
(1996) 07 GUJ CK 0048
In the Gujarat High Court

Balubha Mohabatsinh

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 5, 114

Constitution of India, 1950 — Article 137, 145, 226, 227

Penal Code, 1860 (IPC) — Section 193, 219, 228

Citation : (1996) 3 GLR 218

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—Interestingly, the interpretation and applicability of the provisions of law relating to review analogous to Order 47 Rules 1 and 5 of the Civil Procedure Code, 1908, (Code) are the main questions which are raised. In short, whether a successor in office is competent to review the judgment, order or decision is the sole, but substantial issue which has surfaced in these two petitions. Since both the petitions raise important but identical question, they are being disposed of by this common judgment.

2. The petitioners who are agriculturists holding agricultural lands had submitted information u/s 10 of the Gujarat Agricultural Lands Ceiling Act, 1961 (G.A.L.C. Act) on coming into force of it. Thereupon, the concerned Mamlatdar and A.L.T. after holding an inquiry held that they are holding land in excess of the ceiling area. The petitioners carried the matter before the Gujarat Revenue Tribunal. The petitioners lost in the revisions before the Gujarat Revenue Tribunal. The petitioners, thereafter, submitted review applications which came to be rejected by the Gujarat Revenue Tribunal on the ground that review applications which have been filed by the petitioners against the judgment and orders of the President of the Tribunal who was no longer available and same could not be entertained by the successor.

3. The petitioners being dissatisfied by the impugned orders of the Tribunal in

review applications have, now, come up before this Court challenging the legality and validity of the said orders by filing these petitions under Articles 226 and 227 of the Constitution of India.

The Gujarat Revenue Tribunal is constituted u/s 3 of the Bombay Revenue Tribunal Act, 1957 (B.R.T. Act). The provision about the jurisdiction of the Tribunal is made in Section 9 of the B.R.T. Act. The petitioners have challenged the impugned orders of the Gujarat Revenue Tribunal refusing to review the orders passed in revision u/s 38 of the G.A.L.C. Act. Section 38 of the G.A.L.C. Act provides revisional jurisdiction of the Gujarat Revenue Tribunal. The review of the orders passed in revisions came to be refused by the Gujarat Revenue Tribunal on the ground that the author of the judgment had retired and was not available and therefore, his successor in office is not competent to review.

Section 17 of the B.R.T. Act provides power of review of the order of the Tribunal. Though the general language in which Sub-section (1) of Section 17 of the B.R.T. Act has been worded is different from the general language in which Order 47 Rule 1 of the CPC has been worded, the grounds on which the power to review its own order can be exercised by the Revenue Tribunal are the same as those by the Civil Courts. Regulation 31 of the Bombay Revenue Tribunal Regulations, 1958 prescribes the procedure of hearing of review applications by the Gujarat Revenue Tribunal. Regulation 31 reads as under:

31. Where a single member or the members of a Bench who decided the case or made the order, a review of which is applied for, or one of such members continue or continues to be a member or members of the Tribunal at the time when the application for such review is to be heard, such member or a Bench consisting of such member or members, as the case may be, shall hear the application and no other Bench shall hear the same.

5. The Gujarat Revenue Tribunal held that Regulation 31 of the Bombay Revenue Tribunal Regulations will not come to the rescue of the petitioners because it provides that when a single member of the Tribunal who decided the case is no longer available, the review application can be heard by no other member of the Tribunal. It, therefore, held that the remedy in that case is to go to the higher forum and placed reliance on the decision of this Court in Special Civil Application No. 11487 of 1994. The said decision has been reported in 1995(1) GLH 619 Ex-Subedar Bhupatsingh Nanubha Jethwa v. The President, Sumer Sports Club.

6. The learned Counsel for the petitioners has placed reliance on the provisions of Section 38 of the G.A.L.C. Act and also on the provisions of the Rules and Regulations made under the Bombay Revenue Tribunal Act in support of his contention that review power is provided in the Rules and Regulations. This contention is, seriously, opposed by the other side. It has been submitted on behalf of the respondents that firstly, there is no provision for review of a revisional order of the Gujarat Revenue Tribunal passed u/s 38. It is contended that in absence of statutory specific power to review in the G.A.L.C. Act, the

review application was not competent and maintainable. Reliance is also placed on a decision of the Apex Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, . It is held in that case that the power of review is not inherent power. It must be conferred by law either specifically or by necessary implication. In that case, no provision under the Saurashtra Land Reforms Act, 1951, was brought to the notice of the Hon'ble Supreme Court from which it could be gathered that the Government had power to review its own order. Reliance is also placed on a decision of this Court in Thakershi Popatbhai Patel v. State 1994(2) GCD 36 (Guj. Therein, it was held that there is no provision under the Urban Land (Ceiling and Regulation) Act, 1976 conferring power of review its order once passed by the State.

