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premises are transferred to a person for whose benefit a landlord could not evict the tenant that the provisions of section 14(6) will come into play at once. The scheme of the Act fully supports the view we have taken of the matter, so far as this additional consideration is concerned.

After giving our careful consideration to the third ground, we are clearly, of the view that there is no acquisition by transfer of property by reason of a family partition. Therefore, the Rent Control Tribunal as well as the Rent Controller were right in coming to the conclusion that the provisions of section 14(6) of the Act did not debar the petitioner-respondent from maintaining the petition for eviction of the tenant.

For the reasons given above, this appeal fails and is dismissed. There will be no order as to costs. The tenant is given two month's time to vacate the premises.

S. K. KAPUR, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.
 PRITAM KAUR,—*Petitioner.*

versus

THE RETURNING OFFICER, KHARAR, DISTRICT
 AMBALA, AND OTHERS,—*Respondents.*

Civil Writ No. 287 of 1965.

1965
 March, 1st.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 121—Punjab Panchayat Samitis (Primary Members) Election Rules, 1961—Rules 3 and 17—Prescribed Authority trying election petition—Whether can scrutinise the votes.

Held, that any person, who is a voter for the election of a Member can file an election petition against the election of any person as a Member of the Panchayat Samiti on the ground that there has been a breach of Rule 17 mentioned above, as a result of which the election of the returned candidate has been materially affected. The Prescribed Authority, when dealing with an election petition, can examine whether any invalid votes had been improperly counted in favour of the returned candidate or certain valid votes of the

defeated candidate had been improperly or illegally rejected and if such reception or rejection of the votes has materially effected the result of the returned candidate, then it would set aside his election.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus, prohibition or any other appropriate writ, order or direction be issued declaring the illegally rejected six votes as valid and the petitioner be held to have polled 13 votes; the election of respondents Nos. 5 to 7 be set aside and the lots be ordered to be drawn again and also praying that the co-option, if held of respondents Nos. 3 and 4, be set aside and co-option be made again.

GOKAL CHAND MITTAL, ADVOCATE, for the Petitioner.

N. C. JAIN, AND A. C. HOSHIARPURI, ADVOCATES, for the Respondents.

ORDER

PANDIT, J.—This petition under Article 226 of the Constitution has been filed by Shrimati Pritam Kaur, challenging the election of Shrimati Jaswant Kaur, Shrimati Arjan Kaur and three others, respondents 3 to 7, the co-option of respondents 3 and 4, and the rejection of the petitioner's six valid ballot papers by the Returning Officer, respondent No. 1.

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During the election of 16 Primary Members under section 5(2) (a) (i) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, (hereinafter referred to as the Act) to the Panchayat Samiti for Majri Block, district Ambala, the petitioner, who is a Panch of Gram Panchayat, Chanalon, which falls within the jurisdiction of this Block Samiti, filed her nomination papers for being elected as a Primary Member. Similarly, respondents 3 to 7, also filed their nomination papers, as their villages also fell within the jurisdiction of this Block Samiti. Besides all these persons, there were 32 more candidates. Thus, the total candidates were 38. The election took place on 22nd January, 1965 and, according to the petitioner, the voting went on till 4-00 p.m. and thereafter the counting of votes started and the results were declared at about 5-00 p.m. While counting the votes, according to the petitioner, 13 valid votes were found polled in favour of the petitioner

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and it was so declared by the Returning Officer. After it was discovered that six more persons had polled thirteen votes each, out of whom three were respondents 5 to 7 and the other three were some other persons, the Returning Officer re-checked the votes of the petitioner and illegally rejected her three valid votes and it was declared that she had polled only ten. Later on, when it was found that respondents 3 and 4, had polled eight votes each, the Returning Officer, according to the petitioner, again checked the votes polled in her favour and rejected another three valid votes and then declared that she had polled only seven valid votes. The petitioner was present at the time of the counting of these votes and she objected to their re-checking after it was declared that she had polled 13 valid votes. The Returning Officer, however, did not pay any heed to her objection. Finally, it was found by the the Returning Officer that thirteen persons, including a Harijan, got more than 14 votes and, consequently, those 13 were declared as duly elected Primary Members. Besides the petitioner six more persons had polled 13 votes, out of whom three were respondents 5 to 7. Lots were then drawn between these six persons and respondents 5 to 7 were found successful and they were also declared duly elected. Since the votes of the petitioner were reduced from 13 to 7, therefore, according to her, she was not allowed to take part in the drawing of lots. Moreover, there were five women candidates, including the petitioner, in this election. Respondents 3 and 4, had polled 8 votes each, while the other two polled 4 and 2 each. Since the votes of the petitioner were reduced to 7, therefore, respondents 3 and 4, who had secured the highest votes amongst the women candidates, were going to be co-opted as Members under section 5 (2) (c) (i) of the Act. This led to the filing of the present writ petition.

