

CATALINO BAUTISTA, PETITIONER, VS. PAULINO FAJARDO, RESPONDENT.*G.R. No. 13799. September 23, 1918*

Ponente: STREET, J.

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At the election held on June 6, 1916, the petitioner Catalino Bautista was elected vicepresident of the municipality of Masantol, in the Province of Pampanga, and was duly inducted into office as such on October 16, 1916. The election for municipal president held at the same time failed of effect, and was annulled by a judgment of the Court of First Instance of Pampanga on July 28, 1916.

As a consequence of the failure of said election, the petitioner, as vicepresident, in accordance with the decisions of this court, undoubtedly became entitled to fill the office of president. (*Remata vs. Javier*, 36 Phil. Rep., 483; *Remata vs. Javier and De Gala*, 37 Phil. Rep., 571.) However, instead of making any immediate claim to the office of president the petitioner continued to discharge the duties of the office of vicepresident and was so acting at the time of the institution of this proceeding.

The office of municipal president had been occupied during the previous term by one Bustos; and upon October 16, 1916, the latter held over and continued to discharge the duties of the office of president until May 2, 1917. During all this time the petitioner asserted no claim to the office of president, but did upon one or more occasions serve as acting president during the absence of President Bustos.

Upon May 2, 1917, the provincial board of the Province of Pampanga, acting pursuant to an authority supposed to be contained in Act No. 2707, appointed the respondent Paulino Fajardo to the office of municipal president of Masantol, and upon May 6 this appointee entered upon the discharge of his duties in said office. It is to be supposed that in thus appointing Fajardo to the office of municipal president the provincial board was acting under [section 1] subsection (c) of said Act No. 2707, which provides that in case of the failure of an election for any municipal office an appointment may, in the discretion of the Secretary of the Interior, be made by the provincial board; but there is nothing in the record to show that the action in question was taken by the authority of said secretary, or with his subsequent approval. This point we consider immaterial, as it is to be presumed, in the absence of proof to the contrary, that the action taken by the provincial board was regular.

Upon March 4, 1918, Catalino Bautista instituted the present proceeding by petition in this court. After setting forth the most material facts substantially as above stated, the petitioner asks that the respondent be enjoined from discharging the duties of the office of municipal president of Masantol and from drawing salary from the municipal treasury as such. It is further prayed that the petitioner be declared to be the person entitled to discharge the duties of the office in question and that the respondent be required to surrender the office to him. Although not so entitled, the petition is in the nature of an application for the writ of quo warranto to determine the right to an office under sections 201 et seq. of the Code of Civil Procedure.

The facts are undisputed; and it can not be questioned that if the petitioner is not barred by the period of

prescription of one year stated in section 216 of said Code, he is entitled to a judgment declaring his right to the office in question.

The portion of section 216 here material reads as follows:

"Nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office arose."

This provision states two criteria by reference to which we are supposed to discover the date from which the period of prescription is to be reckoned. One is the ouster, or unlawful exclusion, of the rightful claimant from the office; the other is the right- of the lawful claimant to hold the office.

Upon consideration of the language used in the provision cited, as well as the legislative purpose which was evidently intended to be accomplished, we are of the opinion that the action cannot be maintained if either one of the conditions therein contemplated is adverse to the petitioner. That is to say, if a petitioner delays bringing his action, as in this case, for more than one year after his right to hold the office arises, the action is barred although the usurper or other person holding the office at the time of the institution of the proceeding to oust him may not himself have been in adverse possession for a full year.

From the facts stated it is indisputable that if the petitioner had presented himself upon October 16, 1916, and had qualified by taking the oath of office as president, he should have been admitted to enter upon the discharge of the duties of said office. This, however, he did not do; and Bustos, the officer who had been president during the preceding term, properly continued to discharge the duties of president under section 2123 of the Administrative Code (1916). In thus holding over, president Bustos was not only a de facto officer but was holding office as incumbent de jure under the express direction of the statute. He was therefore not a usurper in any sense, and in remaining in office he violated no right of the petitioner.

It is therefore plain that the petitioner was at no time unlawfully excluded, or ousted, from the office of president while Bustos remained in office; and it cannot be considered that any unlawful exclusion or ouster of any sort occurred until the respondent Fajardo refused upon demand to surrender the office.

Having regard, therefore, to the first criterion stated in section 216, it cannot be said that the petitioner had been unlawfully excluded from the office for more than a year at the time this petition was filed; and if there were nothing else by which the court might be guided, we would be compelled to declare that the proceeding is not barred by said section.

With regard to the second criterion, namely, the right of the lawful claimant to hold the office, it may be observed that the petitioner's right, considered in an abstract sense, accrued upon the date when the Court of First Instance declared that the election for municipal president had failed. This was July 28, 1916. It seems probable, however, that the right contemplated in section 216 refers to the more material and practical right of occupancy which did not begin until October 16, 1916, this being the first day upon which the petitioner could have presented himself and demanded possession of the office against any other claimant whomsoever. As the action was brought more than one year from this date, we are of the opinion that the proceeding is barred.

It cannot be supposed that the Legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable. It is evident that where the action to recover an office has once prescribed it can not be revived by any change in the personality of the incumbent; and it cannot be admitted that a new right, different from that which he had previously possessed, accrued to the petitioner upon May 6, 1917, when the respondent was inducted into office. If the petitioner had any right it had existed at least from the

beginning of the official term, and the prescription must be computed from that date.

The petition is dismissed with costs. So ordered.

Johnson, Carson, Malcolm, Avanceña, and Fisher, JJ., concur.

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