

(1991) 02 BOM CK 0033

In the Bombay High Court

Case No : Civil Revision Application No's. 142 to 150 of 1990

State of Maharashtra and others

APPELLANT

Vs

Kisan Kapagate and etc. etc.

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Forest Act, 1927 — Section 2(4), 2(6), 2(7), 20, 28

Citation : AIR 1991 Bom 398

Hon'ble Judges : W.M. Sambre, J

Bench : Single Bench

Advocate : B.P. Jaiswal and A.M. Tayade, A.G.P, for the Appellant; C.S. Kaptan, N.S. Munshi, P.T. Trivedi and A.V. Gupta, for the Respondent

Judgement

1. All these revisions are arising out of the same order passed by the Additional District Judge, Bhandara on 29-8-1989 in various Misc. Civil appeals Nos. i.e. 7/85, 41/85, 47/85, 6/87, 44/89, 46/89, 45/89, 47/89 & 59/89. The non-applicants/ plaintiffs have filed all the suits before the Civil Judge. Senior Division, Bhandara wherein it has been prayed that the defendants/applicants be restrained by issuing ad-interim injunction from any way obstructing the plaintiffs in the transport of Narpatti, Zhakni, Sarak, Tawdi and Chattai etc. for want of transit pass or seizing the goods for want of transit pass till the decision of the suit. Under Ex. 5, on the application for injunction the court below has passed an order on 30th August 1985 restraining the defendants from obstructing the transport of Chattai and other things by the defendants. The trial court has passed an order directing the plaintiffs to submit an account of transport of the above goods every month before 10th of each month. This order was challenged in appeal by the State before the appellate court and the appellate court, by its order dated 29th August 1989 has confirmed the order passed by the trial court and all the 9 appeals came to be dismissed. Similarly the counter-objection in Misc. Civil Appeal No. 6/87 also came to be rejected. Aggrieved by this order passed by the court below the revisions came to be filed by the State of Maharashtra praying that this order of injunction granted in favour of the non-

applicants be vacated. This court while entertaining the revisions has refused to grant stay but granted relief of early hearing of these revisions and, therefore, these revisions are heard.

2. The main contention of the plaintiffs in the plaint is that they are seeking relief in view of the prayer that (1) it be declared that mattings, Assi, Narpatti etc., are finished goods and hence they are not forest produce within the provisions of law, and hence no transit pass or Money receipt is required for the transportation or transit or storing of the good. (2) that it be further declared that the transport of such goods is not a forest offence and hence the goods, or the vehicle by which the said goods is transported is not liable to be confiscated or forfeited under any provision of law. (3) that, the defendants be restrained from doing any act by which the said right of the plaintiff to do the business of said finished goods will be affected and further be restrained from seizing, forfeiting or confiscating the goods or the vehicle. (4) that the defendants also be restrained from obstructing the transport of goods on any ground like, it does not accompany with transit-pass or money receipt (5) that the costs of the suit be saddled on the defendants, and so on. With the above prayer this suit came to be filed and in the said suit application for interim order was also filed and the same was granted by the court as stated above.

3. Mr. Jaiswal, learned A.G.P., for the applicants contended that the bamboo splits are covered by the definition of section 2(4)(a)(b) of the Indian Forest Act, which can be said to be a forest produce. He contended that previously there was no practice of directing the parties to produce either money receipt or the transit pass in view of the Circular existing since 1980. The Bamboo articles are excluded from the forest produce as per Circular of the Government, Revenue and Forests Department dated 9th October 1980 but subsequent thereto in the year 1986 Government policy has changed and Circular to the effect has been issued by the Government on 24th October 1986, wherein it has been clarified that narpattis, Chatais, petaras are forest produce within the meaning of section 2(4)(b)(i) read with section 2(6) and 2(7) of the Indian Forest Act, 1927. In view of the Circular the parties were directed to produce the money receipts or the transit pass while making any transport of the forest produce. This was agitated by the businessmen who were dealing in the crude forest produce especially Chatai mattings and other various produce. It is pertinent to note that this forest produce was not included in the forest produce in view of the circular dated 26th May 1980 but the change has been effected in view of the change in Govt. policy and, therefore, all these articles were covered by the Circular dated 24th October 1986. Therefore, the department started pressing for the production of money receipts and transit pass. This has been agitated by the plaintiffs in the aforesaid prayer made by them in the plaint filed before the trial court at Bhandara in a civil suit which is pending. In the said civil suit an injunction was sought by the plaintiffs which was granted by the trial court restraining the State from seizing the various fresh produce like mattings in the absence of any production of money receipt or transit pass. This order was challenged by the State in appeal