7. It would be necessary and relevant first to refer to the provisions of Chapter VI of the G.A.L.C. Act relating to the procedure of appeals and revisions. In Section 32, provision is made to empower the Mamlatdar, Tribunal and Collector in making inquiries under the G.A.L.C. Act. Section 33 provides for inquiries to be held in accordance with prescribed procedure. Section 34 provides how notice should be served. Section 35 provides appeal against the orders except awards. Section 36 provides appeal against awards. Section 36 reads as under:

36. Appeal against award: (1) Any person aggrieved by the award made by the Tribunal u/s 24 or by the Collector u/s 28 may appeal to the Gujarat Revenue Tribunal constituted under the Bombay Revenue Tribunal Act. 1957.

(2) Every petition of appeal under Sub-section (1) shall be accompanied by a certified copy of the award against which the appeal is made unless the production of such copy is dispensed with.

(3) In deciding such appeal the Gujarat Revenue Tribunal shall exercise all the powers a Court has and follow the same procedure which the Court follows in deciding Appeals from the decree or order of the original Court under the Code of Civil Procedure, 1908 (V of 1908).

It could be seen from the aforesaid provisions of Section 36 that in deciding an appeal by the Gujarat Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, the said Tribunal is empowered to exercise all the powers of a Court and has to follow the same procedure which the Court follows in deciding the appeal from the decree or order of the original Court under the Code of Civil Procedure.

8. Section 37 of the G.A.L.C. Act provides Collector's power of revision, whereas, Section 38 provides for revisional jurisdiction of the Gujarat Revenue Tribunal. Section 38 reads as under:

38. Revisional jurisdiction of Gujarat Revenue Tribunal: (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957 (Bom. XXXI of 1958), an application for revision may be made to the Gujarat Revenue Tribunal constituted under the said Act against any order of the Collector on the following

grounds only:

- (a) that the order of the Collector was contrary to law;
- (b) that the Collector failed to determine material issue of law; or
- (c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this section the Gujarat Revenue Tribunal shall follow the procedure which has been prescribed by Rules and Regulations made under the Bombay Revenue Tribunal Act, 1957 (XXXI of 1958).

9. It is very clear from the plain persual of the provisions of Section 38 and particularly Sub-section (2) that revision application is required to be heard by the Gujarat Revenue Tribunal after following the procedure which has been prescribed by the Rules and Regulations made under the Bombay Revenue Tribunal Act.

10. The impugned order rejecting the application for review was made by the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal has been constituted under the Bombay Revenue Tribunal Act. In Chapter II of the Bombay Revenue Tribunal Act, 1957, Section 3 provides for the establishment and constitution of the Revenue Tribunal. Section 9 of the said Act provides jurisdiction of the Tribunal. Sub-section (2) of Section 9 says that except as expressly provided in any enactment for the time being in force, the State Government may by official notification in the Official Gazette, direct that the Tribunal shall also have jurisdiction to entertain and decide appeals from, and revise decisions and orders of such persons, officers and authorities in such other cases as the State Government may determine.

11. Obviously, for that very purpose the State Government has to make notification in the official gazette. Thus, the State Government can add to, amend or omit any of the entries in the First Schedule of the Bombay Revenue Tribunal Act and thereupon the Tribunal shall have jurisdiction in such matters. In order to confer jurisdiction on the Tribunal, the State Government is empowered to add to, amend or omit the entries made in the First Schedule. It is true that the Gujarat Agricultural Lands Ceiling Act is not added in the First Schedule attached to the Bombay Revenue Tribunal Act. However, there is a special provision in the enactment in the Gujarat Agricultural Lands Ceiling Act, itself, conferring jurisdiction on the Gujarat Revenue Tribunal. Section 38 provides specific provision that revisional jurisdiction of the Gujarat Revenue Tribunal. Thus, the jurisdiction of the Gujarat Revenue Tribunal is conferred not by virtue of entries made in the First Schedule but by virtue of the specific provision and special provision in the enactment like the Gujarat Agricultural Lands Ceiling Act. Therefore, the Revenue Tribunal has jurisdiction to hear the revision u/s 38. Gujarat Revenue Tribunal is a creature of the Bombay Revenue Tribunal Act. The procedure to be followed by the Gujarat Revenue Tribunal while exercising its

revisional powers is also prescribed in Sub-section (2) of Section 38 of the G.A.L.C. Act. It is in this context, this Court is obliged to consider the provisions of Bombay Revenue Tribunal Act and the Rules and Regulations thereunder.

