

PHILIP G. ROMUALDEZ, PETITIONER, VS. REGIONAL TRIAL COURT, BRANCH 7, TACLOBAN CITY, DONATO ADVINCULA, BOARD OF ELECTION INSPECTORS, PRECINCT NO. 9, MALBOG, TOLOSA, LEYTE, AND TH...*G.R. No. 104960. September 14, 1993*

Ponente: VITUG, J.

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An event in this decade, which future generations would likely come to know simply as the "EDSA People's Power Revolution of 1986," has dramatically changed the course of our nation's history. So, too, not a few of our countrymen have by it been left alone in their own personal lives. One such case is that of the petitioner in this special civil action for certiorari.

The petitioner is Philip Romualdez, a natural born citizen of the Philippines, the son of the former Governor of Leyte, Benjamin "Kokoy" Romualdez, and nephew of the then First Lady Imelda Marcos. Sometime in the early part of 1980, the petitioner, in consonance with his decision to establish his legal residence at Barangay Malbog, Tolosa, Leyte,[1] caused the construction of his residential house therein. He soon thereafter also served as a Barangay Captain of the place. In the 1984 Batasan Election and 1986 "snap" Presidential Election, Romualdez acted as the Campaign Manager of the Kilusang Bagong Lipunan (KBL) in Leyte where he voted.[2]

When the eventful days from the 21st to the 24th of February, 1986, came or were about to come to a close, some relatives and associates of the deposed President, fearing for their personal safety, whether founded or not, "fled" the country. Petitioner Romualdez, for one, together with his immediate family, left the Philippines and sought "asylum" in the United States which the United States (U.S.) government granted.[3] While abroad, he took special studies on the development of Leyte-Samar and international business finance.[4]

In the early part of 1987, Romualdez attempted to come back to the Philippines to run for a congressional seat in Leyte. On 23 March 1987, he finally decided to book a flight back to the Philippines but the flight was somehow aborted.[5]

On 25 September 1991, Romualdez received a letter from Mr. Charles Cobb, District Director of the U.S. Immigration and Naturalization Service, informing him that he should depart from the U.S. at his expense on or before 23 August 1992, thus:

"* * * Failure to depart on or before the specified date may result in the withdrawal of voluntary departure and action being taken to effect your deportation. In accordance with a decision made to your case, you are required to depart from the United States at your expense on or before 23 August 1992." [6]

Upon receipt of the letter, Romualdez departed from the U.S. for the Philippines, arriving on 23 December 1991 apparently without any government travel document.[7]

When Romualdez arrived in the Philippines, he did not delay his return to his residence at Malbog, Tolosa, Leyte. During the registration of voters conducted by Commission on Elections ("COMELEC") on 01 February 1992 for the Synchronized National and Local Election scheduled for 11 May 1992, petitioner registered himself anew as a voter at Precinct No. 9 of Malbog, Tolosa, Leyte. The Chairman of the Board of Election Inspector, who had known Romualdez to be a resident of the place and, in fact, an elected Barangay Chairman of Malbog in 1982, allowed him to registered.

Romualdez's registration, however, was not to be unquestioned. On 21 February 1992, herein private respondent Donato Advincula ("Advincula") filed a petition with the Municipal Trial Court of Tolosa, Leyte, praying that Romualdez be excluded from the list of voters in Precinct No. 9 of Malbog, Tolosa, Leyte, under BP 881 and RA 7166.[8] Advincula alleged that Romualdez was a resident of Massachusetts, U.S.A.; that his profession and occupation was in the U.S.A.; that he had just recently arrived in the Philippines; and that he did not have the required one-year residence in the Philippines and the six-month residence in Tolosa to qualify him to register as a voter in Barangay Malbog, Tolosa, Leyte.[9]

On 25 February 1992, Romualdez filed an answer, contending that he has been a resident of Tolosa, Leyte, since the early 1980's, and that he has not abandoned his said residence by his physical absence therefrom during the period from 1986 up to the third week of December 1991.[10]

After due hearing, the Municipal Court of Tolosa, Leyte rendered a decision[11] on 28 February 1992, the dispositive portion of which reads:

"WHEREFORE PREMISES CONSIDERED, the court finds the respondent to be a resident of Brgy. Malbog, Tolosa, Leyte and qualified to register as a voter thereat. Hence, the instant petition for exclusion of Philip G. Romualdez from the list of voter of Precinct No. 9, Malbog, Tolosa, Leyte is hereby ordered DENIED and petition DISMISSED.

