particulars of such income. Coming now to the question of refund of Rs. 18,825.37 nP. nothing has been said in the petition as to whether the Income-tax Officer has been approached for the refund of the amount or not. In my opinion it would not be appropriate in this case to issue a writ directing the refund of money unless the petitioner has first approached the authorities concerned for the refund. In the circumstances the petition stands dismissed but there will be no order as to costs.

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APPELLATE CIVIL

Before Daya Krishan Mahajan and S. K. Kapur, JJ.

V. N. SARIN,—*Appellant.*

versus

MAJOR AJIT KUMAR POPLAI AND ANOTHER,—*Respondents.*

Second Appeal from the Order No. 235-D of 1963.

1965

March, 1st.

Delhi Rent Control Act, (LIX of 1958)—S. 14(6)—Partition of coparcenary property among the coparcerners—Whether amounts to acquisition by transfer' by the co-parcener to whose share it falls—Such comparcener—Whether landlord qua the tenant.

Held, that the partition of coparcenary property among the coparceners does not amount to transfer of property or 'acquisition by transfer' within the meaning of section 14(6) of the Delhi Rent Control Act, 1958. In comparcenary property each one of the coparceners is an owner of the entire property. By partition, he does not acquire any new title to the property, but what he gets is a right to enjoy his share of the property in severalty. In other words, a joint tenancy is put an end to and either a tenancy in common is created or the joint tenants have a right in severalty to enjoy the property that falls to the share of each one of them. There is no question of a transfer of title. The joint owner was the owner of the property before partition and he remains the owner of the property after partition. The change is only brought about in his status. Therefore, it cannot be said that in fact, there is a transfer of property by partition. Moreover, even if it be assumed that partition amounts to a transfer, the requirements of section 14(6) are that the property is acquired by transfer and mere transfer will be of no consequence. Therefore, a further question arises whether a joint owner acquires property assuming that partition amounts to a

transfer. There is no question of a joint owner acquiring property. He is the owner of the property, and it cannot be said that an owner acquires his property, for all acquisitions suppose some one also from whom the property is acquired, and not only that, the title must also pass. In other words, the acquirer gets title after the acquisition, he having no title to the property before acquisition. This result does not follow in the case of partition of coparcenary property.

Held, further that the provisions of section 14(1) (e) of the Delhi Rent Control Act, 1958, entitle the landlord in case of his *bona fide* requirement for his residence or for the residence of any member of his family, dependent on him, to recover the possession of the premises from the tenant. This provision clearly indicates that a transfer has to be to a person other than the family members of the landlord dependent on him. The statute gives a right to the landlord to get the premises vacated from the tenant for the purposes of the residence of any one of the family members dependent on him. If instead of himself proceeding in the matter, the landlord transfers those premises to the dependent member, can it be said that such a transfer would be hit by section 14(6) of the Act ? Evidently not. Section 14(6) will not stand in the way of such a transfer, for only those transfers are hit by section 14, which offend against the provisions of the Act. In other words, it is only where the 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.

Held, that the coparcener to whose share the premises fall as a result of the partition becomes the landlord thereof *vis-a-vis* the tenant and can maintain the petition for the tenant's ejectment.

Second Appeal from the order of Shri Pritam Singh, Rent Controller Tribunal, Delhi dated 16th October, 1963, modifying that of Shri Asa Singh Gill, Controller, Delhi, dated 20th May, 1963, setting aside the order of the Controller and passing an order for eviction from the premises in dispute in favour of Ajit Kumar Poplai, against V. N. Sarin, and giving the tenant six months to vacate the premises and further ordering that the appeal of B. S. Poplai is dismissed and the parties are left to bear their own costs.

