

(1989) 11 KL CK 0005
In the High Court Of Kerala
Case No : C. R. P. No. 3702 of 1981

G. Jayasree

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 24-11-1989

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 105, 105(2)(b), 105(2)(b), 105(3), 105A

Citation : (1990) 2 KLJ 60

Hon'ble Judges : V. Sivaraman Nair, J; P. K. Shamsuddin, J

Bench : Division Bench

Advocate : P. Sukumaran Nayar, for the Appellant; A. Shahul Hameed, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J

1. The fourth respondent filed a statement u/s 85 (2) of the, Kerala Land Reforms Act, declaring the land owned/possessed by him. He claimed substantial portions thereof to be plantations. According to the statement, he was not in possession of excess lands. The Taluk Land Board required the authorised officer to make a verification of the details contained in the statement. In his report dated 9-7-1976, the authorised officer furnished the details. On the basis thereof, the Taluk Land Board issued a draft statement to the fourth respondent on 27-7-1976, holding that the fourth respondent had 48.34 acres of land, of which 19.7 acres were excess lands liable to be surrendered. The fourth respondent objected to the draft statement. Petitioner and her mother also submitted their objections, claiming that 14.93 acres out of the fourth respondent's holding belonged to them and may be excluded. Items Nos. 2 to 5, 8 and 9 of the draft statement were the subject matter of their objections. The declarant in his objection disowned the above extent of 14.93 acres.

2. The Taluk Land Board in its order dated 25-10-1976, after hearing the

objectors, held that the declarant had to surrender 18 75.613 acres in the six items mentioned above, which were claimed by the petitioner and her mother." Petitioner filed C. R. P. No. 1385 of 1977 against that order and the fourth respondent filed C. R. P. No. 1434 of 1977. This court heard these petitions together and by its order dated 8-8-1978 remitted the matter for reconsideration. This court took note of the fact that the declarant (fourth respondent) was outside the State for a fairly long period of time, that, he had left the properties to his sister and children and subsequently a formal document was executed after 1970. It was in view of those facts that this court remitted the matter for reconsideration to the Taluk Land Board, with specific emphasis that a fresh option has to be given to the fourth respondent.

3. The Taluk Land Board, on receipt of the records, called for a further report from the authorised officer. The authorised officer submitted a fresh report on 10-10-1978, the effect of which was that the declarant was not in possession of the six items of properties, which were treated as excess lands liable to be surrendered by him. He also reported that pursuant to the partition deeds of 1954 and 1964 and the registered release deed No. 743/74 dated 26-2-1974, the fourth respondent had no interest in those properties of the time when the Kerala Land Reforms Act came into force. The Taluk Land Board, however, did not accept this report, apparently for the reason that the fourth respondent-declarant claimed those properties to be his in the statement and he continued to be the owner as per records at the relevant time. The Taluk Land Board also took into account the close relationship between the parties to find against the declarant. It is the case of the petitioner, that even though she was heard and her objections were considered, a copy of the order was not served on her, thus disabling her from challenging that order.

4. The fourth respondent-declarant filed G. R. P. No. 3153 of 1979: Our learned brother Bhat J. heard the above Civil Revision Petition and dismissed the same. It was observed:

It is admitted that these properties were in fact allotted to the share of the declarant in 1954 at a time when he was a student studying in North India. It was only natural for the sister and brother in-law to help this young boy by looking after the properties. This position continued in 1964 as can be seen from the circumstance that the declarant has not been able to produce any document to show at any time during this period of 10 years the sister and her children even though of setting up a hostile title. It was only in 1964 that they purported to include these properties in their partition deed. The context of this document is very important. It was executed after Act 1 of 1964 came into force. Then and now, the declarant continues to be an adult unmarried individual with a ceiling limit of 5 standard acres or 7.50 ordinary acres. There can be no doubt that as the position then stood he would have lost a considerable part of his property.. It was in that context that the 1964 partition deed was brought into existence. In spite of this partition deed, in 1970 the declarant gave a declaration setting up

title and possession over this property. This it appears to me, is a circumstance of considerable significance and it will outweigh whatever weight can be attached to the 1964 partition. In this view, the opinion of the authorised officer that the position is adverse deserves no weight at all. Of course, long after the proceedings started in 1974 the declarant executed a release deed in favour of his sister and her children stating that the property belongs to them and he has executed the document in regard to whatever nominal right he may have. Without anything more, the recitals in this document also cannot have much weight. The close relationship between the parties also is worthy of note. The declarant has no case that at any time after 1954 he and his sister had fallen out. It is no a consideration of this circumstance, though not in this exact manner, that the Land Board came to the conclusion that the petitioner who, in his declaration showed these properties as belonging to him and in his possession has not succeeded in proving that he has lost title or possession over the same. I am unable to find any reason for interference with this conclusion.

