2013 SCC OnLine Gau 355 : (2013) 3 Gau LR 1

In the High Court of Gauhati
(BEFORE A.K. GOEL, C.J. AND N. KOTISWAR SINGH, J.)

Sunil Sutradhar and Anr. ... Appellants;
Versus
State of Assam and Anr. ... Respondents.

Writ Appeal No. 89 of 2008
Decided on January 4, 2013

Assam Forest Regulation, 1891, S. 3(4) — Forest produce — Whether wooden frames for window and ventilator are forest produce within the meaning of section 3(4) of the Regulation — Held : No.

The seized wooden products were not mere wooden pieces or stumps which were fashioned but fashioned wood subsequently assembled and taken the shape of window and ventilator frames, having assumed a distinct form with new commercial identity. In other words, the seized articles which are more than mere 'fashioned wood' with new additional attributes and transformed into new distinct product, can no longer be treated as 'forest produce'

[Para 9]

We hold that the seized wooden frames for window and ventilator which, though initially may be fashioned wood, having assumed a distinct from, shape and character with commercial identity in the popular parlance because of application of human labour, would no more be covered by the definition of 'forest produce' as defined under section 3(4)(a) of the Assam Forest Regulation, 1891

[Para 10]

Advocates who appeared in the case:
Mr. N. Choudhury, for the appellants.
Mr. B.J. Talukdar, for the respondents.

Cases referred: Chronological

Suresh Lohiya v. *State of Maharashtra*, (1996) 10 SCC 397.

Fatesang Gimba Vasava v. *State of Gujarat*, AIR 1987 Guj. 1.

JUDGMENT AND ORDER

N. KOTISWAR SINGH, J.:— The issue raised in this writ appeal is whether wooden frames for window and ventilator are "forest produce" within the meaning of section 3 (4) of the Assam Forest Regulation, 1891, which the learned Single,

Judge had held to be so, in the judgment and order dated 1.2.2008 in WP(C) No. 1853 of 2007, which is under challenge in present proceeding.

2. The background facts of the present case as relevant may be stated as follows:

The forest officials of Duminichowki Forest Check Gate intercepted a truck bearing registration No. AS-12B-9732 on 29.12.2005, which was carrying wooden frames for window, ventilator and dining table towards Guwahati. The said wooden frames were seized by the forest officials on the ground that these were "forest produce" within the meaning of section 3(4) of the Assam Forest Regulation, 1891 and these were transported without the necessary transit permit.

3. A proceeding was accordingly initiated. The Authorised Forest Officer concluded that the said finished products of wood were "forest produce", transportation of which would require transit permit as per Government notification dated 4.5.2002 which was not obtained at the time of transportation of the said products and the vehicle in which the said wooden products were transported was confiscated vide order dated 4.12.2006 passed by the Authorised Forest Officer. Against the aforesaid decision of confiscation by the Authorised Forest Officer, an appeal was preferred by the present appellants as provided under section 49C of the Assam Forest Regulation, 1891 before the learned Sessions Judge, Darrang in Criminal Appeal No. 35(D-4)/2006 and the learned Sessions Judge, Darrang allowed the appeal vide order dated 28.3.2007 setting aside the order of confiscation dated 4.12.2006 and directed release of the vehicle to the owner. Being aggrieved by the decision of the learned Sessions Judge, Darrang, the Authorised Forest Officer preferred a writ petition before this court which was registered as WP(C) No. 1853 of 2007, contending, inter alia, that the definition of "forest produce" as given under section 3(4)(a) of the Assam Forest Regulation, 1891 includes 'timber', and 'timber has been also defined under section 3(3) of the said Regulation to mean 'trees' also, when they have felled or have been felled or "all wood", whether cut out or fashioned or hollowed out for any purpose. According to the Authorised Forest Officer, since the wooden frames for window and ventilator were cut or fashioned out of wood for the purpose of window or ventilation frame, the same are to be treated as "forest produce". The learned Single Judge, allowed the writ petition by distinguishing the decision of the Supreme Court in *Suresh Lohiya* v. *State of Maharashtra*, (1996) 10 SCC 397 which was relied upon by the appellants and observed as follows:

"17. My quest for an answer to the question, as to whether "wooden

frames" of window and ventilator can be regarded as "forest produce" or not, brings me to the definition of 'timber' and, when I turn to the definition of 'timber', I notice that section 3(3), which contains definition of 'timber' reads, thus: 'timber' means trees, when they have felled or have been felled or all wood, whether cut out or fashioned or hollowed out for any purpose or not and includes trees when cut into pieces or sizes or peeled out or sliced out (veneer) for manufacturing of ply-board, block board or any other purposes or not.

