

REPRESENTATIVE DANILO RAMON S. FERNANDEZ, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND JESUS L. VICENTE, RESPONDENTS.

G.R. No. 187478. December 21, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This petition for certiorari and prohibition filed under Rule 65 of the Rules of Court stems from the Decision[1] in HRET CASE No. 07-034 for quo warranto entitled Jesus L. Vicente v. Danilo Ramon S. Fernandez promulgated by the House of Representatives Electoral Tribunal (HRET) on December 16, 2008 as well as Minute Resolution No. 09-080 promulgated on April 30, 2009, likewise issued by the HRET, denying petitioner's Motion for Reconsideration.

The dispositive portion of the questioned Decision reads as follows:

WHEREFORE, the Tribunal DECLARES respondent Danilo Ramon S. Fernandez ineligible for the Office of Representative of [the] First District of Laguna for lack of residence in the district and [ORDERS] him to vacate his office.

As soon as this Resolution becomes final and executory, let notices be sent to the President of the Philippines, the House of Representatives through the Speaker, and the Commission on Audit through its Chairman, pursuant to Rule 96 of the 2004 Rules of the House of Representatives Electoral Tribunal.

No pronouncement as to costs.

SO ORDERED.[2]

On December 22, 2008, petitioner Danilo Ramon S. Fernandez (petitioner) filed a Motion for Reconsideration of the above-quoted Decision. The HRET, in the questioned Resolution, found petitioner's Motion to be "bereft of new issues/ arguments that [had] not been appropriately resolved"[3] in the Decision.

Petitioner thus applied for relief to this Court, claiming that the questioned Decision and Resolution should be declared null and void for having been respectively issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction, and praying for the issuance of a writ of prohibition to enjoin and prohibit the HRET from implementing the questioned Decision and Resolution.[4]

The antecedent facts are clear and undisputed.

Petitioner filed for candidacy as Representative of the First Legislative District of the Province of Laguna in the May 14, 2007 elections. In his Certificate of Candidacy (COC), he indicated his complete/exact address as "No. 13 Maharlika St., Villa Toledo Subdivision, Barangay Balibago, Sta. Rosa City, Laguna" (alleged Sta. Rosa residence).[5]

Private respondent Jesus L. Vicente (private respondent) filed a "Petition to Deny Due Course to and/or Cancel

Certificate of Candidacy and Petition for Disqualification" before the Office of the Provincial Election Supervisor of Laguna. This was forwarded to the Commission on Elections (COMELEC) and docketed therein as SPA No. 07-046 (PES). Private respondent sought the cancellation of petitioner's COC and the latter's disqualification as a candidate on the ground of an alleged material misrepresentation in his COC regarding his place of residence, because during past elections, he had declared Pagsanjan, Laguna as his address, and Pagsanjan was located in the Fourth Legislative District of the Province of Laguna. Private respondent likewise claimed that petitioner maintained another house in Cabuyao, Laguna, which was also outside the First District.[6] The COMELEC (First Division) dismissed said petition for lack of merit.[7]

Petitioner was proclaimed as the duly elected Representative of the First District of Laguna on June 27, 2007, having garnered a total of 95,927 votes, winning by a margin of 35,000 votes over the nearest candidate.[8]

On July 5, 2007, private respondent filed a petition for quo warranto before the HRET, docketed as HRET CASE No. 07-034, praying that petitioner be declared ineligible to hold office as a Member of the House of Representatives representing the First Legislative District of the Province of Laguna, and that petitioner's election and proclamation be annulled and declared null and void.[9]

Private respondent's main ground for the quo warranto petition was that petitioner lacked the required one-year residency requirement provided under Article VI, Section 6 of the 1987 Constitution. In support of his petition, private respondent argued that petitioner falsely declared under oath: (1) his alleged Sta. Rosa residence; (2) the period of his residence in the legislative district before May 14, 2007, which he indicated as one year and two months; and (3) his eligibility for the office where he was seeking to be elected. Private respondent presented the testimony of a certain Atty. Noel T. Tiampong, who stated that petitioner is not from the alleged Sta. Rosa residence but a resident of Barangay Pulo, Cabuyao, Laguna; as well as the respective testimonies of Barangay Balibago Health Workers who attested that they rarely, if ever, saw respondent in the leased premises at the alleged Sta. Rosa residence; and other witnesses who testified that contrary to the misrepresentations of petitioner, he is not a resident of the alleged Sta. Rosa residence. A witness testified that petitioner attempted to coerce some of the other witnesses to recant their declarations and change their affidavits. Finally, private respondent presented as witness the lawyer who notarized the Contract of Lease dated March 8, 2007 between petitioner as lessee and Bienvenido G. Asuncion as lessor.[10]

Petitioner, as respondent in HRET Case No. 07-034, presented as his witnesses residents of Villa de Toledo who testified that they had seen respondent and his family residing in their locality, as well as Bienvenido G. Asuncion who testified that petitioner is the lessee in Unit No. 13 Block 1 Lot I, Maharlika St., Villa de Toledo Subdivision, Brgy. Balibago, Sta. Rosa City, Laguna. Petitioner likewise presented Mr. Joseph Wade, President of South Point Homeowner's Association of Cabuyao, Laguna, as well as Engr. Larry E. Castro (Castro), who testified that since February 2006 up to the present, petitioner had no longer been residing in his property located at Block 28, Lot 18, South Point Subdivision, Cabuyao, Laguna, and that said property was being offered for sale and temporarily being used by Castro, together with some security men of petitioner and employees of Rafters Music Lounge owned by petitioner.[11] Petitioner testified that he had been a resident of Sta. Rosa even before February 2006; that he owned property in another Sta. Rosa subdivision (Bel-Air); that he and his wife had put up a business therein, the "RAFTERS" restaurant/ bar; and that he had prior residence in another place also at Sta. Rosa as early as 2001.[12]

Since the HRET ruled in favor of private respondent, this petition was filed before us.

