resistance, he may still approach the Magistrate under section 14. But it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under section 14.”*

*Rule 8 provides for the procedure to be followed by secured creditor taking possession of the secured asset without the intervention of Court. Such a process was unknown prior to the SARFAESI Act. So, specific provision is made under Rule 8 to ensure transparency in taking such possession. We do not see any conflict between different procedures prescribed by law for taking possession of the secured asset”.*



# Adams Marketing Pvt. Ltd. & Ors. V. State Bank Of India & Anr. on January 19, 2022- Calcutta High Court



No obligation on the DM to put the defaulter borrower on notice before passing any order under the section 14 of the SARFAESI Act

*“The nature of powers that are exercised by the District Magistrate under section 14 of the Act are purely executionary in nature in taking possession of the secured assets and delivering it to the secured creditor. At the time of passing order under section 14 of Act, the District Magistrate will have to consider only two aspects. He must find out whether the secured assets fall within his territorial jurisdiction and whether notice under section 13(2) of the Act is given or not.*

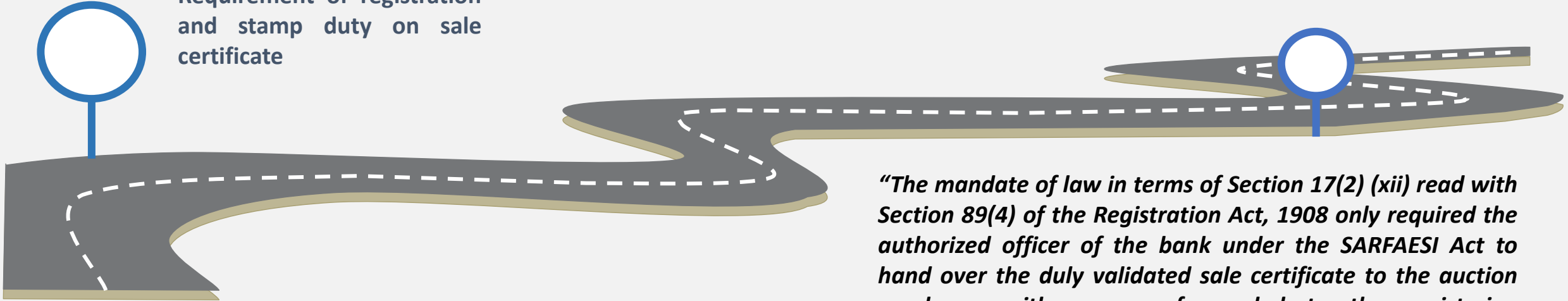
*Section 14 of the SARFAESI Act is an enabling provision which is non-adjudicatory provision and executory in nature. The function of the District Magistrate under section 14 of the Act is non-adjudicatory in nature subject to examination of factual correctness of the assertions made in the affidavit filed. No duty is cast upon the District Magistrate to put the defaulter borrower on notice before passing any order under the section 14 of the Act.”*





