

**SIXTO DE LA VICTORIA, PETITIONER, VS. COMMISSION ON ELECTIONS, HEIRS OF GENOVEVA S. MEDINA REPRESENTED BY FAUSTINO MESINA, JR., JUAN ALAO AND VICTOR S. MESINA, RESPONDENTS.**

*G.R. Nos. 95275-76. July 23, 1991*

Ponente: GRINO-AQUINO, J.

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**GRINO-AQUINO, J.:**

This petition for certiorari with preliminary injunction and/or restraining order assails the order of the Commission on Elections En Banc (COMELEC, for short) which allowed the substitution of the heirs of a deceased candidate as protestee in the election protest filed by her rival for the office of municipal mayor of Albura, Leyte, in the local elections on February 1, 1988, and allowed the same heirs to appeal the decision of the Regional Trial Court declaring her rival (the protestant and herein petitioner), as the actual winner in that election.

The contenders for the mayorship of Albura, Leyte in the special local elections held on February 1, 1988 were petitioner Sixto De la Victoria who obtained 5,093 votes, the late Genoveva S. Mesina who obtained 5,103 votes, and Loly C. Fian who garnered 982 votes. On February 3, 1988, the Municipal Board of Canvassers proclaimed Mesina as the duly elected municipal mayor of Albura, Leyte. Elected and proclaimed vice-mayor was her running-mate, Aquilino Cantiga, Jr.

In due time, the defeated mayoral candidate, De la Victoria, filed two pre-proclamation cases (SPC Nos. 88-560 and 88-614) in the COMELEC but even while they were still pending in the commission, he filed on October 21, 1988 in the Regional Trial Court (RTC), Branch 14 in Baybay, Leyte, an election protest *Ex Abundante Cautela* against Mesina (docketed as Election Protest No. B-44) with claims for damages, attorney's fees, and costs. Mesina filed an Answer with counterclaims for damages and attorney's fees.

On July 22, 1989, Mesina died and was substituted as protestee by her Vice-Mayor, Aquilino Cantiga, Jr., who assumed the mayorship by operation of law. Neither Mesina's heirs (the private respondents herein), nor her counsel informed the trial court about her death.

On May 16, 1990, De la Victoria withdrew from the COMELEC En Banc, his pre-proclamation complaints (SPC Cases Nos. 88-560 and 88-614). The COMELEC granted his motion.

On June 18, 1990, the incumbent Mayor, Aquilino Cantiga, Jr., filed in the Regional Trial Court (RTC) a verified "Petition to Intervene" in the election protest of De la Victoria.

On June 20, 1990, De la Victoria filed a "Manifestation/Motion" waiving his claim for damages and costs against the deceased protestee, Mesina. The trial court granted the motion (p. 389, Rollo).

On June 22, 1990, counsel for Mesina filed a Notice of Death and Motion for Substitution of the deceased

protestee by her heirs, and requested that his motion be set for hearing on July 2, 1990.

De la Victoria opposed the motion for substitution on the ground that the heirs of Mesina are not the "real party in interest" and that since he (De la Victoria) had waived his claim for damages against the deceased, her heirs have no more right to intervene in the case or have been "erased from the picture altogether" (*Lomugdang vs. Javier*, 21 SCRA 402 and *Vda. de Mesa vs. Mencias*, 18 SCRA 533).

On July 2, 1990, the trial court noted the Motion for Substitution filed by the heirs of Mesina and ruled that De la Victoria's waiver of his claim for damages against the said protestee rendered the Motion for Substitution without basis in law, or moot and academic.

On July 17, 1990, the trial court promulgated a decision in the Election Protest No. B-44, declaring the protestant, De la Victoria, as the duly elected Mayor of Albuera, Leyte, by a margin of 134 votes over the deceased protestee, Genoveva S. Mesina.

Two days later, on July 19, 1990, the heirs of Mesina appealed to the COMELEC by a petition for certiorari and prohibition with preliminary injunction to restrain the trial court from rendering a decision in Election Protest No. B-44 or conducting further proceedings therein.