22. In the backdrop of the fact that "bamboo" or cane does not, ordinarily mean 'timber', let me revert to the definition of 'timber'. A careful and microscopic reading of the 'timber' as given in section 3(3) and quoted above, shows that the definition of the word 'timber' stands divided into two distinct parts, which are to be read disjunctively and not conjunctively. The first part of the definition of the word 'timber' shall be read to mean 'trees', when they have felled or have been felled; whereas the second part of the word 'timber' shall be read to mean all 'wood', whether cut out or fashioned or hollowed out for any purpose or not and includes trees, when cut into pieces or sizes or peeled out or sliced out (veneer) for manufacturing of ply-board, block board or any other purposes or not. A correct manner of reading the definition of 'timber' is, in the view of this court, thus: 'timber' means trees when they have felled or have been felled, or all wood, whether cut out or fashioned or hollowed out for any purpose or not and includes trees, when cut into pieces or sizes Or peeled out or sliced out (veneer) for manufacturing of ply-board, bock board of any other purposes or not.

23. What logically follows from the above is that the word 'wood' is not relatable

to the word 'bamboo' or 'cane'; hence, the word 'wood', occurring in the definition of the word 'timber' in section 3(3), would not relate to bamboo or cane, but only to the word 'tree' as is, ordinarily understood. This aspect becomes clear, when one reads carefully the decision in *Suresh Lohiya* v. *State of Maharastra*, (1996) 10 SCC 397, which the respondents rely upon. In *Suresh Lohiya* (supra), the Supreme Court had an occasion to determine whether 'wood', in the given definition of 'timber', in the Indian Forest Act, 1972, would include 'fashioned, bamboo', such as betti and chetti.

27. What follows from the above discussion is that while reading the definition of 'tree' as given in section 3(2) the word 'tree' would include palms, bamboos, stumps, brushwood and canes. However, while construing of 'timber' as given in section 3(3), the word 'wood' would not be relatable to 'fashioned cane' or 'fashioned bamboo'. That is why, 'fashioned bamboo' or 'fashioned cane', such as, 'chatti' and 'batti' would not be regarded as 'timber', whereas the word 'tree', even in the definition

of "timber", would mean and include not only 'tree' as is ordinarily understood, but also 'fashioned wood', such as, wooden frames of window and ventilator. To put is (*sic* it) a little differently 'betti', and 'chetti', which are fashioned bamboos and canes, will not fall within the definition of timber, as given in section 3(3), but all wood whether cut out or fashioned for any purpose, would remain 'timber'.

28. It is because of the reason that the 'fashioned wood' does not include 'bamboo' that the Apex Court, in *Suresh Lohiya* (supra), held that though bamboo, as a whole, is a 'forest produce', but when 'fashioned bamboo' is brought into existence by human labour, a new and distinct product, commercially known to the business, community totally different from its original, such an article and product would cease to be 'forest produce'. All observations, made in *Suresh Lohiya* (supra), have to be read in the light of the conclusions reached by the Apex Court as indicated hereinbefore. It cannot, therefore, be said that whenever a commercially new and distinct product is brought into existence by human labour out of 'wood' it too would cease to be tree. At the cost of repetition, I must point out that when 'fashioned wood' is admittedly tree, one cannot escape from the conclusion that when 'wood' is cut or fashioned, it becomes 'fashioned wood', but it nevertheless still remains a 'tree' it will fall within the ambit of the definition of 'forest produce' as given in section 3(4)(a).

