

DIOGENES VILLAREAL, PETITIONER-APPELLEE, VS. MANUEL SANTOS, RESPONDENT-APPELLANT.*G.R. No. L-28736. August 31, 1970*

Ponente: CONCEPCION, C.J.

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Appeal, taken by respondent Manuel Santos, from a decision of the Court of First Instance of Rizal, declaring that petitioner herein, Councilor Diogenes Villareal, is the only person legally entitled to succeed to the office of Vice-Mayor of Pasay City, to continue holding such position, and to enjoy all rights, privileges and emoluments appertaining thereto, including the right to succeed the incumbent mayor temporarily, and that said respondent-appellant is not entitled to succeed to or hold said office, nor may he be considered a de facto vice-mayor or acting mayor, and that all acts performed by said appellant as vice-mayor are null and void, and directing appellant to desist from performing the duties of vice-mayor of Pasay City, particularly from attending W presiding over the meetings of the city council, or participating therein, or otherwise performing the duties and responsibilities of vice-mayor of said city, as well as dismissing appellant's counterclaim.

It is not disputed that, in the general elections held in 1963, the following, among others, were proclaimed elected as officers of Pasay City, namely: Pablo Cuneta, as Mayor; Dr. Jovito O. Claudio, as Vice-Mayor; and Edgar Ilarde, Wenceslao Trinidad, Jr. and Diogenes F. Villareal - the petitioner-appellee herein - as the candidates who obtained the first, second and third highest number of votes, respectively, for Councilors of the aforementioned city. Having run as candidate for the first congressional district of Rizal, and been elected thereto in 1965, Councilor Ilarde was considered resigned from his position as councilor, upon the filing of his certificate of candidacy for said district. Subsequently, or on September 15, 1967, Vice-Mayor Claudio and Councilor Trinidad filed their certificates of candidacy for mayor and vice-mayor, respectively, of Pasay City, and were, accordingly, considered resigned from their aforementioned respective positions; Thereupon, Councilor Villareal assumed the office of Vice-Mayor by taking, on September 26, 1967, the requisite oath of office and discharging the duties thereof. Soon thereafter, or on October 9, 1967, the President of the Philippines designated Manuel Santos as Acting Vice-Mayor of Pasay City. Santos took the corresponding oath of office and began to discharge the duties appertaining thereto.

When Mayor Cuneta went abroad, both Villareal and Santos assumed office as Acting City Mayor. With a view, apparently, to resolving the conflict, in two communications, dated December 1, 1967, Assistant Executive Secretary Flores Bayot, purporting to act by authority of the President, upheld Santos as the legal Acting Mayor of Pasay City, and directed Villareal "to desist from discharging the duties of the office of mayor and to recognize Mayor Manuel Santos as the one legally entitled" thereto. Thereupon, or on December 5, 1967, Villareal commenced the present action for quo warranto against Santos assailing his right to the office of Vice-Mayor of Pasay City. After appropriate proceedings, the Court of First Instance of Rizal rendered, on December 27, 1967, the decision above referred to. Accordingly, Santos interposed the present appeal, which was docketed in the Supreme Court on February 19, 1968, or after the expiration of the term of office of Villareal as councilor of

Pasay City, and of the mayor and vice-mayor thereof.

Although the term of the offices involved expired on December 31, 1967, this case is not entirely moot, owing to the compensation that may have accrued to the party who may turn out to be the winner, from the date of his assumption of office to the expiration of said term. Hence, we now proceed to pass upon the merits of the present controversy.

Respondent-appellant maintains that the lower court has erred in rendering the decision appealed from, because his appointment as vice-mayor had been made in accordance with Section 21 (b) of the Revised Election Code (R.A. No. 180, as amended), reading:

"SEC. 21. Vacancy in elective provincial, city or municipal office.- xxx

"(b) Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor.

" xx x xxx xx x."

because, although, pursuant to Section 7 of R./v No. 5185. known as the Decentralization Act, which provides that:

"SEC. 7. Succession to Office of Vice-Governor and Vice-Mayor. -In case a vacancy occurs in the office of Vice-Governor or Vice-Mayor, the board or council member, as the case may be, who obtained the highest number of votes, or in cases of provinces, cities, or municipalities where the provincial, city or municipal board members are elected by districts, the highest percentage of total votes cast in the last election, shall succeed to the officer: Provided, however, That such member meets all the requirements for die position: Provided, further, That in case of a tie, the pertinent provisions of the Revised Election Code shall apply."

the councilor who obtained "the highest percentage of total votes cast in the last election, shall succeed" to the office of the vice-mayor "(i)n case a vacancy occurs" therein, said Section 7 does not apply to the case at bar, inasmuch as Section 25 of the same Act exempts from the operation thereof "rights already acquired and existing" at the time of the passage thereof; because, since January 1, 1964 - when the term of the local officers elected in 1963 began - the Nacionalista Party had a vested "right to the successor of the Vice-Mayor of Pasay City in case of the resignation of the Nacionalista occupant, Dr. Jovito O. Claudio"; and because Section 7 of R.A. No. 5185 does not abrogate "the power of the President to appoint the successor of the Vice-Mayor if the first councilor does not fulfill all the requirements for the position," and such "first councilor," was not petitioner-appellee VillareaU but "Edgar Ilarde, who obtained the highest number of votes in the last election of 1963."