On July 20, 1990, the heirs of Mesina filed in the trial court a Notice of Appeal. De la Victoria filed an "Urgent Motion to Disregard Notice of Appeal" on the ground that the heirs had no standing in the case as they failed to appeal the July 2, 1990 Order of the trial court denying their motion for substitution. The trial court in its Order of July 23, 1990, denied the Notice of Appeal and ordered its expulsion from the record of the case. It held that the intervenor, Vice-Mayor Cantiga, who succeeded the deceased protestee by operation of law, not the "heirs" of the deceased, is the "real party in interest" in the continuation of the election protest after the demise of the protestee. Moreover, upon the waiver by De la Victoria of his claim for damages against Mesina, the latter's heirs had no more legal interest to defend in her behalf.

On July 24, 1990, De la Victoria filed a motion for execution of the trial court's decision. It was granted by the court on July 25, 1990. Promptly, on the same day, De la Victoria was sworn into office as the duly elected Mayor of Albuera.

As earlier mentioned, the heirs of Mesina appealed that decision to the COMELEC by a petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction (SPR No. 9-90). In his Comment on the petition, De la Victoria adverted to the decision dated July 17, 1990 of the trial court which became final and executory when no appeal was taken therefrom.

On the same date, the COMELEC denied the heirs' application for a temporary restraining order (TRO), but set the case for hearing before the COMELEC En Banc for "preliminary determination of the sufficiency of the allegations in the main issue raised by said respondents-heirs."

De la Victoria opposed the petition.

On August 6, 1990, the heirs filed in the COMELEC another petition for certiorari and mandamus (SPR No. 11-90), praying that the execution of the decision of the trial court in Election Protest No. B-44 be stopped.

On August 8, 1990, De la Victoria assumed office as Mayor of Albuera, Leyte.

On August 13, 1990, the COMELEC issued a status quo Order directing De la Victoria to answer the petition in SPR No. 11-90, and setting the petition for preliminary injunction for hearing on August 23, 1990.

On September 27, 1990, the COMELEC set aside the trial court's Order dated July 2, 1990 denying the motion for

substitution of the heirs of the deceased protestee, and the Order dated July 23, 1990 which denied due course to the Notice of Appeal of the heirs from its decision dated July 17, 1990. It declared the writ of execution null and void and ordered the elevation to it of the records of the case pursuant to Rule 22 of the COMELEC Rules of Procedure (on appeal from election protest decided by trial courts of general jurisdiction).

De la Victoria has come to us for relief through this petition for certiorari with prayer for the issuance of a temporary restraining order (TRO) where the main issues raised are: (1) whether the heirs of the deceased protestee in an election protest may be considered as real party-in-interest even if the vice-mayor has been allowed to intervene and the protestant had waived his claim for damages and costs in the proceedings; and (2) whether said heirs may appeal the decision in the election protest (EPC No. B-44).

After careful deliberation, the Court is persuaded that the answer to both questions is no.

The late Genoveva Mesina's claim to the contested office was not in any sense a transmissible right that devolved upon her surviving spouse and her children (herein private respondents) after her death. "Public office is personal to the incumbent and is not a property which passes to his heirs" (Santos vs. Secretary of Labor, 22 SCRA 848). Private respondents' only interest in the outcome of the case is limited to no more than their interest in defending her against the protestant's claim for damages and costs (which the protestant, herein petitioner, has already waived). They may no longer prosecute her own counter-claim for damages against the protestant for that was extinguished when death terminated her right to occupy the contested office of mayor of Albura, Leyte.

