95 Phil. 890

[G.R. No. L-6379. September 29, 1954]

IN THE MATTER OF THE PETITION OF WILFRED UYTENGSU TO BE ADMITTED A CITIZEN OF THE PHILIPPINE. WILFRED UYTENGSU, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.

D E C I S I O N

CONCEPCION, J.:

This is an appeal taken by the Solicitor General from a decision of the Court of First Instance of Cebu, granting the application of Wilfred Uytengsu, for naturalization as citizen of the Philippines.

The main facts are not disputed. Petitioner-appellee was born, of Chinese parents, in Dumaguete, Negros Oriental on October 6, 1927. He began his primary education at the Saint Theresa's College in said municipality. Subsequently, he attended the Little Flower of Jesus Academy, then the San Carlos College and, still later the Siliman University—all in the same locality—where he completed the secondary course. Early in 1946, he studied, for one semester, in the Mapua Institute of Technology, in Manila. Soon after, he went to the United States, where, from 1947 to 1950, he was enrolled in the Leland Stanford Junior University, in California, and was graduated, in 1950, with the degree of Bachelor of Science. In April of the same year he returned to the Philippines for four (4) months vacation. Then, to be exact, on July 15, 1950, his present application for naturalization was filed. Forthwith, he returned to the United States and took a postgraduate course, in chemical engineering, in another educational institution, in Fort Wayne, Indiana. He finished this course in July 1951; but did not return to the Philippines until October 13, 1951. Hence, the hearing of the case, originally scheduled to take place on

July 12, 1951, had to be postponed on motion of counsel for the petitioner.

The only question for the determination in this appeal is whether or not the application for naturalization may be granted, notwithstanding the fact that petitioner left the Philippines immediately after the filing of his petition and did not return until several months after the first date set for the hearing thereof. The Court of First Instance of Cebu decided this question in the affirmative and accordingly rendered judgment for the petitioner. The Solicitor General, who maintains the negative, has appealed from said judgment.

Section 7 of Commonwealth Act No. 473 reads as follows:

> "Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname, his present and former place of residence; his occupation; the place and date of his birth; whether single or married and if the father of children, the name, age, birthplace and residence of the wife and of each of the children; the approximate date of his arrival in the Philippines, the name of the port of debarkation, and if he remembers it, the name of the ship on which he came; a declaration that he has the qualifications required by this Act, specifying the same, and that he is not disqualified for naturalization under the provisions of this Act; *that he has complied with the requirements of section five of this Act, and that he will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship* * * *" (Italics supplied.)

In conformity with this provision, petitioner stated in paragraph 13 of his application:

> "* * * I will reside continuously in the Philippines from the date of the filing of my petition up to the time of my

admission to Philippine citizenship." (Record on Appeal, page 3.)

Petitioner contends, and the lower court held, that the word "residence", as used in the aforesaid provision of the Naturalization Law, is synonymous with domicile, which, once acquired, is not lost by physical absence, until another domicile is obtained, and that, from 1946 to 1951, he continued to be domiciled in, and hence a resident of the Philippines, his purpose in staying in the United States, at that time, being, merely to study therein.

It should be noted that to become a citizen of the Philippines by naturalization, one must reside therein for not less than 10 years, except in some special cases, in which 5 years of residence is sufficient (sections 2 and 3, Commonwealth Act No. 473). Pursuant to the provision above quoted, he must, also, file an application stating therein, among other things, that he "has the qualifications required" by law. Inasmuch as these qualifications include the residence requirement already referred to, it follows that the applicant must prove that he is a resident of the Philippines at the time, not only of the filing of the application, but, also, of its hearing. If the residence thus required is the actual or constructive permanent home, otherwise known as legal residence or domicile, then the applicant must be domiciled in the Philippines on both dates. Consequently, when section 7 of Commonwealth Act No. 473 imposes upon the applicant the duty to state in his sworn application "that he will reside continuously in the Philippines" in the intervening period, it can not refer merely to the need of an uninterrupted domicile or legal residence, irrespective of actual residence, for said legal residence or domicile is obligatory under the law, even in the absence of the requirement contained in said clause, and, it is well settled that, whenever possible, a legal provision must not be so construed as to be a useless surplusage, and, accordingly, meaningless, in the sense of adding nothing to the law or having no effect whatsoever thereon. This consequences may be avoided only by construing the clause in question as demanding actual residence in the Philippines from the filing of the petition for naturalization to its determination by the court.

Indeed, although the words “residence” and “domicile” are often used interchangeably, each has, in strict legal parlance, a meaning distinct and different from that of the other.

