



Republic of the Philippines
Supreme Court
Manila

EN BANC

SVETLANA P. JALOSJOS,
Petitioner,

G.R. No. 193314

Present:

- versus -

**COMMISSION ON ELECTIONS,
EDWIN ELIM TUPAG and
RODOLFO Y. ESTRELLADA.**
Respondents.

SERENO, *CJ*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ*.

Promulgated:

JUNE 25, 2013

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RESOLUTION

SERENO, *CJ*:

This Resolution resolves the Motion for Partial Reconsideration dated 8 March 2013, filed by Edwin Elim Tumpag and Rodolfo Y. Estrellada (private respondents) and the Motion for Reconsideration dated 27 March 2013, filed by Svetlana P. Jalosjos (petitioner) in connection with the Decision of the Court promulgated on 26 February 2013.

Private respondents come before this Court on the sole issue of who between the vice-mayor and the second placer shall assume office pursuant to the final determination of petitioner's ineligibility to run for office and the lifting of the 07 September 2010 *Status Quo* Order.

Petitioner, on the other hand, questions the Decision, by raising the following arguments:

1. This Court erred in concluding that there are inconsistencies in the Joint Affidavit of the witnesses presented by petitioner.
2. Petitioner's stay in *Brgy. Punta Miray* should be considered in determining the one-year residency requirement in the same municipality.
3. Petitioner's registration as a voter presupposes she has stayed in the municipality at least six months prior to the registration.
4. Petitioner's certificate of candidacy (COC) should not be cancelled, absent any finding of a deliberate attempt to deceive the electorate.
5. COMELEC was ousted of its jurisdiction to decide on the question of the qualification of petitioner after she was proclaimed as winner.

We deny the motion of petitioner and grant the partial motion for reconsideration of private respondents.

The claim of actual and physical residence in Brgy. Tugas since 2008 is contradicted by the statements that petitioner was staying in Mrs. Lourdes Yap's house while her residential unit was being constructed; and that by December 2009, the construction was still ongoing.

Petitioner questions the inconsistencies noted by the court in the affidavit of her witnesses who, while claiming that they personally know her to have been an actual and physical resident of *Brgy. Tugas* since 2008, declared in the same affidavit that while her house was being constructed, she used to stay at the residence of Mrs. Lourdes Yap (Mrs. Yap) in *Brgy. Punta Miray*.

The declaration of petitioner's witnesses that they know petitioner to be "an actual and physical resident of *Brgy. Tugas* since 2008" contradicts their statements that (1) they have "started the construction of the residential house of the owner and other infrastructures of the resort since January 2009"; (2) "until the present (meaning until December 2009 when they executed their affidavit), the construction and development projects are still

on-going”; and (3) “at times when Ms. Jalosjos is in Baliangao, she used to stay in the house of Mrs. Lourdes Yap at *Sitio* Balas Diut, *Brgy.* Punta Miray, Baliangao, Misamis Occidental, while her residential house was still [being] constructed.”

Petitioner asserts that there are no inconsistencies in the statements of her witnesses, and that the statements are in fact consistent with her claim that she had been residing in Baliangao, Misamis Occidental for at least one year prior to the 10 May 2010 elections. She argues as follows:

x x x the fact that some of these witnesses knew that petitioner lived in the house of Mrs. Lourdes Yap in a different barangay, particularly *Brgy.* Punta Miray, is not at all inconsistent or contradictory with petitioner’s assertion and the witnesses’ statements that petitioner resides in *Brgy.* Tugas, because petitioner obviously needed a place to stay while her residence in *Brgy.* Tugas was being constructed. This does not negate the fact that petitioner was establishing her residence in *Brgy.* Tugas since the latter part of 2008, or at the very latest during the first few months (sic) of January 2009.¹

Her assertion that she “was establishing her residence in *Brgy.* Tugas since the latter part of 2008, or at the very latest during the first few months [sic] of January 2009” shows that she herself cannot pinpoint the particular date when she established her legal residence in *Brgy.* Tugas. This fact is contradictory to the declaration of the witnesses that “we have personal knowledge that Ms. Svetlana P. Jalosjos has been an actual and physical resident of Sunrise Tugas, Baliangao, Misamis Occidental, after she bought the properties thereat from the Heirs of Agapita Yap, Jr. on 9 December 2008.”