In petitioner's assignment of errors, he alleges that the HRET grievously erred and committed grave abuse of discretion:

- In not placing on the quo warranto petitioner Jesus L. Vicente the burden of proving that then respondent (now petitioner) Fernandez is not a qualified candidate for Representative of the First District of the Province of Laguna;
- When it disregarded the ruling of a co-equal tribunal in SPA No. 07-046;
- When it added a property qualification to a Member of Congress;
- When it determined that the petitioner failed to comply with the one (1) year residency requirement based on the contract of lease;
- When it completely disregarded the testimonies of material witnesses;
- When it failed to consider the intent of the petitioner to transfer domicile based on the totality of the evidence adduced; and
- When it failed to find the petitioner in HRET Case No. 07-034 guilty of forum-shopping.[13]

On the first assignment of error, petitioner questions the following pronouncement of the HRET in its decision:

In the case before us, petitioner has clearly asserted, and respondent does not deny, that his domicile of origin is Pagsanjan in the Fourth District of Laguna. Hence, the burden is now on respondent to prove that he has abandoned his domicile of origin, or since his birth, where he formerly ran for provincial Board Member of Laguna in 1998, for Vice-Governor of Laguna in 2001 and for Governor of Laguna in 2004. In all his Certificates of Candidacy when he ran for these positions, he indicated under oath that his domicile or permanent residence was in Pagsanjan in the Fourth District of Laguna, not in the First District where he later ran in the last elections.[14]

Petitioner contends that "it is a basic evidentiary rule that the burden of proof is on he who alleges, and he who relies on such an allegation as his cause of action should prove the same." [15] Since private respondent is the party alleging that petitioner is not eligible for his position, it is therefore incumbent on the former, who filed the quo warranto case before the HRET, to prove such allegation. He cites in support of his contention Sec. 1, Rule 131 of the Rules of Court, to wit:

SECTION 1. Burden of proof . -- Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Petitioner avers that private respondent failed to establish his claim and to adduce evidence sufficient to overcome petitioner's eligibility to be a candidate for Representative of the First District of Laguna.

On the second assignment of error, petitioner submits that the HRET should have been "guided and/or cautioned" by the COMELEC's dispositions in SPA No. 07-046, wherein he was adjudged as qualified to run for the position of Congressman of the First District of Laguna by an agency tasked by law and the Constitution to ascertain the qualifications of candidates before election. Petitioner claims that the HRET should have respected the findings of the COMELEC and should have discreetly denied the petition.

On the third assignment of error, petitioner argues that under Article V, Section 1, of the 1987 Constitution, any citizen of the Philippines who is a qualified voter may likewise, if so qualified under the appertaining law and the constitution, be able to run and be voted for as a candidate for public office. Said provision reads:

SECTION 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

Petitioner alleges that in the questioned Decision, the HRET added a new qualification requirement for candidates seeking election to the position of Member of the House of Representatives, and that is, they must be real property owners in the legislative district where they seek election.

On the fourth assignment of error, petitioner addresses private respondent's arguments against the contract of lease that he presented as part of the proof of his compliance with the residency requirement. Petitioner asserts that the nomenclature used by contracting parties to describe a contract does not determine its nature, but the decisive factor is the intention of the parties to a contract - as shown by their conduct, words, actions, and deeds - prior to, during and after executing the agreement.[16] Petitioner claims that he has presented ample proof of his residency in terms of evidence more numerous and bearing more weight and credibility than those of private respondent. He proceeds to highlight some of the evidence he offered in the quo warranto case that allegedly prove that his transfer of residence and intention to reside in Sta. Rosa were proven by his stay in Villa de Toledo, to wit: (1) even earlier than 2006, he had purchased a house and lot in Bel-Air Subdivision in Sta. Rosa which he rented out because he was not yet staying there at that time; (2) he sent his children to schools in Sta. Rosa as early as 2002; and (3) he and his wife established a restaurant business there in 2003. Petitioner contends that when he and his family moved to Sta. Rosa by initially renting a townhouse in Villa de Toledo, it cannot be said that he did this only in order to run for election in the First Legislative District.[17]

As regards the alleged infirmities characterizing the execution of the contract of lease and the renewal of said contract of lease, petitioner contends that these are not material since the lessor, Bienvenido Asuncion, affirmed his stay in his townhouse; the neighbors and other barangay personalities confirmed his and his family's stay in their area; and petitioner has continued actual residence in Sta. Rosa from early 2006 to the present. Petitioner claims that all these prove that he had effectively changed his residence and could therefore likewise transfer his voter's registration from Pagsanjan to Sta. Rosa under Sec. 12 of R.A. No. 8189.[18] Petitioner also alleges that he had become qualified to seek elective office in his new place of residence and registration as a voter.

To further prove that he has made Sta. Rosa his domicile of choice from early 2006 to the present, petitioner points out that he and his wife had purchased a lot in the same area, Villa de Toledo, on April 21, 2007, built a house thereon, and moved in said house with their family.