and the appellate court has also confirmed the order passed by the trial court on the basis of the decision of the Gujarat High Court *Fatesang Gimba Vasava and Others Vs. State of Gujarat and Others*, .

4. Mr. Jaiswal further contended that this view taken by the learned court below is not proper for the reason that the bamboos which are used for preparing Chatais have been covered by the circular dated 24th October 1986 and, therefore, it was obligatory on the part of the learned court below to uphold the contention of the applicants directing the businessmen to produce the transit pass as well as money receipts. He contended that this circular has been issued considering various circumstances by the State Government as regards preservation of the forests. No doubt previously these concessions were available to the local residents of the area in the jungle i.e. Burads, tribals and aboriginals. They were allowed to purchase the bamboos and thereafter prepare the mattings and sell it freely. But considering the elimination of the forest in an unlimited manner this circular dated 24th October 1986 came to be issued wherein such restrictions have been put and Government wanted to implement this circular on the basis of which parties were directed to produce transit passes and money receipts. This action on the part of the State is under challenge before the civil court. Considering this fact, Mr. Jaiswal contended that the contention of the non-applicants/plaintiffs that it is not a forest produce and it cannot be covered by the said circular is not correct. He contended that the non-applicants have placed reliance on the decision of the Gujarat High Court *Fatesang Gimba Vasava and Others Vs. State of Gujarat and Others*, , cited supra which deals with the same subject matter. He contended that the circumstances prevailing in Gujarat are not akin to the prevailing position in Maharashtra but Maharashtra is having a different status given to the aboriginals who are residing in the jungles. He has brought to the notice of the court that in Gujarat all these aboriginals, tribals are provided free - bamboos for preparation of the forest produce i.e. Chatai, Topic etc. The Division Bench of the Gujarat High Court has held that Suplas, Toplas, Chatais etc., are not forest produce in view of the fact that special craftsmanship is required for preparation of such produce and it completely changes the nature of the forest produce to that of the handicrafts. A special craftsmanship for manufacturing these Toplas, Suplas etc., are required and, therefore, it is held that these Suplas, Toplas, which are prepared after applying special craftsmanship cannot be said to be a forest produce. This view taken by the Gujarat High Court, according to Mr. Jaiswal cannot be made applicable in the instant matter in view of the changed circumstances which are as under. That the bamboos are not available freely to "Burads" in Maharashtra. They are required to be purchased either at the concessional rate or in auction. In Gujarat this is not the position. These Burads, tribals are supplied free of cost these bamboos. So this practice in existence, of the material supplied freely and supplied at the cost is required to be considered from a different angle. Coming to the conclusion the Gujarat High Court has held that in view of the fact that they are supplied these bamboos with specific intention that they should earn their livelihood by

