

**VICENTE G. CRUZ, AMADO V. HERNANDEZ, JOSEFINA R. PHODACA,
SALVADOR MARIÑO, ISAURO M. SANTIAGO, AND SEGUNDO AGUSTIN,
PETITIONERS, VS. PLACIDO RAMOS, FERNANDO MONLEON, AND
LUIS VI...**

G.R. No. L-3059. August 02, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

This is an original petition of Quo Warranto (1) to declare "that the respondents are illegally usurping, intruding into, and/or exercising or holding the office of Members of the Manila Municipal Board," and (2) to oust them from that office.

The six petitioners allege that they are members of the municipal board of the City of Manila, they having been elected in the general elections of 1947 together with Gregorio Garcia, Andres Santamaria, Pedro Arenas, and Eustaquio Balagtas (who are not parties in this case) to compose the ten members of the Board, for a term of four years expiring on December 31, 1951, and that as such elected members they have the absolute and exclusive right to exercise the prerogatives and privileges of the office of members of said board; that only one vacancy in the board was created by the appointment of Eustaquio Balagtas in March, 1949, as Director of Prisons; that on June 22, 1949, the President of the Philippines appointed the respondents Placido Ramos, Fernando Monleon and Luis Villaceran members of the municipal board to fill the vacancy caused by the appointment of Eustaquio Balagtas as Director of Prisons and two new additional positions created by Republic Act No. 409, known as the Revised Charter of the City of Manila; that said Republic Act No. 409, which increases the congressional districts of the City of Manila from two to four and the membership of the municipal board from ten to twelve, is unconstitutional because section 5 of Article VI of the Constitution authorizes the Congress to apportion legislative districts throughout the Philippines by a general law and not by piecemeal legislation; that at least any two of the respondents are illegally usurping, intruding into, and/or holding or exercising the rights and privileges and discharging the duties exclusively pertaining to the petitioners and other members of the municipal board elected in the general elections of 1947 because the creation of the office and the appointment of at least any two of the respondents are contrary to section 55 Article VI of the Constitution; and that the unconstitutional appointment and qualification of at least any two of the respondents increases the number of a majority to constitute a quorum to do business in the deliberation of the municipal board, thereby depriving any six of the elective members of the board to do business, inasmuch as the minimum number to constitute a quorum of a 12-member board under Republic Act No. 409 is seven, instead of six.

The respondents in their answer contend (1) that the petitioners have no legal capacity to bring the present action for usurpation of public office, inasmuch as the petitioners do not claim to be entitled to occupy the office now held by the respondents, and that an action for usurpation of office may be brought only by the Solicitor General or by a fiscal in the name of the Republic of the Philippines; (2) that the respondents are lawfully holding the office in question, they having been duly appointed thereto by the President of the Philippines; and (3) that

Republic Act No. 409 is constitutional.

The exercise of the prerogative writ of Quo Warranto is governed by Rule 68 of the Rules of Court. Section 1 of said rule provides that an action for the usurpation of office may be brought in the name of the Republic of the Philippines against any person who usurps, intrudes into, or unlawfully holds or exercises a public office. Section 3 provides that the Solicitor General or a fiscal, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in sections 1 and 2 [the latter referring to actions against corporations] can be established to proof, must commence the action. Section 4 provides that the Solicitor General or fiscal may, with the permission of the court in which the action is to be commenced, bring such an action at the request and upon the relation of another person; but in such case the officer bringing it may first require an indemnity for the expenses and costs of the action to be given to him by the person at whose request and upon whose relation it is brought. And section 6 provides that "a person claiming to be entitled to a public office usurped or unlawfully held or exercised by another may bring an action therefor in his own name."

The present petition is not authorized by section 6 because the petitioners do not claim to be entitled to the public office alleged to be unlawfully held or exercised by the respondents. As a matter of fact the petitioners allege that they are elected members of the municipal board and that their term of office will not expire until December 31, 1951. They do not and cannot claim that the respondents have supplanted them. Their contention that they and the other elected members of the board who are not parties in this case "have the absolute and exclusive right to exercise the prerogatives and privileges and discharge the duties of the office of members of said board," does not bring their case within the purview of section 6. Moreover, such contention is untenable because if the elected councilors had "the absolute and exclusive right" to the membership of the board, then no other person could become a member of the board even if vacancies should be created therein by law or by the death or resignation of an elected member during the four-year term of office of the petitioners; and that is untenable because the councilors are elected individually, each to fill one seat in the board, and not collectively as a body to constitute the board. And if the petitioners should admit as they must that vacancies may be filled by other persons, because an elected councilor cannot fill more than one seat in the board, they must necessarily admit also that their right to membership therein is not exclusive.

The mere fact that the membership of the board was increased from ten to twelve and the quorum from six to seven does not in any way diminish the rights and prerogatives of the individual petitioners as members of the board. Such increase does not result in the diminution of the emolument or in the curtailment of the participation in the deliberations and of the vote of each of the petitioners as a member of the board. The petitioners are bringing this action as individuals and not as a group or juridical entity recognized by law as having a corporate or collective right to assert. As members of the municipal board the six petitioners are not bound to vote solidly to a man on any measure or motion that may come up before the board. Indeed, they are supposed to express their individual opinions and cast their individual votes. Therefore, the increase of the membership of the board and of the quorum necessary to do business does not constitute any invasion of petitioners' right which would entitle them to bring this action.

If, as petitioners contend, Republic Act No. 409 increasing the membership of the board is unconstitutional—a question which we cannot inquire into unless a proper action is brought before us—the remedy available to them as well as to any other citizen is that provided for in section 1 of Rule 68; namely, to relate the matter to the Solicitor General and request him to bring the action in the name of the Republic of the Philippines. The reason of the law is that a public office or a franchise is created or granted by law, and its usurpation or unlawful exercise is the concern primarily of the Government. Hence the latter as a rule is the party called upon to bring the action for

such usurpation or unlawful exercise of an office or franchise. The only exception in which the law permits an individual to bring the action in his own name is when he claims to be entitled to the public office alleged to be usurped or unlawfully held or exercised by another. That, however, is not the present case, as we have hereinabove demonstrated.

It resulting from foregoing that the petitioners have no cause of action, it is neither necessary nor proper for the Court to pass upon the constitutionality of Republic Act No. 409.

The petition is dismissed, with costs.

Moran, C.J., Paras, Feria, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

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