

**CESAR A. CERENO, PETITIONER, VS. HON. LUIS D. DICTADO,
PRESIDING JUDGE, REGIONAL TRIAL COURT, FIFTH JUDICIAL
REGION, BRANCH XXXIX (39) AT DAET, CAMARINES NORTE, RAMON
B. ASIS AN...**

G.R. No. 81550. April 15, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In the herein petition for certiorari, prohibition and mandamus with restraining order, the Court is called upon to set aside an order of the lower court which seeks to restrain petitioner from the performance of the functions of the office of the Municipal Mayor when he appears to have been duly elected and had qualified for said office although thereafter an election protest was filed against him in the same court.

Petitioner Cesar A. Cereno and private respondent Ramon B. Asis were mayoralty candidates for the municipality of Vinzons, Camarines Norte in the local election of January 18, 1988, who were voted for the said office. On January 20, 1988, petitioner was proclaimed by the Municipal Board of Canvassers as the duly elected mayor of said town. He took his oath of office on January 22, 1988 before the Second Assistant Provincial Fiscal of Camarines Norte.

Meanwhile, on January 20, 1988, respondent Asis filed an election protest before the Regional Trial Court of Daet, Camarines Norte, Branch 38, presided by Hon. Judge Sancho Dames, II docketed as Civil Case No. 5549 but the same was ordered dismissed on the same day on the ground that the claim that 84 votes cast for Santiago Cereno, another mayoralty candidate, were credited to petitioner, was not substantiated, and that petitioner had already been proclaimed.

On January 25, 1988, another election protest was filed by respondent Asis before the same court but was assigned to Branch 39 thereof presided by respondent Hon. Judge Luis D. Dictado, docketed as Civil Case No. 5551, seeking a judicial recount of the votes cast in two precincts. On January 28, 1988, respondent judge issued an order that petitioner desist or refrain from taking his oath of office on February 2, 1988 or any date thereafter until further orders of the court. Petitioner filed a manifestation on January 29, 1988 informing the court that he had already taken his oath of office on January 22, 1988 so that the restraining order has become moot and academic. Due to the absence of the respondent judge and considering the urgency of the matter, the pairing judge Hon. Sancho Dames, II was requested by petitioner to act on his manifestation, and thus, on February 1, 1988, he issued an order that the restraining order of the court has become moot and academic as petitioner had already taken his oath of office.

Earlier, on January 29, 1988, petitioner filed his Answer to the election protest.

On February 1, 1988, petitioner sent a letter to respondent Job de Vela, the municipal Officer-In-Charge, to the effect that he will assume the functions of Municipal Mayor on February 2, 1988 and requested a formal turn

over.

On February 2, 1988, as petitioner took steps to assume the office of Mayor of Vinzons, Camarines Norte, he was served a copy of the supplemental order of the respondent judge of February 2, 1988 ordering him to refrain from assuming office or if he has already assumed office to stop, desist and refrain from continuing to act as Mayor of Vinzons, Camarines Norte until further orders from the court. Petitioner filed his ex-parte urgent motion to set aside the supplemental order but the respondent judge has not acted on the same date. Hence this petition.

The petition is impressed with merit. Section 5 of Republic Act No. 6636 provides as follows:

"Section 5. Term. - Local officials duly elected shall assume office at noon on the second day of February 1988 and shall serve until noon of June 30, 1992.

If no candidate has been elected and qualified to assume office on the aforementioned date and time, the officer-in-charge shall continue to hold office until the duly elected officer has qualified."

This provision of the law clearly states that the duly elected local officials shall assume office on February 2, 1988. Petitioner was proclaimed as the duly elected mayor of Vinzons, Camarines Norte on January 20, 1988 and took his oath of office on January 22, 1988 before the filing of the election protest on January 25, 1988 by private respondent Ramon B. Asis. As he appears to be the duly elected mayor of the aforesaid town, the law mandates that he assume office on February 2, 1988. The respondent judge committed a grave abuse of discretion, and acted in excess of his jurisdiction in ordering petitioner to desist and refrain from assuming office on the said date against the clear provisions of Section 5 of Rep. Act No. 6636.

The pendency of the election protest filed by respondent Asis is not sufficient basis to enjoin petitioner from assuming office as required of him by law. The efficiency of public administration should not be impaired.[1] Until and unless the election protest is decided against the petitioner, he has a lawful right to assume and perform the duties of Mayor of Vinzons, Camarines Norte.

The claim of respondent Asis to the contested office is a contingent right which could ripen only into an actual right favorable to him when a judgement is rendered to this effect. The respondent judge is not justified in protecting private respondent Asis' alleged right to the contested office when it has not yet been clearly established against petitioner whose right is actual and existing. An injunction "is not to protect contingent or future rights nor is it a remedy to enforce an abstract right."[2]

By the same token, the Officer-In-Charge, respondent Job de Vela, has no lawful right to continue discharging the duties of Municipal Mayor of said town as the petitioner appears to have been duly elected to said office and has qualified thereto.

WHEREFORE, the petition is GRANTED and the supplemental order of the respondent judge of February 2, 1988 is REVERSED and set aside for being null and void without prejudice to the election protest proceeding which should be terminated with deliberate dispatch. Immediately executory.

SO ORDERED.

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

[1] Estrada vs. Sto. Domingo, 28 SCRA 904.

[2] Milagros Rosauro, et al vs. Pablo Cuneta, G.R. No. 69854, June 30, 1987 and Yaptinchay vs. Torres, 28

SCRA 489.

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