Regarding the non-notarization of the contract of lease raised by private respondent, petitioner avers that this "does not necessarily nullify nor render the parties' transaction void ab initio." [19]

On the fifth assignment of error, petitioner alleges that the HRET relied on private respondent's witnesses in negating petitioner's claim that he had validly resided at the alleged Sta. Rosa residence for more than one year and two months prior to the May 14, 2007 elections, and did not touch on the testimonies of his witnesses. The questioned Decision pointed out petitioner's alleged non-appearance in the day-to-day activities of the Homeowners' Association and considered this as failure to prove that he is a resident of Villa de Toledo, without considering the fact that private respondent failed to discharge the burden of proof in support of his indictment against petitioner.

On the sixth assignment of error, petitioner claims that the questioned Decision was arrived at based on the perceived weakness of his evidence and arguments as respondent, instead of the strength of private respondent's own evidence and arguments in his quo warranto petition.

On the seventh and last assignment of error, petitioner alleges that the matters raised in HRET Case No. 07-034 were no different from the ones raised by private respondent before the COMELEC in SPA No. 07-046 (PES); thus, private respondent's petition should have been dismissed by the HRET for forum-shopping.

In his Comment dated June 22, 2009, private respondent summarized the issues raised in petitioner's assignment of errors into two: (1) those that involve the issue of conflict of jurisdiction between the HRET and the COMELEC respecting the eligibility, qualification/s or disqualification of elective public officials; and (2) those that involve factual and evidentiary matters designed as supposed errors.[20]

Regarding the first issue, private respondent contends that the 1987 Constitution is most equivocal in declaring that the HRET is the sole judge of all contests relating to the election, returns and qualifications of Members of the House of Representatives, under the following provision:

Art. VI, SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.

Private respondent alleges that the above constitutional provision was adopted by the HRET in its Rules, which read:

THE 1998 RULES OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL

The House of Representatives Electoral Tribunal hereby adopts and promulgates the following Rules governing its proceedings as the sole judge of all contests relating to the election, returns and qualifications of Members of the House of Representatives, pursuant to Section 17, Article VI of the Constitution.

xxx xxx xxx

RULE 17

Quo Warranto

A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any voter within ten (10) days after the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The rule on verification provided in Section 16 hereof shall apply to petitions for quo warranto.

xxx xxx xxx

Private respondent concludes from the above that petitioner had no legal basis to claim that the HRET, when reference to the qualification/s of Members of the House of Representatives is concerned, is "co-equal" to the COMELEC, such that the HRET cannot disregard any ruling of COMELEC respecting the matter of eligibility and qualification of a member of the House of Representatives. The truth is the other way around, because the COMELEC is subservient to the HRET when the dispute or contest at issue refers to the eligibility and/or qualification of a Member of the House of Representatives. A petition for quo warranto is within the exclusive jurisdiction of the HRET as sole judge, and cannot be considered forum shopping even if another body may have passed upon in administrative or quasi-judicial proceedings the issue of the Member's qualification while the Member was still a candidate. There is forum-shopping only where two cases involve the same parties and the same cause of action. The two cases here are distinct and dissimilar in their nature and character.

Anent the second issue, private respondent contends that petitioner raised errors of judgment, mistakes in the factual findings, and/or flaws in the evidence appreciation, which are appropriate on appeal, but not in a petition for certiorari which is a special civil action, where the only allowable ground in order to prosper is grave abuse of discretion amounting to lack or in excess of jurisdiction.

For its part, public respondent HRET, through the Solicitor General, filed a Comment dated July 14, 2009,

arguing that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it held that petitioner failed to comply with the one year residency requirement under Section 6, Article VI of the 1987 Constitution.[21]

The HRET avers that the questioned Decision is supported by factual and legal basis, for it found that the original and extended contracts of lease presented by petitioner were defective and fabricated, as it contained "several apparent, if not visible, deficiencies as to form, i.e., it being not notarized; the absence of witnesses, the intercalations thereat especially on the term/period of the alleged lease; the absence of respondent's participation therein and some others pointed out in the petition." [22] The Decision states that even if the contract of lease was valid and legitimate, "a fixed period of one year ... negates the concept of permanency that would suffice to prove abandonment of respondent's previous residence or domicile at Pagsanjan." The Decision further reads as follows:

Respondent's connection to the First District of Laguna is an alleged lease agreement of a townhouse unit in the area. The intention not to establish a permanent home in the First District of Laguna is evident in his leasing a townhouse unit instead of buying one. The short length of time he claims to be a resident of the First District of Laguna (and the fact that his domicile of origin is Pagsanjan, Laguna is not within the First District of Laguna) indicate that his sole purpose in transferring his physical residence is not to acquire a new residence or domicile but only to qualify as a candidate for Representative of the First District of Laguna.[23]

xxx xxx xxx

Exhibit -"3" is the very document that was produced and presented by respondent to attest that while the original contract, replete with infirmities, as only for one year expiring even before the May 14, 2007 elections, here now comes the renewed Contract of Lease, signed by respondent himself, no longer his wife, immaculately perfect on its face, now notarized and properly witnessed, and even the terms and conditions thereof undeniably clear and explicit, with the added feature of a prolonged 2-year period of lease that will go well beyond the May 14, 2007 elections.