29. In short, what emerges from the above discussion is that even 'fashioned wood' such as, wooden frames of window and ventilator are 'forest produce' within the meaning of section 3(4)(a). Hence, when the vehicle, in question, was, admittedly, found carrying 'forest produce' without requisite permit, a forest offence, within the meaning of section 3(5), was committed and since the vehicle was used in the commission of the forest offence and the respondent No. 1, who is the owner of the vehicle, has miserably failed to show that he took all reasonable and due precaution to ensure that his vehicle was used in the commission of any forest offence, the vehicle was liable to confiscation and had been correctly Confiscated. Viewed, thus, it is clear that the impugned appellate order, passed by the learned Sessions Judge, Darrang, is contrary to law and cannot be allowed to survive."

4. The conclusion of the learned Single Judge that the wooden frames for windows and ventilators which are 'fashioned wood' are 'forest produce' is based on the

reasoning that all 'wood' whether, fashioned or hollowed out for any purpose would be covered by the definition of 'timber' given in section 3(3) and the definition of 'forest produce' under section 3(4)(a) of the Assam Forest Regulation, 1891.

5. Learned Single Judge also held that when 'fashioned wood' is admittedly 'tree', one cannot escape from the conclusion that when

'wood' is cut or fashioned, it becomes 'fashioned wood', but it nevertheless still remains a 'tree' and it will fall within the ambit of the definition of 'forest produce' as given in section 3(4)(a) of the Assam Forest Regulation, 1891.

6. The learned Single Judge also distinguished the decision of the Supreme Court in *Suresh Lohiya* (supra) which was dealing with the issue whether 'fashioned bamboo' or 'bamboo mat' would be a 'forest produce' under the Indian Forest Act, 1927 by stating that 'bamboo' or 'cane' is not relatable to the word 'wood' in the second part of the definition of the word 'timber' because of which 'fashioned bamboo' or 'fashioned cane' would not be regarded as 'timber', whereas the word 'tree', even in the definition of 'timber' would mean and include not only 'tree' as is ordinarily understood, but also 'fashioned wood' such as wooden frames of window and ventilator. The learned Single Judge also held that all observations, made in *Suresh Lohiya* (supra), have to be read in the light of the conclusions reached by the Apex Court in the said case and further held that it cannot be said that whenever a commercially new and distinct product is brought into existence by human labour out of 'wood' it would cease to be 'tree'.

7. We have heard the learned counsel for the parties. The learned counsel for the appellants relying on the judgment of the Supreme Court in *Suresh Lohiya* (supra), however, has urged that the said wooden frames being finished products of wood or tree has assumed a commercially new and distinct identity, and can no longer be considered as 'forest produce'.

8. In *Suresh Lohiya* (supra), the Supreme Court held that even though bamboo as a whole is a 'forest produce', if a product, which is commercially new and distinct, known in the business parlance, has been brought into existence by application of human labour, such an article and product would cease to be a 'forest produce'. It was also held that the definition of 'forest produce' would not take into its fold article or thing which is different from a forest produce having a distinct character and accordingly held that a bamboo mat is distinct from bamboo in the commercial world and cannot be treated as a 'forest produce'.

9. It may be noted that in *Suresh Lohiya* (supra), the Supreme Court was interpreting 'forest produce' as defined in Indian Forest Act, 1927, and 'timber' and 'tree' have similar definitions given under Assam Forest Regulation, 1891. In the said case, the Supreme Court decided that a bamboo mat which is derived from bamboo would not be considered a 'forest produce' within the meaning of Indian Forest Act, 1927 in view

of the fact that a product with commercially new and distinct character has been brought into existence.

10. The Supreme Court *Suresh Lohiya* (supra), considered the issue before it

mainly from three perspectives. Under the Indian Forest Act, 1927 'timber' has been defined as follows:

> "2. (6) 'timber' includes trees when they have fallen or have been felled, *and* all wood whether cut up or fashioned or hollowed out for any purpose or not;"
>
> (emphasis added).

11. It may be mentioned that in the definition of 'timber' given in the Assam Forest Regulation, instead of the conjunctive word and, the disjunctive word or has been used.

12. Referring to the aforesaid definition, the Supreme Court held that the second part of the definition of 'timber' does not take into its fold fashioned bamboo as that part is relatable to wood and not tree. Therefore, as a corollary, 'fashioned bamboo' not being wood would not be covered by the definition of 'timber' and, hence, not 'forest produce', even though bamboo as a whole is a 'forest produce'.