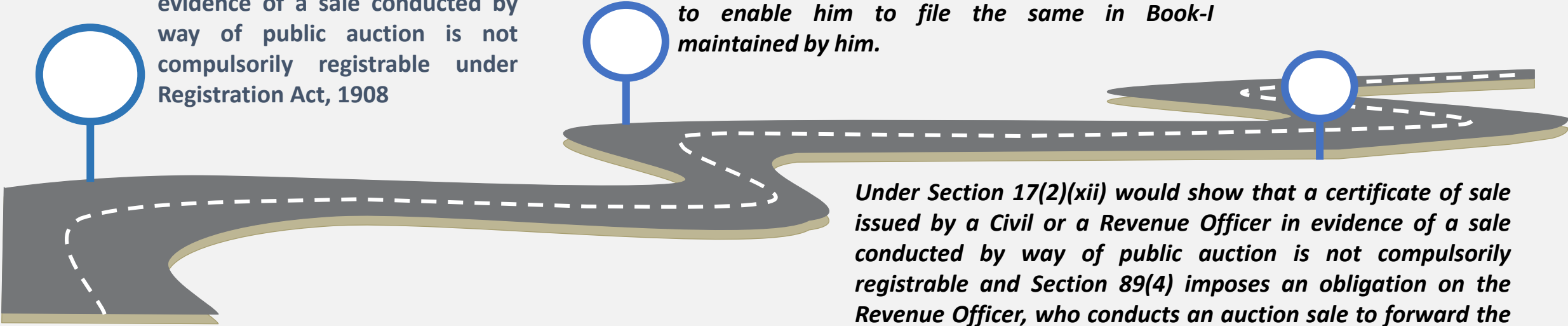
# M/S ESJAYPEE Impex Pvt. Ltd. v. The AGM and the Authorized Officer Canara Bank - Petition(s) for Special Leave to Appeal (C) No(s). 24164/2019

Requirement of registration and stamp duty on sale certificate



*“The mandate of law in terms of Section 17(2) (xii) read with Section 89(4) of the Registration Act, 1908 only required the authorized officer of the bank under the SARFAESI Act to hand over the duly validated sale certificate to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act”.*

**L. Sangeetha Vs. The Sub Registrar, Pollachi**  
**W.P. No. 25139 and W.M.P. No. 24090 of 2022 and W.P. No. 25140 of 2022**  
**High Court of Madras**



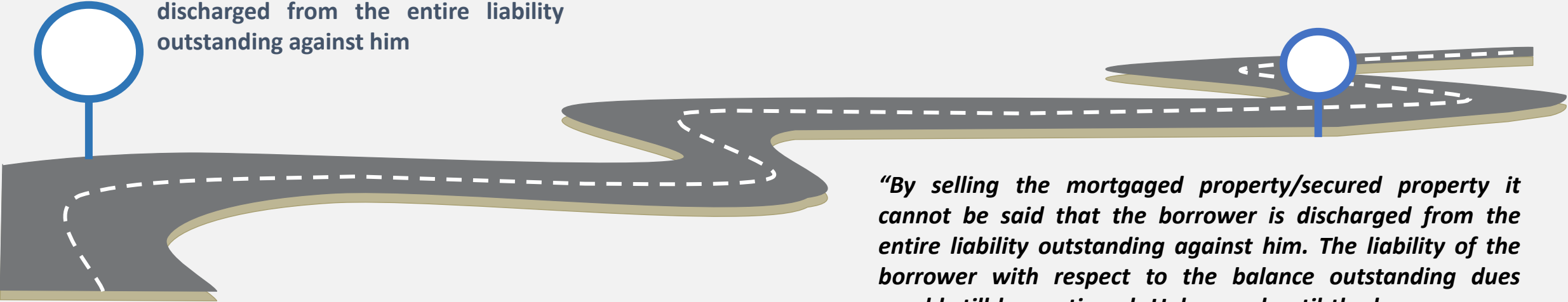
A certificate of sale issued by a Civil or a Revenue Officer in evidence of a sale conducted by way of public auction is not compulsorily registrable under Registration Act, 1908

*“A certificate of sale issued by a Civil or a Revenue Officer in evidence of a sale conducted by way of public auction is not compulsorily registrable and Section 89(4) imposes an obligation on the Revenue Officer, who conducts an auction sale to forward the certificate to the Registering Authority to enable him to file the same in Book-I maintained by him.”*

*Under Section 17(2)(xii) would show that a certificate of sale issued by a Civil or a Revenue Officer in evidence of a sale conducted by way of public auction is not compulsorily registrable and Section 89(4) imposes an obligation on the Revenue Officer, who conducts an auction sale to forward the certificate to the Registering Authority to enable him to file the same in Book-I maintained by him.”*