We cannot however, simply accept the renewed Contract of Lease (Exhibit -"3") on its face. In fact, as succinctly pointed out by petitioner, the renewed Contract of Lease suffers from a more grievous infirmity.

x x x As respondent's brother-in-law, Atty. Macalalag is prohibited from notarizing a document that involves the respondent.[24]

xxx xxx xxx

But the lack of notarial authentication does not even constitute the main defect of [Exhibit "3"]. The surfacing of Exhibit "3" very late in the day cannot but lead to the conclusion that the same was a mere afterthought. x x x[25]

xxx xxx xxx

We have to emphasize that the initial one-year lease contract expired on February 27, 2007, and as such, standing alone, the same cannot prove and will not establish the declared one-year and two months prior residence eligibility requirement of respondent, unless it is shown that the expired lease agreement was extended or renewed beyond the May 14, 2007 elections, and, more importantly, accompanied by a copy of the claimed existing renewed lease agreement. x x x[26]

xxx xxx xxx

By the unexplained delay in the production and presentation of Exhibit "3", respondent's residence qualifications suffered a fatal blow. For it can no longer be denied that respondent's claimed residence at the alleged townhouse unit in Sta. Rosa for one year and two months prior to the May 14, 2007 election is not only most doubtful, but also negates the concept of permanency that would suffice to prove abandonment of

respondent's previous residence or domicile at Pagsanjan.[27]

Furthermore, the HRET alleges that, as it found in the questioned Decision, the witnesses presented who were residents of Sta. Rosa, Laguna were consistent and credible in disputing petitioner's alleged physical presence at any given time in said place. Among these witnesses were three Barangay Health Workers, one of whom, Rowena Dineros, submitted an affidavit that her job required her to frequently go around Villa de Toledo, knocking on every household door to inquire about its occupants, and not once did she see petitioner at the alleged Sta. Rosa residence. The HRET claims that this testimony was corroborated by another Barangay Health Worker (BHW), Jeanet Cabingas, who stated in her affidavit that every time she accompanied her niece, who was petitioner's goddaughter, to request a favor from petitioner, the latter would ask them to return to his house in Cabuyao, Laguna, even if she was a resident of Sta. Rosa.[28] The Solicitor General quotes the following portion from the questioned Decision:

What appears very evident from this is that respondent has absolutely not the slightest intention to reside in Sta. Rosa permanently.

This ineluctably confirms that respondent has not developed animus manendi over the latter place, Sta. Rosa[,] and that he has not actually abandoned his old domicile of origin in Pagsanjan.[29]

As for the third BHW witness, Flocerfina Torres, the HRET gives credence to her testimony that she conducted a household census in Villa de Toledo every three months, but not once had she seen petitioner in the alleged Sta. Rosa residence, and that she was advised by petitioner to proceed to his house in Cabuyao, Laguna when she had attempted to solicit from petitioner at his "Rafter's establishment because it was near her residence in Sta. Rosa." From the foregoing testimonies, the HRET found in the questioned Decision that:

The uniform testimony of our 3 BHW witnesses disputing the physical presence of the respondent at his claimed Toledo address during all the time that they were performing their routine duties at that community, and which encompassed the period of "1 year and 2 months before the May 14, 2007 election", revealed that he was not staying in Sta. Rosa.[30]

The HRET likewise contends that the fact that petitioner registered as a voter in Sta. Rosa does not prove that he is a resident thereat, given that a voter is required to reside in the place wherein he proposes to vote only for six months preceding the election.

The HRET avers that this Court had explained the importance of property ownership in *Aquino v. COMELEC*, et al.[31] and finds no merit in petitioner's insistence that the will of the electorate attests to his residence in Sta. Rosa because, the HRET further avers, "[a] disqualified candidate cannot assume office." [32]

The HRET likewise contends that the purpose of the residency requirement is to ensure that the person elected is familiar with the needs and problems of his constituency.

The issues for determination are: (1) whether the HRET had jurisdiction over the case; and (2) whether petitioner sufficiently complied with the one-year residency requirement to be a Member of the House of Representatives, as provided in the 1987 Constitution.

The first issue is procedural and involves the jurisdiction of the HRET vis-à-vis that of the COMELEC in cases involving the qualification of Members of the House of Representatives. Petitioner suggests that the matters raised in HRET Case No. 07-034 were already passed upon by the COMELEC in SPA No. 07-046 (PES), thus the HRET should have dismissed the case for forum-shopping.

We do not agree. The 1987 Constitution explicitly provides under Article VI, Section 17 thereof that the HRET

and the Senate Electoral Tribunal (SET) shall be the sole judges of all contests relating to the election, returns, and qualifications of their respective members. The authority conferred upon the Electoral Tribunal is full, clear and complete. The use of the word sole emphasizes the exclusivity of the jurisdiction of these Tribunals,[33] which is conferred upon the HRET and the SET after elections and the proclamation of the winning candidates. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives. [34]

Thus, private respondent correctly pointed out that a petition for quo warranto is within the exclusive jurisdiction of the HRET, and cannot be considered forum shopping even if, as in this case, the COMELEC had already passed upon in administrative or quasi-judicial proceedings the issue of the qualification of the Member of the House of Representatives while the latter was still a candidate.

Anent the second issue pertaining to petitioner's compliance with the residency requirement for Members of the House of Representatives, after studying the evidence submitted by the parties, we find for petitioner, taking into account our ruling in *Frivaldo v. COMELEC*,[35] which reads in part:

This Court has time and again liberally and equitably construed the electoral laws of our country to give fullest effect to the manifest will of our people, for in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate freely expressed through the ballot. Otherwise stated, legal niceties and technicalities cannot stand in the way of the sovereign will. xxx (Emphasis supplied)

For the foregoing reason, the Court must exercise utmost caution before disqualifying a winning candidate, shown to be the clear choice of the constituents that he wishes to represent in Congress.