13. Secondly, referring to the definition of 'forest produce' which is similarly defined as in the Assam Forest Regulation, the Supreme Court held that what is contemplated in the definition of 'forest produce' is that of naturally grown or produced and not man made products.

14. Thirdly, by endorsing the view taken by the Gujarat High Court in *Fatesang Gimba Vasava* v. *State of Gujarat*, AIR 1987 Guj. 1, the Supreme Court held that even if bamboo as a whole is a forest produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest produce.

15. In *Fatesang* (supra), the Gujarat High Court had held,

> "13 Now the expression 'forest produce' as defined by section 2(4) of the Act includes trees and leaves, flowers and fruits and all other parts or produce of trees. Section 2(7) which defines 'tree' includes a bamboo. Therefore, bamboos are undoubtedly forest produce. Toplas, palas and Supdas are undoubtedly prepared from bamboo chips and can be described as bamboo-articles, but do such articles fall within the definition of 'forest produce'. A careful look at the various clauses of the definition of forest produce makes it clear that it takes within its fold all that is produced by nature but does not include man-made products such as toplas, palas, supdas, etc., made from bamboo chips. True it is that if bamboo as a whole is forest produce, every part thereof including chips would fall within that definition but once the chips cease to be a 'produce' of nature and get merged into a 'product' brought about by

human labour and if the product so made is commercially new and distinct, known to the business community as a totally different commodity having a distinct character, such an article or product ceases to be a forest produce, i.e., furniture made from timber or paper produced from bamboo-pulp. Therefore, bamboo being a tree would certainly fall within clause (b) of the definition of 'forest produce', but toplas, supdas and palas made out of bamboo chips would not fall within the definition of forest produce."

16. Thus, in *Suresh Lohiya* (supra), the Supreme Court held,

> "6. We have given our considered thought to the rival contentions. It appears to us that the High Court erred in taking the abovesaid view by referring to the definition of 'timber' inasmuch as we agree with Shri Bhatia that the second part of the definition does not take within its fold fashioned bamboo as that part is

relatable to wood, and not tree. We have said so because the definition of tree includes even canes, and a cane cannot be taken as a wood, even if a tree could be. But then, the High Court has also referred to sub-clause (i) (supra) which speaks of produce of tree as well. As to this, submission of the appellant's counsel has been that when sub-clause (i) is read as a whole the same would clearly indicate that such produce of tree alone is contemplated which is a natural growth or product like flowers, and fruits. This submission has force when the definition of forest produce is read in its entirety which would show that the definition either includes nature's gifts like charcoal, mahua flowers or minerals. Wild animals of which sub-clause (iii) speaks of is also a God's gift and not man-made. Wherever the Legislature wanted to include article produced with the aid of human labour, it has said so specifically as would appear from sub-clause (iv), as it speaks, apart from minerals, etc., of "all products of mines or quarries".

17. The Legislature having defined "forest produce", it is not permissible to us to read in the definition something which is not there. We are conscious of the fact that forest wealth is required to be preserved; but, it is not open to us to legislate, as what a court can do in a matter like at hand is to iron out creases; it cannot weave a new texture. If there be any lacuna in the definition it is really for the Legislature to take care of the same.

18. We may also state that according to us the view taken by the Gujarat High Court in Fatesang case is correct, because though bamboo as a whole is forest produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by human labour, such an article and product would cease to be a forest produce. The definition of this expression leaves nothing to doubt that it would not take within its fold an article or thing which is totally different from forest produce having a distinct character. May it be stated that where a word or an expression is defined by the

Page: 8

Legislature, courts have to look to that definition; the general understanding of it cannot be determinative. So, what has been stated in *Stroud's Judicial Dictionary* regarding a 'produce' cannot be decisive. Therefore, where a product from bamboo is commercially different from it and in common parlance taken as a distinct product, the same would not be encompassed within the expression "forest produce" as defined in section 2(4) of the Act, despite it being inclusive in nature, That bamboo mat is taken as a product distinct from bamboo in the commercial world, has not been disputed before us, and rightly.

19. In view of all the above, we hold that bamboo mat is not a forest produce in the eye of the Act, and so, allow the appeal, set aside the impugned judgment of the High Court and state that the order of confiscation passed by the Conservator of Forest was not in accordance with law."