It is evident from the above, that this court, in disposing of C.R. P. No. 3153 of 1979; filed by the fourth respondent, had considered the effect of that specific plea advanced by him that ever-since the family partition of 1954 the sister of the declarant (mother of the petitioner herein) and the children were in possession of the six items and that he had no children and his sister and her children treated those items as belonging to them, in the portion deed No. 3356/64 dated 13-6-1964. This court approved the finding contained in the order of the Taluk Land Board, that the declarant was not entitled to exclude that area from his ceiling limits. It is true, that our learned brother, M. P. Menon J., in disposing of C. R. P. Nos. 1385 and 1434 of 1977, had indicated that the authorised officer's report at pages 83 to 88 supported the case of adverse possession advanced by the petitioner and her mother, that the partition of 1964 among them justified the case of adverse possession, which the declarant had specifically pleaded in his declaration filed in 1970, and therefore all the materials available to the Taluk Land Board were in favour of the declarant, and it was difficult to sustain the findings to the contrary.

5. When the matter came up for consideration before our learned brother, Radhakrishna Menon J., he felt that in the light of the report of the authorised officer at pages 83 to 88 (first report) and 277 to 280 (second report), the Taluk Land Board ought to have held in favour of the declarant and the present petitioner." But he found that the judgment in C. R. P. No. 3153 of 1979 stood in his way in adopting that course; and it was for that reason that he stated. "I am of opinion that the judgment in C. R. P. No. 3153 of 1979 requires reconsideration". What we have now to decide is whether the judgment in C. R. P. No. 3153 of 1979 can now be reconsidered by us. The other question which we have to answer is whether the Taluk Land Board has no discretion to deal with and differ from the report of the authorised officer and to come to a conclusion different from that indicated in the report.

6. It is clear from the judgment in C. R. P. No. 3153 of 1979, which we have extracted in extenso, that Bhat J., disposed of that revision petition on a consideration of the matter on merits. He came to a definite finding, after referring to all the relevant circumstances, that the recitals contained in the partition deed of 1964, among the sister of the declarant and her children, and those contained in the declaration, which the fourth respondent filed in 1970; could not have much weight in -"view of the fact that the declarant had executed a surrender deed No. 743/74 dated 26-2-1974 whereby he surrendered all his rights in the disputed property in favour of his sister and her children.- The learned Judge also affirmed the finding contained in the order of the Taluk Land Board, that the fourth respondent, who, in his declaration showed these properties as belonging to him and in his possession, had not succeeded in proving that he had lost title or possession over the same. It is evident therefore that the" judgment in C.R.P. No. 3153 of 1979, was rendered on a consideration of the merits of the controversy after adverting to all the relevant circumstances. We do not think that we are entitled, in a reference, to review or reconsider that judgment as if in appeal. Nor are we entitled to hold that the judgment in C.R.P. No. 3153 of 1979 is unsustainable.

7. True it is that the revision petitioner was not a party to C.R.P. No. 3153 of 1979. It is evident from the order impugned in these proceedings, that the Taluk Land Board did not furnish a copy of that order to the petitioner. It is also true that she had to file O.P.No.4287 of 1981 before this court to obtain a direction to the Taluk Land Board to furnish a copy of the impugned order. Counsel for the petitioner is technically right in his submission, that the petitioner cannot be bound by the" observations contained in the judgment in which she was not a party. She was entitled to urge all her contentions and if we find sufficient reasons to differ from the conclusions come to by our learned brother in disposing of C. R. P. No. 3153 of 1979, we may, perhaps, be entitled to hold in favour of the petitioner. None of these circumstances enable us to reconsider the judgment in C. R. P. No, 3153 of 1979 on merits. In other words, we may come to our own conclusions in this petition, but cannot review or set aside the judgment in C. R. P. No. 3153 of 1979.

