

**AGUSTIN B. DOCENA, PETITIONER, VS. THE SANGGUNIANG
PANLALAWIGAN OF EASTERN SAMAR, GOVERNOR LUTGARDO B.
BARBO, VICE GOVERNOR CAMILO A. CAMENFORTE, BOARD
MEMBERS MARCOS ALIDO, NON...**

G.R. No. 96817. June 25, 1991

Ponente: CRUZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-96817/>

CRUZ, J.:

Two persons are claiming the same position in the Sangguniang Panlalawigan of Eastern Samar by virtue of separate appointments thereto extended to them by the same authority. The first appointment was replaced by the second appointment, which was subsequently withdrawn to reinstate the first appointment, but this was later itself recalled in favor of the second appointment. To add to the confusion, the Sangguniang Panlalawigan has joined the fray and taken it upon itself to decide who as between the two claimants is entitled to the office.

The case arose when Luis B. Capito, who had been elected to and was serving as a member of the Sangguniang Panlalawigan of Eastern Samar (SPES), died in office and petitioner Agustin B. Docena was appointed to succeed him.

The appointment was issued on November 19, 1990,[1] by Secretary Luis T. Santos of the Department of Local Government and read in full as follows:

Republic of the Philippines

Department of Local Government

PNCC Bldg., EDSA Corner Reliance St.

Mandaluyong, Metro Manila

OFFICE OF THE SECRETARY

November 19, 1990

S i r :

Pursuant to the provisions of existing laws, you are hereby appointed MEMBER OF THE SANGGUNIANG PANLALAWIGAN, PROVINCE OF EASTERN SAMAR.

By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission copies of your oath of office.

Very truly yours,

By Authority of the President

LUIS T. SANTOS

Secretary

Mr. AGUSTIN B. DOCENA

Thru: The Honorable Governor

Province of Eastern Samar

Pursuant thereto, the petitioner took his oath of office before Speaker Ramon V. Mitra of the House of Representatives on November 22, 1990,[2] and assumed office as member of the SPES on November 26, 1990.[3]

The record does not show why, but on November 27, 1990, private respondent Socrates B. Alar was appointed, also by Secretary Luis T. Santos, to the position already occupied by Docena.[4] The appointment read in full as follows:

Republic of the Philippines

Department of Local Government

PNCC Bldg., EDSA Corner Reliance St.

Mandaluyong, Metro Manila

OFFICE OF THE SECRETARY

November 27, 1990

S i r :

Pursuant to the provisions of existing laws, you are hereby appointed MEMBER OF THE SANGGUNIANG PANLALAWIGAN, PROVINCE OF EASTERN SAMAR.

By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission with copies of your oath of office.

Very truly yours,

By Authority of the President.

LUIS T. SANTOS

Secretary

Atty. SOCRATES ALAR

Thru: The Honorable Governor

Eastern Samar

On December 18, 1990, the SPES passed Resolution No. 75[5] recognizing Alar rather than Docena as the legitimate successor of the late Board Member Capito.

The following day, the SPES was in effect reversed by Secretary Santos when he addressed the following letter to Alar:[6]

Republic of the Philippines

Department of Local Government

PNCC Bldg., EDSA Corner Reliance St.

Mandaluyong, Metro Manila

OFFICE OF THE SECRETARY

December 19, 1990

Mr. Socrates Alar

Borongan, Eastern Samar

Dear Mr. Alar:

It appearing from perusal of records that an appointment dated November 19, 1990 was already issued to Mr. AGUSTIN DOCENA as member of the Sangguniang Panlalawigan of Eastern Samar, vice: Luis Capito, the appointment issued to you dated November 27, 1990 as member of the same sanggunian, is hereby recalled effective the date of issue.

Please be guided accordingly.

Very truly yours,

LUIS T. SANTOS

Secretary

cc: The Honorable Governor

Borongan, Eastern Samar

The Sangguniang Panlalawigan

Borongan, Eastern Samar

Mr. Agustin Docena

Borongan, Eastern Samar

This action was affirmed in a First Indorsement dated January 4, 1991, signed by Head Executive Assistant Arturo V. Agudo of the Department of Local Government,[7] in which he declared "by authority of the Secretary" that:

1. Records show that the Secretary has appointed Mr. Agustin B. Docena as Sangguniang Panlalawigan Member as of November 19, 1990; the Secretary has extended another appointment to the same post in favor of Atty. Socrates Alar on November 27, 1990; the Secretary, on December 19, 1990, has recalled the appointment of Atty. Socrates Alar on the basis of the earlier appointment extended in favor of Mr. Docena.