D. N. BHASIN, ADVOCATE, for the Appellant.

S. N. CHOPRA, ADVOCATE, for the Respondent.

JUDGMENT

Mahajan, J. MAHAJAN, J.—This second appeal under section 39 of the Delhi Rent Control Act, 1958 (hereinafter referred to

as the Act), came up for hearing before P. D. Sharma, J. on 13th August, 1964. The learned Judge, by an order of the same date, directed that in view of the general importance of the question involved in the appeal, the matter should be decided by a larger Bench. Accordingly, the papers were laid before Hon'ble the Chief Justice and the matter has been placed before us for decision.

The question that presented some difficulty to the learned Single Judge was whether the partition of the coparcenary property among the coparceners could be said to be "an acquisition by transfer" within the meaning of section 14(6) of the Act.

The facts so far as they are relevant for our purposes may now be stated. The premises are part of a bungalow situate at Racquet Court Road, Civil Lines, Delhi. This bungalow belonged to the joint Hindu family consisting of father (B. S. Poplai), and his two sons, (Major Ajit Kumar Poplai and Vinod Kumar Poplai). The members of the joint Hindu family, partitioned the coparcenary property. The premises in dispute which are under the tenancy of V. N. Sarin appellant fell to the share of Major Ajit Kumar Poplai. Shri V. N. Sarin had been inducted in the premises as a tenant by the father, B. S. Poplai, before partition at a monthly rental of Rs. 80. Ajit Kumar Poplai brought an application for the eviction of the appellant on the ground that he required the premises *bona fide* for his own residence and that of his wife and two children, who are dependent on him. He impleaded his father as a second petitioner with him. The petition was contested by the appellant-tenant on three grounds:—

(1) that Major Ajit Kumar Poplai, was not his landlord inasmuch as the tenant was not aware of partition and, therefore, he could not file the petition;

(2) that even if Ajit Kumar, was the landlord, he did not *bona fide require* the premises for his own use or for the use of his family members, as he was serving in the Army and was posted at Delhi and the Army authorities were required to provide residence to the petitioner;
and

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(3) that, in any case, the petitioner having acquired the premises by partition which amounted to transfer of premises to him, could not maintain the present petition in view of the provisions of section 14(6) of the Act within a period of five years of the acquisition of the premises by transfer.

The Rent Controller held that Major Ajit Kumar Poplai, was the exclusive owner of the premises in dispute by reason of the partition. It was further held that he was the owner and thus the landlord of the respondent. With regard to the second contention, it was held that at the time when the petition was filed, that is, on 17th May, 1962, Major Ajit Kumar, was posted in Jammu and Ksahmir. Jammu being a non-family station, the petitioner would have been entitled to the possession of the premises by eviction of the tenant for residence of his wife and children. But during the course of the trial of the petition, the situation had changed. Major Ajit Kumar, was posted to Delhi in October, 1962. He is living with his parents. It is also the responsibility of the military authorities to provide him with accommodation. It was only if he was not given any accommodation that he could evict the tenant from his own property and live there. The petitioner had failed to produce any writing by the military authorities refusing accommodation to him on the ground that he owns a house. The petitioner was offered accommodation in Khyber Pass, but he refused to accept it. On this basis, it was concluded that the application for eviction of the tenant was *mala fide* and the landlord had failed to prove that he *bona fide* required the premises for his residence or for the residence of his family members. With regard to the third contention, it was held that a partition of the premises did not amount to transfer by one co-sharer of his interest in the property to the others and, therefore, the provisions of section 14 (6) of the Act did not stand in the way of the petitioner in seeking ejectment of the tenant within a period of five years of the partition. In this connection, reliance was placed on the decision of the Madras High Court in *Naramsetti Venkatappala Narasimhalu and another* v. *Naramsetti Someswara Rao and another* (1).

(1) A.I.R. 1948 Mad. 505.