putting their craftsmanship in the said preparation of handicrafts i.e. Suplas, Toplas etc., and, therefore, this aspect has weighed with Gujarat High Court while coming to the conclusion that these products are not the forest produce which is not the case in the Maharashtra. Therefore, all the forest produce which are mentioned in the circular dated 24th October 1986 are covered by the definition u/s 2(4)(a)(b)(6) and (7) of the Indian Forest Act, as the bamboos are covered by the definition as a tree and in case any article is prepared from the said bamboo by converting the bamboo into either matting or chatai, it is a forest produce within the definition of Section 2(4)(a)(b)(6) and (7) because it is prepared from the bamboo itself. Bamboo is converted into these various items, like Chatais, mattings in a crude form of bamboos. He contended that considering these facts, i.e. conversion of bamboo into matting is definitely a forest produce and, therefore, circular dated 24th October 1986 is required to be considered from that angle. Therefore, according to Mr. Jaiswal, the view taken by the Gujarat High Court in its reported judgment cannot be made applicable in the Maharashtra in view of the changed circumstances and the prevailing facilities available in Gujarat and that in the Maharashtra.

5. Mr. Jaiswal further contended that conversion of the original item in crude form is required to be considered as the original item itself, as transformation into other crude form does not change its originality. He placed reliance on the decision *Phanindra Bikash Roy Chowdhury Vs. Union of India (UOI) and Others*, . It deals with primary gold. Calcutt's High Court held that primary gold converted into a kada cannot be said to be an ornament in view of the experts knowledge and it is to be treated as primary gold and the Excise Department can lay its hand over the said primary gold unless and until its originality or production or possession is properly explained. He also placed reliance on the decision reported in *M.G. Venugopalan Vs. Edayil Veetil Govindan and Another*, . In the placitum (B) and (C) the same issue as regards primary gold is considered and discussed. It is held in the aforesaid judgment that opinion of the expert is relevant while coming to the conclusion.

6. Mr. Jaiswal further placed reliance on the decision *Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others*, . Their Lordships of the Supreme Court of India observed therein as under:--

"The change in the law in 1976 was brought about with a view to prevent the growing menace of ruthless exploitation of Government forests by illicit felling of teak and other valuable forest produce by unscrupulous traders, particulars from the reserved forests by providing for a machinery for confiscation of illegally felled trees or forest produce by the Forest Authorities. The intendment of the Legislature in enacting Act 17 of 1976 was to provide for two separate proceedings before two independent forums in the Act, one, for confiscation by a departmental authority exercising quasi-judicial powers conferred under sub-section (2A). of Section 44 of the goods forming the Subject-matter of the offence, and The other for the trial of the person accused of the offence so

committed. There is no conflict of jurisdiction as S.45 of the Act as amended by the Amendment Act, in terms curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. The conferral of power of confiscation of seized timber or forest produce and the implements, etc., on the Authorized Officer under sub-section (2A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under sub-section (2A) of Section 44 of the Act, where a Forest Officer makes a report of seizure of any timber or forest produce and produce the seized timber before the Authorized Officer along with a report u/s 44(1), the Authorised Officer can direct confiscation to Government of such timber or forest produce and the implements etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence u/s 20 or 29 of the Act."

He contended that the Supreme Court of India has also taken cognizance of the ruthless cutting of the forest and has dealt with extreme harshness which such criminals who indulge in such unauthorised cutting of forests. Therefore, Mr. Jaiswal contended that considering all the aspects, this circular issued by the Government was in vogue and on the basis of the said circular the action of the department in directing the parties to produce money receipt or transit pass was perfectly right.

7. Mr. Jaiswal further contended that the circular itself has been under challenge before this Court (High Court) in a writ petition No. 2322 of 1987. He has brought to my notice that the stay was sought in the aforesaid writ petition and after hearing the parties, this court has passed an order specifically refusing the stay in the aforesaid matter. Therefore, he contended that the circular is in operation and, therefore, the order passed by both the courts below granting injunction under the above circumstances, under no circumstances can be sustained. Therefore, this order passed by the courts below is liable to be quashed and set aside.