## Bank of Baroda v. M/s Karwa Trading Company & Anr.

By selling the mortgaged property/secured property it cannot be said that the borrower is discharged from the entire liability outstanding against him



*“By selling the mortgaged property/secured property it cannot be said that the borrower is discharged from the entire liability outstanding against him. The liability of the borrower with respect to the balance outstanding dues would still be continued. Unless and until the borrower was ready to deposit/pay the entire amount payable together with all costs and expenses with the secured creditor, the borrower cannot be discharged from the entire liability outstanding”.*

# JUDGMENTS ON JURISDICTION OF CIVIL COURTS

# Mardia Chemicals Limited & Ors. v. Union of India & Ors. (2004) 4 SCC 311

Restraint on the exercise of the power of sale will be exercised by Courts only under limited circumstances

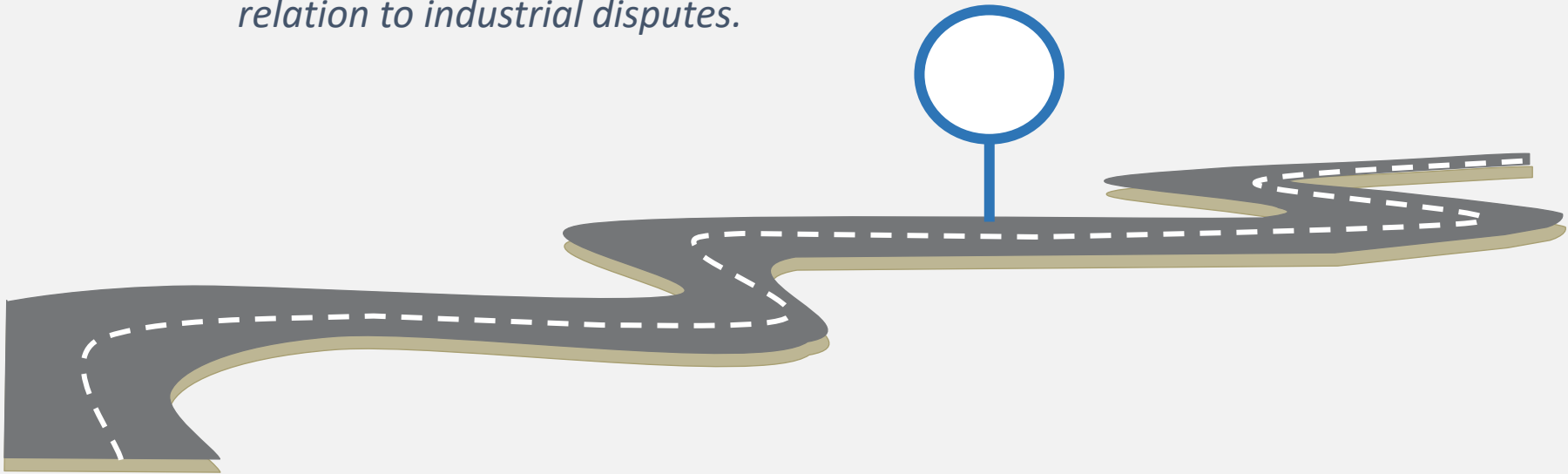
*“The prohibition Section 34 covers even matters which can be taken cognizance of by the DRT though no measures in that direction were taken under sub section (4) of Section 13. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the case of English mortgages.*

*That this restraint on the exercise of the power of sale will be exercised by Courts only under the limited circumstances.*

*The secured creditor must bear in mind the say of the borrower before such a process of recovery is initiated so as to demonstrate that the reply of the borrower to the notice under Section 13(2) of the Act has been considered applying mind to it. The reasons, howsoever brief they may be, for not accepting the objections, if raised in the reply, must be communicated to the borrower”.*

# Premier Automobile Ltd. v. Kamlekar Shantaram (1976) 1 SCC 496

*The Supreme Court formulated the principles applicable to the jurisdiction of the civil court in relation to industrial disputes.*