SO ORDERED."

Upon receipt of the adverse decision, Advincula appealed the case to the respondent court.

On 03 April 1992, the respondent court rendered the assailed decision[12], thus:

"WHEREFORE, this Court finds respondent Philip Romualdez disqualified to register as a voter for the 1992 elections and hereby reverses the decision of the lower court on toto.

The Municipal Registrar of the Commission on Elections of Tolosa, Leyte, is hereby ordered to delete and cancel the name of respondent Philip G. Romualdez from the list of qualified voters registered February 1, 1992, at Precinct 9, barangay Malbog, Tolosa, Leyte.

SO ORDERED."

Hence, this recourse.

On 7 May 1992, this Court issued a temporary restraining order directing respondent Regional Trial Court Judge Pedro Espino to cease and desist from enforcing his questioned decision.[13]

The petitioner has raised several issues which have been well synthesized by the Solicitor General into –

- (1) Whether or not the MTC and RTC acquired jurisdiction over, respectively, Case No. 01-S. 1992 and Case No. 92-03-42, the petition having been filed by one who did not allege to be himself a registered voter of the municipality concerned; and
- (2) Whether or not the respondent court erred in finding the petitioner to have voluntarily left the country and

abandoned his residence in Malbog, Tolosa, Leyte.

The petition is impressed with merit.

Anent the first issue, the petitioner assails for the first time the jurisdiction of the respondent Court and the MTC of Tolosa, Leyte, in taking cognizance of the case, despite an absence of any allegation in the petition filed with the MTC that Advincula was himself a registered voter in Precinct No. 9 of Barangay Malbog, Tolosa, Leyte conformably with Section 142 of the Omnibus Election Code.[14]

When respondent Advincula filed the petition with the MTC for the exclusion of herein petitioner Romualdez, the latter countered by filing his answer[15] and praying for the denial of the petition, without raising the issue of jurisdiction. But what can be telling is that when the MTC decision, denying the petition for disqualification, went on appeal to the RTC, Romualdez, in his own appeal-memorandum, explicitly prayed that the MTC decision be affirmed. This unassailable incident leads us to reiterate that "while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of jurisdiction." [16] Undoubtedly, the petitioner is now estopped from questioning the jurisdiction of the respondent court not only by his active participation in the proceedings thereat but, more importantly, in having sought an affirmative relief himself when the appeal was made to the latter court whose jurisdiction he, in effect, invoked. Furthermore, the question is not really as much the jurisdiction of the courts below as merely the locus standi of the complainant in the proceedings, a matter that, at this stage, should be considered foreclosed.

In any case, we consider primordial the second issue of whether or not Romualdez voluntarily left the country and abandoned his residence in Malbog, Tolosa, Leyte. Here, this time, we find for the petitioner.

The Solicitor-General himself sustains the view of petitioner Romualdez. Expressing surprise at this stance given by the Solicitor-General, respondent Advincula posits non sequitur argument[17] in his comment assailing instead the person of Solicitor Edgar Chua. If it would have any value, at all, disabusing the minds of those concerned, it may well be to recall what this Court said in *Rubio v. Sto. Tomas*: [18]

"It is also incumbent upon the Office of the Solicitor General to present to the Court the position that will legally uphold the best interest of the government although it may run counter to a client's position."

