

CIPRIANO P. MALIWANAG, PETITIONER, VS. HON. AMEURFINA MELENCIO HERRERA, PRESIDING JUDGE, BRANCH I, COURT OF FIRST INSTANCE OF QUEZON, AND CESAR V. BOLAÑOS, RESPONDENTS.

G.R. No. L-29193. September 26, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

This is an action for mandamus with preliminary injunction wherein the petitioner, Cipriano Maliwanag, prays for a writ to issue, ordering the respondent judge of the Court of First Instance of Quezon to give due course to his appeal from the order of the court a quo in its Election Protest No. 7142, striking the counter-protest filed by the petitioner with his answer.

The antecedent facts which disclose the law questions involved are not disputed.

In the local election of November 14, 1967, petitioner Cipriano Maliwanag and respondent Cesar Bolaños were the opposing candidates for the office of Mayor in the municipality of Candelaria, Quezon. Maliwanag was thereafter proclaimed elected by the Municipal Board of Canvassers with a plurality of 36 votes. In due time, Cesar Bolaños filed a protest against the election of Maliwanag.

On December 4, 1967, Maliwanag was served with the corresponding summons, together with a copy of the protest filed by Bolaños. The former did not immediately file his answer. He filed instead a motion seeking extension of time within which to answer; and the same was granted by the trial court which, in an order dated December 7, 1967, fixed the time for filing the answer not later than December 22. Before the expiration of the time granted the court, he moved for further extension of time to file his answer and, once again, the motion was granted the trial court in an order dated December 21, 1967, requiring Maliwanag to submit his responsive pleading on or before January 6, 1968. Maliwanag filed his answer within the time, submitting therewith his counter-protest. On the other hand, it turned out that protestant Bolaños had also filed, in the meantime, an amended pleading dated December 7, 1967, seeking to add new precincts to those embraced in his original protest.

On January 16, 1968, the court a quo, *motu proprio* ordered both protestee Cipriano Maliwanag and protestant Cesar Bolaños to appear before it on January 27, 1968, to show cause, orally or in writing, why latter's supplemental pleading of December 7, 1967, and the former's counter-protest filed on January 6, 1968, should not be stricken from the record of the case on the ground of lack of jurisdiction - both pleadings having been filed, according to the order, after the lapse of the corresponding statutory periods. In obedience to the said order of the court, the parties filed their respective memoranda.

On February 27, 1968, both the protestant's supplemental pleading dated December 7, 1967, and the protestee's counter-protest filed on January 6, 1968, were ordered stricken from the record by the trial court. Maliwanag

moved for reconsideration of the order, re-iterating his contention in his previous memorandum that his counter-protest was not filed out of time because he has filed it within the time fixed by the respondent judge for the filing of the answer. The motion was de-nied by the trial court in its order of April 5, 1968.

On April 10, 1968, Maliwanag filed a notice of appeal, manifesting to the court below that he was appealing from the orders of February 27 and April 5, 1968, to the Supreme Court where he would raise only questions of law. The respondent judge, however, re-fused to give due course to the appeal in an order of April 24, 1968, which reads as follows:

"The orders of February 27, 1968 and April 5, 1968 are interlocutory. They cannot be appealed from but can be the subject of certiorari and/or mandamus proceedings.

WHEREFORE, protestee's appeal from said Orders is hereby disallowed."

In a motion dated May 3, 1968, protestee Cipriano Maliwanag moved for reconsideration of the order above quoted. But the same was denied by the respondent judge in an order of May 16, 1968. A second motion for reconsideration also proved futile; hence, the instant petition for mandamus with preliminary injunction wherein herein petitioner Cipriano Maliwanag prays, among other things, for a writ to issue ordering the respondent judge of the Court of First Instance of Quezon to allow his appeal from the questioned orders.