Appellant's pretense is manifestly untenable. A vested right is "some right or interest x x x which has become fixed and established and is no longer open to doubt or controversy." [1] It is an "immediate fixed right of present or future enjoyment"; it is to be contradistinguished from a right that is "expectant or contingent." [2]

"Rights arevestedwhenthe right to enjoyment, present orprospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. So inchoate rights which have not been acted on are vested." [3]

When the certificate of candidacy of Dr. Claudio for Mayor of Pasay City was filed on September 15, 1967, he was deemed automatically to have resigned from his office as vice-mayor of that office. That is the tune at which

the right to fill the same shall be determined, for, obviously, no such right can be "fixed and established" and, hence, vested, before a vacancy has come into existence, and the office of vice-mayor did not become vacant until September 15, 1967. Prior thereto, or on September 15, 1967, R.A. No. 5185 was approved and became effective. Accordingly, no right to nominate the successor of Dr. Claudio as vice-mayor could have vested in the Nacionalista Party on September 15, 1967, under Section 21 (b) of R.A. No. 180, as amended, the same having already been superseded by Section 7 of K.A. No. 5185, insofar as inconsistent with the latter.

Neither is there any merit in appellant's claim that petitioner-appellee may not avail of the benefits of Section 7 of R.A. No. 5185, upon the ground that the councilor who had the highest number of votes in the 1963 elections was not he (petitioner-appellee), but Edgar Ilarde. It is true that the latter then obtained the highest number of votes; that Wenceslao Trinidad, Jr. was the second highest; and that Villareal was next to Trinidad, Jr., or the third highest in the number of votes obtained. Appellant conveniently overlooks, however, the fact that, upon the filing of Ilarde's certificate of candidacy for the first congressional district of Rizal in 1965, he vacated his office as premier councilor of Pasay City; that the vacancy in such rank was "filled automatically" by Wenceslao Trinidad, Jr., pursuant to Section 8 of R.A. No. 5185, as the "council member who obtained the second highest number of votes"; that when Wenceslao Trinidad, Jr. was deemed resigned from the council upon the filing of his certificate of candidacy for vice-mayor of Pasay City, on September 15, 1967, his rank as premier councilor thereof - in substitution of Edgar Ilarde - was "automatically" filled by Villareal, pursuant to the first paragraph of said Section 8 of R.A. 5185, which provides:

"SEC. 8. Filling of Special Vacancies in Local Legislative-Bodies. - Vacancy occurring in Board or Council as a consequence of the preceding Section shall be filled automatically by the Board or council member who obtained the second highest number of votes, or if the provincial, city or municipal board members are elected by districts, the second highest percentage of total votes cast in the last election. Succeeding vacancy or vacancies as a result of such succession shall be filled automatically by other members as ranked on the basis of the number of votes or percentage of votes received."

and that, as such premier councilor, by virtue of this provision, Villareal succeeded to the office of vice-mayor, which became vacant upon the filing of the certificate of candidacy of Dr. Claudio for Mayor of Pasay City, on September 15, 1967.

In this connection, it should be noted that the provisions of Sections 7 and 8 of R.A. No. 5185 merely adopt and apply the principle of succession incorporated into Section 7 of R.A. No. 2264, known as the Local Autonomy Act, which is of the following tenor:

"SEC. 7. The city, municipal, and municipal district vice-mayor and succession to the office of mayor.- The vice-mayor of every city, municipality or municipal district shall assume the office of mayor for the unexpired term of the latter in the event of permanent vacancy in the office of mayor. If for some reason the vice-mayor is incapacitated from assuming the office of mayor or refuses to assume such office, the councilor who obtained the largest number of votes in the local elections immediately preceding shall assume the office of mayor. If for some reason the councilor who obtained the largest number of votes in the local elections immediately preceding is incapacitated from assuming the office of mayor or refuses to assume such office, the councilor who obtained the next largest number of votes in the local elections immediately preceding shall assume the office of mayor, and so on until the permanent vacancy in the office of mayor is filled

"Should the mayor-elect die before assumption of office or fail to qualify for any reason, the vice-mayor-elect shall assume the office of mayor, but in the latter case, he shall hold such office only until the mayor-elect qualifies. If for some reason the vice-mayor-elect is incapacitated from assuming the office of mayor or refuses to assume such office, the councilor-elect who obtained the largest number of votes in the local elections immediately preceding shall assume the office of mayor. If for some reason the councilor-elect who obtained

the largest number of votes in the local elections immediately preceding is incapacitated from assuming the office of mayor or refuses to assume such office, the councilor-elect who obtained the next largest number of votes in the local elections immediately preceding shall assume the office of mayor, and so on until the office of mayor is filled.

"In the event of temporary incapacity of the mayor to perform the duties of his office on account of absence on leave, sickness, or any temporary incapacity, the vice mayor shall perform the duties and exercise the powers of the mayor except the power to appoint, suspend or dismiss employees. In the event the vice-mayor is temporarily incapacitated to perform the duties of the office of mayor, the councilor who obtained the largest number of votes among the incumbent councilors in the local election immediately preceding shall perform the duties and exercise the powers of the mayor except the power to appoint, suspend or dismiss employees."