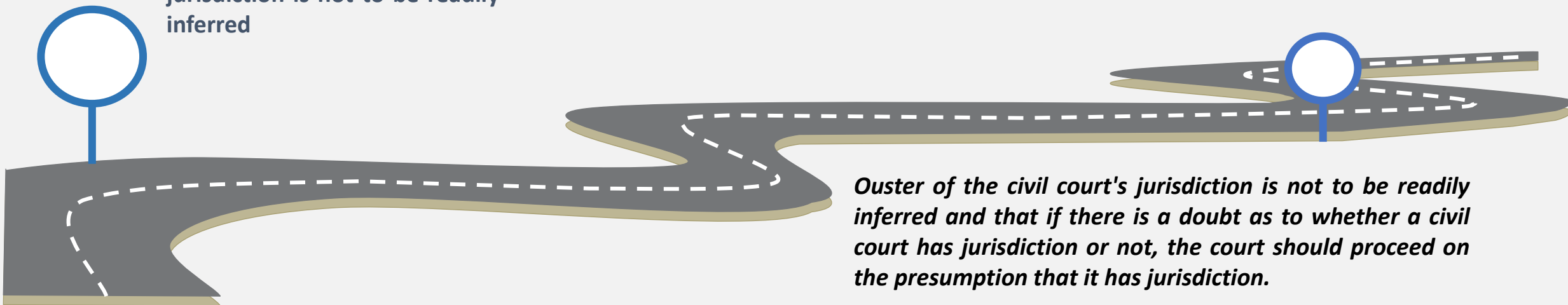
# Bank of Rajasthan Ltd. vs Vck Shares And Stock Broking on November 10, 2022, Supreme Court

Proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the Civil Court

*"In the absence of any such power existing in the Civil Court, an independent suit filed by the borrower against the bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act. However, the proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the Civil Court".*

# Rajasthan SRTC v. Bal Mukund Bairwa (2009) 4 SCC 299

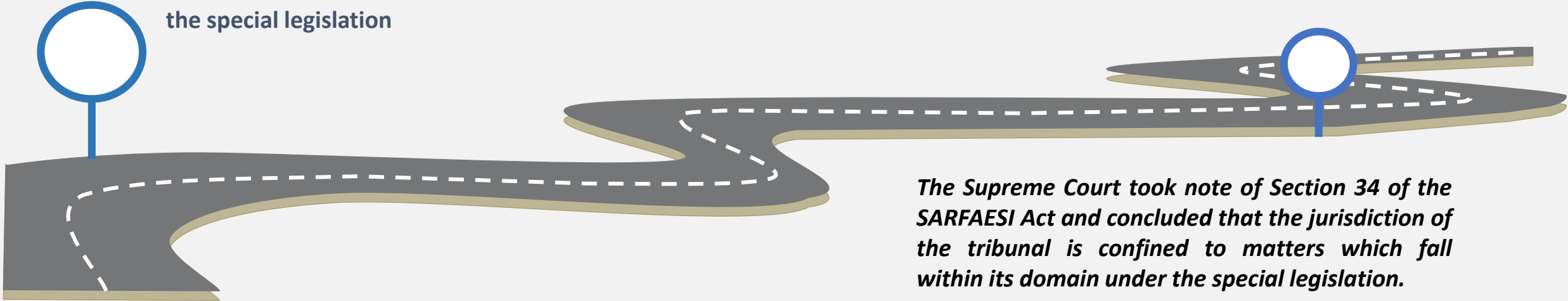
Ouster of the civil court's jurisdiction is not to be readily inferred



*Ouster of the civil court's jurisdiction is not to be readily inferred and that if there is a doubt as to whether a civil court has jurisdiction or not, the court should proceed on the presumption that it has jurisdiction.*

