

MARTIN MAYO, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF THE PROVINCE OF TAYABAS AND VALENTIN MAGBIRAY, RESPONDENTS.

G.R. No. 12197. December 08, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an original petition presented in the Supreme Court for the writ of mandamus. Its purpose was to require the said judge of the Court of First Instance to reinstate and hear upon its merits a certain election protest heretofore presented in said court and dismissed upon the ground that said court was without jurisdiction to hear the same.

The important facts upon which the petition is based are as follows:

First. That on the 6th of June, 1916, an election was held in the municipality of Tiaong of the Province of Tayabas for the purpose of electing a president and other officers for said municipality.

Second. That on the 9th of June, 1916, the municipal board of inspectors declared that the respondent, Valentin Magbiray, had been duly elected as president of said municipality.

Third. That on the 15th of June, 1916, the petitioner herein (Martin Mayo) presented a protest in the Court of First Instance of the Province of Tayabas against the election of the said Valentin Magbiray.

Fourth. That on the 5th of June, 1916, notice of said protest was given to the said Valentin Magbiray.

Fifth. That on the 13th of July, 1916, the attorney for the said Valentin Magbiray presented a motion in the Court of First Instance to dismiss the said protest for the reason that all of the persons voted for at said election for the office of president had not been notified and for that reason the court was without jurisdiction to hear said protest. Said motion alleged that the following persons had been voted for for the office of president: Valentin Magbiray, Martin Mayo, Mariano Umali, Sulpicio Dia, Mariano Dia.

The motion alleged that the only one of the persons who had been voted for for president who had been notified was the said Valentin Magbiray.

Sixth. That on the 22d of July, 1916, the lower court, at the suggestion of the protestant, examined a number of witnesses for the purpose of ascertaining who were the "candidates voted for" at said election.

Seventh. That upon the conclusion of the said hearing and on the 25th of July, 1916, the Honorable Isidro Paredes, judge, rendered a decision upon said motion to dismiss and dismissed the said protest upon the ground that all of the persons who had been voted for at said election for the office of president had not been given notice of the protest.

On the 4th of September, 1916, the present petition was presented in this court to obtain the remedy above

indicated.

The theory of the lower court upon which the motion to dismiss the protest was granted is that all the persons who received votes for the office of president should be considered "candidates voted for" and should, therefore, be notified; that unless all of such persons were notified, the court was without jurisdiction to hear the protest.

The theory of the petitioner herein (the protestant) is that he is not required to notify any of the persons voted for, except those who were "candidates voted for" for the office of president.

In the case of Santos vs. Miranda and Clemente, post, we said:

"In view of the fact that the municipal board of inspectors are required to make a certificate showing the names of 'all the persons voted for' and proclaim the persons elected, we are of the opinion that in the first instance all the 'persons who received votes' for a particular office and who were eligible for election to said office and whose names appear in said certificate, must be considered for the purpose of any protest as 'candidates voted for,' until the contrary is shown. That being true, they should, of course, be notified. If, however, the protestant should fail to notify any of said persons * * * the court should hear proof upon the question whether said persons were or were not 'candidates voted for' and decide whether or not, in fact, such persons were candidates.

* * * * *

"* * * it will be presumed that all of the persons voted for, as appears from the certificate of the municipal board of inspectors, were 'candidates voted for' until the contrary is shown and must be given notice of the protest. That presumption, however, is a rebuttable one. When the question is properly presented to the court whether or not such persons voted for were or were not, in fact, 'candidates voted for,' it is the duty of the court to hear proof upon that question."

The question of who were in fact candidates voted for is one of fact and the lower court, when the question is presented, should hear proof and decide it. He should not act upon the rebuttable presumption that all of the persona voted for, as indicated by the certificate of the municipal board of inspectors, were in fact candidates voted for, when the proof presented during the hearing upon that question shows that all of the persons voted for were not in fact candidates. He should not deprive the protestant of his day in court, without giving him an opportunity to show that he had in fact notified all of the candidates voted for. If the protestant knows, as a matter of fact, that the persons voted for as appears in the certificate of the municipal board of inspectors were not candidates and is prepared to prove that fact, there is no reason for requiring him to go through the empty formula of giving them notice. The protestant, in such a case, assumes the responsibility of his failure to give the notice required by law and, if he fails to give notice to a particular candidate voted for, he must fail utterly because the court does not have jurisdiction to hear the protest until all of the candidates voted for have been given notice.

In the present case the proof which the protestant presented and which was not contradicted shows beyond question that the persons whose names appear in the certificate of the municipal board of inspectors, other than the said Valentin Magbiray, were not candidates for the office of president. That being true, the protestant gave notice to all of the candidates voted for and his protest should not have been dismissed without a day in court—without a hearing. The court having deprived the protestant of his right to be heard upon his protest, upon an erroneous theory of the law, it should be required to reinstate said protest and to proceed to hear the same upon its merits.

From the foregoing it is very clear that the protestant has been deprived of his day in court absolutely, if the decision of the lower court is to stand, by an erroneous interpretation of the law and he is without a remedy unless he can in some way secure the reinstatement of his cause or protest. But it may be argued that mandamus is not

the proper remedy for the purpose of correcting the errors complained of in the present proceeding. In the case of *De Castro vs. Salas and Santiago* (34 Phil. Rep., 818), we said:

"No rule of law is better established than the one that provides that mandamus will not issue to control the discretion of an officer or a court, when honestly exercised, and when such power and authority is not abused. A distinction, however, must be made between a case where the writ of mandamus is sought to control the decision of a court upon the merits of the cause, and cases where the court has refused to go into the merits of the action, upon an erroneous view of the law or practice. If the court has erroneously dismissed an action, upon a preliminary objection and upon an erroneous construction of the law, then mandamus is the proper remedy to compel it to reinstate the action and to proceed to hear it."

For all of the foregoing reasons, we are of the opinion that the facts contained in the record are sufficient to justify the granting of the remedy prayed for. Therefore it is ordered and decreed that, an order be issued out of this court to the respondent judge, directing and requiring him to set aside and annul his order heretofore rendered in which he dismissed the protest of the petitioner, and to reinstate said protest, and to proceed to try said cause upon its merits. And without any finding as to costs, it is so ordered.

Carson, Trent, and Araullo, JJ., concur.

Torres, J., see concurring opinion.

Moreland, J., see dissenting opinion.

CONCURRING OPINION

TORRES, J.:

I concur on the ground that every person voted for in a municipal election is a candidate voted for.

DISSENTING OPINION

MORELAND, J.:

I dissent and refer to and make a part hereof my dissenting opinion in the case of *Santos vs. Miranda and Clemente*, post, p. 643.

I do not discuss whether mandamus should issue in this case even conceding the correctness of the decision of the court in this case. I base my dissent on the ground that the Court of First Instance was right in dismissing the protest for failure to make parties and to notify all of the persons who, according to the proclamation of the municipal board of canvassers, received votes for the office contested.

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