Against this decision, the petitioner Ajit Kumar, went up in appeal to the Rent Control Tribunal, Delhi. The Rent Control Tribunal affirmed the decision of the Rent Controller on the first and the third grounds. He, however, reversed the decision on the second ground and the reasons for that reversal may better be stated in his own words:—

"It was further urged that Ajit Kumar Poplai, is a military officer posted at Delhi and, therefore, he must be provided with accommodation by the military authorities, that he was offered accommodation, but he refused to accept the same and, therefore, the application was not made *bona fide*. In support of this contention, the tenant examined Jagdish Rai, R. W. 1, Assistant in the office of the Chief Administrative Officer, Ministry of Defence, New Delhi, who deposed that the petitioner was offered accommodation on 31st October, 1962, in Khyber Pass, but he refused without giving any reason. He also deposed that he could be straightaway alloted accommodation in Rama Krishnapuram, but the offer was also refused by him. However, in this cross-examination, this witness admitted that four suites were available in Khyber Pass, which were offered to 24 officers and that the number of Ajit Kumar Poplai, appellant was 14th in that list, that the accommodation was refused by all these officers and, therefore, it was offered to junior officers. He could not give the names of the officers to whom that accommodation was allotted. He could not state whether any accommodation is likely to fall vacant in Khyber Pass. As regards the accommodation in Ramakrishna Puram, he simply deposed that the offer was made to Ajit Kumar, but he did not send reply and it amounted to refusal. However, he admitted that as regards the hired houses the position of Ajit Kumar was 10th on the list and for New Delhi hostels, his position was 20th and for regular accommodation his position was 110th. It is thus clear from the statement of this witness that the refusal of Ajit Kumar, was not without any reasons. It appears that the accommodation, which was not suitable

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was offered to him and like other senior officers he refused the same. Moreover, no question was put to Ajit Kumar, appellant No. 1, in his cross-examination as to whether any accommodation was offered to him and if so whether he refused the same and on what grounds. Further, his senior officers were also offered that accommodation and if they accepted the same, then the acceptance or refusal of that accommodation by Ajit Kumar, was immaterial. Consequently the aforesaid contention of the counsel, for the respondent is rejected as devoid of force.

Under clause (e) of the proviso to section 14(1) of the Delhi Rent Control Act, we have to see the existing accommodation in possesion of the landlord and not the accommodation which might be acquired or offered to him for residence. At present, he has no reasonably suitable accommodation in his possession and he is entitled to an order for eviction. It is not the duty of the Government to provide accommodation to military, employees posted at Delhi. However, when the accommodation becomes available, it is offered to the officers according to rules and they may or may not accept the same."

The tenant, who is dissatisfied with the decision of the Rent Control Tribunal, has come up in second appeal to this Court under section 39 of the Act. This appeal, as already stated, came up before P. D. Sharma, J., and the learned Judge, referred this appeal for decision by a larger Bench for the reasons that have already been stated above. That is, how, the matter has been placed before us.

It may be stated that so far as the first ground raised before the Rent Control Tribunal is concerned, no arguments have been addressed to us. We have, therefore, proceeded on the basis that the bungalow in dispute, of which the premises in dispute formed a part, was joint Hindu family property of the father and the two sons. This property was partitioned and the premises in dispute fell to the share of respondent, Ajit Kumar Poplai. According to the definition of the landlord in section 2(e) of the Act,

it cannot be disputed that the petitioner has become the landlord *vis-a-vis* the tenant, that is, the appellant. Therefore, he could maintain the present petition.

With regard to the second ground, there is a clear finding by the Rent Control Tribunal that the landlord requires the premises *bona fide* for his own use and for the use of his family members, who are dependent upon him. This is a finding of fact and is not open to review in second appeal under section 39 of the Act. Section 39 provides for a second appeal and it only lies if it involves some substantial question of law. No substantial question of law is involved so far as the second ground is concerned. Principally, the matters requiring determination in relation to the second ground are matters of fact. This, the learned counsel for the appellant did not dispute. All that he urged before us was that the finding on the second ground was not based on any evidence. We were taken through the evidence and after going through it, we are clearly of the view that there is ample evidence on the record on which the findings of fact arrived at by the Rent Control Tribunal are based. That being so, the attack of the learned counsel to the decision of the Rent Control Tribunal on this part of the case cannot be sustained. This brings us to the consideration of principal question on the basis of which the reference to a larger Bench was necessitated. Shortly put, the question that requires determination is whether partition of coparcenary property amounts to a transfer, or to use the phraseology of section 14(6) of the Act is an acquisition of property by transfer.