The grievance of the petitioner is that her six valid votes had been illegally and *mala fide* rejected by the Returning Officer, with the result that she could not take in the lots that were drawn between six candidates, who had secured 13 valid votes each. Further, she was entitled to be co-opted as a women candidate, since she had secured more votes than respondents 3 and 4.

In the reply filed on behalf of the Returning Officer, the allegations made by the petitioner were denied and it was stated that the counting was done in the presence of

the petitioner, who got only seven valid votes. It was never declared that she had secured 13 votes. There was no re-checking of the votes and the counting was done only once. No objection of any kind was raised by the petitioner. Since she had got only seven votes, there was no question of her being included among the persons, who had secured 13 votes and whose lots were drawn. It was admitted that two lady Members had been co-opted, as they secured the highest votes amongst the defeated lady candidates. Whatever votes of the petitioner had been rejected, they were invalid according to the Rules. The allegations of *mala fide* were also denied.

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A preliminary objection has been raised by the learned counsel for the respondents that this writ petition ought to fail on the short ground that the petitioner should have made use of the alternative remedy available to her of filing an election petition on the allegations made in the present writ petition. Learned counsel for the petitioner, on the other hand, submitted that no election petition on these allegations was competent in law. His contention was that though it was true that under the provisions of section 121 of the Act, any person, who was a voter for the election of a Member, could file an election petition to challenge the election of any person as a Member, Vice-Chairman or Chairman of the Panchayat Samiti or Zila Parishad concerned, but the Prescribed Authority in the present case could not examine the allegations made by the petitioner, if she filed an election petition. His argument was that the Prescribed Authority could not scrutinise the votes, which, according to the petitioner, had been illegally rejected by the Returning Officer. The Prescribed Authority could only examine the petitioner's allegation regarding the securing or acceptance of invalid votes relating to the returned candidate, but that was not the petitioner's case. According to him, those candidates, including respondents 5 to 7, who had secured 13 votes, had not got any invalid votes. On the other hand, his contention was that the Returning Officer had illegally rejected six of the valid votes of the petitioner and this the Prescribed Authority could not examine, if an election petition was filed by the petitioner. For this submission, he placed his reliance on the decision of Gurdev Singh, J., in *Sarup Singh v. Shri K. C. Grover and another* (1), wherein, while dealing with

(1) I.L.R. (1965) 1 Punjab 110=1964 P.L.R. 1196.

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a similar provision in the Punjab Gram Panchayat Act, 1952, the learned Judge held thus—

“Under clause (d) (ii) of sub-section (1) of section 13-0 of the Punjab Gram Panchayat Act, 1952, as amended by Punjab Act, 26 of 1962, the Legislature merely intended that only the allegation regarding securing or acceptance of invalid votes relating to the returned candidate should be gone into by the Prescribed Authority, and the votes on the basis of which a candidate has been declared alone should be scrutinised.

Held, further, that while dealing with the petition for setting aside the election under section 13-0, the Prescribed Authority was not competent to go into the question whether the unsuccessful candidate secured any votes of persons, who were dead or minors or absent from the village on the day of polling etc.”

The section of the Act and the Rules made thereunder, which deal with this point are as under:—

“S. 121. (1) Any person, who is a voter for the election of a Member may, on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty days of the announcement of the result of an election, present to the prescribed authority, an election petition in writing, against the election of any person as a Member, Vice-Chairman or Chairman of the Panchayat Samiti or Zila Parishad concerned.

(2) The prescribed authority may—

(a) if it finds, after such inquiry as it may deem necessary, that failure of justice has occurred, set aside the said election, and a fresh election shall thereupon be held;

(b) if it finds that the petition is false, frivolous, or vexatious, dismiss the petition and order the security to be forfeited to the Panchayat Samiti or Zila Parishad concerned, as the case may be.

(3) Except as provided in this section, the election of a Member, Vice-Chairman or Chairman shall not be called in question before any authority or in any court."

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Rule 17 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961—

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"Any ballot-paper which bears any mark or signature by which the voter can be identified or in which the mark (x) is placed in an ambiguous manner or against the names of more than one candidate or which does not bear the official seal or signatures prescribed in sub-rule (3) of rule 16, shall be invalid."

Rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961—

"The election of any person as a Member, Vice-Chairman or Chairman of a Panchayat Samiti or Zila Parishad, as the case may be, may be called in question by an elector through an election petition on the ground that such person has been guilty of a corrupt practice specified in the Schedule, or has connived at, or abetted the commission of any such corrupt practice or the result of whose election has been materially affected by the breach of any law or rule for the time being in force or there has been a failure of justice."