The qualifications of a member of the House of Representatives are found in Article VI, Section 6 of the Constitution, which provides:

Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election. (Emphasis supplied)

We find the interpretation of the HRET of the residency requirement under the Constitution to be overly restrictive and unwarranted under the factual circumstances of this case.

The evidence presented by private respondent before the HRET hardly suffices to prove that petitioner failed to comply with the one-year residency requirement under the Constitution. Private respondent's documentary evidence to disqualify petitioner mainly consisted of (a) petitioner's certificates of candidacy (COCs) for various positions in 1998, 2001 and 2004, which all indicated his residence as Pagsanjan, Laguna within the Fourth District of said province; (b) his application for a driver's license in August 2005 that indicated Pagsanjan, Laguna as his residence; and (c) the statement in his COCs including his 2007 COC for Congressman for the First District of Laguna that his place of birth was Pagsanjan, Laguna.

The only thing these pieces of documentary evidence prove is that petitioner's domicile of origin was Pagsanjan, Laguna and it remained his domicile up to 2005, at the latest. On the other hand, what petitioner asserted in his 2007 COC is that he had been a resident of Sta. Rosa, Laguna in the First District of Laguna as of February 2006 and respondent's evidence failed contradict that claim.

If it is true that petitioner and his family had been living in Sta. Rosa, Laguna as of February 2006 with the intent to reside therein permanently, that would more than fulfill the requirement that petitioner be a resident of the

district where he was a candidate for at least one year before election day, which in this case was May 14, 2007.

In order to buttress his claim that he and his family actually resided in Sta. Rosa, Laguna beginning at least in February 2006, petitioner's evidence included, among others: (a) original and extended lease contracts for a townhouse in Villa de Toledo, Barangay Balibago, Sta. Rosa, Laguna; (b) certification issued by the President of the Villa de Toledo Homeowners Association, Inc, that petitioner has been a resident of said Subdivision since February 2006; (c) affidavits of petitioner's neighbors in Villa de Toledo attesting that petitioner has been a resident of said subdivision since February 2006; (d) certification of the barangay chairman of Barangay Balibago, Sta. Rosa, Laguna that petitioner is a resident of Villa de Toledo within the said barangay; (e) certificates of attendance of petitioner's children in schools located in Sta. Rosa, Laguna since 2005; and (f) DTI certificates of business issued in the name of petitioner and his wife to show that they own and operate businesses in Sta. Rosa, Laguna since 2003.

The fact that a few barangay health workers attested that they had failed to see petitioner whenever they allegedly made the rounds in Villa de Toledo is of no moment, especially considering that there were witnesses (including petitioner's neighbors in Villa de Toledo) that were in turn presented by petitioner to prove that he was actually a resident of Villa de Toledo, in the address he stated in his COC. The law does not require a person to be in his home twenty-four (24) hours a day, seven days a week, in order to fulfill the residency requirement. It may be that whenever these health workers do their rounds petitioner was out of the house to attend to his own employment or business. It is not amiss to note that even these barangay health workers, with the exception of one, confirm seeing petitioner's wife at the address stated in petitioner's 2007 COC. Indeed, these health workers' testimonies do not conclusively prove that petitioner did not in fact reside in Villa de Toledo for at least the year before election day.

Neither do we find anything wrong if petitioner sometimes transacted business or received visitors in his Cabuyao house, instead of the alleged Sta. Rosa residence, as there is nothing in the residency requirement for candidates that prohibits them from owning property and exercising their rights of ownership thereto in other places aside from the address they had indicated as their place of residence in their COC.

As regards the weight to be given the contract of lease vis-à-vis petitioner's previous COCs, we find *Perez v. COMELEC*[36] to be instructive in this case, and quote the pertinent portions of the decision below:

In the case at bar, the COMELEC found that private respondent changed his residence from Gattaran to Tuguegarao, the capital of Cagayan, in July 1990 on the basis of the following: (1) the affidavit of Engineer Alfredo Ablaza, the owner of the residential apartment at 13-E Magallanes St., Tuguegarao, Cagayan, where private respondent had lived in 1990; (2) the contract of lease between private respondent, as lessee, and Tomas T. Decena, as lessor, of a residential apartment at Kamias St., Tanza, Tuguegarao, Cagayan, for the period July 1, 1995 to June 30, 1996; (3) the marriage certificate, dated January 18, 1998, between private respondent and Lerma Dumaguit; (4) the certificate of live birth of private respondent's second daughter; and (5) various letters addressed to private respondent and his family, which all show that private respondent was a resident of Tuguegarao, Cagayan for at least one (1) year immediately preceding the elections on May 11, 1998.

There is thus substantial evidence supporting the finding that private respondent had been a resident of the Third District of Cagayan and there is nothing in the record to detract from the merit of this factual finding.

Petitioner contends that the fact that private respondent was a resident of Gattaran, at least until June 22, 1997, is shown by the following documentary evidence in the record, to wit: (1) his certificates of candidacy for governor of Cagayan in the 1988, 1992 and 1995 elections; (2) his voter's registration records, the latest of which was made on June 22, 1997; and (3) the fact that private respondent voted in Gattaran, Cagayan, in the

elections of 1987, 1988, 1992 and 1995.