The contention of the learned counsel for the appellant is that partition of joint Hindu family property *per se* amounts to transfer of property. The only decisions where this question was considered are decisions under the Transfer of Property Act or the Registration Act. There is no direct decision so far as the Act is concerned. The decisions under the Transfer of Property Act, are not of much assistance. Section 5 of that Act defines "transfer" in the following terms:—

> "In the following sections, "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or

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more other living persons; and "to transfer property" is to perform such act.

* * * *".

Whenever a question arises with reference to any of the provisions of the transfer of Property Act, the word 'transfer' must be interpreted in the light of its definition in section 5. This is but a truism. The decisions relied upon by the learned counsel for the appellant are decisions either under section 36 or section 53 or section 53-A of the Transfer of Property Act or the Registration Act, which uses a different phraseology. There is no uniformity even in these decisions. In some of them, it has been held that partition of coparcenary property does not amount to transfer. But in a majority of such decisions, a contrary view has been taken.

In *Naramsetti Venkatappala Narasimhalu and another* vs. *Naramsetti Someswara Rao and another* (1), Patanjali Sastri J., (as he then was) held that "the true nature of a partition is that each co-owner gets a specific property in lieu of his rights in all the joint properties; that is to say, each co-sharer renounces his rights in the other common properties in consideration of his getting exclusive right to and possession of specific properties in which the other co-owners renounced their rights. It is thus a renunciation of mutual rights and does not involve any transfer by one co-sharer of his interest in the properties to the others." The same view was taken in a later decision of the same High Court in *Gutta Radhakristnayya minor by mother and guardian Nagarattamma* vs. *Cutta Sarasamma* (2), Subba Rao J., (as he then was) held that "partition is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the sharers had an antecedent title and, therefore, no conveyance is involved in the process as a conferment of a new title is not necessary. A partition, therefore, is not a transfer within the meaning of section 53-A, of the Transfer of Property Act." To the same effect is the decision of the Oudh High Court in *Ramman Singh and another* v. *Dilla Singh and another* (3), and the decision of the Kerala High Court in *W. N. Mammad Kunhi* v. *W. N. Ibrayani Haji and others* (4).

(2) A.I.R. 1951 Mad. 213.
(3) A.I.R. 1929 Oudh 334.
(4) A.I.R. 1959 Kerala 208.

The contrary view has been taken in *K. Panchapagesa Ayyar and another* v. *K. Kalyanasundaram Ayyar and others* (5), in *Soniram Raghushet and others* v. *Dwarkabai Shridharshet and another* (6), in *Sadhu Ram* Vs. *Pirthi Singh and company* (7), in *Banarsilal* v. *Shri Bhagwan A.I.R.* (8), *and in Raman Pillai Gopala Pillai and others* v. *Madhavan Pillai Aiyappan Pillai and others* (9).

In *K. Panchapagesa's* case, the question that arose for determination was whether an instrument of partition of immovable properties between coparceners required registration. While disposing of this question, it was observed as follows:—

> "A partition of immovable properties between coparceners or co-owners is not required to be in writing at all. But it is a mixture of surrender and conveyance of rights in property and is transfer of property within the meaning of Transfer of Property Act. It partly extinguishes a right to the joint property and partly creates a right to it. Consequently, an instrument effecting a partition is compulsorily registrable under clause (b) of section 17."