A combined reading of the above provisions would show that any person, who is a voter for the election of a Member can file an election petition against the election of any person as a Member of the Panchayat Samiti on the ground that there has been a breach of Rule 17 mentioned above, as a result of which the election of the returned candidate has been materially affected. In other words, if the allegation of the petitioner is that her valid votes had been illegally rejected by the Returning Officer in contravention of Rule 17, then an election petition was competent, because in case her allegation was found to be true, then the result of the election of the returned candidate would be materially

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affected as the number of valid votes polled in favour of the petitioner would increase to 13 and she too would be entitled to be included amongst the persons, who secure 13 votes and whose lots were drawn. Further, she would also be entitled to be co-opted in preference to respondents 3 and 4, who had secured only 8 votes. Rule 17, mentioned above, declares that in certain contingencies a vote would become invalid. The effect of the breach of this Rule would be that in a case in which certain votes, have been polled in favour of the returned candidate, which were actually invalid under this Rule, then it would be held that the reception of such votes in his favour was improper. Similarly, where certain votes in the case of a defeated candidate, which were actually valid, but have been illegally declared invalid, then it would mean that this valid votes were improperly rejected. In other words, if in a case where certain votes have been improperly received by the returned candidate or some votes of the defeated candidate have been illegally rejected, then there would be breach of Rule 17. If the petitioner alleges that such a breach has materially affected the result of the election of the returned candidate, then an election petition would be competent under Rule 3, noted above. The Prescribed Authority, when dealing with such an election petition, can examine whether any invalid votes had been improperly counted in favour of the returned candidate or certain valid votes of the defeated candidate had been improperly or illegally rejected and if such reception or rejection of the votes has materially affected the result of the returned candidate, then it would set aside his election. A similar provision exists in the Representation of the People Act, 1951, which is section 100, the relevant portion of which reads as under—

“S. 100. (1) Subject to the provisions of sub-section (2), if the Tribunal is of opinion—

* * *
* * *

(d) that the result of the election in so far as it concerns a returned candidate, has been materially affected—

* * *
* * *

(iii) by the improper reception, refusal or rejection
of any vote "or the reception of any vote
which is void;

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the Tribunal shall declare the election of the
returned candidate to be void."

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While dealing with this provision, their Lordships of the
Supreme Court in *Jabar Singh, v. Genda Lal* (2), observed—

"The scope of enquiry in a case falling under section
100(1) (d) (iii) is to determine whether any
votes have been improperly cast in favour of the
returned candidate, or any votes have been im-
properly refused or rejected in regard to any
other candidate. These are the only two matters
which would be relevant in deciding whether the
election of the returned candidate has been
materially affected or not."

It may be stated that the Tribunal cannot go into the
question as to whether any invalid votes had been
erroneously counted in favour of the defeated candidate,
unless in the election petition a declaration is claimed that
any candidate other than the returned candidate has been
duly elected and the returned candidate has given notice
to the Tribunal to lead such evidence within 14 days from
the date of the commencement of the trial as provided in
section 97 of the Representation of the People Act, the
reason being that this section enables the returned candi-
date to give evidence to prove that the election of the
defeated candidate would have been void, if he had been
the returned candidate. In other words, the
returned candidate would become the petitioner in such
a contingency. In this very authority, the Supreme Court,
while discussing section 97, held that it would not be open
to the Tribunal to scrutinise the votes and determine
whether, infact, the petitioner or some other person had
received a majority of the valid votes. That would be the
position only if the returned candidate had recriminated. In
the absence of recrimination, it would not be open to the
Election Tribunal to allow the returned candidate to
challenge the validity of votes cast in favour of the peti-
tioner or any other candidate in whose favour a declaration

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is claimed by the election petitioner or to contend that any of his votes were improperly rejected. It is common ground that a provision like section 97 of the Representation of the People Act, does not exist in the Punjab Panchayat Samitis and Zila Parishads Act. Therefore, in an election petition under this Act, the Prescribed Authority would only see if any invalid votes had been counted in favour of the returned candidate or a valid vote of the petitioner has been improperly rejected. The decision in *Sarup Singh's case*, relied on by the learned counsel for the petitioner, is distinguishable on fact, because in that case the Prescribed Authority had permitted the returned candidate to assail the validity of the votes polled in favour of the defeated candidate, who had filed an election petition. Since there was no provision like section 97 of the Representation of the People Act, in the Punjab Gram Panchayat Act, therefore, the learned Judge, held that the Prescribed Authority had erred in law in allowing the returned candidate to examine the validity of the votes polled in favour of the defeated candidate. It was in this context that the learned Judge observed that the Prescribed Authority was not competent to go into the question whether an unsuccessful candidate secured any votes of persons, who were dead or minors or absent from the village on the day of the polling, etc.

In view of what has been said above, I hold that the Prescribed Authority in this case could go into the question as to whether any valid votes of the petitioner had been improperly rejected by the Returning Officer and whether the same had materially affected the result of the election of the returned candidate. That being so, the proper remedy for the petitioner in the present case was to file an election petition under section 121 of the Act. No doubt, the alternative remedy *per se* is no ground for non-interference in writ proceedings, but since a number of disputed questions of fact have to be determined, the proper forum for deciding such matters, in my view, is the Prescribed Authority. I would, therefore, decline to interfere in matters of this kind in writ proceedings.

The result is that the petition fails and is dismissed, but taking into consideration the facts of this case, I would make no order as to costs.

B.R.T.