

BENITO POBLETE, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF CAVITE ET AL., RESPONDENTS.*G.R. No. 12551. March 27, 1917*

Ponente: MORELAND, J.

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This is an action for a writ of mandamus to compel the Court of First Instance of the Province of Cavite to take cognizance of and continue an election contest pending in that court between the petitioner here, Benito Poblete, and several respondents.

It appears that, in the elections held on the 6th of June 1916, Elias Poblete, one of the defendants in this action, was duly declared elected to the office of municipal president of Naic, Cavite. Benito Poblete, the plaintiff here, contested the election of Elias Poblete. After the beginning of the proceeding a motion was made to dismiss the same on the ground that the contestant had not notified one Francisco Punzalan, one of the persons who received votes for the office contested. It appears also that the fact that Punzalan received votes for the office contested was not disclosed until after the opening of the ballot boxes after the proceedings had been instituted and the hearing begun. The proclamation of the result of the election by the municipal board of canvassers did not show that Punzalan had received a vote or votes for the office contested. It is conceded that all of the persons who, according to the proclamation of the municipal board of canvassers, received votes for the office contested were made parties to the contest and were duly notified. The name of Punzalan not appearing in the proclamation of the municipal board of canvassers he was not made a party to the proceedings nor was he notified of the contest.

The trial court on the motion to dismiss held that inasmuch as Punzalan had actually received votes for the office contested and had not been notified of the contest as required by law the court acquired no jurisdiction to proceed and dismissed the contest.

We believe that the court erred in this ruling; and by that error deprived the contestant of his day in court and of his right to contest the election. The contestant cannot be held to do impossible things or to know facts which are beyond the possibility of ascertainment prior to the beginning of his contest. This court has held on several occasions that the duty of a contestant with regard to the persons who shall receive notice of the contest is, in the first instance, limited to those named in the proclamation of the municipal board of canvassers; and that, if he duly notifies all such persons of the contest, he has done all that the law requires him to do up to that time and is entitled to have his contest submitted to the court for consideration. The fact that the opening of the ballot boxes discloses that some person or persons other than those named in the proclamation of the municipal board of canvassers actually received a vote or votes for the office contested does not deprive the court of jurisdiction to proceed; but the court should allow the contestant to make such person party to the contest and to bring him in in the regular way.

We are of the opinion that the plaintiff here was deprived of the opportunity to be heard by an error of the court committed in determining a question presented by a preliminary objection and that the mandamus should be

issued as prayed.

Let mandamus issue directed to the Court of First Instance of the Province of Cavite directing it to proceed with the hearing of the contest mentioned in this proceeding after Francisco Punsalan has been duly made a party to the proceeding and brought in in the regular way by the contestant.

If the contestant fails within a reasonable time to bring said Punsalan in as a party to the proceedings or fails to demonstrate to the satisfaction of the court that he was not a candidate for the office contested the Court of First Instance will be authorized to dismiss the proceedings upon the proper representations. Costs against Elias Poblete. So ordered.

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

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