If a reference is made to section 17(1)(b) of Registration Act, which is in these terms:—

> 17(1) The following documents shall be registered, if the property to which they relate is situate in a district in which and if they have been executed on or after the date on which, Act No. XVI, of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—
>
> (a) * * * *.
>
> (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit

(5) A.I.R. 1957 Mad. 472.
(6) A.I.R. 1951 Bom. 94.
(7) A.I.R. 1936 Lahore 220.
(8) A.I.R. 1955 Raj. 167.
(9) A.I.R. 1959 Kerala 235.

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or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

* * *".

It is apparent that language of this provision is wide enough to include the instrument of partition irrespective of the fact whether it amounts to transfer or not. Moreover, the learned Judges, while deciding the question of registration, referred to section 5 of the Transfer of Property Act which defines a 'transfer'. There could be no two opinions that if the definition of 'transfer' as embodied in section 5 of the Transfer of Property Act is to be taken into consideration, the partition of coparcenery property would be a transfer within the meaning of section 5. So far as the Act is concerned, the word 'acquisition' or 'transfer' have not been defined. The question that arises is whether we would be justified in importing the definition of 'transfer' as embodied in section 5 of the Transfer of Property Act, while construing that phrase in section 14(6) of the Act. *Panchapagesa's* case will only be good authority if this course is permissible. The learned Judges of the Madras High Court in the aforesaid case imported the definition of 'transfer' in section 5 of the Transfer of Property Act, for the purposes of section 17 of the Registration Act. This may have been necessary because the Registration Act and the Transfer of Property Act are complementary to one another. The fact, however, remains that decision in the *Panchapagesa's* case poceeded on the basis of the definition of 'transfer' as embodied in section 5 of the Transfer of Property Act.

So far as the decision in *Soniram's* case is concerned, Bhagwati J., (as he then was), who delivered the judgment of the Court, pointed out that the definition of 'transfer of property' contained in section 5 of the Transfer of Property Act is to be taken as the definition of 'transfer of property' for the purposes of determining what is a transfer within the meaning of the term as used in proviso to section 2 of the Bombay Act. It was in this context that the following observations were made by the learned Judge:—

> "A partition by metes and bounds between the members of a joint Hindu family amounts to a transfer

within the meaning of section 5 of the Transfer of Property Act. Hence, it is also transfer within the meaning of section 2, proviso, of the Bombay Act XVII (17) of 1942."

Therefore, this authority is of no assistance so far as the present case is concerned.

In *Sadhuram's* case, which is a Single Bench decision of the Lahore High Court, Becket, J. merely relied on the two earlier decisions of the Madras High Court in *Rasa Goundan* v. *Arunachella Goundan* (10), and in *Ramaswami Chettiar* vs. *Rathamuttu Thevar* (11), and observed:

> It seems now to be generally accepted that a partition is a transfer as defined in the Transfer of Property Act."

This decision also is of no assistance and is clearly distinguishable because like the decisions of the Madras High Court already discussed, it proceeds on the basis of the definition of transfer in section 5 of the Transfer of Property Act.

In *Banarsilal's* case, the learned Single Judge of the Rajasthan High Court held that the term 'transfer of property' is wide enough to include a 'partition' and the provisions of section 109 of the Transfer of Property Act can be applied to a person, who receives the property leased in his share by partition. This case again is analogous to the case of *K. Panchapagesa* and for the reasons stated while dealing with that case, this case is clearly distinguishable and is of no assistance.

In Raman Pillai's case, a Division Bench of the Kerala High Court took a view that where immovable property has been partitioned among co-sharers by metes and bounds, there is a transfer. This decision again proceeded on the basis of the definition of 'transfer' as embodied in section 5 of the Transfer of Property Act, and for the reasons already stated in *Panchapagesa's* case, it is clearly distinguishable and not of much assistance. It is also significant that no reference was made by the learned judges to the earlier

(10) A.I.R. 1923 Mad. 577.
(11) (1926) 97 I.C. 70.