8. Counsel for the petitioner submits, that the two reports of the authorised, officer made it absolutely clear that after the partition in the family in 1954," the fourth respondent-declarant had not been in possession and enjoyment of the properties. On the other hand, his sister and her children were in possession of those properties openly and adverse to the fourth respondent. He refers to the partition of 1964 between the sister of the fourth respondent and her children as per document No. 3356/64 dated 13-10-1964, whereby they treated items 2 to 5, 8 and 9 consisting of 14.93 acres as belonging to them, in spite of the fact that those properties were allotted to the share of the fourth respondent in the 1954 partition. Reference is also made to the Rubber Board Registration Certificate No. 2399 in favour of the petitioner, which disclosed that the petitioner had planted the area in 1963 and 1967. Counsel submits that all these

factors disclose that the petitioner was holding the properties in question; adverse to the fourth respondent and that fact as disclosed by the reports of the authorised officer, ought to have been accepted. He invited our attention to the decision of our learned brother, Radhakrishna Menon J. in "Abbas v. Taluk Land Board, 1987 (2) KLT 533, to the effect, that unless the authorised officer is summoned and cross examined u/s 105 A (3) of the Kerala Land Reforms Act, the Taluk Land Board is bound to accept the "verdict." of the authorised officer as disclosed by his reports, Counsel therefore submits, that in both the reports at pages 83 to 88 and 277 to 280, the respective authorised officers had reported that the petitioner was holding the land adverse to the declarant, and since neither of them was cross-examined, the Taluk Land Board was bound to find that 14.93 acres included in six items in the declaration were not in the possession of the fourth respondent-declarant, and therefore were not includible in his holding.

9. It is true that the authorised officers reported that the properties in question were in adverse possession of the petitioner and her mother and therefore those lands were liable to be excluded from the account of the fourth respondent-declarant. If the decision in Abbas v. Taluk Land Board, 1987 (2) KLT 533, is correct, petitioner is entitled to succeed, since according to that decision, the Taluk Land Board has no discretion, except to follow the findings contained in the report of the authorised officer was not summoned and cross-examined in relation to the disclosures made in the report.

10. We have our serious reservations about the proposition. That is partly due to the fact that on the same question two of our learned brothers, Kader J., in Patty Thommen v. Thommen Thommen, 1984 KLT (SN) 19 C. R. P. No. 2369 - and Bhaskaran Nambiar J., in Ammad v. State of Kerala, 1989(2) KLT 398, have taken different views. In the former, this court held that by virtue of section 105 A(2) of the Act, the report of the authorised officer formed part of the record and may be used as evidence even without examining him; and sub-section (3) being only enabling and directory, the Land Tribunal had no obligation to accept the report of the authorised officer. In the latter decision, Bhaskaran Nambiar J., explained away Abbas (supra) in the following manner:

If the authorised officer commits a patent error an error apparent on the face of the record, Land Board will be acting within its jurisdiction if it rejects or accepts only in part the report of the authorised officer. This is, because the inspection, and report of the authorised officer are statutory aids available to the Land Board for passing an order in the ceiling case. The "order" of the authorised officer under S. 105(3) is not a substitute for the order of the Land Board and the Land Board has to apply its mind whether the report and order of the authorised officer should be accepted or not. It is in this proconsul jurisdiction that the admissibility in evidence of the report of the officer arises and when there is a patent error in the report of the authorised officer, the Land Board is not bound to incorporate the mistake in its order also; but has the power and the duty,

implicit in its jurisdictional exercise, not to carry the mistake in the order of the Land Board.

11. We will carry our reasoning a little further. According to us the report or order of the authorised officer has the effect only of a verification report by a designated officer. It is not a substitute for a determination which the Taluk Land Board alone is entitled to make on a consideration of all the materials. The report of the authorised officer may be part of such materials or one of the items of evidence. Section 85(5) of the Land Reforms Act enables the Taluk Land Board, on receipt of the statement under sub-section (2) or sub section (3A) to cause verification of the particulars mentioned in the statement and also to ascertain whether the person to whom the statement relates, owns or holds any other lands, and by order to determine the extent and identity of the land to be surrendered.

