

**JOHN H. OSMEÑA, PETITIONER, VS. HON. AGAPITO HONTANOSAS, ET AL., RESPONDENTS.***G.R. No. L-31373. January 22, 1970*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c13cea51af05/>**PER CURIAM:**

Petitioner John H. Osmeña prays that respondent Judge Agapito Hontanosas be ordered to cease and desist from taking further proceedings in Civil Case No. R-11477 before him in the Court of First Instance of Cebu (Branch XI), and from enforcing the writ or preliminary injunction issued by him on December 3, 1969 in the aforesaid case; that respondent Judge be ordered to dismiss the petition in said Civil Case No. R-11477; and that respondent Provincial Board of Canvassers of Cebu be ordered to convene itself and forthwith canvass the votes cast for the office of Representative of the second representative district of Cebu in the elections of November 11, 1969 and thereafter to proclaim the candidate duly elected to said office.

On December 23, 1969 this Court issued a temporary restraining order directing the respondent Judge, until further orders from this Court, to cease and desist from taking further proceedings in Civil Case No. R-11477 of the Court of First Instance of Cebu, without prejudice to the effect of the preliminary injunction is-sued by him on December 3, 1969 in the aforesaid case.

Originally, respondent Josefino Almendras, along with Bernardino Florido and Merilito Aznar, petitioned the Court of First Instance of Cebu, in an ordinary civil action, docketed as Civil Case No. R-11477 in said court, to declare the election in the City of Cebu, which took place on November 11, 1969, null and void ab initio, and to enjoin the Provincial Board of Canvassers of Cebu to desist or refrain from making any canvass of the votes cast for the office of Representative for the second representative district of Cebu and to desist from proclaiming the winner thereof, because: (1) on election day, on November 11, 1969 an unruly mob gathered in the premises of the Comelec office in Cebu City forcing officials of said office to close the office and flee for their lives; (2) at about 4:00 in the afternoon of that day Eliseo Blancaflor (Policy Adviser of the Comelec), allegedly on orders of the Commission on Elections, unlawfully gained entrance into the Comelec office in City of Cebu and allowed the henchmen of the Liberal Party to ransack the files of the office and extracted therefrom all the lists and voters' applications and ordered them to be distributed to the different precincts of the City of Cebu, thereby allowing some 23,000 voters to cast illegal votes; (3) as a result of the illegal acts of Eliseo Blancaflor some 17,000 voters allegedly ordered excluded by Judges Laya and Villasor, of the Court of First Instance of Cebu, were allowed to vote; (4) in some precincts of Cebu City voting was actually done even until morning, contrary to law, allowing voters without the proper registration forms and pictures to cast their votes; (5) the voting records delivered by order of Eliseo Blancaflor to the polling places were not sealed and signed by the corresponding election registration boards in violation of the law and of the rules and regulations promulgated by the Commission on Elections, thus giving rise to frauds in the casting of the votes; (6) as a result of the illegal orders of Eliseo Blancaflor the three copies of the registration forms of individual voters were brought and distributed illegally to different precincts, thus allowing a single voter to vote three times in three different precincts contrary to law; and (7) as a consequence of the foregoing facts, events and circumstances the election in the City of Cebu, on November 11, 1969, is null and void from the very beginning, it being impossible to separate the legal votes cast

from the illegal ones.

On the same day that the petition in Civil Case No. R-11477 was filed respondent Judge issued, ex parte, a writ of preliminary injunction directed to the Provincial Board of Canvassers of the province of Cebu restraining it from making any canvass of the votes cast for the office of Representative for the second representative district of Cebu and/or from proclaiming the duly elected Congressman for said district.

On December 8, 1969 petitioner John H. Osmeña filed an urgent motion, to dissolve the writ of preliminary injunction issued on December 3, 1969 and to dismiss the petition in Civil Case No. R-11477. In support of said urgent motion, petitioner contended that respondent Judge "has no jurisdiction to entertain the petition and to issue the writ of preliminary injunction, because: (1) there is no law authorizing the courts to annul an election except in a regular election protest; (2) the alleged irregularities should be ventilated in an election protest; and (3) in the case of petitioner Osmeña it is the House Electoral Tribunal that is the sole judge of the election and returns."

The respondent Judge, on December 19, 1969, denied the motion to dismiss as well as the prayer to dissolve the writ of preliminary injunction. Hence petitioner Osmeña filed before this Court the present petition for certiorari, prohibition, and mandamus, with preliminary injunction.

This case was heard on oral argument on January 10, 1970. After a careful consideration of the arguments adduced by the parties, in their pleadings as well as during the oral argument, and of the facts extant in the record, this Court RESOLVED, as follows:

- (a) To grant the writs of certiorari and prohibition prayed for, since Court of First Instance have no jurisdiction to nullify votes cast in a congressional election, apart from the fact that there is no showing for whom the alleged illegal votes were cast as would affect the result of the election;
- (b) To declare permanent the restraining order issued by this court on December 23, 1969;
- (c) To set aside the writ of preliminary injunction issued by respondent Judge Agapito Hontanosas on December 3, 1969 in Civil Case No. R-11477 of the Court of First Instance of Cebu, and to order said respondent Judge, or whoever is the judge that acts in his place, to dismiss said case;
- (d) To order the respondent Provincial Board of Canvassers of Cebu to convene and canvass the votes cast for the candidates for the office of Representative for the second representative district of Cebu in the elections of November 11, 1969, and to proclaim the result, not later than noon of Saturday, January 24, 1970.

This resolution is immediately executory upon promulgation. No pronouncement as to costs.

Let copy of this resolution be furnished the Commission on Elections.

**SO ORDERED.**

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

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