The contention is without merit. The fact that a person is registered as a voter in one district is not proof that he is not domiciled in another district. Thus, in *Faypon v. Quirino*, this Court held that the registration of a voter in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence.

Nor is it of much importance that in his certificates of candidacy for provincial governor in the elections of 1988, 1992, and 1995, private respondent stated that he was a resident of Gattaran. Under the law, what is required for the election of governor is residency in the province, not in any district or municipality, one year before the election.

Moreover, as this Court said in *Romualdez-Marcos v. COMELEC*:

It is the fact of residence, not a statement in a certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the constitution's residency qualification requirement. The said statement becomes material only when there is or appears to be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

In this case, although private respondent declared in his certificates of candidacy prior to the May 11, 1998 elections that he was a resident of Gattaran, Cagayan, the fact is that he was actually a resident of the Third District not just for one (1) year prior to the May 11, 1998 elections but for more than seven (7) years since July 1990. His claim that he had been a resident of Tuguegarao since July 1990 is credible considering that he was governor from 1988 to 1998 and, therefore, it would be convenient for him to maintain his residence in Tuguegarao, which is the capital of the province of Cagayan.

As always, the polestar of adjudication in cases of this nature is *Gallego v. Vera*, in which this Court held: "[W]hen the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected." In this case, considering the purpose of the residency requirement, i.e., to ensure that the person elected is familiar with the needs and problems of his constituency, there can be no doubt that private respondent is qualified, having been governor of the entire province of Cagayan for ten years immediately before his election as Representative of that province's Third District.[37]

Thus, in the case above, the Court found that the affidavit of the lessor and the contract of lease were sufficient proof that private respondent therein had changed his residence. In the case now before us, although private respondent raised alleged formal defects in the contract of lease, the lessor himself testified that as far as he was concerned, he and petitioner had a valid contract and he confirmed that petitioner and his family are the occupants of the leased premises.

Petitioner correctly pointed out that the lack of proper notarization does not necessarily nullify nor render the parties' transaction void ab initio. In *Mallari v. Alsol*, we found a contract of lease to be valid despite the non-appearance of one of the parties before a notary public, and ruled in this wise:

Notarization converts a private document into a public document. However, the non-appearance of the parties before the notary public who notarized the document does not necessarily nullify nor render the parties' transaction void ab initio. Thus:

. . . Article 1358 of the New Civil Code on the necessity of a public document is only for convenience, not for validity or enforceability. Failure to follow the proper form does not invalidate a contract. Where a contract is not in the form prescribed by law, the parties can merely compel each other to observe that form, once the contract has been perfected. This is consistent with the basic principle that contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present.

Hence, the Lease Contract is valid despite Mayor Perez's failure to appear before the notary public. [38]

The HRET puts undue emphasis on the fact that petitioner is only leasing a townhouse in Sta. Rosa while he owns houses in Pagsanjan and Cabuyao. His ownership of properties in other places has been taken to mean that petitioner did not intend to make Sta. Rosa his permanent residence or that he had not abandoned his domicile of origin.

Although it is true that the latest acquired abode is not necessarily the domicile of choice of a candidate, there is nothing in the Constitution or our election laws which require a congressional candidate to sell a previously acquired home in one district and buy a new one in the place where he seeks to run in order to qualify for a congressional seat in that other district. Neither do we see the fact that petitioner was only leasing a residence in Sta. Rosa at the time of his candidacy as a barrier for him to run in that district. Certainly, the Constitution does not require a congressional candidate to be a property owner in the district where he seeks to run but only that he resides in that district for at least a year prior to election day. To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that only the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional.

This case must be distinguished from *Aquino v. COMELEC*[39] and *Domino v. COMELEC*,[40] where the disqualified candidate was shown to be merely leasing a residence in the place where he sought to run for office. In *Aquino* and *Domino*, there appeared to be no other material reason for the candidate to lease residential property in the place where he filed his COC, except to fulfill the residency requirement under election laws.

In the case at bar, there are real and substantial reasons for petitioner to establish Sta. Rosa as his domicile of choice and abandon his domicile of origin and/or any other previous domicile. To begin with, petitioner and his wife have owned and operated businesses in Sta. Rosa since 2003. Their children have attended schools in Sta. Rosa at least since 2005. Although ownership of property should never be considered a requirement for any candidacy, petitioner had sufficiently confirmed his intention to permanently reside in Sta. Rosa by purchasing residential properties in that city even prior to the May 2007 election, as evidenced by certificates of title issued in the name of petitioner and his wife. One of these properties is a residence in Bel-Air, Sta. Rosa which petitioner acquired even before 2006 but which petitioner had been leasing out. He claims that he rented out this property because prior to 2006 he had not decided to permanently reside in Sta. Rosa. This could explain why in early 2006 petitioner had to rent a townhouse in Villa de Toledo-- his Bel-Air residence was occupied by a tenant. The relatively short period of the lease was also adequately explained by petitioner - they rented a townhouse while they were in the process of building their own house in Sta. Rosa. True enough, petitioner and his spouse subsequently purchased a lot also in Villa de Toledo in April 2007, about a month before election day, where they have constructed a home for their family's use as a residence. In all, petitioner had adequately shown that his transfer of residence to Sta. Rosa was bona fide and was not merely for complying with the residency requirement under election laws.