12. Chapter III of the Kerala Land Reforms (Ceiling) Rules (hereinafter referred to as the Ceiling Rules) provides for verification and determination of the extent and identity of the land to be surrendered. Rule 9 of those rules empowered the Taluk Land Board to call for any relevant information from any officer of the Government or from any other person and obliges such officer or other person to furnish the required information in his possession. Rule 9A provides that the Taluk Land Board may require the Taluk Tahsildar or such other officer to verify the correctness or otherwise of the particulars contained in the statement and to ascertain whether the person who file the statement owns or holds any other land and send a report thereof to the Taluk Land Board. Sub-rule (2) casts an obligation on the concerned officer to send his report to the Taluk Land Board. Rule 10 requires the Taluk Land Board after considering (1) the particulars furnished in the statement (2) the verification report, if any, received by it, (3) the facts and circumstances appearing in the case, and (4) such other relevant matter, to prepare a draft statement of the lands, the ownership or possession or both of which are to be surrendered by the person to whom the draft declaration relates. After publication and service of the draft declaration on the persons concerned as provided in rules 11 and 12 respectively and after receipt of objection, the Taluk Land Board is required under rule 13 to consider the objections if any and the oral and documentary evidence and after bearing the parties who appear before it and after such further verification, and ascertainment or investigation as it may deem fit and proper, by order determine the extent and identity of the land to be surrendered. Proviso to that rule insists upon giving reasonable opportunity to be heard to the persons interested about the particulars obtained by such further verification, ascertainment or investigation if the Taluk Land Board proposes to rely on them.

13. It is difficult to accept the submission that the verification reports are orders which bind the Taluk Land Board. To accept that position to be correct, we should assume that the provisions of the rules enabling parties to lead oral and documentary evidence and the Taluk Land Board to conduct further investigation,

inquiry or ascertainment of data are surplusages and need not have been provided for. Such a construction as would ignore part of the rules do not commend itself to us.

14. It is evident from the ceiling rules referred to above, that the Taluk Land Board has to consider the statement, the verification report, acts and circumstances appearing in the case such other relevant matters, the draft statement, objections thereto, materials emerging from further verification, ascertainment and investigation etc, to come to its conclusion relating to the extent and identity of the land to be surrendered. It is clear that the verification reports or the further verification reports, if any, are only some of the materials which the Taluk Land Board shall consider in passing final orders. In an extreme case, where the verification reports are in favour of the declarant, but all other materials except of course the declarant's objection are against him, the Taluk Land Board may have to weigh these conflicting factors one against the other to come to a final decision. If the other factors, out weigh the verification report, the Taluk Land Board cannot ignore those factors and enter a finding based entirely on the verification report. The very fact that in addition to the first verification under rules 9 and 9A of the Ceiling Rules, the Taluk Land Board is authorised to conduct a further verification, ascertainment or investigation is a clear indication of the fact that the report of verification has no such finality as to bind the Taluk Land Board, if it does not summon and cross-examine the verifying officer. In a case where the verification report cannot be reconciled with other relevant factors mentioned in rule 10 or the materials introduced under rule 12, the Taluk Land Board has power to require either the same authorised officer or another to conduct a further verification, ascertainment or investigation. The Taluk Land Board may do so even without summoning or cross-examining the authorised officer. These rules definitely indicate that the report of verification submitted by the authorised officer either under rules 9, 9A or 12 of the Ceiling Rules is only one of the many factors or materials which the Taluk Land Board may consider. That report has no exclusive finality, nor is the Taluk Land Board obliged to give that report any overriding importance in preference to other factors and materials referred to in rules 10 and 13 of those rules.

