

## EN BANC

[ G.R. No. 193314, June 25, 2013 ]

**SVETLANA P. JALOSJOS, PETITIONER, VS. COMMISSION ON ELECTIONS, EDWIN ELIM TUPAG AND RODOLFO Y. ESTRELLADA. RESPONDENTS.**

### R E S O L U T I O N

**SERENO, C.J.:**

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.<sup>[1]</sup>

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 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.<sup>[2]</sup>

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 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.**<sup>[3]</sup> (Emphasis in the original and underscoring omitted)

Petitioner relies on *Mitra v. COMELEC*<sup>[4]</sup> and *Sabili v. COMELEC*<sup>[5]</sup> 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."<sup>[6]</sup>

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."<sup>[7]</sup>

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 her house was being constructed.<sup>[8]</sup> 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.***