It was incumbent upon private respondent to prove his assertion that petitioner is indeed disqualified from holding his congressional seat. Private respondent's burden of proof was not only to establish that petitioner's domicile of origin is different from Sta. Rosa but also that petitioner's domicile for the one year prior to election day continued to be Pagsanjan, Laguna which was petitioner's domicile of origin or that petitioner had chosen a domicile other than Sta. Rosa, Laguna for that same period. In other words, to prove petitioner's disqualification, the relevant period is the one year period prior to election day. It would be absurd to rule that the petitioner in a quo warranto suit only needs to prove that the candidate had some other previous domicile, regardless of how remote in time from election day that previous domicile was established, and then the candidate would already

have the burden to prove abandonment of that previous domicile. It is the burden of the petitioner in a quo warranto case to first prove the very fact of disqualification before the candidate should even be called upon to defend himself with countervailing evidence.

In our considered view, private respondent failed to discharge his burden of proof. Petitioner's COCs for previous elections and his 2005 application for a driver's license only proved that his domicile of origin was Pagsanjan, Laguna and it remained to be so up to 2005. Affidavits/testimonies of respondent's witnesses, at most, tended to prove that petitioner was on several instances found in his house in Cabuyao, Laguna, which was not even his domicile of origin. Cabuyao, Laguna is in the Second District of Laguna while petitioner's domicile of origin, Pagsanjan, is in the Fourth District of Laguna. Based on private respondent's own documentary submissions, Cabuyao was never even stated as a domicile or residence in any of the petitioner's COCs. Moreover, owning an abode in Cabuyao where petitioner is occasionally found did not prove that Cabuyao is petitioner's real domicile. Indeed, disregarding Cabuyao as petitioner's domicile would be consistent with the established principle that physical presence in a place sans the intent to permanently reside therein is insufficient to establish domicile. Neither did private respondent's submissions refute petitioner's evidence that since February 2006 petitioner has chosen Sta. Rosa as his domicile.

To summarize, private respondent's own evidence did not categorically establish where petitioner's domicile is nor did said evidence conclusively prove that for the year prior to the May 14, 2007 petitioner had a domicile other than where he actually resided, i.e. Sta. Rosa, Laguna. To be sure, *Gallego v. Vera*[41] decreed that:

We might add that the manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community; and when the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected. xxx xxx (Emphasis supplied)

Frivaldo[42] likewise prescribed that:

xxx xxx xxx To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. xxx xxx xxx (Emphasis supplied)

In *Torayno*,[43] the Court had the occasion to say that:

The Constitution and the law requires residence as a qualification for seeking and holding elective public office, in order to give candidates the opportunity to be familiar with the needs, difficulties, aspirations, potentials for growth and all matters vital to the welfare of their constituencies; likewise, it enables the electorate to evaluate the office seekers' qualifications and fitness for the job they aspire for. xxx xxx xxx

Recently, in *Japzon v. COMELEC*,[44] the Court, citing *Papandayan, Jr. v. COMELEC*,[45] said:

In *Papandayan, Jr. v. Commission on Elections*, the Court provided a summation of the different principles and concepts in jurisprudence relating to the residency qualification for elective local officials. Pertinent portions of the ratio in *Papandayan* are reproduced below:

Our decisions have applied certain tests and concepts in resolving the issue of whether or not a candidate has complied with the residency requirement for elective positions. The principle of *animus revertendi* has been used to determine whether a candidate has an "intention to return" to the place where he seeks to be elected.

Corollary to this is a determination whether there has been an "abandonment" of his former residence which signifies an intention to depart therefrom. In *Caasi v. Court of Appeals*, this Court set aside the appealed orders of the COMELEC and the Court of Appeals and annulled the election of the respondent as Municipal Mayor of Bolinao, Pangasinan on the ground that respondent's immigration to the United States in 1984 constituted an abandonment of his domicile and residence in the Philippines. Being a green card holder, which was proof that he was a permanent resident or immigrant of the United States, and in the absence of any waiver of his status as such before he ran for election on January 18, 1988, respondent was held to be disqualified under §68 of the Omnibus Election Code of the Philippines (Batas Pambansa Blg. 881).

In *Co v. Electoral Tribunal of the House of Representatives*, respondent Jose Ong, Jr. was proclaimed the duly elected representative of the 2nd District of Northern Samar. The House of Representatives Electoral Tribunal (HRET) upheld his election against claims that he was not a natural born Filipino citizen and a resident of Laoang, Northern Samar. In sustaining the ruling of the HRET, this Court, citing *Faypon v. Quirino*, applied the concept of *animus revertendi* or "intent to return", stating that his absence from his residence in order to pursue studies or practice his profession as a certified public accountant in Manila or his registration as a voter other than in the place where he was elected did not constitute loss of residence. The fact that respondent made periodical journeys to his home province in Laoag revealed that he always had *animus revertendi*.

In *Abella v. Commission on Elections* and *Larrazabal v. Commission on Elections*, it was explained that the determination of a person's legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances. In that case, petitioner Adelina Larrazabal, who had obtained the highest number of votes in the local elections of February 1, 1988 and who had thus been proclaimed as the duly elected governor, was disqualified by the COMELEC for lack of residence and registration qualifications, not being a resident nor a registered voter of Kananga, Leyte. The COMELEC ruled that the attempt of petitioner Larrazabal to change her residence one year before the election by registering at Kananga, Leyte to qualify her to run for the position of governor of the province of Leyte was proof that she considered herself a resident of Ormoc City. This Court affirmed the ruling of the COMELEC and held that petitioner Larrazabal had established her residence in Ormoc City, not in Kananga, Leyte, from 1975 up to the time that she ran for the position of Provincial Governor of Leyte on February 1, 1988. There was no evidence to show that she and her husband maintained separate residences, i.e., she at Kananga, Leyte and her husband at Ormoc City. The fact that she occasionally visited Kananga, Leyte through the years did not signify an intention to continue her residence after leaving that place.

