

EN BANC

[G.R. No. 129938, December 12, 1997]

**ALFREDO B. ENOJAS, JR., PETITIONER, VS. THE HONORABLE
COMMISSION ON ELECTIONS AND JOSE R. RODRIGUEZ,
RESPONDENTS.
D E C I S I O N**

REGALADO, J.:

The present petition for *certiorari* seeks the reversal of the resolution^[1] issued by respondent Commission on Elections (COMELEC) in SPR Nos. 9-97 and 18-97 which set aside the decision of the Regional Trial Court of Palawan, Branch 50, in Special Election Case No. 891 by disposing as follows:

“WHEREFORE, the Commission resolves to GRANT, as it hereby GRANTS, the petitions. The respondent court’s order dated February 19, 1997, denying petitioner’s presentation of evidence, the order dated March 10, 1997, denying petitioner’s Motion for Reconsideration, the Decision dated April 21, 1997, the order dated June 17, 1997, directing the issuance of a writ of execution, and the writ of execution issued pursuant thereto are SET ASIDE.

We order the Regional Trial Court of Palawan and Puerto Princesa City, Branch 50, to proceed immediately with the trial of Election Case No. 891.

In the meantime, respondent Alfredo Enojas, Jr. shall vacate the position of mayor of Roxas, Palawan, and the petitioner shall assume said position to restore the parties to the status quo ante.

This resolution is immediately executory.

Let the records be remanded to the court a quo for further proceedings.”

The records show that these facts are not substantially disputed:

1. Petitioner Alfredo B. Enojas, Jr. and respondent Jose R. Rodriguez were the mayoralty candidates for the Municipality of Roxas, Palawan in the May, 1995 elections. Respondent Rodriguez reportedly won by forty-eight (48) votes over petitioner Enojas and was proclaimed by the Municipal Board of Canvassers for Roxas, Palawan as its duly elected mayor.

2. Petitioner Enojas, Jr. then filed an election protest before the Regional Trial Court of Palawan, docketed as Special Election Case No. 891, seeking the revision of ballots in one hundred two (102) precincts in the municipality. However, after the revision of the ballots in thirty-nine (39)

precincts, petitioner Enojas, Jr., with prior approval of the trial court, withdrew the remaining unrevised precincts from the revision proceedings.

3. After petitioner Enojas, Jr. had filed his Formal Offer of Exhibits and rested his case, respondent Rodriguez filed, with leave of court, a Motion to Dismiss^[2] alleging, inter alia, that the court had no jurisdiction on the ground that the protest had not passed through the Katarungang Pambarangay and the correct docket fees had not been paid; that based on the allegations in the protest and the exhibits formally offered, protestant had no cause of action against the protestee because the protest should have been filed against the person or persons liable for the alleged errors in the counting of votes; that protestant should be deemed to have waived his right to file the present protest by reason of his failure to file a protest with the Board of Election Inspectors and/or Municipal Board of Canvassers; that the filing of the election protest was premature and should be dismissed for forum shopping since there was a pending pre-proclamation protest filed with the Municipal Board of Canvassers and the COMELEC; and that the allegations in the complaint are ambiguous for failure to make out clearly whether it is an election contest or a judicial recount.

4. On December 19, 1995, the trial court granted the motion of respondent Rodriguez on the ground of lack of jurisdiction for non-payment of the correct docket fees, and dismissed Special Election Case No. 891.

5. From said order of dismissal, petitioner Enojas, Jr. went to respondent COMELEC on a petition for certiorari, prohibition and disqualification which was docketed as SPR No. 1-96. On June 11, 1996, respondent COMELEC issued a resolution reversing the Order of December 19, 1995 and remanding the case to the trial court for further proceedings. The lower court thereafter set the case for reception of the evidence of respondent Rodriguez.

6. On October 11, 1996, however, petitioner Enojas, Jr. filed an Opposition to the presentation of evidence by respondent Rodriguez on the ground that the latter is deemed to have waived his right to present evidence by reason of the COMELEC's denial of his motion to dismiss which was previously granted by the court a quo.

7. On February 19, 1997, the trial court issued an Order declaring that respondent Rodriguez was deemed to have waived his right to present evidence, and accordingly considered the case submitted for decision.

8. His motion for reconsideration of the Order of February 19, 1997 having been denied for lack of merit, respondent Rodriguez filed a petition for certiorari and prohibition before the COMELEC in SPR No. 9-97 questioning the February 19, 1997 and March 10, 1997 orders of the trial court denying his right to present evidence.

9. In the meantime, the trial court rendered a decision dated April 28,

1997 declaring petitioner Enojas, Jr. as the winner in the 1995 elections for the position of mayor of Roxas, Palawan. On even date, petitioner Enojas, Jr. filed a motion for execution pending appeal.

10. As a consequence of the foregoing, the COMELEC issued on April 29, 1997 a temporary restraining order (TRO) in SPR No. 9-97 against Presiding Judge Nelia Yap-Fernandez of the Regional Trial Court of Palawan, Branch 50.

11. On June 17, 1997, a writ of execution pending appeal was issued by the trial court, upon motion of protestant and after the expiration of the 20-day TRO issued by the COMELEC. Accordingly, after posting a bond of P400,000.00, petitioner Enojas, Jr. assumed office as municipal mayor of Roxas, Palawan.

12. Respondent Rodriguez consequently filed another petition for certiorari, prohibition and mandamus with the COMELEC, docketed as SPR No. 18-97, questioning the propriety of the Order of June 17, 1997 which authorized the issuance of a writ of execution pending appeal.

In reversing the trial court and ordering the reception of evidence for respondent Rodriguez, respondent COMELEC held as follows:

"x x x [R]espondent Enojas objected to petitioner's presentation of evidence contending that by filing a motion to dismiss or demurrer to evidence, petitioner was deemed to have waived his right to present evidence. Respondent judge upheld such contention in the questioned orders dated February 19, 1996 and March 10, 1996.

Such ruling is not only erroneous but constitutes a grave abuse of discretion amounting to lack or excess of jurisdiction. What petitioner filed was not a demurrer to evidence but a motion to dismiss for lack of jurisdiction. Demurrer to evidence questions the sufficiency of evidence. Thus, as enunciated by the Supreme Court in the case of Siayngco vs. C(o)stibolo, 27 SCRA 272:

'This rule is now embodied in the Revised Rules of Court, section 1, Rule 35, captioned Judgment and Demurrer to Evidence, which will take effect on January 1, 1964. It is, therefore, evident that the respondent court, in the case at bar, after denying the motion to dismiss, for insufficiency of evidence, (demurrer to evidence), should have permitted the petitioner-defendant to present his own evidence x x x.'

The motion to dismiss on the ground of jurisdiction can be easily differentiated from a motion to dismiss on demurrer to evidence in that, in the latter case, the movant admits the truth or factual allegations in the complaint and moves for the dismissal of the case on the ground of insufficiency of evidence. The legal effect and consequence of a demurrer to evidence is that in the event that the motion to dismiss on demurrer to evidence is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf.

However, in a motion to dismiss on the ground of lack of jurisdiction, the movant does not lose his right to present evidence.