It is clear from the pleadings of the parties that from the circumstances above set forth, they simply want to force the issue on whether or not the striking of herein petitioner's counter-protest, which is the error supposed to have been committed by the trial court, may be corrected by appeal or by the use of the writ of certiorari or mandamus - herein petitioner taking the position that appeal is the plain, speedy and adequate remedy in the ordinary course of law, and the other contending that the said orders, being interlocutory, may not be appealed from but may only be questioned by certiorari or mandamus. As We view the present controversy however, We see that the settlement alone of the procedural question thus posed will not settle once and for all the real problem that stands in the way of the parties toward the early disposition of the election contest between them. We consider it idle, therefore, to discuss here whether one or the other remedy suggested would be more expeditious under the circumstances not because We believe the procedural question is unimportant, but to keep alive the fundamental principle underlying the trial of election cases that technicalities and procedural barriers should not be allowed to stand if the same would tend to defeat rather than promote the interest of justice, (*Ibasco vs. Ilao, et al.*, L-17512, December 29, 1960.) Rather, We believe it to be our duty, here and now, to pass upon the more important question whether or not it was right and legal for the respondent judge to order the striking out of herein petitioner counter-protest on the ground that the same was filed out of time.

With this in mind We are inclined to view the pre-sent application as one for certiorari, directed not only against the order of the trial court disallowing herein petitioner's appeal, but principally against, the order of the respondent judge striking out the counter-protest and the subsequent order denying reconsideration thereof. The situation presented here is one that needs prompt and immediate action. And We fully realize that the value of the election contest herein involved is becoming less with the passing of each day. We note further that the protest filed in this case has been pending before the respondent judge for a considerable length of time now; yet it appears that the opening of the ballot boxes in the precincts covered by the said protest, has not even been ordered by the trial court for purposes of going into the merits of the case. Worse still, herein petitioner, by design or otherwise, insists that the trial court should be enjoined from opening the said ballot boxes pending resolution of the question whether or not the trial court was right in striking out his counter-protest. And to be sure, to entertain his pleas - limiting the issue as to whether his appeal blocked by the trial court should be allowed, and ordering the respondent judge to refrain from holding trial on the merits of the protest until such time that the said appeal of his should be settled - would only prolong the determination of the question as to who, between the

par-ties here, had been legally chosen by the electorate. Under these circumstances, the action of this Court in entertaining the present application as a case of certiorari will be conducive to the speedy disposition of the case, will save the parties from further expense, and will not unnecessarily extend and prolong the proceedings. At any rate, the allegations of the present petition may be considered sufficient for the purpose.

Coming to the fundamental question involved, it was herein respondent judge's view that the extension of the period within which to answer the protest in this case, did not carry with it the right on the part of the protestee to file a counter-protest within the same period; that is why, when the counter-protest of herein petitioner was filed with his answer within the extended period, said trial judge ruled that the counter-protest was filed out of time. Such view is not well taken. In *Torres vs. Ribo*, 83 Phil. 645, it took a long time to dispose of a motion to dismiss filed by the protestee. And only after the final disposition of the said motion to dismiss, did the protestee answer, filing therewith a counter-protest. The latter pleading was ordered stricken from the record by the trial court; but on appeal, this Court sustained the right of the protestee to file the same, holding that the motion to dismiss had suspended the period for filing the answer, and the counter-protest, having been filed within the period left after the suspension was terminated, must be deemed filed within the statutory period. In *Valenzuela vs. Judge of the Court of First Instance of Bulacan*, 40 Phil. 163, it was, likewise, held that a counter-protest is tantamount to a counter-claim in a civil action and may be presented as a part of the answer within the time the protestee is required to answer the protest. With these authorities then, We really see no reason why the respondent judge in this case has ordered the striking out of herein petitioner's counter-protest, even after herein petitioner had called her attention to such holdings of the Court. Such act, to our mind, constitutes not merely a mistaken view of the law, but a gross abuse of discretion neither governed by rule nor exercised under established principles of law, which makes it void. It is not one which will withstand review by certiorari and mandamus, and may be interfered with.

WHEREFORE, the order of the trial court striking out herein petitioner's counter-protest, together with the other orders complained of in this proceeding are set aside. Case remanded to the trial court for further proceedings.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Fernando JJ., concur.

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