

VICENTE BAUTISTA ET AL., PETITIONERS, VS. VALERIANO FUGOSO AND THE HONORABLE PEDRO MA. SISON, RESPONDENTS.*G. R. No. 42209. August 24, 1934*

Ponente: BUTTE, J.

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On July 14, 1934, Valeriano Fugoso filed in the Court of First Instance of Manila a petition for writ of mandamus (civil No. 46700) naming the Junta Municipal de Escrutinio de Manila as respondent. The petition recites in substance that the petitioner was a duly qualified candidate for the office of councilor in the general election held in Manila on June 5, 1934; that the Junta Municipal de Escrutinio de Manila (Election Canvassing Board) is composed of Vicente Bautista as president and the following members: Gabino Pobre, Lazaro Pormarejo, Martin de Castro, Simplicio de los Santos, Jose Saez Tiu, Bernabe Cruz, Ifiigo Ed. Regalado, Alfredo Z. Fernandez and Felicisimo Gabriel, having as its secretary, Edilberto Gonzalez; that the said board in refusing to credit Valeriano Fugoso with 85 votes to which he was entitled for precinct No. 135 of the City of Manila fraudulently and illegally reduced his total vote to 16,297 and in crediting Teofilo Mendoza with 100 votes in precinct No. 229, the said board illegally and fraudulently increased his total vote to 16,428, resulting in a majority of 121 votes in favor of Mendoza, and declared and proclaimed him elected on July 12, 1934; that it was the ministerial duty of the said election board to count the said 85 votes in favor of Valeriano Fugoso in precinct No. 135 and to conform to the decision of the court authorizing the correction of the error of 100 votes in precinct No. 229 which were erroneously credited to Teofilo Mendoza; that although the petitioner has demanded of said board that these corrections be made and the petitioner declared to be the elected candidate the said board has refused to take any further action. The petition prays that the board be required to file its answer and that upon final hearing a writ of mandamus issue requiring said board to reassemble and recount the votes of the candidates for the office of councilor cast in said election held in Manila on June 5, 1934, to the end that the said errors in precincts Nos. 135 and 229 should be corrected and the petitioner Valeriano Fugoso be declared elected.

On July 16, 1934, the court ordered the president and secretary of the said canvassing board to appear and show cause why the writ should not be granted as prayed for. On July 16, 1934, Edilberto Gonzalez filed his answer which consists of a general denial and a special defense to the effect that the said board having declared the result of the election as aforesaid has ceased to exist since July 13, 1934, and therefore he, the said Gonzalez, appears only in his own behalf having ceased since that date to be the secretary of the said board. The answer continues with a statement of the proceedings had in the said board terminating in the proclamation issued on the morning of July 12, 1934, declaring Mendoza and not Fugoso as the duly elected councilor. The answer further alleges that a protest and not a mandamus is the proper remedy available to the petitioner and prays that the petition be dismissed. On July 18, 1934, the trial court rendered a decision reciting that upon the hearing of the petition the respondent appeared neither personally nor by counsel. The secretary of the board, Edilberto Gonzalez, appeared by counsel. The court received the evidence of the petitioner and found the facts to be in substance as alleged in his petition. Considering the objections raised by Edilberto Gonzalez, the triad court held that the proclamation of the board of July 12, 1934, was void. It further held that the board under the circumstances of this case could be

compelled to reassemble and perform any ministerial duty and that the remedy by way of protest is not available to the candidate until after a valid proclamation has issued. The court thereupon ordered the respondent, Municipal Board of Canvassers of Manila, to reassemble and recanvass all the votes cast in favor of the candidates Valeriano Fugoso and Teofilo Mendoza in accordance with the corrections in precincts Nos. 135 and 229 previously authorized by judicial proceedings, that is to say, adding 85 votes to the count of Valeriano Fugoso in precinct No. 135 and deducting 100 votes from candidate Mendoza in precinct No. 229.