8. In reply Mr. Trivedi, learned counsel for the non-applicants contended that the plaintiffs are businessmen in bamboos. They are doing their business from the time of their forefathers. It is a practice prevailing in the Bhandara district that Burads prepare articles from these bamboos i.e., Chatai and they are purchased by the businessmen from them. This is a regular feature which is in existence for years together. He contended that previously there were no restrictions which can be seen from the circular issued by the Government in 1980. These various products like Chatai from bamboos were not to be treated as forest produce. Therefore, there was no problem about this up to the year 1986 till this new circular dated 24th October 86 came to be issued. Mr. Trivedi contended that in

fact there was no reason for issuance of such a circular by the Government as this was not a circular repelling the effects of 1980 circular. At the most it will be seen that it is in furtherance of the circular of 1980. In case it is in furtherance of the circular of 1980 then the interpretation of the same that all the forest produce mentioned in 1986 circular is bound to be covered by the forest produce, under no circumstances can be sustained. Government cannot change its stand from time to time according to its convenience. 1980 circular is a speaking one which specify that Chatai etc., will not be the forest produce, while 86 circular says that it is a forest produce. No reason as to why such a stand has been taken by the Government has been stated. This requirement is necessary for the reason that the Burads and tribals and the businessmen are the suppliers. Unless and until it is made known to them with proper motive of the Govt. such change overnight cannot be made and, therefore, this circular is illegal and even on the basis of this circular as contended, it cannot be held that all these items are covered by the definition of forest produce. Merely issuing a circular does not create a right in the Government to confiscate the goods and direct the parties to produce money receipt or transit pass unless and until a change of such a nature is substantiated by the reasons. In the absence of any reasoning given by the Government this change cannot be effected overnight to the detriment of the non-applicants/plaintiffs and, therefore, he contended that the circular itself is not applicable to the plaintiffs/non-applicants. He further contended that even assuming that the said circular is applicable, in that case, conversion of bamboos into mattings cannot be treated to be a forest produce. At the most it changes its nature by craftsmanship may be in the crude form. Therefore, it cannot be said that these mattings can be said to be a "forest produce" as stated in the circular issued by the Government dated 24th October 1986.

9. Mr. Trivedi also placed reliance on the aforesaid Gujarat decision as cited above, wherein he contended that Gujarat High Court has rightly held that these mattings (Chatais), Suplas etc., cannot be said to be a "forest produce". He contended that once this decision is in existence and a finding to that effect has already been given by the Division Bench of the Gujarat High Court, then it is not open for the State to discuss the said issue again and again and in view of the aforesaid decision it was obligatory on the part of the Government to cancel this circular issued on 24th October 1986. He contended that the case of the applicant that the aforesaid decision has been arrived at in a different circumstances cannot be held good for the reason that the court has decided the issue about the conversion of bamboos into chatai, toplas either it is free supplied or it may be supplied at cost. There may be certain circumstances which are not in existence in Maharashtra. But that does not change the definition which has been arrived at by the court and, therefore, mere issuance of the circular docs not change the nature of the articles which are prepared by the craftsmen converted from bamboos to that of chatai, suplas, toplas. They cannot cover in the category of the various forest produce. Therefore, he contended that these restric- tions put on the businessmen to procure money receipt or forest