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> “* * * There is a decided preponderance of authority to the effect that residence and domicile are not synonymous in connection with citizenship, jurisdiction, limitations, school privileges, probate and succession.
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> “* * * the greater or less degree of permanency contemplated or intended furnishes a clue to the sometimes shadowy distinction between residence and domicile. To be a resident one must be physically present in that place for a longer or shorter period of time. “The essential distinction between residence and domicile is this: the first involves the intent to leave when the purpose for which he has taken up his abode ceases; the other has no such intent, the abiding is *animo manendi*. One may seek a place for purposes of pleasure, of business, or of health. If his intent be to remain it becomes his domicile; if his intent is to leave as soon as his purpose is accomplished, it is his residence. Perhaps the *most satisfactory definition is that one is a resident of a place from which his departure is indefinite as to time, definite as to purpose;* and for this purpose he has made the place his *temporary home*.
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> “For many legal purposes there is a clear distinction between ‘residence’ and ‘domicile.’ A person may hold an office or may have business or employment or other affair which requires him to reside at a particular place. His intention is to remain there while the office or business or employment or other concern, continues; but he has no purpose to remain beyond the time the interest exists which determines his place of abode. Domicile is characterized by the *animus manendi.* * * *.
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> “Residence and domicile are not to be held synonymous. Residence is an act. Domicile is an act coupled with an intent. A *man may have a residence in one*

state or country and his domicile in another,
and he may be a nonresident of the state of his domocile in the sense that his place of actual residence is not there. Hence the great weight of authorities.—*rightly* so, as we think—that *a debtor, although his legal domicile is in the state, may reside or remain out*
of it for so long a time and under such circumstances as to acquire so to speak, an actual non-residence within the meaning of the attachment statute."

"Domicile is a much broader term than residence. A *man may have his domicile in one state and actually reside in another, or in a foreign country.*
If he has once had a residence in a particular place and removed to another, but with the intention of returning after a certain time, however long that may be, his domicile is at the former residence and *his residence at the place of his temporary habitation*.
Residence and habitation are generally regarded as synonymous. A resident and an inhabitant mean the same thing. A person resident is defined to be one 'dwelling and having his abode in any place an inhabitant,' 'one that resides in a place.'

The question of domicile is not involved in determining whether a person is a resident of a state or country.
The compatibility of domicile in one state with actual residence in another has been asserted and acted upon in the law of attachment by the Courts of New York, New Jersey, Maryland, North Carolina, Mississippi and Wisconsin.

"*Residence indicates permanency of occupation, distinct from lodging or boarding, or temporary occupation.*
It does not include as much as domicile, which requires intention combined with residence.' * * * 'one may seek a place for purposes of pleasure, of business, or of health. If his intent be to remain, it becomes his domicile; *if his intent be to leave as soon as his purpose is accomplished*, it is his residence.'

"The
derivation of the two words 'residence' and 'domicile' fairly

illustrates the distinction in their meaning. A home (domus) is something more than a temporary place of remaining (residendi) however long such stay may continue.

'While, generally speaking, domicile and residence mean one and the same thing, residence combined with intention to remain, constitutes domicile while an established abode, fixed permanently for a time [1] *for business or other purposes, constitutes a residence*, though there may be an intent, existing all the while, to return to the true domicile.'

"There is a difference between domicile and residence. 'Residence' is used to indicate the place of abode, whether permanent or temporary; 'domicile' denotes a fixed permanent residence to which, when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another.' 'Residence is not domicile, but domicile is residence coupled with intention to remain for an unlimited time. A man can have but one domicile for one and the same purpose at any time, but he may have numerous places of residence. His place of residence generally is his place of domicile, but is not by any means necessarily so, since no length of residence without intention of remaining will constitute domicile." (Kennan on Residence and Domicile, pp. 26, 31-35)

Such distinction was, in effect, applied by this Court in the case of Domingo Dy, *alias* William Dy Chinco *vs.* Republic of the Philippines (92 Phil., 278). The applicant in that case was born in Naga, Camarines Sur, on May 19, 1915. "At the age of seven or eight, or in the year 1923, he went to China, with his mother to study, and while he used to go back and forth from China to the Philippines during school vacations, he did not come back to live permanently here until the year 1937." He applied for naturalization in 1949. The question arose whether, having been domiciled in the Philippines for over 30 years, he could be naturalized as a citizen of the Philippines, with- out a previous declaration of intention, in view of section 6 of Commonwealth Act No. 473 (as amended by Commonwealth Act No. 535), exempting from such requirement "those

who have resided in the Philippines continuously for a period of thirty years or more, before filing their application." This Court decided the question in the negative, upon the ground that "actual and substantial residence within the Philippines, not legal residence", or "domicile," alone, is essential to the enjoyment of the benefits of said exemption.