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decision of that Court to the contrary in *W. N. Mammad Kunhi's case.*

It will be apparent from the decisions already discussed that partition has not been held to be transfer of property, where the provisions of section 5 of the Transfer of Property Act, were not adverted to. But where they were adverted to partition of coparcenery property has been held to be a transfer. The question which then arises is whether we are justified in adverting to the definition of 'transfer of property' in section 5 of the Transfer of Property Act. The Rent Control Act, does not define the word 'transfer'. It also does not make the definitions of the Transfer of Property Act, applicable to it. It cannot be disputed that section 5 of the Transfer of Property Act defines 'transfer of property' for the purposes of that Act. There appears to be no justification why that special definition should be taken into account for the purposes of the Rent Control Act. It is significant that that definition was not imported to construe the word 'transfer' in section 16(3)(a) (iii) or section 16(3) (a) (iv) of the Income-tax Act, 1922. In this connection, reference may be made to a recent decision of the Supreme Court in *The Commissioner of Income-tax Gujarat* v. *Keshavlal Lallubhai Patel* C.A. No. 1022 of 1963, decided on the 9th of November, 1964. The question that fell for determination in this case was whether a partition of joint Hindu family property is a transfer in the strict sense. Their Lordships of the Supreme Court held that it was not and for this reliance was placed on *Gutta Radhakristnayya's* case already referred to. Their Lordships also relied upon another decision of the Madras High Court in *M. K. Stremann* v. *Commissioner of Income-Tax, Madras* (12), and also on the decision of Punjab High Court in *Jagan Nath and others* v. *The State of Punjab and others* (13). On the same parity of reasoning, it must be held that there is no basis to import the definition of the word 'transfer of property' into section 14(6) of the Act.

Apart from what has been stated above, one cannot lose sight of the fact that in coparcenery property each one of the coparceners is an owner of the entire property. By partition, he does not acquire any new title to the property, but what he gets is a right to enjoy his share of the pro-

(12) 41 I.T.R. 297.
(13) I.L.R. (1962) 1 Punj. 811=(1962) 64 P.L.R. 22.

perty in severalty. In other words, a joint tenancy is put an end to and either a tenancy in common is created or the joint tenants have a right in severalty to enjoy the property that falls to the share of each one of them. There is no question of a transfer of title. The joint owner was the owner of the property before partition and he remains the owner of the property after partition. The change is only brought about in his status. Therefore, it cannot be said that in fact, there is a transfer of property by partition.

Moreover, even if it be assumed that partition amounts to a transfer the, requirements of section 14(6) are that the property is acquired by transfer and mere transfer will be of no consequence. Therefore, a further question arises whether a joint owner acquires property assuming that partition amounts to a transfer. There is no question of a joint owner acquiring property. He is the owner of the property, and it cannot be said that an owner acquires his property, for all acquisitions suppose some one else from whom the property is acquired, and not only that, the title must also pass. In other words, the acquirer gets title after the acquisition, he having no title to the property before acquisition. This result does not follow in the case of partition of coparcenary property.

Before parting with this judgment, we may mention another additional reason which has commended itself to us for placing a strict construction on the word 'transfer' in section 14(6) of the Act. The provisions of section 14(1) (e) of the Act entitle the landlord in case of his *bona fide* requirement for his residence or for the residence of any member of his family, dependent on him, to recover the possession of the premises from the tenant. This provision clearly indicates that a transfer has to be to a person other than the family members of the landlord dependent on him. The statute gives a right to the landlord to get the premises vacated from the tenant for the purposes of the residence of any one of the family members dependent on him. If instead of himself proceeding in the matter the landlord transfers those premises to the dependent member, can it be said that such a transfer would be hit by section 14(6) of the Act ? In our view, section 14(6) with not stand in the way of such a transfer, for only those transfers are hit by section 14, which offend against the provisions of the Act. In other words, it is only where the

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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 resaons 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 elcetion petition, can examine whether any invalid votes had been improperly counted in favour of the returned candidate or certain valid votes of the