transit pass are not applicable to the non-applicants/plaintiffs. State cannot compel the parties i.e. businessmen to produce money receipt or the transit pass. On the other hand, it is obligatory on the part of the forest department itself to take proper action against those persons who prepared the mattings but without taking any action against them the department has started seizing articles and are insisting for production of the transit pass which is not proper. As discussed above, Mr. Trivedi contended that no doubt requirement of Section 41 of the Indian Forest Act, is that any forest produce, if it is to be transported, a transit pass is a must. But once these articles are exempted and subsequently again if it is not to be exempted then it becomes the disputed matter and the benefit must go to the businessmen and no insistence should be there for production of the forest transit pass for the transport of the forest goods. Section 28 of the Indian Forest Act deals with the powers and certain authorities and concessions are given for supply of the forest goods to the villagers, tribals, aboriginals etc. It is not the case that this forest produce i.e. bamboos is not sold. On the other hand, non-applicants held so many receipts by which great deal of quantity of bamboos have been sold by the forest department in the name of a person and receipt is issued, while the said property i.e. bamboos are purchased by a many purchasers whose names do not appear in the said receipt. Under these circumstances this insistence about production of money receipt is of no avail to the department as the receipt is issued in a particular name though bamboos are purchased by many persons whose names are not mentioned in the receipt. Therefore, the contention raised by the Government regarding production of money receipt does not specify the requirement of the department and, therefore, this insistence on the part of the department for production of money receipt as well as transit pass is just with an intention to harass the businessmen. Therefore, he contended that the view taken by the court below in granting injunction is perfectly right and liable to be sustained as the plaintiffs/businessmen have already been directed by the department to submit the accounts and, therefore, no prejudice is likely to be caused to the Government. In case the plaintiffs succeed there is no question of submitting any accounts but in case she plaintiffs lose then the accounts as regards transit of the forest goods is already submitted to the court on which an action can be taken by the court for either recovery or the amount or whatever may be feasible in the circumstances.

10. Mr. Trivedi contended further that the stay has already been granted by the court by its order dated 30-8-85, which has been subsequently confirmed by the appellate court by its order dated 29-9-1989. Therefore, he contended that if the said order is continued till final disposal of the suit ends of justice will be met.

11. Mr. Kaptan, learned counsel for some of the non-applicants contended that even by bare reading the very plaint it cannot be said that the activities of the non-applicants/ plaintiffs are illegal. They are doing the business in the said area not with any illegal motive and the said conversion of the forest produce by the craftsmen were in existence since long with permission vide circular of 1980.

Therefore, these restrictions put by the department under no circumstances can be sustained in view of the decision of the Gujarat High Court, *Fatesang Gimba Vasava and Others Vs. State of Gujarat and Others*, . He contended that definition of the forest produce has been elaborately discussed and decided in the aforesaid judgment. Therefore, there is no scope to reconsider this issue. Mr. Kaptan further contended that considering all these aspects the order of injunction is already in existence and it should be continued till final decision of the suit, as no prejudice is likely to be caused to the Government.

12. Mr. Deo, learned counsel for the non-applicant further contended that even the claim of the applicant/State nullifies its own stand on the basis of the money receipt issued by them. He contended that receipts have been issued by the department for sale of the bamboos. Even though the purchase has been made by number of persons, but the receipt is issued in the name of single person. Therefore, the stand taken by the State Government that businessmen should produce money-receipt and transit pass does not satisfy the purpose to check the pilferage or unauthorised dealings. The non-applicants are ready and willing to disclose the identity of the persons from whom they have purchased the forest produce and receipts do not mention their full name while claiming production of receipt and transit pass. Department is not ready to proceed against the craftsmen, tribals, aboriginals who are living in the forest villages, who are actually cutting the bamboos unauthorisedly but the Department wanted to catch hold neck of the businessmen who are subsequent purchasers, even though this business they are doing since long. Therefore, he contended that production of the receipt as placed before the court does not satisfy the requirements of the department. Therefore, this order passed by the court below is liable to be sustained.

13. After hearing the arguments advanced by the parties through their counsel I am of the view that the view taken by the learned court below in the circumstances of the case cannot exist, as the circular of 1986 is very clear wherein the Government has taken a definite stand declaring the Chatais, mattings etc., as the forest produce. This exemption was available to the parties prior to the issuance of 1986 circular but once the circular has come into effect, department was under obligation to proceed to implement the said circular. State has taken this view by issuing a circular under certain changed circumstances in view of their previous stand in the year 1980. The Government has considered this aspect about pilferage, illegal cutting of the jungle and environmental problem. Therefore, the previous stand taken by the Government to exclude these mattings etc., from the forest produce is required to be changed and that the State Government has come with a specific case that the mattings, Chatais etc., are the forest produce. As contended by the counsel for the non-applicants that this definition cannot be changed in view of the observations of the Gujarat High Court cannot be accepted for the reason that the Gujarat judgment deals with the changed circumstances prevailing in the State of Gujarat. It has already been observed by the Division Bench of the Gujarat High Court that free supply