12. Section 13 of the Bombay Revenue Tribunal Act, clearly clothes the Tribunal with power of a Civil Court. Section 13 reads as under:

13. (1) In exercising the jurisdiction conferred upon it by or under this Act, the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath, affirmation or affidavit, of summoning and enforcing the attendance of witnesses, of compelling discovery and the production of documents and material objects, requisitioning any public record or any copy thereof from any Court or office, issuing commissions for the examination of witnesses or documents, and for such other purpose as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of Sections 195, 480 and 482 of the Code of Criminal Procedure, 1898, and its proceedings shall be deemed to be judicial proceedings within the meaning of Sees. 193, 219 and 228 of the Indian Penal Code.

(2) In the case of any affidavit to be filed, any officer appointed by the Tribunal in this behalf may administer the oath to the deponent.

The Tribunal is empowered to exercise the power of a Civil Court by virtue of the provisions of Section 13 of the B.R.T. Act. Section 14 provides about the regulation for regulating the practice and procedure of the Tribunal. The regulations exercising powers u/s 14 are also made. The relevant regulation will be considered hereinafter very shortly.

13. Again, it is interesting to refer to the provisions made in Section 17 of the B.R.T. Act with regard to review of orders of the Tribunal. Provisions of Section 17 are as under:

17(1) The Tribunal may, either on its own motion or on the application of any party interested, and where the State Government is heard u/s 15 on the application by that Government, review its own decision or order in any case, and pass in reference, thereto, such order as it thinks just and proper:

Provided that no such application made by any party shall be entertained, unless the Tribunal is satisfied that there has been the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of such party or could not be produced by him at the time when its decision was made, or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reason:

Provided further, that no such decision or order shall be varied or revised, unless notice has been given to the parties interested to appear and be heard in support of such order.

(2) An application for review under Sub-section (1) by any party or, as the case

may be, by the State Government shall be made within 90 days from the date of decision or order of the Tribunal:

Provided that in computing the period of limitation, the provisions of the Indian Limitation Act, 1908, applicable to applications for review of a judgment or order of a Civil Court shall, so far as may be, apply to applications for review under this section.

It could very well be seen from the aforesaid provisions of Section 17 that the Tribunal is clothed with review powers of its own orders. Therefore, the Gujarat Revenue Tribunal constituted u/s 3 of the Bombay Revenue Tribunal Act having jurisdiction of revision under the Gujarat Agricultural Lands Act has statutory specific power to review its orders. There is, thus, a clear provision for review of the orders of the Tribunal. Therefore, the contention that there is no provision for review of the orders of the Tribunal is required to be rejected.

14. Having regard to the specific provisions of Section 17 of the B.R.T. Act and having regard to the provisions of Sections 9 and 13, there cannot be any doubt about the power of review of the Gujarat Revenue Tribunal. Therefore, this Court has no hesitation in holding that the Gujarat Revenue Tribunal constituted under the provisions of Section 3 of the B.R.T. Act for hearing the revisions has power of review under the Bombay Revenue Tribunal Act.

Not only that, Regulation 31 of the Bombay Revenue Tribunal Regulations, 1958 provides about the hearing of review applications by the Gujarat Revenue Tribunal. It would be expedient and relevant at this stage to refer to the provisions of Regulation 31. Regulation 31 reads as under:

31. Where a single member or the members of a Bench who decided the case or made the order, a review of which is applied for, or one of such members continue or continues to be a member or members of the Tribunal at the time when the application for such review is to be heard, such member or a Bench consisting of such member or members, as the case may be. shall hear the application and no other Bench shall hear the same.

On combined reading of the aforesaid provisions and particularly provisions of Section 17 and Regulation 31, this Court has no hesitation in finding that the review is competent before the Gujarat Revenue Tribunal which has heard the revision u/s 38(2) of the G.A.L.C. Act.

15. Apart from that, the proposition of law as borne out from the decision of the Apex Court in P.N. Thakershi's case (supra), even in absence of specific statutory provision for review, the power of review may be by implication. Therefore, even if no specific statutory power is conferred to review its order, in a given set of facts and the relevant proposition of law, there may be an implied power of review. Having regard to the facts and circumstances and the provisions of law, this Court finds that power of review of the Gujarat Revenue Tribunal of its order recorded in a revision can also readily be inferred impliedly.

16. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice.

