

**BIENVENIDO A. EBARLE AND JAVIER ARIOSAS, PETITIONERS, VS.  
VICENTE M. CERILLES AND JOSE L. TECSON, RESPONDENTS.***G.R. No. L-34436. May 31, 1977*

Ponente: ANTONIO, J.

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Petition for quo warranto and mandamus with preliminary mandatory injunction filed by petitioners on September 13, 1971, which was amended on January 13, 1972 so as to include Jose L. Tecson as respondent.

Petitioners Bienvenido A. Ebarle and Javier Ariosa are residents of Pagadian City and qualified voters of Zamboanga del Sur province, while respondents Vicente M. Cerilles and Jose L. Tecson are also residents of Pagadian City. Respondent Cerilles was then the duly elected Congressman for the lone district of Zamboanga del Sur in the elections of November 11, 1969, and as such Congressman had performed his duties up to the last sessions of Congress in 1971. However, he was proclaimed official candidate of the Nacionalista Party for the position of Governor for the Province of Zamboanga del Sur to which he filed his certificate of candidacy dated September 8, 1971 for the November 8, 1971 elections.[1]

On December 4, 1971, the Provincial Board of Canvassers of Zamboanga del Sur, on the basis of the election returns received by said Board, proclaimed, among others, respondents Vicente M. Cerilles and Jose L. Tecson as the duly elected Governor and Vice-Governor, respectively, of the Province of Zamboanga del Sur.[2] After his proclamation as the Governor-elect, respondent Cerilles refused to take his oath of office as Provincial Governor and publicly made known his intention to assume his position as Congressman of the lone district of Zamboanga del Sur, under the provisions of Section 24 of Republic Act No. 6388,[3] otherwise known as the Election Code of 1971.

Hence, the present petition for quo warranto and mandamus with preliminary mandatory injunction wherein petitioners contend, among others, (1) that the unilateral and deliberate act of respondent Cerilles in forfeiting his new position as Provincial Governor of Zamboanga del Sur, under Section 24 of Republic Act No. 6388 by merely refusing to take his oath of office, is illegal and against public policy because it negated and violated the electoral mandate of the people on November 8, 1971 and, therefore, said forfeiture is null and void and without effect; (2) that to construe the aforementioned Section 24 as permitting any member of Congress who is elected to the position of Governor to either reject or accept the people's mandate at his discretion would violate the essence of a democracy and, as such, said Section 24 would be unconstitutional for being a class legislation; (3) that respondent Cerilles in filing his certificate of candidacy for Provincial Governor, offering himself to be voted upon, and consenting to be proclaimed winner as Governor in the elections of November 8, 1971, had irrevocably accepted the electoral mandate of the sovereign will of the people of Zamboanga del Sur to serve as Governor, and, consequently, said acceptance constitutes and operates as a forfeiture and an abandonment of his office as Congressman; (4) that respondent Cerilles is doing or about to assume the duties of Congressman for the lone district of Zamboanga del Sur, contrary to his political campaign speeches and printed propaganda,[4] to the effect that once elected he will finish his full term as Governor; and (5) that the commission or continuance of the act

complained of during the litigation would surely work injustice not only to herein petitioners as taxpayers and residents of Zamboanga del Sur, but also the whole people of said province, who would be deprived of the invaluable services of respondent Cerilles as Governor. Petitioners then prayed that judgment be issued: (1) immediately commanding respondent Cerilles to assume and hold the position of Governor of Zamboanga del Sur; (2) declaring Section 24 of Republic Act No. 6388 unconstitutional for being a class legislation; (3) in the event that said Section 24 is not declared unconstitutional, declaring the forfeiture of respondent Cerilles of his new position as Governor, null and void and without effect for being against public policy; (4) declaring that by the election of respondent Cerilles as Governor on November 8, 1971, he has forfeited his position as Congressman of the lone district of Zamboanga del Sur; (5) ordering respondent Jose L. Tecson to vacate the position of Governor in favor of respondent Vicente M. Cerilles; and (6) ordering the respondents to pay the costs of this suit.