In election cases, the Court treats domicile and residence as synonymous terms, thus: "(t)he term 'residence' as used in the election law is synonymous with 'domicile', which imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention". [19] "Domicile" denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. [20] That residence, in the case of the petitioner, was established during the early 1980's to be at Barangay Malbog, Tolosa, Leyte. Residence thus acquired, however, may be lost by adopting another choice of domicile. In order, in turn, to acquire a new domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. [21] In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual. [22]

The political situation brought about by the "People's Power Revolution" must have truly caused great apprehension to the Romualdezes, as well as a serious concern over the safety and welfare of the members of their immediate families. Their going into self-exile until conditions favorable to them would have somehow stabilized is understandable. Certainly, their sudden departure from the country cannot be described as "voluntary", or as "abandonment of residence" at least in the context that these terms are used in applying the concept of "domicile

by choice".

We have closely examined the records, and we find not that much to convince us that the petitioner had, in fact, abandoned his residence in the Philippines and established his domicile elsewhere.

It must be emphasized that the right to vote is a most precious political right, as well as a bounden duty of every citizen, enabling and requiring him to participate in the process of government so as to ensure that the government can truly be said to derive its power solely from the consent of the governed.[23] We, therefore, must commend respondent Advincula for spending time and effort even all the way up to this Court, for as the right of suffrage is not to be abridged, so also must we safeguard and preserve it but only on behalf of those entitled and bound to exercise it.

WHEREFORE, finding merit on the petition the same is hereby GRANTED DUE COURSE; the Decision of the respondent Regional Trial Court dated 03 April 1992 is hereby REVERSED and SET ASIDE, and the Decision of the Municipal Trial Court dated 28 February 1992 is hereby REINSTATED and the Temporary Restraining Order issued by the Court in this case is correspondingly made PERMANENT. No pronouncement as to costs.

SO ORDERED.

Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, and Puno, JJ., concur.

Narvasa, C.J., and Feliciano, J., on leave.

[1] RTC decision, Rollo, 48.

[2] Rollo, 6; 48; 59.

[3] Rollo, 7.

[4] Ibid., 8.

[5] Ibid.

[6] Ibid., 148-149.

[7] Ibid., 9.

[8] Rollo, 10.

[9] Annex "B", Rollo, 55-56; 10; 68.

[10] P. 10.

[11] Per Judge Paulino Cabello; Rollo 68-75.

[12] Per Judge Pedro Espina; Rollo 45-54.

[13] Rollo, 122-124.

[14] "Sec. 142. Petition for exclusion of voters from the list.

- Any registered voter in a city or municipality may apply at any time except during the period beginning with the twenty-first day after the last registration day of any election up to and including election day with the proper municipal or metropolitan trial court, for the exclusion of a voter from the list, giving the name and residence of

the latter, the precinct in which he is registered and the grounds for the challenge. The petition shall be sworn to and accompanied by proof of notice to the board of election inspectors concerned, if the same is duly constituted, and to the challenged voter.”

[15] Annex "C", Rollo, 57-66.

[16] Aquino vs. CA, G.R. No. 91896, 204 SCRA 240/1991/; Salen vs. Dinglasan, G.R. No. 59082, 198 SCRA 623/1991/; Tijam vs. Sibonghanoy, G.R. No. L--21450, 23 SCRA 29/1968/.

[17] x x x x x

4. That further investigation showed that Solicitor Edgar Y. Chua is the brother of Ex-Assemblyman Edward Chua (Youth Representative in the Batasan) a protege of Imee Marcos Manotoc the first cousin of Philip Romualdez.

x x x x x

6. That Edward Chua has influence over his brother Solicitor Edgar Y. Chua, who favored Philip Romualdez.

[18] 183 SCRA 371.

[19] Nuval v. Guray, 52 Phil. 645.

[20] Ong Huan Tin v. Republic, G.R. No. L-20997, 19 SCRA 966 (1967).

[21] Gallego v. Vera, 73 Phil 453.

[22] 17 Am. Jur., sec. 16, pp. 599-601.

[23] Puñgutan v. Abubakar, G.R. No. L-33541, 43 SCRA 1/1972/.

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