Thus, since June 19, 1959, when R.A. No. 2264 was approved and took effect, the policy whereby the vice-mayor succeeded the mayor, the premier councilor took over the functions of the vice-mayor, the councilor who obtained the second highest number of votes succeeded the premier councilor, "and so on" - in the language of said Act - was, for all intents and purposes, in force, in the event of either permanent or temporary vacancy or incapacity to assume office or to discharge the duties thereof.

Consistently therewith, in *Javellana v. Tayo*[4] We held:

"Appellant likewise invokes Section 7 (third paragraph) of Republic Act No. 2264, in support of his view that the sessions in question were null and void, as they were not presided by him or by his Vice-Mayor, or by the councilor who obtained the largest number of votes.

"It is true that this section mentions only the vice-mayor, or in his place, the councilor who obtained the largest number of votes who could perform the duties of the mayor, in the event of the latter's temporary incapacity to do so, except the power to appoint, suspend, or dismiss employees. Ordinarily, this enumeration would be interpreted as exclusive, following the general principle of *inclusio unius est exclusio alterius*, but there are cogent reasons to disregard this rule in this case, since to adopt it would cause inconvenience, hardship, and injury to the public interest, as it would place in the hands of the mayor, vice-mayor, and the councilor receiving the highest number of votes an instrument to defeat the law investing the legislative power in the municipal council, by simply boycotting, as they continuously did for 4 months, the regular sessions of the council. It is to be noted that the same Section: 7 of Republic Act No. 2264 invoked by appellant provides, in case of permanent incapacity of the mayor, vice-mayor, and the councilor obtaining the largest number of votes, to assume and perform the duties of the mayor, the councilor receiving the next largest number of votes, and so on, can assume and perform such duties. We see no strong reason why the same procedure should not be followed in case of temporary incapacity, there being no express prohibition against its observance. The legal provision being therefore susceptible of two interpretations, we adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective and harmonious with other provisions of law. This is imperative because, as already pointed out heretofore, under the law 'the majority of the council elected shall constitute a quorum to do business,' and this would be defeated if we adopt the literal interpretation of appellant that only the mayor, vice-mayor, or the councilor receiving the largest number of votes could preside the council's meeting, to be legal, irrespective of the presence of a quorum or the majority of the councilors elected. Such an interpretation would, indeed, be fraught with dangerous consequences, x x x"

Adhering to the same philosophy, We, likewise, declared in *Luciano v. Provincial Governor*,[5] after quoting said Section 7 of R.A. No. 2264:

"The foregoing section in the Local Autonomy Act, we must say, is meant to cover all cases of succession in elective positions for mayors and vice-mayors. Provisions have been made for permanent vacancies and temporary incapacities, and even situations where mayors-elect die before assumption of office. We cannot

assume that Congress intended to leave gaps in legislation.

"That Section 21 (a) of the Revised Election Code provides for the filling up of temporary vacancies of elective municipal offices by appointment of the provincial governor with the consent of the provincial board, should not stand in the way of said Section 7, Local Autonomy Act, above-quoted. To the extent that said Section 21 (a) conflicts with Section 7 of the Local Autonomy Act, a later legislation, the former should yield. We cannot escape the broad sweep of the term 'any temporary incapacity' expressed in the third paragraph of Section 7. That phrase catches within its reach the present situation before us. Incapacity, a dictionary quote tells us, is the lack of physical or intellectual power or of natural or legal qualification.' Embraced in the foregoing is the legal inability of Mayor Estrella and Vice-Mayor Gealogo to perform the functions of their respective offices, by reason of their suspension by the Court of First Instance of Rizal.

"Because of this, the suggestion that the rule of ejusdem generis should limit the incapacity referred to physical disability appears pointless; it siphons off one significant import of the term — lack of legal qualification. Under the statutory set-up, and the meaning we attribute to the phrase 'temporary incapacity', that interpretation would unreasonably constrict legislative intent.

"It is thus our conclusion that, because of the temporary incapacity of the Mayor and Vice-Mayor of Makati, Rizal, the Councilor who obtained the largest number of votes among the incumbent Councilors in the local election immediately preceding who, in this case, is petitioner Jose C. Luciano, should, by the law, ordinarily perform the duties and exercise the powers of the mayor' except as the statute so directs - the power to appoint, suspend or dismiss employees, which after all is not inherent in one acting in a temporary capacity."

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against respondent-appellant, Manuel Santos.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor and Makasiar, JJ., concur.

[1] Balboa v. Farrales, 51 Phil. 498, 502. Italics supplied.

[2] Benguet Consolidated Mining Co. v. Pineda, 98 Phil. 711, 722. Italics supplied.

[3] Benguet Consolidated Mining Co. v. Pineda, supra; Zari v. Santos, L-21213 and 21214, March 28, 1969.

[4] L-18919, December 29, 1962.

[5] L-30306, Juua 20, 1969.

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