20. We are of the view that the principle laid down in the aforesaid case of *Suresh Lohiya* (supra) will be applicable in the present case also. Before we proceed further, it may be required to ascertain as to what actually were seized by the Authorised Forest Officer. A perusal of the records produced (which include the affidavit in opposition on behalf of the respondents in the writ petition) reveals that the following wood products were seized.

1. Window - 5′ × 7′- 1 piece.
2. Window - 5′ × 5′ - 1 piece.

3. Window - 4′ × 3′ - 2 pieces.
4. Window - 5′ × 3′ -1 piece.
5. Ventilator - 7′ × 1 ½″ -1 piece.
6. Ventilator - 5′ × 1 ½′ - 1 piece.
7. Ventilator - 4′ × 1 ½ - 3 pieces.
8. Dining Table - 1 piece.

21. What were, thus, seized were not mere loose ‘fashioned wood’, but assembled wooden frames. The said seized materials have been prepared out of the wood or timber by cutting and fashioning by applying human labour to give certain shape in the form of frame for window and ventilator for use as such. A new product has emerged out of tree or timber or wood which was not available in the forest. The tree or timber or wood has undertaken certain transformation brought about by application of human labour with a new identity with commercial value. A new identity has evolved. The wooden frames for window and ventilator, though are derived from wood or tree, have acquired new

Page: 9

attributes. In other words, these are finished products of wooden frames for window and ventilator known in the commercial parlance as substances having distinct characters and attributes, different from the normal tree or timber or wood or any other fashioned wood and as such, can no longer be treated as ‘forest produce’.

22. The learned Single Judge held that definition of ‘timber’ not only includes ‘tree’ as it is understood ordinarily but also all wood, whether cut up or ‘fashioned’ and since the wooden frames of window and ventilator are also ‘fashioned wood’, hence, ‘timber’, these will be covered by the definition of ‘forest produce’ even if a commercially new distinct product emerges. We sure unable to agree with the reasoning given by the learned Single Judge. True, under the second part of the definition of ‘timber’ in the Assam Forest Regulation, 1891 all wood including ‘fashioned wood’ would be considered ‘timber’, hence, a ‘forest produce’, yet every ‘fashioned wood’ need not be a forest produce, if the same has already undergone further changes by application of human labour to assume a new and distinct identity. If the wood are merely fashioned for the purpose of construction of window frame or ventilator frame and remain at the stage of ‘fashioned wood’ only without being assembled and taking the new shape of window or ventilator frames, perhaps these ‘fashioned wood’ would still remain as ‘forest produce’ within the meaning of section 3(4)(a) of the Assam Forest Regulation, 1891. However, once these ‘fashioned wood’ are assembled and take the form and shape of window frame or ventilator frames, these no more remain as mere ‘fashioned wood’ as these have acquired an additional and new commercial identity as window frame or ventilator frame.

23. The seized wooden products were not mere wooden pieces or stumps which were fashioned but fashioned wood subsequently assembled and taken the shape of window and ventilator frames, having assumed a distinct form with new commercial identity. In other words, the seized articles which are more than mere ‘fashioned wood’ with new additional attributes and transformed into new distinct product, can no longer be treated as ‘forest produce’.

24. In our opinion, in the light of the decision in *Suresh Lohiya* (supra) the decisive factor would be that, if any ‘forest produce’, on application of human labour acquires a new form or shape with distinct commercial identity, the same would no longer remain a ‘forest produce’ by virtue of the new and distinct character and form assumed with

input of human labour. Accordingly, we hold that the seized wooden frames for window and ventilator which, though initially may be fashioned wood, having assumed a distinct form, shape and character with commercial

identity in the popular parlance because of application of human labour, would no more be covered by the definition of 'forest produce' as defined under section 3(4)(a) of the Assam Forest Regulation, 1891. In the result, the appeal is allowed. The judgment and order dated 1.2.2008 passed by the learned Single Judge in WP(C) No. 1853/2007 is, accordingly, interfered with and set aside. Consequently, the confiscation order dated 4.12.2006 passed by the Authorised Forest Officer is also quashed and the order dated 28.3.2007 passed by the learned Sessions Judge, Darrang is upheld for the reasons given above.

25. Parties are to bear their respective costs.