To be an actual and physical resident of a locality, one must have a dwelling place where one resides no matter how modest and regardless of ownership. The mere purchase of a parcel of land does not make it one’s residence. The fact that the residential structure where petitioner intends to reside was still under construction on the lot she purchased means that she has not yet established actual and physical residence in the *barangay*, contrary to the declaration of her witnesses that she has been an actual and physical resident of *Brgy.* Tugas since 2008.

Petitioner wants this Court to believe that the ongoing construction referred to by her witnesses in their joint affidavit does not refer to the residential structure, but to the other structures in the resort that petitioner was then establishing. She does not assert, however, that her residential unit

¹ Motion for Reconsideration, p. 9.

had already been completed by that time. In fact, she has failed to present any proof as to when her claimed residential unit was completed, or when she transferred to the unit.

It must be pointed out that the second statement in paragraph 1 of the Joint Affidavit states: “We have started the construction of the residential house of the owner and the other infrastructures of the resort since January, 2009.” This was immediately followed by paragraph 2 which reads:

2. Until the present, the construction and development projects are still on-going. To establish the fact of the on-going construction work, we are attaching herewith as part hereof, pictures we have taken on December 20 and 29, 2009 marked Annexes “1”, “2”, “3”, “4”, “5”, and “6” hereof, respectively.²

Without any qualification as to what is being referred to by the construction and development projects in paragraph 2, it follows that it refers to the “construction of the residential house of the owner and the other infrastructures of the resort” found in the prior statement.

In the affidavit, there is no mention whatsoever of completion of the residential house as of 30 December 2009. Neither has any occupancy permit been presented by petitioner to definitely establish the date she started occupying what she claims to be her residential unit in the resort.

Petitioner takes pains to present photographs of other structures in the resort, but fails to present any photograph of a completed residential structure, which is more relevant in proving her claimed residence in Brgy. Tugas. If the residential unit was already completed by December 2009, her witnesses could have easily testified to that fact and presented photographs of the structure.

This absence of any photograph proving the alleged residence of petitioner in the resort bolsters the court’s conclusion that at the time the witnesses signed their affidavits in December 2009, or six months prior to the May 2010 elections, her residential unit had not yet been built.

A temporary stay in a stranger’s house cannot amount to residence.

Petitioner wants this Court to credit her stay in Mrs. Yap’s house as

² *Rollo*, p. 221.

proof that she had been a resident of the Municipality of Baliangao for more than one year prior to the 10 May 2010 elections. In her words:

7. More importantly, if this Honorable Court would consider the circumstance that petitioner was staying in Brgy. Punta Miray as true so as to render the statements of her witnesses inconsistent, then such a consideration should not have led this Honorable Court to the conclusion that petitioner was not a resident of Baliangao, Misamis Occidental since Brgy. Punta Miray is located in the municipality of Baliangao like Brgy. Tugas. **In other words, the fact that petitioner was staying in a house in Brgy. Punta Miray while her residence in Brgy. Tugas was being constructed during the early part of 2009 would STILL LEAD to the conclusion that petitioner has been residing in Baliangao, Misamis Occidental for at least one (1) year prior to the 10 May 2010 elections since Brgy. Punta Miray is a part of Baliangao.**³ (Emphasis in the original and underscoring omitted)

Petitioner relies on *Mitra v. COMELEC*⁴ and *Sabili v. COMELEC*⁵ in claiming that “the series of events whereby petitioner first had her residence constructed [...] after she purchased in 2008 the property where her residence was eventually established, and while she lived in another *barangay* of the same municipality, and then eventually moved in to her residence in *Brgy. Tugas* amounted to an ‘incremental process’ of transferring residence.”