In *Romualdez v. RTC, Br. 7, Tacloban City*, the Court held that "domicile" and "residence" are synonymous. The term "residence", as used in the election law, 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. "Domicile" denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. In that case, petitioner Philip G. Romualdez established his residence during the early 1980's in Barangay Malbog, Tolosa, Leyte. It was held that the sudden departure from the country of petitioner, because of the EDSA People's Power Revolution of 1986, to go into self-exile in the United States until favorable conditions had been established, was not voluntary so as to constitute an abandonment of residence. The Court explained that in order 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. There must 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.

Ultimately, the Court recapitulates in *Papandayan, Jr.* that it is the fact of residence that is the decisive factor in determining whether or not an individual has satisfied the residency qualification requirement.

We do not doubt that the residency requirement is a means to prevent a stranger or newcomer from holding office

on the assumption that such stranger or newcomer would be insufficiently acquainted with the needs of his prospective constituents. However, it is appropriate to point out at this juncture that aside from petitioner's actual, physical presence in Sta. Rosa for more than a year prior to election day, he has demonstrated that he has substantial ties to Sta. Rosa and the First District of Laguna for an even longer period than that. Petitioner has business interests in Sta. Rosa comprised of restaurants and a residential property for lease. Petitioner has two children studying in Sta. Rosa schools even before 2006. These circumstances provided petitioner with material reasons to frequently visit the area and eventually take up residence in the said district. Significantly, petitioner previously served as Board Member and Vice-Governor for the Province of Laguna, of which the First District and Sta. Rosa are a part. It stands to reason that in his previous elected positions petitioner has acquired knowledge of the needs and aspirations of the residents of the First District who were among his constituents.

Simply put, petitioner could not be considered a "stranger" to the community which he sought to represent and that evil that the residency requirement was designed to prevent is not present in this case.

We take this occasion to reiterate our ruling in *Sinaca v. Mula*,^[46] to wit:

[When] a candidate has received popular mandate, overwhelmingly and clearly expressed, all possible doubts should be resolved in favor of the candidate's eligibility for to rule otherwise is to defeat the will of the people. Above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred.

WHEREFORE, premises considered, the petition is hereby GRANTED. The decision of the HRET in HRET CASE No. 07-034 promulgated on December 16, 2008, and its Minute Resolution No. 09-080 promulgated on April 30, 2009 in the same case, are hereby REVERSED AND SET ASIDE.

SO ORDERED.

Puno, C.J., Carpio, Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Del Castillo, Abad, and Villarama, Jr., JJ., concur.

Corona, and Carpio Morales, JJ., no part.

[1] Rollo, pp. 64-111.

[2] *Id.* at 107.

[3] *Id.* at 112.

[4] *Id.* at 59-60.

[5] *Id.* at 156.

[6] *Id.* at 25-26.

[7] *Id.* at 31.

[8] *Id.* at 13.

[9] *Id.* at 166.

[10] *Id.* at 67.

[11] *Id.* at 71.

[12] Id.

[13] Id. at 17-18.

[14] Id. at 89.

[15] Id. at 19.

[16] Alvaro v. Ternida, G.R. No. 166183, January 20, 2006, 479 SCRA 288.

[17] Rollo, pp. 34-35.

[18] Otherwise known as "The Voter's Registration Act of 1996." SECTION 12. Change of Residence to Another City or Municipality. -- Any registered voter who has transferred residence to another city or municipality may apply with the Election Officer of his new residence for the transfer of his registration records.

[19] Mallari v. Alsol, G.R. No. 150866, March 6, 2006, 484 SCRA 148.

[20] Rollo, p. 212.

[21] Id. at 267-291.

[22] Id. at 272.

[23] Id. at 273. Emphasis ours.

[24] Id. at 274.

[25] Id. at 275.

[26] Id. at 277.

[27] Id. at 278.

[28] Id. at 281.

[29] Id. at 282.

[30] Id. at 283.

[31] G.R. No. 120265, September 18, 1995, 248 SCRA 400.

[32] Rollo, p. 287.

[33] Co v. Electoral Tribunal of the House Of Representatives, G.R. Nos. 92191-92, July 30, 1991, 199 SCRA 692, 699.

[34] Supra note 31 at 417-418.

[35] G.R. Nos. 120295 & 123755, June 28, 1996, 257 SCRA 727, 770-771.

[36] G.R. No. 133944, October 28, 1999, 317 SCRA 641.

[37] Id. at 649-651. Emphasis ours.

[38] Supra note 19 at 158-159.

[39] Supra note 31.

[40] G.R. No. 134015, July 19, 1999, 310 SCRA 546.

[41] G.R. No. L-48641, November 24, 1941, 73 Phil. 453,459.

[42] Supra note 1 at 771-772.

[43] G.R. No. 137329, August 9, 2000, 337 SCRA 574, 577.

[44] G.R. No. 180088, January 19, 2009.

[45] G.R. No. 147909, April 16, 2002, 430 Phil. 754, 768-770.

[46] G.R. No. 135691, September 27, 1999, 315 SCRA 266, 282.

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