of bamboos is made to tribals etc. This has been provided to them for their daily needs so that they can prepare crafts and sell them, which position is not prevailing in Maharashtra. The conclusion arrived at in the Gujarat judgment is on the basis of free supply of bamboos to the tribals and Burads. This has weighed with the Division Bench, while coming to the conclusion that supaias, toplas cannot be said to be forest produce. It has been specifically observed that suplas, toplas are prepared by the craftsmen which cannot be said to be in a crude form of bamboos. This requires special efforts and, therefore, Division Bench held that suplas, toplas which is made out of the bamboo cannot be said to be the forest produce. Now two things are to be considered which weighed with the Division Bench of the Gujarat High Court; one thing is free supply of bamboos to Burads and tribals. This shows that the Government has intention to provide some amenities for their livelihood free of charge and once they have been taken to the craftsmen and brought out something out of the said bamboos, the Division Bench held that it cannot be said to be a forest produce. These facilities of free supply is not available to the tribals in Maharashtra. No doubt, some concessions are allowed in cost for the purchase of bamboos but they are not supplied free of charge. Burads are required to purchase the bamboos. There is no free supply of bamboos to any of the persons in this State including the agriculturists and tribals except at the concessional rates. Therefore, the produce from the bamboos in any converted form is required to be explained by the inhabitants of the forest village or the businessmen who are subsequent purchasers. Everybody in the State is under obligation to produce a transit pass for transport of any forest goods u/s 41 of the Indian Forest Act. The Government has also taken a serious view of illegal cutting of the forest and extended the limit for transport of any forest goods within the periphery of the forest to the extent of 80 miles directing the production of transit pass. Therefore, most of the forest areas are covered by the Indian Forest Act; even the woods, possession of which is required to be explained by the possessor by producing transit pass or otherwise the said goods can be confiscated. No doubt, furniture cannot be seized as definitely it is exempted as it changes the nature of the wood but in case, however, any cut-wood is available and if anybody is unable to explain the source of its receipt then it is like the primary gold seized by the excise department. These are the circumstances which were required to be considered while granting relief of injunction in favour of the businessmen/non-applicants which has been ignored by the learned court below. The learned court below has, without going into the details of the observations made by the Division Bench of Gujarat has blindly placed reliance with an intention to give relief to the plaintiffs/non-applicants which in fact was not permissible. Merely giving accounts of the transport of the forest produce does not satisfy the requirement. Government has framed rules to the effect that in case a truck is found unauthorisedly transporting any forest produce, it is to be seized and cannot be released unless and until a final decision is arrived at. The said truck is required to be kept idle and this rule is made by the Government with an intention that the said truck should not be again used for unauthorised purpose

i.e. transport of the unauthorised forest goods. Such restrictions have been put by the Government with a specific intention to conserve the forest from its extinction and also with an intention to maintain the balance of nature and environment. In case such type of view is taken then the intention of the Government by issuance of such circular and its object is completely frustrated and unauthorised persons are encouraged to take to such recourse of unauthorised business. Therefore, the view taken by the learned lower appellate court in confirming the order of the trial court is perverse and the same is liable to be quashed.

14. Even the Supreme Court of India in a judgment *Kishan Lal Vs. State of Rajasthan*, has held that:--

"Khandsari, Shakkar, Gur and Sugar --Whether Agricultural produce -- Definition of "Agricultural produce" -- Definition not exhaustive but inclusive, neither excludes any item produced in mill or factories nor it confines its width to produce from soil --Sugar held to be agricultural produce."