15. In *Abbas (supra)*, the learned Judge seems to have assumed that sections 105 and 105A apply to verification of particulars in the statement by the Taluk Land Board as provided u/s 85(5) of the Act. That assumption does not appear to us to be sound or correct. The Taluk Land Board is empowered (a) to cause the particulars mentioned in the statement to be verified, and (b) to ascertain whether the person who filed the statement owns or holds any other land. Rules 9 and 9A of the Ceiling Rules apply to these processes of verification and assessment. The former enables the Board to call for any relevant information from Government officer or any other person. That need not be the authorised officer. - It may be any Government officer or any other person. The officer designated in rule 9A to verify the particulars contained in the statement is the Taluk Tahsildar or such other officer as the Land Board may specify. These

officers perhaps may be the same as the authorised officers, but they need not be. Nor need a Taluk Tahsildar always be an authorised officer mentioned in sections 105 and 105A of the Act. We are therefore of the opinion that the verification report provided in section 85 (5) of the Act and rules 16 and 13 of the Ceiling Rules cannot be the order which the authorised officer" may pass u/s 105 (2) of the Act. Nor is it necessary that the Taluk Tahsildar or any other person designated by the Land Board and who verifies the particulars furnished by the declarant should be an authorised officer appointed under sections 105 and 105A of the Act. On a consideration of the provisions contained in section 85 (5) read with rules to 13 of the Ceiling Rules we are of the opinion that the verification of the particulars as enjoined by section 35 (5) of the Act need not and was not meant to be conducted u/s 105 of the Act. Rule 10 deals with verification reports and such further verification as it deems fit" before the Taluk Land Board prepares a draft statement.

At the stage of enquiry under rule 13, before passing orders u/s 85 (5), the Taluk Land Board may order "further verification/ ascertainment of investigation as it may deem fit and proper". Neither rule 10 nor rule 13 contemplates, an order as is provided in section 105 (2) (b); verification reports alone are within the comprehension of those rules. Such Verification reports are items of evidence or materials which the Taluk Land Board is bound to consider in preparing draft statement under rule 10 and in passing final order at the stage of enquiry under rule 13 of file rules. We are of the opinion that Verification reports contemplated by section 85 (5) and rules 10 and 13" of the Ceiling Rules are not the same as the order which the authorised officer may pass u/s 105 (2) (b) of the Act. We also notice that the officers who conduct the verification/ascertainment/ investigation or further verification under the ceiling rules are either the Taluk Tahsildar or such other officer, as may be specified by the Land Board. Authorised officers mentioned in sections 105 and 105A are persons appointed by Government.

16. Section 105 authorises the Government to appoint an authorised officer, who may, by notice, require any person to furnish any information relating to the extent of land held by such person, the number of members of the family, and such other particulars as may be prescribed. Persons who are so required have to furnish the information to such authorised officer within such time as may be specified in the notice. If he fails to furnish the information within time specified, the authorised officer may obtain necessary information by himself or through such agency as he thinks fit. He is obliged to give the person concerned, a reasonable opportunity to make representations and to adduce evidence if any in respect of such information as he has gathered. He is also authorised to pass such orders as he deems fit.

17. The procedures to be followed by the authorised officer are prescribed in rules 138 to 141 of the Land Reforms (Tenancy) Rules. It is true that after receipt of information, he has to verify the same by conducting an enquiry with

notice to the declarant or any other person concerned. He is enabled to issue and serve summons, examine parties and witnesses, compel production of documents, permit amendment of pleadings, addition of parties, review orders passed, conduct local inspection and pass final orders. We are of the opinion that these procedural provisions do not throw the mantle of a court on the authorised officer, nor is his "verdict" consecrated as a final order binding on the Taluk Land Board, or the Land Tribunal. It cannot be a substitute for an order of the Taluk Land Board u/s 85 (5) of the Act. Even after completion of the processual formalities, his "verdict" is no more than a verification report, whenever he acts as the verifying officer u/s 85(5) of the Act read with rules 9 and 13 of the Ceiling Rules.

