

CESAR TUMULAK, DEMETRIO TEVES, FAUSTINO JOVILLE, AND VICTORIANO BENLOT, PETITIONERS, VS. HON. AMADOR E. GOMEZ, ETC., ET AL., RESPONDENTS.

G. R. No. L-19697. June 03, 1966

Ponente: DIZON, J.

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DIZON, J.:

Petition for mandamus to compel the Court of First Instance of Cebu to give due course to petitioners' appeal in Election Case No. R-6398 and to issue a mandatory injunction ordering respondents to vacate the positions of Vice-Mayor and Municipal Councilors of Samboan, Cebu and restore petitioners to the positions respectively held by them following their proclamation by the municipal board of canvassers.

In the general elections of November 10, 1959, petitioners Cesar Tumulak, Demetrio Teves, Faustino Joville and Victoriano Benlot, official candidates of the Nacionalista Party, were proclaimed by the municipal board of canvassers of Samboan, Cebu as the duly elected vice-mayor and municipal councilors of said municipality, together with two other councilors who are not parties to this case. In due time, respondents Crispin Chan, Ignacio Singco, Sofronio Ferolino, and Cosme Catipay, opposition candidates, contested their election (Election Case No. R-6398 of the Court of First Instance of Cebu).

On February 16, 1962, the respondent Court rendered judgment annulling 1,820 contested ballots of the protestees, on the ground that they were marked, and declared the protestants, herein respondents, elected.

On February 22, 1962, petitioners moved for the reconsideration of said decision on the ground of insufficiency of evidence, but the same was denied.

On March 20, 1962 the petitioners filed a notice of appeal, which reads:

"Protestees (excluding Vicente Cal), thru their undersigned counsel, hereby give notice that, In accordance with cases promulgated by the Supreme Court, they hereby appeal the decision of this Honorable Court, dated February 16, 1962, to the Honorable Court of Appeals.

"Protestees appealing are ready, upon notice, to file the necessary appeal bond which this Honorable Court will fix. "Cebu City, March 20, 1962."

Later on the foregoing notice was amended so as to take the appeal to this court, the questions involved being merely of law. After hearing both parties on the question of whether due course should be given to the appeal, the trial court refused to do so on the ground that its decision was not appealable.

The sole issue to be resolved in the instant petition is whether or not the decision rendered by the respondent Court in Election Case No. 6398, involving offices of vice-mayor and municipal councilors, is appealable to Us. It appears, however, that the term of the office of vice-mayor and municipal councilor in dispute already expired on December 30, 1963, this circumstance rendering this case as well as the protest itself moot and academic.

WHEREFORE, the present action for mandamus is dismissed, without costs.

Concepcion, Reyes, Barrera, Regala, Makalintal, Bengzon, Zaldivar and Sanchez, JJ., concur.

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