

PEDRO FORRES, JR., PEDRO NARIO, PEDRO TORRES, SR., ALFREDO DE LA ROSA, SERVILLANO ALBERTO, CESAR MENDOZA, IN HIS CAPACITY AS MUNICIPAL MAYOR OF ALCALA, PANGASINAN, AND THE MUNIC...

G.R. No. L-27456. March 29, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The petitioners in the Court below (Court of First Instance of Pangasinan), now appellants, are the barrio captain and councilmen of Barrio Pindangan, Municipality of Alcala, Province of Pangasinan, and the municipal mayor as well as the municipal council of the said town. The respondents, now appellees, are Francisco Q. Duque, in his capacity as the then Provincial Governor of Pangasinan, and the election tellers of the three new barrios of Pindangan Este, Pindangan Oeste and Kisikis, which formerly constituted the barrio of Pindangan. The petition, filed on July 30, 1964 sought the nullification of Resolution No. 186, Series of 1964, of the provincial board of Pangasinan, and Administrative Order No. 10, dated July 27, 1964, of respondent Provincial Governor Francisco Q. Duque.

The antecedent facts as stipulated by the parties below are stated in the decision of the court a quo. Pursuant to an undated petition, to which were attached the signatures of 334 residents of Barrio Pindangan, the municipal council of Alcala approved a resolution (No. 195) on December 1, 1961, providing that "Barrio Pindangan be divided into two barrios, namely, Pindangan East and Pindangan West." On December 15, 1962 the same municipal council approved another resolution "to remind the provincial board of Pangasinan of the petition of the barrio people of Pindangan Este for the division of Barrio Pindangan into two." Still another resolution (No. 80) was adopted on December 6, 1963, again reminding the provincial board of the same petition, but this time stating "that Barrio Pindangan be divided into three equal barrios: East and West Pindangan and Kisikis."

On March 4, 1964 the provincial board of Pangasinan passed Resolution No. 186 "to approve under Section 3 of R. A. No. 2370, as amended, otherwise known as the Barrio Charter, the division of Barrio Pindangan, Alcala, Pangasinan into three barrios, independent of one another, to be denominated as Pindañgan East, Pindañgan West and Kisikis." Then on July 27, 1964 Governor Duque issued Administrative Order No. 10, in which, invoking his authority under Republic Act No. 3590 (the Revised Barrio Charter) designated August 2, 1964 for the election of the members of the barrio council of Pindangan Este and Pindangan Oeste and designating the election tellers for that purpose.

The petitioners thereupon went to court questioning the legality of the action taken by the Provincial Board and the Provincial Governor. The court quo in its decision dated December 10, 1965 found in favor of the respondents and dismissed the petition.

This appeal by the petitioners has been submitted for decision without any brief for the respondents. The pertinent provision of Republic Act No. 3590, otherwise known as the Barrio Charter, which took effect on June 23, 1963,

is identical to the previous law, Rep. Act No. 2370, and is reproduced as follows:

"SEC. 3. The creation of new barrios. Upon petition of a majority of the voters in the areas affected, a new barrio may be created or the name of an existing one may be changed by the provincial board of the province, upon recommendation of the council of the municipality or municipalities in which the proposed barrio is situated. The recommendation of the municipal council shall be embodied in a resolution approved by at least two-thirds of the entire membership of the said council: Provided, however, that no barrio may be created if its population is less than five hundred persons, nor out of chartered cities or Poblaciones of municipalities.

'Barrios shall not be created or their boundaries altered nor their names changed except under the provisions of this Act or by Act of Congress."

Under the foregoing provision the creation of a new barrio, or the alternation of the boundaries of an existing barrio, or even only the change of its name, requires: (1) a petition of a majority of the voters in the areas affected; (2) the recommendation of the municipal council of the municipality where the proposed barrio is situated, approved by at least two-thirds of the entire council membership; and (3) the condition that the new barrio must have a population of not less than 500 persons and that it may not be created out of chartered cities or poblaciones of municipalities.

The main submission of the appellants is that the first requirement was not complied with, namely, that the petition be by a majority of the voters in the areas affected. It is stipulated by the parties that the total number of registered voters in Barrio Pindangan in the 1961 elections was 856, which rose to 938 in the elections of 1963. It is therefore clear that the creation of the three new barrios was not upon petition of a majority of the voters, even assuming that all 334 who signed, referred to as residents of Barrio Pindangan, were registered voters.

The court a quo, however, in upholding the validity of the resolution of the provincial board and the administrative order of the Provincial Governor now in question, said that the mere fact that the petition was signed by 334 residents of Barrio Pindangan, "without any showing that there are no other petitioners than those 334 persons, does not sufficiently rebut the presumption that the required majority of the voters of Pindangan have petitioned for the creation of the three barrios above stated." The court failed to say just what the basis was of such a presumption. If anything, the presumption should be otherwise, that is, that since the petition, as exhibited in court, appeared to have been signed by 334 persons, they were only ones who were in favor of the petition. Furthermore, since the law requires, as an indispensable condition, that for a new barrio to be created under its provisions a majority of the voters in the areas affected must make the petition for that purpose, the burden of proof is upon the party upholding the legality of the creation of a new barrio which is challenged in court to show that the condition has been duly complied with. In the absence of such a showing and in the light of the undisputed fact that less than majority of the voters of Barrio Pindangan expressed their conformity to the division of their barrio into three new ones, the legality thereof cannot be upheld.

WHEREFORE, the decision appealed from is reversed and the questioned resolution of the provincial board of Pangasinan as well as the administrative order of the Provincial Governor issued pursuant to said resolution are declared null and void. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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