

96 Phil. 680

[ G.R. No. L-7642. March 28, 1955 ]

**VICENTE R. SANTOS, TIRSO M. DAÑAR, GALICANO CABREZOS, TEODOSIO H. PANULAYA AND MELQUIADES SATUR, PETITIONERS, VS. EMERENCIANO LEAÑO, PEDRO MACAS, AGAPITO LITUANAS, PROTACIO AGUILAR, ARTURO FERNANDEZ AND MIGUEL CHAVEZ, RESPONDENTS.**

## **D E C I S I O N**

**PADILLA, J.:**

A petition for a writ of *quo warranto* to test the legality and validity of the appointment of the respondents to replace the petitioners as municipal officials of the municipality of Balingoan, Province of Oriental Misamis.

On 2 February 1952 the President of the Philippines created the municipality of Balingoan, province of Oriental Misamis, pursuant to the provisions of section 68 of the Revised Administrative Code.<sup>[1]</sup> On 4 February 1952, Melchor P. Mercado was appointed mayor, together with the petitioners Tirso M. Dañar, Galicano Cabrezos, Teodosio H. Panulaya and Melquiades Satur as municipal councilors, of the newly created municipality. On 6 March 1952 the petitioners Vicente R. Santos and Tirso Aligsao were appointed vice-mayor and municipal councilor, respectively. They all qualified by taking the oath of office and performed the duties and functions thereof. On 13 September 1952, Melchor P. Mercado died. Vicente R. Santos, the vice-mayor, succeeded him in office and performed the duties and functions of the office of municipal mayor.

On 17 February 1954 the petitioners were notified by the Executive Secretary that they were relieved from their respective positions by the President who had appointed in their stead the respondents Emerenciano Leano as municipal mayor, and Pedro Macas, Agapito Lituanas, Protacio Aguilar, Arturo Fernandez and Miguel

Chavez as municipal councilors.

In the cases of *Cometa vs. Andanar*,<sup>[2]</sup> 50 Off. Gaz., 3594; *Ocupe vs. Martinez*, G. R. No. L-7591, 16 August 1954; and *Lanzar vs. Brandarez*, G. R. No. L-8305, 18 March 1955, we held that the designation or appointment of one to replace an incumbent municipal mayor who by such designation or appointment is removed from office without cause is unauthorized and illegal, because the petitioners were entitled to hold the office of mayor, unless removed for cause, until after the people shall have chosen their mayor at the next general election.

The contention that the petitioner Vicente R. Santos, appointed vice-mayor of Balingoan, who succeeded the late mayor Melchor P. Mercado upon the latter's death on 13 September 1952, is not entitled to the office of mayor, because he was appointed and not elected, is not well taken. Section 21 (6) of the Revised Election Code (Republic Act No. 180, as amended) invoked by the respondent Emerenciano Leano in support of the contention does not exclude an appointed vice-mayor who succeeds the mayor upon the latter's death. The term or adjective "elective" is used in the section because the office of mayor is elective and a mayor is appointed only if and when the President in his discretion chooses to appoint and does not order the holding of a special election to elect the mayor, as provided for in section 10 of the Revised Election Code (Republic Act No. 180, as amended). So that if a vice-mayor appointed under the last mentioned section of the Revised Election Code, upon the death of the mayor, succeeds the latter in office, he is entitled to hold it until his successor be elected at the next regular election.<sup>[3]</sup> The claim

that the rule laid down in the cases of *Lacson vs. Roque*<sup>[4]</sup> and *Jover vs. Borra*<sup>[5]</sup> cannot be invoked, because the term of the city mayors is for a fixed period, whereas the term of the municipal officers of Balingoan is not, is without merit. The term of the elective or appointed municipal officials is for a fixed period, as provided for in section 7 of the Revised Election Code (Republic Act No. 180, as amended by Republic Act No. 867).

The petitioners are entitled to hold the respective offices to which they were appointed to the exclusion of the respondents until their successors shall have been duly elected and qualified.

Writ granted, without pronouncement as to costs.

*Paras, C.J. Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.*

*Writ granted.*

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<sup>[1]</sup> Executive Order No. 490, series of 1952, 48 Off. Gaz., 494.

<sup>[2]</sup> 195 Phil., 604.

<sup>[3]</sup> Section 10, Rep. Act No. 180, as amended.

<sup>[4]</sup> 49 Off. Gaz., 93.

<sup>[5]</sup> 49 Off. Gaz., 2765.

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