18. We are of the opinion that section 105 deals with cases where the authorised officer has to pass "orders" which may at least be preliminary in character. Detailed procedural provisions mentioned therein indicate that what the authorised officer is required to do is to pass at least a preliminary order for the purpose of collecting information relating to the extent of land held by such person, the number of members of the family and such other particulars as may be prescribed. Such preliminary orders may be those enabling the authorised officer to file complaints relating to offences involving violation of provisions of the Act. Sections 85 and 85A of the Act require the persons specified therein to file statements before the Taluk Land Board intimating the location extent and such other particulars as may be prescribed. Section 118 penalises a person who in spite of his obligation under the Act to furnish a return or information, refuses or wilfully fails to do so. Section 118A penalises any person bound to file a statement u/s 85A for his failure to do so within a specified time. Section 119 penalises any person who furnishes a return or information which he knows to be false. False declarations are sought to be penalised u/s 120. Section 121 penalises contravention of any lawful order passed under the Act and sec. 122 penalises cutting of trees or removing machinery etc., from land which is liable to be surrendered u/s 85(5) of the Act. Sections 123 and 123A deal with cognizance of offences: the former the generality of offences and the latter offences u/s 118A of the Act. Judicial First Class Magistrate alone can, take cognizance of general offences, whereas Taluk Land Board is constituted as a criminal court to try offences u/s 118A. Sub-section (1) of section 123 provides that no court shall take cognizance of offences except on a complaint filed by an officer authorised by the Government. Sub-section (4) of section 123A provides, that the Taluk Land Board shall not take cognizance of any offence punishable u/s 118A, except on complaint in writing made by an officer authorised by the Government in this behalf. It is evident from the above provisions, that refusal or wilful failure to file returns u/s 85(2), refusal to file statement u/s 85A, furnishing false return or information, or false declarations are penalised on the basis of a complaint in writing made by an officer authorised by the Government in that behalf. It is clear that the authorised officer mentioned in section 105 is the person authorised to make such a complaint. We understand section 105 to lay down

the procedure whereby the authorised officer comes to preliminary conclusions as to whether a complaint shall be filed against an offender under any one of these provisions. It is for the purpose of satisfying himself whether a complaint is necessary that the detailed procedures are engrafted in section 105 and rules 138 to 141 of the Land Reforms (Tenancy) Rules. It is in that context that the authorised officer is required to pass "such order as he deems fit". Even that order may only be preliminary in character on a consideration of the prima facie aspects relating to the commission of offences provided u/s 117 to 122 of the Act. The order provided in section 105 (2)(b) enables the authorised officer to file a complaint before the Taluk Land Board which can take cognizance of the offence only on receipt of such a complaint. It appears to us that the provisions of section 105 require the authorised officer to comply with the procedural requirements provided in sub-sections (1) and (2), before, he finally decides to file a complaint on a consideration of the prima facie aspects which emerge from the enquiry which he conducts. That, according to us, is entirely different from a verification report which the same officer may submit in compliance with the requirement provided in section 85 (5) of the Act read with rules 9 to 13 of the Ceiling Rules.

19. Section 105 enables the Taluk Land Board to depute any authorised officer to make local enquiry, investigation for inspection to collect data and to use the report and records as evidence in the proceedings without examining him as witness. It is true that sub-section (3) enables the Taluk Land Board, if it thinks fit, to summon and examine the authorised officer. That is obviously with reference to the report which he submits after a local enquiry, investigation or inspection or collection of data as is enabled by sub-section (2) of section 105A and not with reference to an order which he is obliged to pass u/s 105(2) (b) of the Act. We are of the opinion that section 105A (3) cannot apply to an "order" which the authorised officer passes. We do not find anything even in section 105A which obligates the Taluk Land Board to accept the verification report, without demur, if the authorised officer is not summoned and cross-examined by the Taluk Land Board.

20. What section 105A contemplates is a different type of enquiry for an entirely different purpose. The authorised officer is appointed thereunder for bringing to the notice of the Land Tribunal or the Land Board or the Taluk Land Board any fact or information required by the above authorities, or for moving any of them to take any action necessary for the implementation of the provisions of the Act. Taluk Land Board can depute that officer to make local enquiry, investigation or inspection and to collect any data, and the "authorised officer is obliged to submit a report if so required along with records. The Taluk Land Board is enabled to use such records or report as evidence in the proceedings without examining him. That authority is also empowered to summon and examine any officer referred to in sub-section (2). The service of the authorised officer u/s 105A may be used for purposes of verification or further verification of the information contained in the statement- as also to make a local inquiry or

investigation or inspection or to collect any data and report the same to the Land Board to aid any proceedings u/s 85 (5). It is clear from sub-section (2) that what he submits is only a report and not an order. In that sense, the authorised officer performs a different function u/s 105A, leaving it open to the party concerned to summon and examine the officer on his report. This, according to us, is the only intelligible manner in which the provisions of section 105 and 105A can be understood. Our learned brother Radhakrishna Menon J., in Abbas (supra) read the provisions of section 105 (2) (b) along with section 105A (3). That does not appear to us to be correct. It is impossible to comprehend that the statute provided an opportunity to summon and examine an authorised officer on an order which he has made u/s 105 (2)(b), whereas" it is quite reasonable to provide that the authorised officer, who submits a report of local enquiry, investigation or inspection, or ascertainment u/s 105A can be summoned and subjected to cross-examination on his report.

