

EN BANC

[G.R. No. 188240, December 23, 2009]

MICHAEL L. SAN MIGUEL, PETITIONER, VS. COMMISSION ON ELECTIONS AND CHRISTOPHER V. AGUILAR, RESPONDENTS.

DECISION

CARPIO MORALES, J.:

Challenged via Certiorari and Prohibition are the Resolutions of February 25, 2009 and May 25, 2009 of public respondent Commission on Elections (Comelec) in SPR (Brgy) No. 106-2008 directing the issuance of a writ of execution *pendente lite* and denying the motion for reconsideration, respectively.

Petitioner Michael San Miguel and private respondent Christopher Aguilar vied in the October 29, 2007 elections for the position of *Punong Barangay* of Barangay Marcelo Green in Parañaque City where they obtained 2,969 and 2,867 votes, respectively.

After petitioner's proclamation, private respondent filed an election protest docketed as E.P. Case No. 07-4 before the Metropolitan Trial Court of Parañaque City which, after recount and revision of ballots from the contested precincts, ruled that private respondent garnered 2,898 votes or 12 votes more than the 2,886 votes received by petitioner and accordingly annulled petitioner's proclamation, by Decision of May 9, 2008.

Petitioner filed with the trial court a Notice of Appeal to the Comelec, docketed eventually as EAC No. 208-2008. The appeal is still pending.

Meanwhile, three days after the promulgation of the trial court's Decision or on May 12, 2009, private respondent filed an Urgent Motion for Execution Pending Appeal (Urgent Motion) which was received by petitioner on May 13, 2008 with notice of a May 14, 2008 hearing. The trial court calendared the hearing, however, on May 19, 2008, and eventually denied the Urgent Motion by Order of May 22, 2008.^[1]

Private respondent elevated the matter on certiorari to the Comelec which reversed the trial court's May 22, 2008 Order, by the first assailed Resolution the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition for certiorari is hereby **GRANTED**. Accordingly, the assailed Order of May 22, 2008 in Election Protest Case No. 07-4 (*Christopher Aguilar v. Michael San Miguel*) of the Metropolitan Trial Court of Parañaque City is hereby SET ASIDE. Let a Writ of Execution pending appeal be issued in accordance with Section 11(b), Rule 14 of the Rules of Procedure in Election Contests to implement the May 9, 2008 Decision of the respondent Judge in the

above-captioned case, which declared Protestant-**CHRISTOPHER V. AGUILAR** as the duly elected Punong Barangay of Marcelo Green, Parañaque City and annulled the proclamation and oath-taking of Protestee-MICHAEL L. SAN MIGUEL.

SO ORDERED.^[2] (emphasis and italics in the original),

and denied reconsideration thereof by the second assailed Resolution.

Hence, the present petition, petitioner averring that the Comelec gravely abused its discretion by blatantly misapplying Section 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials^[3] (Rules of Procedure) which reads:

Sec. 11. Execution Pending Appeal "€ On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, **may**, at its discretion, **order the execution of the decision** in an election contest **before the expiration of the period to appeal**, subject to the following rules:

(a) There must be a motion by the prevailing party with three-day notice to the adverse party. Execution pending appeal shall not issue without prior notice and hearing. There must be good reasons for the execution pending appeal. The court, in a special order, must state the good or special reasons justifying the execution pending appeal. Such reasons must:

- (1) constitute superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal; and
- (2) be manifest, in the decision sought to be executed, that the defeat of the protestee or the victory of the protestant has been clearly established.

(b) If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or *status quo order* from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty days, if no restraining order or status quo order is issued. During such period, the writ of execution pending appeal shall be stayed. (emphasis, italics and underscoring supplied)

In not granting a special order to execute its decision pending appeal, the trial court explained that it could no longer order execution since the above-quoted rule allows the issuance of a special order only within the five-day period to appeal which, at that time, had already expired.