

**MANUEL B. OSIAS, PETITIONER, VS. HONORABLE JAIME N. FERRER,
BRIGIDO R. SIMON, JR. AND BONIFACIO G. OLIVEROS,
RESPONDENTS.**

G.R. No. 77049, March 28, 1988

Ponente: PARAS, J.

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PARAS, J.:

Petitioner herein, Manuel B. Osias, although undisputably duly elected in the Barangay Elections in May, 1982 as barangay captain of Barangay Apolonio Samson, Quezon City, for a term of six (6) years expiring in 1988, was nevertheless sought to be replaced in office before February 2, 1987 by respondents herein through the appointment of his would-be successor, private respondent Bonifacio G. Oliveros in a Memorandum dated January 15, 1987. Appointment papers dated January 15, 1987 were extended to said successor, but he took his oath of office only after March 24, 1987.

Article III, Section 2, of the Provisional Constitution (as found in Proclamation No. III) provides:

"All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986." [1]

It is evident from a reading of the aforementioned proviso that the successor must have been not only designated or appointed prior to February 2, 1987 but must also have qualified before said date.

In an en banc Resolution dated June 16, 1987, the Court resolved to give due course to the petition.

It is understood that although appointed on January 15, 1987, private respondent Oliveros took his oath of office as Barangay Captain of Barangay Apolonio Samson, Quezon City only much later than February 2, 1987. In fact, as late as March 24, 1987, he had not yet signed his oath of office. This oath had been sent to him for signature only on March 20, 1987. and the same was received in his office only on March 24, 1987. It is therefore impossible for respondent Oliveros to have signed his oath of office within one (1) year from February 2, 1986. It is clear from the foregoing that inasmuch as Oliveros had not qualified by February 2, 1987, petitioner Osias is entitled to have his instant petition for quo warranto granted.

In the Resolution dated July 14, 1987, this Court issued the following restraining order:

"Acting on the urgent motion for issuance of temporary restraining order, the Court Resolved to ISSUE a TEMPORARY RESTRAINING ORDER, effective immediately and continuing until further orders from this Court, ordering respondents OIC Mayor Brigido R. Simon, Jr. and Bonifacio G. Oliveros to CEASE and DESIST from (a) removing the petitioner and taking over his functions as the duly elected and qualified Barangay Captain of Apolonio Samson, Quezon City; (b) taking possession of all records, equipment and other various materials without any formal turnover or inventory despite due and proper notice by petitioner's counsel which have caused confusion and instability in the Barangay so affected by their arbitrary actions." (p.

107, Rollo)

For having allegedly violated the above-mentioned restraining order, the respondents were cited in contempt by petitioner. It appearing however that any actuation on this point by the respondents was done in good faith, the said respondents are hereby exonerated from said contempt charge.

WHEREFORE, finding the quo warranto charge well-taken, said petition is hereby GRANTED and petitioner is hereby restored to his position as barangay captain of Barangay Apolonio Samson, Quezon City. The restraining order previously issued is hereby made permanent.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencia-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

[1] Later interpreted as referring to a period expiring on February 2, 1987, date of effectivity of the new Constitution.

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