Copies of said decision were served on all the members of the board individually. No copy was served on the secretary, Edilberto Gonzalez. On July 23, 1934, at 6 o'clock a. m., Valeriano Fugoso filed a petition in the court stating that the said board had failed to comply with the decision and order of the court of July 18, 1934, and prayed for an order requiring each and every one of the members of the said board to appear and show cause why he should not be punished for contempt and in case of further disobedience praying that they be confined in Bilibid until they complied with the order of the court. On the same day, the court issued an order denying said" petition but requiring the respondent board within forty-eight hours from service upon them of copies of said order to comply with said decision warning them that upon failure to do so, they would be liable for contempt. Upon receiving copies of this last order, the several members of the board, by their counsel, entered a special appearance in which they asserted that they had never been served with copies of the petition for mandamus; that no summons had been served upon them; that they had never entered any voluntary appearance subjecting themselves to the jurisdiction of the court; that the service of summons upon Edilberto Gonzalez was not a legal service upon the board of canvassers nor did his appearance by filing an answer bind any person but himself. They therefore denied that the court ever acquired any jurisdiction over them.

On July 24, 1934, the respondent board of canvassers, through its president, filed an appearance copy of which was served on the attorney for the petitioner. This document is as follows:

"COMPARECENCIA

"La Junta recurrida hace constar su comparecencia especial, por medio del que suscribe, con el unico objeto de exponer respetuosamente los siguientes:

"Que ha recibido copia de la orden de este Juzgado de fecha 23 del presente mes que fija un 'plazo de 48 horas improrrogables para cumplir con la decision' y en caso contrario, los miembros de la Junta 'quedaran incurso en desacato';

"Que el articulo 224 delCodigo de Procedimiento Civil dispone que 'se servira copia certificada de la decision y orden de mandamiento perentorio' a la parte demandada; y hasta la fecha la recurrida no ha recibido copia certificada de la decision ni la orden de mandamiento perentorio ;

"Que la recurrida no podra cumplir con la decision de este Juzgado a menos que se cumplan las disposiciones del articulo 224 delCodigo de Procedimiento Civil.

"Por lo tanto, se pide respetuosamente la reconsideracion de la orden de este Juzgado de fecha 23 del presente mes suspendiendo sus efectos y se ordena el cumplimiento de lo dispuesto en el articulo 224 delCodigo de Procedimiento Civil.

"Manila, I. F., hoy 24 de julio de 1934.

"JUNTA MUNICIPAL DE ESCRUTINIO

"Recurrida

(Fdo.) "VICENTE BAUTISTA "

On July 27, 1934, the court entered an order the dispositive part of which is as follows:

"Por tanto, el Juzgado DECLARA que la comparecencia especial arriba mencionada no esta justificada, y que ha adquirido debidamente jurisdiccion sobre esta causa por haber sido debidamente emplazada la recurrida junta municipal de escrutinio, y ordena a la junta recurrida y a todos sus miembros para que hasta a la una de esta tarde improrrogablemente cumpla con la decision de este Juzgado; y SE instruye al Sheriff de Manila para que, si despues de aquella hora los miembros de la citada junta recurrida no hayan cumplido con esta orden y la decision de este Juzgado en esta causa proceda inmediatamente a arrestarles y recluirles en Bilibid hasta que cumplan con las mismas," whereupon the members of the board as individuals filed a petition for certiorari in this court praying for relief on the ground that the trial court had never acquired jurisdiction over them either by their voluntary appearance or by service of summons, and therefore the order threatening them with arrest and confinement in Bilibid was void. Upon the prima facie showing made by the sworn petition the court issued a temporary injunction and required the respondents to answer. The cause is now before us for decision on the petition and answer after due hearing at which counsel for both sides appeared and made oral arguments.