17. The underlying purport and design of the provisions of Order 47 Rule 1 of the CPC and analogous provisions of review are that justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to any one.

18. This will lead to the appreciation of the finding of the Tribunal that review of its order cannot be made in view of the non-availability of the Presiding Judge who recorded the judgment and decision in the review in view of the provisions of Regulation 31 of the B.R.T. Regulations. The Acting President of the Gujarat Revenue Tribunal rejected the review applications filed against the orders of his predecessor holding that power to review is only with the author of the judgment or decision. The approach of the Tribunal in this connection is not legal and sustainable. The interpretation of Regulation 31 made by the Tribunal is not proper and legal. The provisions of Regulation 31 are analogous to the provisions of Order 47 Rule 5 of the Civil Procedure Code. The provisions of Order 47 Rules 1 to 9 are relating to review. Order 47 Rule 5 provides the procedure for hearing of application for review in Court consisting two or more Judges. Order 47 Rule 5 reads as under:

R. 5. Application for review in Court consisting of two or more Judges: Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which applies for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application for considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Relying on the provisions of Regulation 31. the Tribunal reached to the conclusion that the order in review was passed by the predecessor and therefore, review is not competent by the successor in office. With due respect, this view of the Tribunal is not correct and legal. Regulation 31 does not say that the successor in office cannot review the order of the predecessor in office. A mere glance on the provisions of Regulation 31 which is analogous to the provisions of Order 47 Rule 5 would go to show that where a member or members of a Bench who decided the case or made the order, a review of which is applied for. continue or continues to be a member of members or the Tribunal at the time when the application for such review is to be heard, then in that case, such member or members or a Bench consisting of such member or members, as the case may be, shall have to hear the application and no other Bench shall hear the review

application.

19. It means that so long as a member or members of the Bench continue or are available at the time of hearing of application for review, other member or members of the Bench shall be precluded from hearing the review application. Thus, what is contemplated by the provisions of Regulation 31 is that the same member or members of the Tribunal or the Bench should hear the review application which had passed the orders sought to be reviewed so long as they are available. But it cannot be construed that by any reason or any eventuality, if a member of the Tribunal or members of the Bench are not available at the time of hearing of review application, the successors in office are debarred or precluded from hearing the review application. The Court is obliged to take broad, liberal and lenient view and not a technical, dogmatic and unrealistic view as taken by the Tribunal while rejecting the application for review.

20. If the view taken by the Tribunal is accepted to be correct, then substantive statutory right of review will be lost in many cases. The approach of the Tribunal is not correct and legal. Let us see by an illustration. Where one of the Judges who was a member of a Full Bench which heard the revision ceased to be attached at the time when the review application was filed and the other two Judges also ceased to continue to be attached after they had ordered to issue notice, a Full Bench of any other three Judges hearing the review application against the order of the Full Bench consisting of 3 Judges who were not available at the time of hearing of review application could be said to be incompetent? The obvious positive answer would be in the negative.

21. The interpretation and construction of the provisions should be such so as to advance the cause of substantial justice and not to thwart it. In this connection, it would be profitable to refer to the observations made by the Hon"ble Supreme Court on the concept of justice and review to be culled out in the case of *S. Nagaraj and Others Vs. State of Karnataka and Another*, . The relevant observations are at pages 46 and 47 wherein the Supreme Court has spelt out the legal ratio as follows:

Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare-decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher Courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction hut for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid justice. It is either statutory or inherent. The latter is available where the

mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which are of us (R.M. Sahai. J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that, obviously, cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Court and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even then, there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order, the Courts culled out such power to avoid abuse of process or miscarriage of justice. In AIR 1941 1 (Federal Court) , the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council in *Rajinder Narain v. Bijai Govind Singh* 1 Moo PC 117 (sic) that an order made by the Court was final and could not be altered.

Nevertheless, if by misprison (sic) in embodying the judgments, by errors have been introduced, these Courts possess, by common law, the same power which the Courts of record and statute have of (sic) rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have, however, gone a step further and have corrected mistake introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.

Basis for exercise of the power was stated in the same decision as under:

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard. Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed and substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame rules as to the conditions

subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in Civil proceedings on ground analogous to Order XLVII, Rule 1 of the Civil Procedure Code. The expression, "for any other sufficient reason" in the has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL, Rule I of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of the process of the Court. The Court is thus not precluded from recalling or reviewing its order if it is satisfied that it is necessary to for sake of justice.