In view of the foregoing, the appointment of Mr. Agustin Docena stands and should be recognized.

The reaction of the SPES was to pass Resolution No. 1 dated January 8, 1991,[8] where it reiterated its previous recognition of Alar and declared that "the recall order issued by Secretary Santos, dated December 19, 1990, recalling the appointment of Atty. Alar has no legal basis in fact and in law and issued to fit his whimsical, capricious and wishy-washy desires to the detriment of decency and due process of law."

On the same date, Provincial Prosecutor Dario S. Labrador had rendered an opinion that the recall order of

Secretary Santos was "void ab initio" because Alar's right to the office "had become vested." [9]

It is not clear if Secretary Santos agreed with these views, but at any rate he issued on February 20, 1991, another recall order,[10] this time addressed to Docena, reading in full as follows:

Republic of the Philippines

Department of Local Government

PNCC Bldg., EDSA Corner Reliance St.

Mandaluyong, Metro Manila

OFFICE OF THE SECRETARY

February 20, 1991

MEMORANDUM

T O : MR. AGUSTIN DOCENA

Borongan, Eastern Samar

SUBJECT: RECALL OF APPOINTMENT -

Please be informed that the appointment extended to you as Member of the Sangguniang Panlalawigan of Eastern Samar, last November 19, 1990 is hereby recalled effective immediately.

You are hereby directed to turn-over the office to Mr. Socrates Alar who was appointed by this Department on November 27, 1990, immediately upon receipt hereof.

For compliance.

LUIS T. SANTOS

Secretary

cc: The Honorable Governor

Province of Eastern Samar

Mr. Socrates Alar

Borongan, Eastern Samar

Docena then came to this Court in a petition for mandamus to compel the respondents to recognize and admit him as a lawfully appointed member of the Sangguniang Panlalawigan of Eastern Samar. He also seeks to hold them officially and personally liable in damages for their refusal to do so in spite of his clear title to the disputed office.

Pending resolution of this case, we issued a temporary restraining order on January 31, 1991, enjoining both Docena and Alar from assuming the office of member of the Sangguniang Panlalawigan of Eastern Samar.

The pertinent legal provision is Section 50 of the Local Government Code reading as follows:

SEC. 50. Permanent Vacancies in Local Sanggunians. - In case of permanent vacancy in the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, or sangguniang barangay, the President of the Philippines, upon recommendation of the Minister of Local Government, shall appoint a qualified person to fill the vacancy in the sangguniang panlalawigan and the sangguniang panlungsod; the governor, in the case of sangguniang bayan members; or the city or municipal mayor, in the case of sangguniang barangay members.

Except for the sangguniang barangay, the appointee shall come from the political party of the sanggunian member who caused the vacancy, and shall serve the unexpired term of the vacant office.

The petitioner makes the point; and it has not been disputed by the respondents, that both he and Capito ran for the provincial board in the 1988 elections under the banner of Lakas ng Bansa. Later, they both joined the Laban ng Demokratikong Pilipino under the leadership of Speaker Mitra, who administered the oath of office to him when he was appointed to the SPES on November 19, 1990. Docena argues that he has a preferential right to the disputed office even on equitable grounds because he placed ninth in the election, next to Capito, compared to Alar who did not even run for the office.

The respondents do not challenge the qualifications of the petitioner. But they contend that the appointment in his favor on November 19, 1990, had been superseded by the appointment in favor of Alar on November 27, 1990, and that the recall of the second appointment on December 19, 1990, was null and void ab initio for lack of previous hearing. Curiously, they do not have the same view of the recall of Docena's appointment on February 20, 1991, which was also issued without hearing.

From the tenor of the appointment extended to Docena on November 19, 1990, there is no question that it was intended to be permanent, to fill the permanent vacancy caused by Capito's death. As such, it was to be valid for the unexpired portion of the term of the deceased member, who was entitled to serve "until noon of June 30, 1992," in accordance with Article XVIII, Section 2, of the Constitution.