Petitioner’s case must be differentiated from *Mitra* in that petitioner therein presented not only the notarized lease contract over the property where he claimed to be residing, but also “a residence certificate [...] and an identification card of the House of Representatives showing Aborlan as his residence.”⁶

In *Sabili*, the Court declared that “the existence of a house and lot apparently owned by petitioner’s common-law wife, with whom he has been living for over two decades, makes plausible petitioner’s allegation of bodily presence and intent to reside in the area.”⁷

Petitioner’s stay in the house of Mrs. Yap in *Brgy. Punta Miray*, on the other hand, was only a temporary and intermittent stay that does not amount to residence. It was never the intention of petitioner to reside in that *barangay*, as she only stayed there at times when she was in Baliangao while

³ Motion for Reconsideration, p. 9.

⁴ G.R. No. 191938, 2 July 2010, 622 SCRA 744.

⁵ G.R. No. 193261, 24 April 2012, 670 SCRA 664.

⁶ Supra note 4.

⁷ Supra note 5.

her house was being constructed.⁸ Her temporary stay in *Brgy. Punta Miray* cannot be counted as residence in Baliangao.

Petitioner failed to show by what right she stayed in Mrs. Yap's house. Except for the declarations of her witnesses that she stayed there while her residential unit in the resort was being built, she presented no other evidence to show any basis of her right to stay in that particular house as a resident.

Approval of voter registration does not presuppose six-month residency in the place prior to registration.

It appears on record that petitioner, in filing her application for registration as a voter on 7 May 2009, claimed "that she has been a resident of *Brgy. Tugas, Baliangao, Misamis Occidental* for six (6) months prior to the filing of the said registration."⁹ For her claim to be true, she must have resided in *Brgy. Tugas* on or before 8 November 2008. The records, however, show that she purchased property in *Brgy. Tugas* only on 9 December 2008. Thus, her claim that she had been a resident of *Brgy. Tugas* for at least six (6) months prior to her application for registration as a voter on 7 May 2009 is an utter falsity.

The approval of the registration of petitioner as a voter does not and cannot carry with it an affirmation of the falsehood and misrepresentation as to the period of her residence in *Brgy. Tugas*. At best, the approval of her registration as a voter carries a presumption that the registrant will be able to meet the six-month residency requirement for the elections in which the registrant intends to vote.¹⁰ It does not prove that the registrant has resided in the locality for more than one year prior to the elections.

Representation that one is qualified to run for public office when proven false constitutes a deliberate attempt to deceive the electorate.

Petitioner contends that the Court erred in upholding the cancellation of her COC despite the glaring absence of any finding made by the

⁸ *Rollo*, p. 222; Joint Affidavit.

⁹ Motion for Reconsideration, p. 15.

¹⁰ Batas Pambansa Blg. 881, Omnibus Election Code Sec. 117 reads:

Sec. 117. *Qualifications of a voter.* - Every citizen of the Philippines, not otherwise disqualified by law, eighteen years of age or over, who shall have resided in the Philippines for one year and in the city or municipality wherein he proposes to vote for at least six months immediately preceding the election, may be registered as a voter.

respondent COMELEC in its assailed Resolution that petitioner committed a false material representation in said COC.

The finding of the COMELEC that petitioner lacks the one year residency requirement to run for local elective position in the municipality of Baliangao directly contradicts her sworn declaration that she is eligible to run for public office. The fact that petitioner failed to prove that she has been a resident of the locality for at least one year prior to the elections reveals the falsity of her assertion in her COC that she is qualified to run for a local elective position. This false material representation justifies the cancellation of her COC.

When the candidate's claim of eligibility is proven false, as when the candidate failed to substantiate meeting the required residency in the locality, the representation of eligibility in the COC constitutes a "deliberate attempt to mislead, misinform, or hide the fact"¹¹ of ineligibility.

COMELEC is not ousted of jurisdiction to decide a petition for cancellation of the certificate of candidacy after the winner is proclaimed.

The COMELEC, in its Resolution dated 19 August 2010, citing *Aquino v. COMELEC*,¹² has amply discussed this matter, thus:

Petitioner's contention that "after the conduct of the election and (petitioner) has been established the winner of the electoral exercise from the moment of election, the COMELEC is automatically divested of authority to pass upon the question of qualification" finds no basis in law, because even after the elections the COMELEC is empowered by Section 6 (in relation to Section 7) of R.A. 6646 to continue to hear and decide questions relating to qualifications of candidates. Section 6 states:

SECTION 6. Effect of Disqualification Case. – Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of guilt is strong.