In the case of Vda. de Mesa vs. Mencias, 18 SCRA 533, 545, we ruled:

"The same cannot, however, be said of the protestee's widow or of the local Liberal Party chapter of Muntinlupa. The protestee's claim to the contested office is not in any sense a right transmitted to his widow or heirs. Said widow's remaining interest in the outcome of the case is limited to no more than the possible award of costs against the deceased protestee. Besides not being such an interest as would justify her substitution for her deceased husband as an indispensable legal representative, the right to such an award if eventually made has already been waived by protestant Argana. This effectively withdraws the widow from the picture altogether. Much less has the local Liberal Party Chapter any claim to substitution. Not being duly incorporated as a juridical person, it can have no personality to sue or be sued as such. And while it conceivably may derive some indirect benefit consequent to the resolution of the contest in favor of the deceased protestee, neither the chapter itself nor the officers thereof would become entitled thereby to any right to the contested office in case of a favorable judgment, nor, for that matter, do they stand to sustain any direct prejudice in case of an adverse one. No basis therefore exist upon which to predicate their claim to substitution." (Underscoring supplied).

This ruling was not a mere obiter as the COMELEC erroneously supposed.

Vice Mayor Aquilino Cantiga's accession, by operation of law, to the position of Municipal Mayor upon the death of Mesina on July 22, 1989, automatically made him the real party-in-interest in the election contest for his right to hold the office of municipal mayor is in jeopardy of being lost should De la Victoria win his protest. Thus did this Court hold in Lomugang vs. Javier, 21 SCRA 403:

"The vice-mayor elect has the status of a real party-in-interest in the continuation of the proceedings and is entitled to intervene therein. For if the protest succeeds and the protestee is unseated, the vice-mayor succeeds to the office of mayor that becomes vacant if the one duly elected cannot assume the post."

This ruling was reiterated in Unda vs. COMELEC (G.R. No. 94090, October 19, 1990):

"Now under the Local Government Code, the Vice-mayor stands next in line of succession to the mayor in case of a permanent vacancy in the latter's position. Upon the death of the protestee mayor in the case at bar,

petitioner, as then incumbent vice-mayor, succeeded by operation of law to the vacated office and is ordinarily entitled to occupy the same for the unexpired term thereof. The outcome of the election contest necessarily and primarily bears upon his right to his present position and he is the person directly concerned in the fair and regular conduct of the election in order that the true will of the electorate will be upheld. His status as a real party-in-interest in the continuation of said case cannot thus be disputed." (Underscoring ours.)

On the procedural aspects of the case, we find the following observations of the Solicitor General in his Consolidated Comment dated January 8, 1991, to be well taken:

"x x x respondent COMELEC acted with grave abuse of discretion in giving due course to the [private respondents'] petitions for certiorari filed in SPR Nos. 9-90 and 11-90 filed on August 6, 1990 to set aside the final and executory decision of the trial court promulgated on July 18, 1990, far beyond the 5-day period allowed by [Section 22, Rule 35] Comelec Rules of Procedure." (p. 410, Rollo.)

"Respondent COMELEC further gravely abused its discretion by issuing a 'permanent' and final injunction to prevent the execution of said final and executory Decision dated July 17, 1990 of the trial court, without the required bond contrary to its own Rule 30, Section 4, COMELEC Rules of Procedure." (p. 411, Rollo.)

However, these issues have been rendered moot and academic by the COMELEC's order of January 23, 1991 dismissing the "reinstated" appeal of the private respondents (p. 447, Rollo), for failure to file their Appellant's Brief on December 9, 1990, the last day for filing the same, their Motion for Extension of Time to File said Appellant's Brief having been previously denied by the COMELEC for being a prohibited pleading under Section 1(c) of Rule 13 of the COMELEC Rules of Procedure, in relation to Section 9(b), Rule 22 of the COMELEC Rules of Procedure. The COMELEC's dismissal order reads:

"Consequently, the dismissal of the herein appeal case pursuant to the Comelec Rules of Procedure renders the decision of the Regional Trial Court of Leyte, Branch XIV dated July 17, 1990, as FINAL AND EXECUTORY." (pp. 459-460, Rollo.)

On January 28, 1991, petitioner De la Victoria reassumed the office of Mayor of Albueria, Leyte (p. 460, Rollo).

WHEREFORE, finding merit in the petition for certiorari, the same is hereby GRANTED, with costs against private respondents. The proclamation of Sixto de la Victoria as mayor of Albueria, Leyte, is upheld.

### **SO ORDERED.**

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Gancayco, J., on leave.

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