If said actual and substantial residence—not merely legal residence—is necessary to dispense with the filing of a declaration of intention, it is even more necessary during the period intervening from the filing of the petition for naturalization to the date of the hearing thereof. In this connection, it should be remembered that, upon the filing of said petition, the clerk of court is ordained by law to publish it with a notice of the date of the hearing, which, pursuant to section 7 of Act No. 2927, shall not be less than 60 days from the date of the last publication. This period was extended to two (2) months, by section 7 of Commonwealth Act No. 473, and then to six (6) months, by Republic Act No. 530. The purpose of said period, particularly the extensions thereof—like the requirement of making a declaration of intention at least one (1) year prior to the filing of the application—is not difficult to determine. It is nothing but to give the government sufficient time to check the truth of the statements made in said declaration of intention, if any, and in the application for naturalization, especially the allegations therein relative to the possession of the qualifications and none of the disqualifications provided by law. Although data pertinent to said qualifications and disqualifications could generally be obtained from persons familiar with the applicant, it is to be expected that the information thus secured would consist, mainly, of conclusions and opinions of said individuals. Indeed, what else can they be expected to say on whether the applicant has a good moral character; or whether he believes in the principles underlying our Constitution; or whether his conduct has been proper and irreproachable; or whether he is suffering from mental alienation or incurable contagious diseases, or has not mingled socially with the Filipinos, or has not evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos? Obviously, the Government would be in a better position to draw its own

conclusions on these matters if its officers could personally observe the behaviour of the applicant and confer with him if necessary.

In the case at bar, the Government has not had any chance whatsoever to thus keep a watchful eye on petitioner herein. Immediately after the filing of his application—and notwithstanding the explicit promise therein made by him, under oath, to the effect that he would reside continuously in the Philippines "from the date of the filing of his petition up to the time of his admission to Philippine citizenship"—he returned to the United States, where he stayed, continuously, until October 13, 1951. For this reason, when this case was called for hearing, for the first time, on July 12, 1951, his counsel had to move for continuance. The adverse effect of such absence upon the opportunity needed by the Government to observe petitioner herein was enhanced by the fact that, having been born in the Philippines, where he finished his primary and secondary education, petitioner did not have to file, and did not file, a declaration of intention prior to the filing of his petition for naturalization. Thus, the Government had no previous notice of his intention to apply for naturalization until the filing of his petition and could not make the requisite investigation prior thereto.

Moreover, considering that petitioner had stayed in the United States, practically without interruption, from early in 1947 to late in 1951, or for almost five (5) years, over three years and a half of which preceded the filing of the application, it may be said that he resided—as distinguished from domiciled—in the United States at that time and for over a year subsequently thereto. In fact, under our laws, residence for six (6) months suffices to entitle a person to exercise the right of suffrage in a given municipality (section 98, Republic Act No. 180); residence for one (1) year, to run for a seat in the House of Representatives (sec. 7, Art. VI, of the Constitution); and residence for two (2) years, to run for the Senate (sec. 4, Art. VI, of the Constitution). In some states of the United States, a residence of several weeks or months is enough to establish a domicile for purposes of divorce. Although in these cases the word "residence" has been construed, generally, to mean "domicile"—that is to say, actual

residence, coupled with the intention to stay permanently, at least at the time of the acquisition of said domicile—it would seem apparent from the foregoing that the length of petitioner's habitation in the United States amply justifies the conclusion that he was residing abroad when his application for naturalization was filed and for fifteen (15) months thereafter, and that this is precisely the situation sought to be forestalled by the law in enjoining the applicant to "reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship," unless this legal mandate—which did not exist under Act No. 2927, and was advisedly inserted, therefore, by section 7 of Commonwealth Act No. 473—were to be regarded as pure verbiage, devoid, not only, of any force or effect, but, also, of any intent or purpose, as it would, to our mind, turn out to be, were we to adopt petitioner's pretense.

In short, we are of the opinion that petitioner herein has not complied with the requirements of section 7 of Commonwealth Act No. 473, and with the aforementioned promise made by him in his application, and, accordingly, is not entitled, in the present proceedings, to a judgment in his favor. Wherefore, the decision appealed from is hereby reversed, and the case dismissed, with costs against the petitioner, but without prejudice to the filing of another application, if he so desires, in conformity with law. It is so ordered.

Pablo, Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo and *Reyes, J.B.L., JJ.,* concur.

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