22. The legal ratio constituted in the aforesaid case law is that though review literally and even judicially means re-examination or re-consideration, but the basic philosophy inherent in it is the universal acceptance of human fallibility and yet in the realm of law the Court and the statutes lean strongly in favour of finality of decision and exceptions to them have been carved out to correct accidental mistakes or miscarriage of justice. Thus, the horison of the power of the Court and the law, in order to render proper justice, has been extended by the Supreme Court to an aggrieved person by virtue of a decree or order on the ground of human fallibility or a mistake or error of law and to prevent or end the miscarriage of justice. It is in this context and the aforesaid legal proposition, the interpretation of Regulation 31 must be made.

23. Reliance is placed on the decision of this Court in the case of Ex-Subedar, B.N. Jethwa v. Sumer Sports Club 1995(1) GLH 619. The learned brother A.N. Divecha, J. held that if a member who authored the judgment is not available a review application cannot be heard by any other member of the Tribunal relying on the decision of the Supreme Court in the case of Devaraju Pillai Vs. Sellayya Pillai, while interpreting the provisions of Regulation 31 and the provisions of Section 114 and Order 47 Rule 1 of the Code of Civil Podedure. Thus, in terms it is held in that a successor Judge of the Court or successor member of the Tribunal cannot review the judgment or decision of its predecessor in view of the decision of the Apex Court in the case of Devraju Pillai (supra).

24. The learned Counsel for the petitioners has placed reliance on a Division Bench decision of this Court in Geetaben Janakbhai Patel Vs. The Competent Authority and Deputy Collector of Ahmedabad, and it is contended that the decision of the learned single Judge in Ex-Subedar's case (supra) is reversed. Reliance is also placed on the decision of the Apex Court in Devraju Pillai's case (supra). After dispassionately examining and carefully considering the ratio laid down in Devraju Pillai's case, in my opinion, it does not lay down that the successor Judge or successor in office is prevented or precluded from hearing of a review application of a decision or judgment or order of the predecessor. It cannot be said that the review application or petition must be heard only by the author of it and nobody else. Such an interpretation would not only be unjust,

but would also be totally improper. It cannot be contended that merely because the incumbent who has passed the original order or decision is not attached to that Court or is not available redressal by way of review is lost or not available. The view which this Court is inclined to take is also supported by the ratio of the Division Bench decision in Geetaben's case (supra).

25. The Division Bench in Geetaben's case (supra) has held that the Supreme Court in Devraju Pillai's case did not at any stage observe that because the Judge who heard the review was different from the Judge who had originally decided the Second Appeal, the second Judge had no jurisdiction to hear the review. It is also observed that the observations with regard to the jurisdiction was only in the context of the limited jurisdiction which has to be exercised by a Judge in hearing a review application inasmuch as the provisions of Order 47 of the CPC had to be kept in view while dealing with such an application and a Court hearing a review application cannot rehear the case on merits as if it was an appellate Court. So the Division Bench of this Court has explained the correct ratio laid down by the Apex Court in Devraju Pillai's case (supra) in Geetaben's case (supra). Therefore, the respondents are not in a position to make any capital out of placing reliance on the decision of the Supreme Court in Devraju Pillai's case (supra). Reliance placed on the case of Ex-Subedar 's case (supra) decided by the learned single Judge of this Court is also of no avail to the respondents as the proposition of law laid down therein is not approved by the Division Bench of this Court in Gitaben 's case (supra). Therefore, in the opinion of this Court, the ratio propounded by this Court in Ex-Subader's case (supra) is not only watered down but is not approved by the Division Bench in the case of Geeiaben (supra). Therefore, it would not be necessary for this Court to refer the matter to a larger Bench while disagreeing with the proposition of law laid down in Ex-Subedar's case (supra) on the principle of binding stare-decisis and implied overruling.

25.1 Again in Geetaben 's case, the Division Bench of this Court held that in similar and such a case decided by the learned single Judge in Special Civil Application No. 10157 of 1994 did not correctly appreciate the ratio decidendi of the judgment of the Supreme Court in the case of Devarju Pillai (supra). Therefore, the Division Bench while disagreeing with the view of the learned single Judge held that merely because an incumbent who had passed the original order is no longer available, then the remedy by way of review would be lost. The Division Bench judgment is binding and above single Bench judgment is as such impliedly overruled.

26. In view of the aforesaid discussion and the reasons, both these petitions are allowed and the impugned orders of the Gujarat Revenue Tribunal in both the petitions are quashed and set aside. The Tribunal is directed to decide the both the review applications filed by the petitioners on merits and until then, the parties are directed to maintain status quo as on today. It is hoped, that the Tribunal will hear the review applications expeditiously in accordance with law.

Rule is made absolute accordingly with no order as to costs.