In the meantime, respondent Jose L. Tecson took his oath of office on January 1, 1972 as Vice-Governor for Zamboanga del Sur before District Judge Asaali S. Isnani, Branch II, of the Court of First Instance of Zamboanga del Sur.[5] Upon the failure of respondent Cerilles to qualify as the Governor-elect, respondent Tecson took his oath of office as Governor for Zamboanga del Sur on January 2, 1972 before said Judge Isnani.[6] Likewise, Vicenta C. Enerio, who took her oath of office as Senior Provincial Board Member on January 1, 1972, succeeded respondent Tecson and took her oath of office as Vice-Governor on January 2, 1972 before Judge Isnani.[7]

In their amended answer, respondents Cerilles and Tecson admit some of the allegations of the petition and deny the rest thereof, and, by way of affirmative and special defenses contend: (a) that the amended petition states no cause of action for petitioners, who are mere taxpayers and residents of Zamboanga del Sur, do not claim title to the governorship in question, hence, they are not the real party in interest under Section 6 of Rule 66 of the Revised Rules of Court; (b) that the amended petition is insufficient in form and substance under Section 3 of Rule 65 of said Rules, and that mandamus is not the proper remedy to compel the undoing of an act already done,[8] thereby rendering this case moot and academic; (c) that respondent Cerilles, who was then the incumbent Congressman, is a national official and, therefore, he is not covered by the prohibition of Section 24 of Republic Act No. 6388; (d) that this action was filed prematurely, considering that the original petition was filed on December 13, 1971, and this defect cannot be cured by the subsequent filing on January 13, 1972 of an amended petition so as to include Jose L. Tecson as co-respondent;[9] (e) that respondent Cerilles did not take the oath of office as Governor of Zamboanga del Sur and, in accordance with the second paragraph of Section 24 of Republic Act No. 6388, he has forfeited his right thereto; (f) that the conditions for judicial determination of constitutional questions are absent; (g) that there was no notice served by the petitioners, who are questioning the validity of Section 24 of Republic Act No. 6388, upon the Solicitor General who is entitled to be heard, pursuant to Section 3 of Rule 64 of the Revised Rules of Court; and (h) that this amended petition has omitted other necessary or proper parties.

During the pendency of this case, the 1935 Constitution was superseded by the New Constitution, which took effect on January 17, 1973, replacing the presidential system and its bicameral legislature, with that of a parliamentary system and its unicameral National Assembly with an interim National Assembly to function during the period of transition. Subsequently, the interim National Assembly was abolished and, in lieu thereof, the Batasang Pambansa, a new interim legislative body, was created. The afore-mentioned changes in the political institutions, the expiration of the term of respondent Cerilles as a Member of the defunct Congress, and the termination of the four-year term of the Governor, have rendered the issues raised in the petition moot.

ACCORDINGLY, the petition for quo warranto and mandamus is hereby DISMISSED. No costs.

Fernando, (Chairman), Barredo, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., on leave.

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[1] Annex "A", Amended Petition, p. 18, SC Rollo.

[2] Annex "B", Ibid., p. 17, SC Rollo.

[3] Pertinent provision reads:

"SEC. 24. Candidate holding elective office. -

\* \* \* \* \*

Every elected official shall take his oath of office on the day his term of office commences, or within ten days after his proclamation if said proclamation takes place after such day. His failure to take his oath of office as herein provided shall be considered forfeiture of his right to the new office to which he has been elected unless said failure is for a cause or causes beyond his control." (*Italics supplied.*)

[4] Annex "C", Amended Petition, p. 19, SC Rollo.

[5] Annex "C", of Cerilles' Comments, p. 36, SC Rollo.

[6] Annex "D", Ibid., p. 37, SC Rollo.

[7] Annex "F", Ibid., p. 39, SC Rollo.

[8] *Guanio v. Fernandez*, 55 Phil. 814.

[9] *Surigao Mine Exploration Co. v. Harris*, 68 Phil. 113; *Limpangco v. Mercado, et al.*, 10 Phil. 508.

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