It may be conceded for the purposes of this case that in order to acquire jurisdiction over the petitioners the action of mandamus (civil No. 46700) should have been directed against them individually -and personally and they should have been served with summons under paragraph 6 of section 396 of the Code of Civil Procedure. It may be conceded that said suit was not a suit against a corporation formed under the laws of the Philippine Islands referred to in paragraph 1 of section 396 nor was it a suit against the City of Manila so as to make paragraph 5 of section 396 applicable. (Cf. Cordero vs. Judge of First Instance of Rizal, 40 Phil., 246.) But even if it be conceded that the petitioners were not brought within the jurisdiction of the trial court by compulsory process before its said order of July 27, 1934, was entered, we have concluded that the trial court was correct in holding that the petitioners had entered a voluntary appearance when they filed the petition set out above, marked Exhibit 8. Prior to the filing of the said Exhibit 8 by Vicente Bautista on behalf of the municipal canvassing board, all of the members had individually been served with a copy of the decision of the court of July 18, 1934. They deny in the said Exhibit 8 having received a copy of the order of the court of July 23, 1934, and they pray that said order be reconsidered and that they be served with a copy thereof in accordance with the provisions of section 224 of the Code of Civil Procedure. In the said petition, Exhibit 8, the jurisdiction of the court over them is not questioned. At no stage of the proceedings thereafter was the authority of Vicente Bautista, the president of the board, to make said appearance on behalf of the board ever put in issue. No reference was made with regard thereto either in the petition for the writ of certiorari or the special appearance filed on July 25, 1934, or upon the argument in this court. On the record before us we have concluded that the court acquired jurisdiction over the petitioners by the voluntary appearance aforesaid.

The petitioners allege that the orders of the trial court of July 18, 1934, and July 23, 1934, supra, are void because the municipal board of canvassers having terminated their duties by the issuance of a proclamation on July 12, 1934, had ceased to exist thereafter. It may be conceded as a general proposition that when a board of canvassers has fully performed its duty and proclaimed the result of the election according to law and adjourned sine die, it may be deemed functus officio in the sense that the members of the board have no power voluntarily to reassemble and recanvass the returns. The case of Cordero vs. Judge of First Instance of Rizal (40 Phil., 246), is directly in point. In that case the municipal board of canvassers issued their proclamation on June 6, 1919. On June 23, 1919,

they voluntarily held another meeting and undertook to amend their first proclamation and this court held: "* * * The municipal board of canvassers was without authority to make the recanvass and the new proclamation without having been authorized so to do by an order of the court in accordance with the provisions of section 479 of Act No. 2711." In the present case, however, it appears that the Acting Secretary of the Interior authorized the said board to convene in a special session on July 26, 1934, for the purpose of complying with the order of the Court of First Instance in the mandamus suit filed by Valeriano Fugoso against the said board. Although there is considerable conflict of opinion in various jurisdictions as to whether a board of canvassers may reassemble after adjourning sine die and make a recanvass of the votes under any circumstances, we accept as the more reasonable the doctrine that until the board has fully performed the duties laid upon it by law in the manner prescribed by the law, it may be required by a writ of mandamus to comply with the law and complete its work in accordance with the law. Its duties are purely ministerial and mandamus is the proper remedy. This court said in the case of *Municipal Council of Las Pifias vs. Judge of First Instance of Rizal* (40 Phil, 279, 283):

"Until the board of canvassers had performed the exact duty imposed upon it by law it must be considered as in default, and, in a case like that it would be a legal anomaly to allow the examining board to rely upon the fact that it had issued one certificate of election to a party, who had not received the largest number of votes, contrary to the express provision of the law, as a sufficient reason why it should not be compelled to perform an imperative duty. (Paine on Elections, pp. 756, 757.)" (See also *Blaquera vs. Municipal Council of Lagangilang and Hermoso*, G. R. No. 16092, promulgated December 17, 1920, not reported, and *Municipal Council of Antipolo vs. Court of First Instance of Rizal*, G. R. No. 42329, resolution of August 22, 1934.)

In view of the premises, the petition for writ of certiorari is denied and the temporary injunction issued in this case is dissolved, with costs against the petitioners. The effect of this decision is to leave the order of the court below of July 27, 1934, in full force and effect, but inasmuch as the period for compliance limited in said order has passed, it is proper for the trial court to fix a new reasonable period of time for the members of the board of election canvassers of Manila to reassemble and recanvass the votes and issue a correct proclamation in compliance with the decisions and orders of the trial court heretofore made.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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