¹¹ *Salcedo v. COMELEC*, 371 Phil. 377 (1999).

¹² 318 Phil. 467 (1995).

Under the above-quoted provision, not only is a disqualification case against a candidate allowed to continue after the election (and does not oust the COMELEC of its jurisdiction), but his obtaining the highest number of votes will not result in the suspension or termination of the proceedings against him when the evidence of guilt is strong. While the phrase “when the evidence of guilt is strong” seems to suggest that the provisions of Section 6 ought to be applicable only to disqualification cases under Section 68 of the Omnibus Election Code, Section 7 of R.A. 6646 allows the application of the provisions of Section 6 to cases involving disqualification based on ineligibility under Section 78 of B.P. 881. Section 7 states:

SECTION 7. Petition to Deny Due Course or to Cancel a Certificate of Candidacy. – The procedure hereinabove provided shall apply to petition to deny due course to or cancel a certificate of candidacy based on Sec. 78 of Batas Pambansa 881.¹³

The cancellation of the certificate of candidacy of an ineligible candidate who has assumed office renders the officer a de facto officer.

This Court has ruled in *Aratea v. COMELEC*¹⁴ and *Jalosjos, Jr. v. COMELEC*¹⁵ that the cancellation of the COC based on an ineligibility that existed at the time of its filing means that the candidate was never a valid candidate from the very beginning.¹⁶

On the question of who should assume the post vacated by the ineligible candidate, this Court amply explained in *Jalosjos, Jr.* that:

Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first placer was **valid at the time of filing** but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes

¹³ Id.

¹⁴ G.R. No. 195229, 09 October 2012, 683 SCRA 105.

¹⁵ G.R. No. 193237, 09 October 2012, 683 SCRA 1.

¹⁶ Id. at 31.


because the certificate of candidacy is void from the very beginning.¹⁷
x x x. (Citations omitted)

There is another more compelling reason why the eligible candidate who garnered the highest number of votes must assume the office. The ineligible candidate who was proclaimed and who already assumed office is a *de facto* officer by virtue of the ineligibility.

The rule on succession in Section 44 of the Local Government Code¹⁸ cannot apply in instances when a *de facto* officer is ousted from office and the *de jure* officer takes over. The ouster of a *de facto* officer cannot create a permanent vacancy as contemplated in the Local Government Code. There is no vacancy to speak of as the *de jure* officer, the rightful winner in the elections, has the legal right to assume the position.

WHEREFORE, in view of the foregoing, the Motion for Partial Reconsideration dated 08 March 2013 is hereby **GRANTED**. Petitioner's Motion for Reconsideration dated 27 March 2013 is hereby **DENIED** with **FINALITY**. **AGNE V. YAP, SR.** is hereby declared the duly elected Mayor of the Municipality of Baliangao, Misamis Occidental in the 10 May 2010 elections. This resolution is immediately executory.

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice

¹⁷ Id. at 31-32.

¹⁸ **Section 44.** *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in the Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.


WE CONCUR:

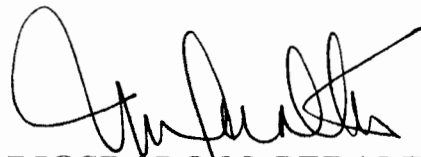


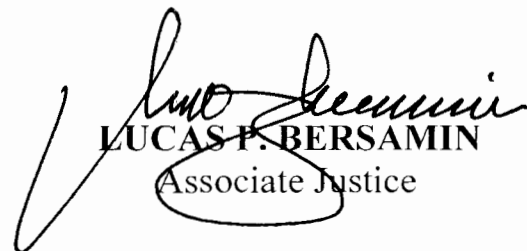
ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice


Teresita Leonardo de Castro
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ARTURO D. BRION
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DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
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MARIANO C. DEL CASTILLO
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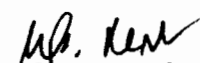

ROBERTO A. ABAD
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

**MARIA LOURDES P. A. SERENO**

Chief Justice