

ARACELI V. MALAG, PETITIONER-APPELLANT, VS. RAMON DE LOS CIENTOS (IN HIS CAPACITY AS GOV-ERNOR OF DAVAO DEL SUR) ET AL., RESPONDENTS-APPELLEES.*G.R. No. L-29684. March 28, 1969*

Ponente: REYES, J.B.L., J.

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This is an appeal from a decision of the Court of First Instance of Davao, in its Special Civil Case No. 6104, granting a motion to dismiss and dissolving a preliminary injunction previously issued by said Court.

In brief, the case is as follows:

Petitioner-appellant, Araceli Malag, is the duly elected mayor of Magsaysay, Davao. Sometime in early June, 1968, a barrio captain, Delfin Gilledo, lodged sworn charges against the said mayor with the Provincial Board of Davao, accusing said official of serious misconduct in office. Thereupon, respondent Ramon de los Cientos, in his capacity as Provincial Governor, required Mayor Malag to answer the charges, and on 3 July 1968 preventively suspended the mayor from office and directed the other res-pondent, Vice-Mayor Wilfredo Coong, to assume the post. Mayor Malag refused to turn over the office, contending that said order of preventive sus-pension had no warrant in law; filed with the Court of First Instance of Davao a petition for prohibition against the enforcement of the governor's order, and secured a writ of preliminary injunction.

However, after hearing the parties, the court below concluded that the order of suspension was valid. On 10 September 1968, the court granted the governor's motion to dismiss, and dissolved the writ of preliminary in-junction. Unable to secure reconsideration, Mayor Malag resorted to this Court.

The issue at bar, on basically identical facts, was finally resolved by this Supreme Court in *Sarcos vs. Governor Castillo*, L-29755, promulgated on 31 January 1969. Therein, this Court, through Mr. Justice Enrique M. Fernando, ruled that after the effectivity of the Decentralization Act of 1967, Republic Act No. 5185, the power of preventive suspension of municipal officials was taken away from the Provincial Governor and lodged, in the Provincial Board. For the reasons set out at length in said decision, which we need not repeat here, we hold that the order of preventive suspension of Mayor Malag by Governor de los Cientos is not in accord with law, and, therefore, invalid. As a corollary, the order authorizing and directing Vice-Mayor Coong to assume the functions of the mayor is likewise null and void.

Respondents sought dismissal of this case as moot, pleading that the Pro-vincial Board had found Mayor Malag guilty as charged. It was shown, how-ever, that operativeness of the decision has been arrested by higher executive authority. Not only this, but it likewise appears that, during the pendency of this appeal, the Court of First Instance of Davao has reconsidered its opinion and reinstated the injunction.

IN VIEW OF THE FOREGOING, the order of the Court of First Instance of Davao, dated 10 September 1968, is declared erroneous, and the same is reversed and set aside, and respondents, their agents and represent-atives are

prohibited and enjoined from enforcing or implementing the order of suspension of Mayor Malag, as well as the directive to the Vice-Mayor to assume and discharge herein petitioner's functions; and should they have done so, to immediately desist therefrom. Costs against respondents.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

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