21. There are provisions in other statutes as well which insist that the cause before it shall be subject to verification. It is difficult for us to accept the submission that in all such cases, the verification report shall be accepted as final, if the verifying officer is not summoned and examined as witness. That according to us is not the general law of our country. Nor do we find anything in section 85 (5) which justifies a finding that the report of the authorised officer shall be binding on the Taluk Land Board if the Taluk Land Board had not cross-examined him as is enabled u/s 105A (3) of the Act. We are inclined to hold that the report of the authored officer is not entitled to any greater sanctity than any other verification report. His findings or opinions on points of fact and law are subject to scrutiny by the Land Board of the Land Tribunal, as the case may be. It is too much to insist that the authorised officer should have been cross-examined so as to enable the Taluk Land Board to differ from him even on a point of law like adverse possession and limitation. The report of the authorised officer is to be examined with reference to the statement filed by the declarant, his objections, documents which he may file and such other materials as he may produce in support of his case.

22. As is clear from section 105A, it is open to the Taluk Land Board to order the authorised officer to conduct a local enquiry, investigation or inspection, and direct him to collect data and to submit the report and records even in cases where any other officer had submitted a verification report earlier. There is nothing in the Act or there rules which denies such a power to the Taluk Land Board; Even in such a case, the Taluk Land Board is not bound to accept any of the verification reports as final, but the authorised officer who submits a report of local enquiry, investigation or inspection can be subjected to cross-examination just as much as a commissioner may be, Report of a commissioner if he is not cross-examined will only be a piece of evidence and cannot bind the court. It appears to us that the power of the Taluk Land Board to determine the extent and identity of the land to be surrendered enjoins upon it to consider all materials before it, including verification reports as also the report of local

enquiry, investigation or inspection or any data or other records submitted by the authorised officer. As was rightly observed by our learned brothers Kader J., in Paily Thomman and Bhaskaran Nambiar J. in Ammad (supra), the patent error which an authorised officer commits need not obsess the Taluk Land Board. It has the discretion to accept or reject the verification report wholly or in part for good and sufficient reasons. It is bound to apply its mind to all materials including the verification report. It is not entitled to turn a blind eye and a deaf ear to more acceptable materials on record for the only reason that "they have effect different from the verification report of the authorised officer. We need only state that the Supreme Court had held in Mathew v. Taluk Land Board, 1979 KLT 601, that "it is not the requirement of the law, that purchase certificate should be conclusive proof of surplus or other land held by its holder so as to foreclose a decision of the Taluk Land board under sub-section (5) of section 85". We are of the opinion that the report of the authorised officer can have no more or greater finality in proceedings u/s 85 (5) of the Act.

23. True it is that in this case, the reports at pages 83 to 87 and 277 to 280, the authorised officer reported that the petitioner and her mother were in adverse possession of six items of the disputed properties. We are of the opinion that the Taluk Land Board was entitled to differ from or even discard that report and it has done so for good and proper reasons. The facts of this case sufficiently justify the finding of the Taluk Land Board that adverse possession as found by the authorised officer was legally unsustainable in view of the positive statements contained in the declaration filed by the fourth respondent and the fact that he himself had executed a surrender deed in 1974 in favour of his sister and her children, including the present petitioner. The only conclusion which can be drawn from these circumstances is that the finding entered by the Taluk Land Board that there was no such adverse possession is unassailable. We are not inclined to hold that the judgment in C.R. P. No. 3153 of 1979 requires reconsideration. We over-rule Abbas v. Taluk Land Board 1987(2) KLT 533, and affirm the decisions in Pally Thomman v. Thomman Thomman, 1984 KLT (SN) 19, and Ammad v. State of Kerala 1989 (2) KLT 398.

In this view, we are of the opinion that neither on the point of law nor on merits, is the petitioner entitled to succeed. We, therefore, dismiss, this Civil Revision Petition. Parties will suffer their costs.