# Standard Chartered Bank v. Dharminder Bhohi (2013) 15 SCC 341

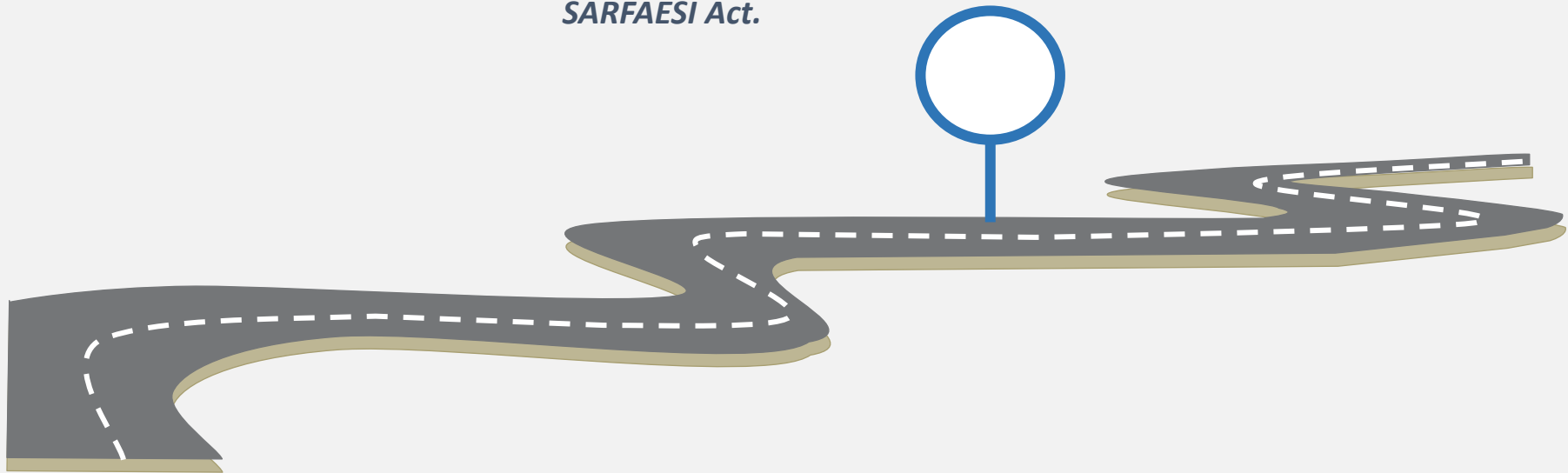
Jurisdiction of the tribunal is confined to matters which fall within its domain under the special legislation



*The Supreme Court took note of Section 34 of the SARFAESI Act and concluded that the jurisdiction of the tribunal is confined to matters which fall within its domain under the special legislation.*

# Jagdish Singh v. Heeralal - (2014) 1 SCC 479

*Supreme Court categorically held that the jurisdictional DRT should be approached in respect of any grievance against any measure under Section 13(4) of the SARFAESI Act.*





# Mantras Green Resources Ltd. & Ors. V. Canara Bank Comm Arbitration Application (L) No. 12570 OF 2021

Borrower can maintain a civil suit despite a remedy being available to file a counterclaim in an application filed by the bank/financial institution before DRT

*In the wake of the clear law laid down in Bank of Rajasthan Ltd. (supra). The position of law that emerges today is, the borrower can maintain a civil suit despite a remedy being available to file a counterclaim in an application filed by the bank/financial institution before the designated forum i.e. Debt Recovery Tribunal and the choice is ultimately of the borrower to approach the Civil Court, if he deem it to be expedient.*

*Amongst the Civil Court and the arbitration proceedings, arbitration being a chosen forum and once it is agreed between the parties that the dispute amongst them, that has or which may arise, shall be referred for arbitration, the Civil Court under Section 8 of the Arbitration and Conciliation Act, 1996 would not entertain the suit and will relegate the parties to the process of arbitration*