The said appointment had been accepted by Docena, who had in fact already assumed office as member of the SPES, as per certification of the Provincial Secretary.[11] For all legal intents and purposes, the petitioner's appointment had already become complete and enforceable at the time it was supposed to have been "superseded" by the appointment in favor of Alar.

The respondents are ambivalent about the power of the Secretary of Local Government to recall his appointments. They described the appointment as "whimsical, capricious and wishy-washy" but they had no similar complaints about the recall of Docena's appointment although also apparently indecisive. On the contrary, they maintained a deep silence about this other recall and insisted simply that the subsequent appointment of Alar had invalidated the earlier appointment of Docena.

It is noteworthy that absolutely no reason was given for the recall of Docena's appointment (or for that matter, the recall of Alar's appointment). It appears that after appointing Docena and later twice sustaining his title to the office, Secretary Santos simply had a change of heart and decided to award the position to Alar.

This is not the way things are done in a democracy.

Docena's appointment having been issued and accepted earlier, and the petitioner having already assumed office, he could not thereafter be just recalled and replaced to accommodate Alar. The appointment was permanent in nature, and for the unexpired portion of the deceased predecessor's term. Docena had already acquired security of tenure in the position and could be removed therefrom only for any of the causes, and conformably to the procedure, prescribed by the Local Government Code.[12] These requirements could not be circumvented by the simple process of recalling his appointment.

Whatever gave the SPES the impression that the questioned appointments were revocable at will can only be left to conjecture; what is certain is that it was not based on careful legal study. The Provincial Prosecutor's opinion that the office had "become vested" in Alar suffers from the same flaw and a lack of understanding of the nature of a public office. Political rather than legal considerations seem to have influenced the action of the provincial government in rejecting the petitioner's claim despite its obvious merit.

The respondents also argue that the petitioner should have sought to enforce his claimed right in a petition not for mandamus but for quo warranto, as his purpose is to challenge Alar's title to the disputed office. That is only secondary in this case. The real purpose of the present petition is to compel the respondent SPES to recognize and admit Docena as a member of the body by virtue of a valid appointment extended to him by the Secretary of Local Government.

Mandamus is employed to compel the performance of a ministerial duty to which the petitioner is entitled. In arguing that the recognition and admission of the petitioner is not a ministerial duty, the respondents are asserting the discretion to review, and if they so decide, reject, the Secretary's appointment. They have no such authority. Faced with a strictly legal question, they had no right and competence to resolve it in their discretion. What they should have done was reserve their judgment on the matter, leaving it to the courts of justice to decide which of the conflicting claims should be upheld. As a local legislative body subject to the general supervision of the President of the Philippines, the SPES had no discretion to rule on the validity of the decisions of the Secretary of Local Government acting as her alter ego.

Even assuming that the proper remedy is a petition for quo warranto, the Court may in its own discretion consider the present petition as such and deal with it accordingly. We find that as a petition for quo warranto, it complies with the prescribed requirements, to wit, that it be filed on time and by a proper party asserting title to the office also claimed by the respondent. Acting thereon, we hold that Docena has proved his right to the disputed office and could not be legally replaced by Alar.

The Court will make no award of damages, there being no sufficient proof to overcome the presumption that the respondents have acted in good faith albeit erroneously. Nevertheless, the petitioner is entitled to the payment of the salaries and other benefits appurtenant to the office of a Member of the Sangguniang Panlalawigan of Eastern Samar, from the time of his assumption of office and until he is actually admitted or reinstated.

WHEREFORE, the petition is GRANTED. The petitioner is DECLARED the lawfully appointed member of the Sangguniang Panlalawigan of Eastern Samar, which is hereby DIRECTED to admit or reinstate him as such. The temporary restraining order dated January 31, 1991, is LIFTED. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.
Sarmiento, J., on leave.

[1] Rollo, p. 10.

[2] Ibid., p. 11.

[3] Id., p. 11.

[4] id., p. 12.

[5] id., p. 14.

[6] id., p. 15.

[7] id., p. 16.

[8] id., p. 17.

[9] Comment of Private Respondent, Annex 2.

[10] Ibid., Annex 1.

[11] Rollo, p. 12.

[12] Sections 60, 61, 61, B.P. 337.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.