From this observation of the Supreme Court it will be seen that the definition is inclusive and conclusive of all the material facts. Even the sugar can be considered to be an agricultural produce and, therefore, the Government has taken a stand that all the mattings etc., are covered by the definition of forest produce, which is perfectly right and liable to be sustained.

15. Mr. Jaiswal has pointed out that in the previous judgment the Additional District Judge has taken a different view refusing injunction in the matter and holding that the said circular of 1986 is perfectly legal and the matting which is a crude form of bamboo is covered by the said definition, while in the subsequent event in the present case he has changed his mind and has given a wrong finding which cannot be sustained. It may be possible that he might have taken a view previously but the subsequent event might have weighed with the learned Additional District Judge while passing the said order. But in view of the above discussion it will be seen that the view previously taken by the lower appellate court was right and without considering the circumstances as prevailing in this State has placed reliance on the Division Bench judgment of the Gujarat High Court which has been delivered in different circumstances prevailing in that State, which is not proper.

16. In these circumstances the view taken by the court below in granting injunction is liable to be quashed. It will be seen that the court has ignored the fact that the circumstances prevailing in Gujarat as regards free supply of bamboos to the aboriginals and tribals is not the position in Maharashtra State and, therefore, the ratio of the judgment of the Gujarat High Court, under no circumstances, can be applicable in the instant matter. Even from the observations made in the said judgment the court has come to the conclusion on the basis of the craftsmanship that these bamboos are converted into Suplas, Toplas and other finished craft-articles prepared from bamboos unlike that of

crude conversion of bamboos into matting, chatais etc., as these mattings, Chatais converted from bamboos is a crude form of bamboo. These splits are substantially made from bamboos. They are thick and they can be used for any other purposes like bamboo itself. Therefore, considering the position in view of the circular issued by the Government in the year 1986, all these articles i.e. preparation of such Chatais are covered as a forest produce. Even on the basis of the provisions of the Indian Forest Act, the parties even after authorised purchase of the forest produce, they are required to produce the transit pass and money receipt. The non-applicants/businessmen are definitely encouraging these aboriginals to cut unauthorised the bamboos and prepare these mattings to be purchased by these non-applicants/businessmen to be sold in the market. Therefore, these restrictions have been put by the Government by incorporating all these mattings in crude form to be the forest produce, in view of the provisions of the circular of the year 1986. Therefore, the view taken by the learned lower appellate court and the trial court that ratio of the Gujarat High Court's judgment is applicable, under no circumstances, can be sustained. There are the articles in crude form converted from bamboos and, therefore, not to encourage the perforation or illegal cutting of the jungles these bamboos and its converted crude crafts like Chatais etc., are covered by this circular. In case these restrictions are not put on the transport of these forest produce there will be unlimited cutting of the bamboos from the jungles.

17. The contention of non-applicants that they are ready to name the persons from whom they have purchased the articles is of no avail. Non-applicants are restrained from purchasing these articles which has been unauthorisedly prepared. I am of the opinion that the Govt. is disinclined to proceed against the tribals but wanted to put some restrictions on the unlimited cutting of the bamboos and, therefore, these businessmen are restrained from purchasing these articles by putting this condition of the transit pass to be produced. There is no reason as to why the provisions of this circular are required to be interpreted otherwise. The contention of the businessmen that they are doing the business since long cannot be a criteria to encourage their business by purchasing material from unauthorised cutting of bamboos and preparation of Chatais and mattings in a crude form. In case they do not purchase the unauthorised material, then definitely the aboriginals will not cut the bamboos itself. Government will take care of their day-to-day maintenance but not by encouraging illegal cutting of the bamboos encouraged by the non-applicants by their illegal purchase. Considering all these aspects, the injunction granted by the courts below under no circumstances can be sustained. The orders passed by both the courts below dated 29-9-1989 and of 30th August 1985 are hereby quashed and set aside. With the above directions, all the revision applications stand allowed with costs.

Order accordingly.