# Amira Pure Foods Pvt Ltd v. Canara Bank & Ors.

## WP (C) 8814 & CM No. 33880/2018-Delhi High Court

Court cannot issue a mandamus directing the respondent banks to restructure

*This Court cannot issue a mandamus directing the respondent banks to restructure the financial assistance granted by them to the petitioner.*

### **Cases Referred:**

- ***Haryana Steel & Alloys Ltd. v. IFCI Ltd. & Anr.: 137(2007) DLT 554;***
- ***Chinar Fabrics and Furnishing Private Limited and Ors. v. State Bank of India: W.P.(C) Nos. 18753-57/2005***



# M/S. Reactive Chemicals v. Indian Overseas Bank on March 10, 2010 - Civil Suit (Comm. Div) No.639 of 2018 - Madras High Court



Commercial court under the Commercial Courts Act is prohibited from entertaining a suit where the jurisdiction is vested with DRT or DRAT

*On reading Section 34 of the SARFAESI Act and Section 11 of the Commercial Courts Act conjointly, the position that emerges is that a commercial court or commercial division is prohibited from entertaining a suit or proceeding in respect of matters which the jurisdictional DRT or DRAT, as the case may be, is empowered by the SARFAESI Act to determine.*

**SOME JUDGEMENTS IN THE CONTEXT OF SICA &  
JUDGEMENT PRIOR TO INSERTION OF SECTION 26E  
AND 31B IN THE SARFAESI ACT & RDB ACT**



## Judgements in the Context of SICA & Judgement prior to Insertion of Section 26E and 31B in the SARFAESI Act & RDB Act

KSL & Industries Ltd. v. Arihant  
Threads Ltd (2015) 1 SCC 166

*The provisions of SICA, in particular Section 22, shall prevail over the provision for the recovery of debts in the RDDB Act.*

Madras Petrochem Ltd. v. Board for  
Industrial & Financial Reconstruction &  
Ors. (2016) 4 SCC 1

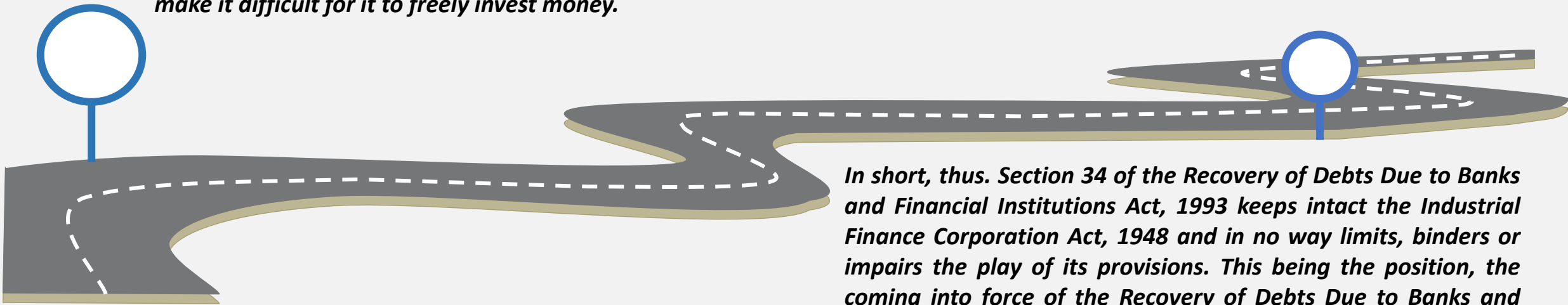
*The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 prevails over the Sick Industrial Companies (Special Provisions) Act, 1985 to the extent of inconsistency therewith. Section 15(1) proviso 3 covers all references pending before the BIFR, no matter whether such reference is at the inquiry stage, scheme stage, or winding up stage.*

Central Bank of India v. State of  
Kerala (2009) 4 SCC 94

*The Court was in complete agreement with the Division Bench which ruled that the statutory first charge created in favour of the State under Section 26B of the Kerala General Sales Tax Act, 1963 has primacy over the right of the bank to recover its dues.*

**Note:** This judgement is prior to amendments in DRBT Act and SARFAESI Act.

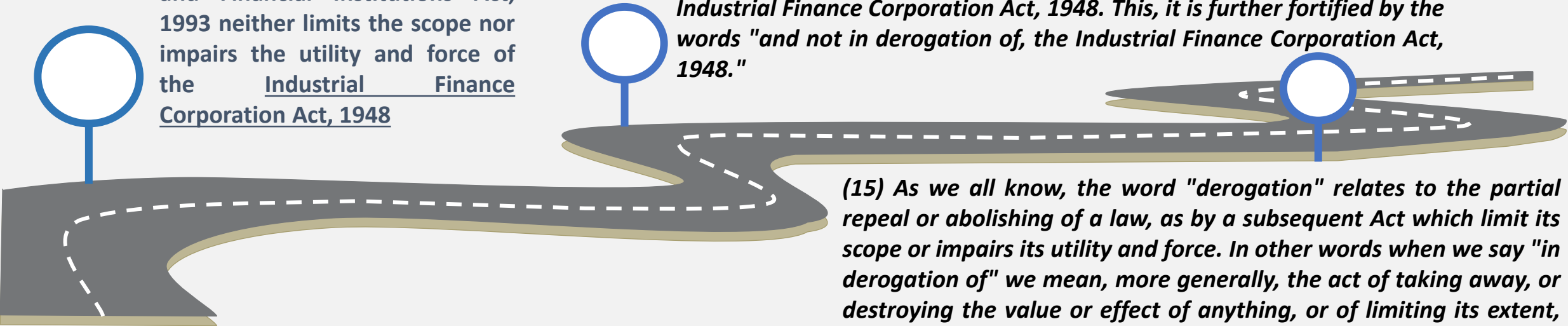
*And, the reason for it is not far to seek. Section 30 of the Industrial Finance Corporation Act, 1948 confers on the Corporation special rights to enable it to recover its dues promptly and effectively, and without the necessity of resorting to long drawn litigation requiring adjudication by judicial authorities and which may harm the interest of the Corporation, frustrate its rights, block its funds and make it difficult for it to freely invest money.*



*In short, thus. Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 keeps intact the Industrial Finance Corporation Act, 1948 and in no way limits, binders or impairs the play of its provisions. This being the position, the coming into force of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has no effect on the pendency of the present proceedings. I hold accordingly.*



# Industrial Finance Corporation of India v. Allied International Products Ltd. & Ors. (1997) 2 Comp LJ 195 (Del)



Recovery of Debts Due to Banks and Financial Institutions Act, 1993 neither limits the scope nor impairs the utility and force of the Industrial Finance Corporation Act, 1948

*The term "in addition to", is synonymous with "also", "moreover", "likewise", or "besides". The term, surely, cannot be construed as meaning "in lieu of" and is rather diametrically opposed to diminution or abatement or abridgment. In other words, what the term "in addition to" signifies is an increase of or accession to, and thus carries out the idea of protecting the reliefs already available under Section 30 of the Industrial Finance Corporation Act, 1948. This, it is further fortified by the words "and not in derogation of, the Industrial Finance Corporation Act, 1948."*

*(15) As we all know, the word "derogation" relates to the partial repeal or abolishing of a law, as by a subsequent Act which limit its scope or impairs its utility and force. In other words when we say "in derogation of" we mean, more generally, the act of taking away, or destroying the value or effect of anything, or of limiting its extent, or of restraining its operation. If that be the meaning and purport of the word "derogation", when Section 34 uses the words "and not in derogation of the Industrial Finance Corporation Act, 1948", it is clearly conveyed that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 neither limits the scope nor impairs the utility and force of the Industrial Finance Corporation Act, 1948.*



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