

FIRST DIVISION

[G.R. No. 206249, December 10, 2019]

**ROMMEL V. DEL ROSARIO, PETITIONER, VS. EVA T. SHAIKH,
RESPONDENT.**

DECISION

REYES, J. JR., J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision^[1] dated September 7, 2012 and the Resolution^[2] dated March 6, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 114405, which reversed and set aside the Decision^[3] dated November 4, 2009, of the Regional Trial Court (RTC) of Balanga City, Bataan, Branch 1 in Civil Case No. 9172, a case for *mandamus*.

The Facts

On December 11, 2007, the synchronized elections for the officers and members of the Liga ng mga Barangay ng Pilipinas (Liga) Chapters in Municipalities and Component Cities were held. On the same day, and prior to the actual elections, the Punong Barangays of Bagac conducted an election meeting for the election of officers and members of the Board of Directors of the Liga Municipal Chapter of Bagac, Bataan (Liga-Bagac Chapter). The meeting was attended by the Punong Barangays from the 14 Barangays of Bagac, including Ernesto N. Labog (Labog) and herein respondent Eva T. Shaikh (Shaikh). However, during the election meeting, Labog, together with 5 other Punong Barangays and Oscar M. Ragindin (Ragindin), Municipal Local Government Operations Officer (MLGOO) of Bagac and Chairperson of the Board of Election Supervisors (BES), walked out. Despite this, the remaining eight Punong Barangays proceeded with the election and elected Shaikh as the President of the Liga-Bagac Chapter.^[4] Consequently, James Marty L. Lim (Lim), National President of the Liga, issued a Certificate of Confirmation^[5] dated December 27, 2007 in favor of Shaikh.

Meanwhile, in a letter-memorandum^[6] dated December 11, 2007, Ragindin informed the Provincial Director of the Department of Interior and Local Government (DILG)-Bataan that the election for the Liga-Bagac Chapter did not materialize as scheduled and that there had been a failure of elections. Further, on December 18, 2007, Ragindin issued a Certification^[7] stating that Labog is the Acting President of the Liga-Bagac Chapter, as per appointment issued by Lim on December 6, 2007.

On January 9, 2008, the Office of the Sangguniang Bayan of Bagac, through a letter-inquiry, requested the Liga to issue an official endorsement as to who shall seat, presumably between Labog and Shaikh, as the *ex-officio* member of the Sanggunian.^[8] On the same day, the Liga, through its Director of Legal Affairs,

replied that Shaikh, as the newly elected President of the Liga-Bagac Chapter, shall seat as the *ex-officio* member.^[9]

On January 28, 2008, Vice-Mayor Romeo T. Teopengco (Vice-Mayor Teopengco) issued OSB Memo No. 08-02 addressed to Shaikh, advising her to submit her Certificate of Canvass and Proclamation as certified and attested to by the BES for her full recognition as *ex-officio* member of the Sangguniang Bayan of Bagac, pursuant to DILG Memorandum Circular No. 2008-07.^[10] Vice-Mayor Teopengco reiterated his instruction on February 26, 2008,^[11] but it would appear that Shaikh failed to submit the required certificate.

On February 26, 2008, Hon. Rommel V. Del Rosario (Mayor Del Rosario), Mayor of Bagac, wrote the DILG-Bataan, through Ragindin, requesting confirmation as to who is the legitimate and duly elected representative of the Liga-Bagac Chapter to the Sangguniang Bayan.^[12] Ragindin replied that, as of February 28, 2008, no newly-elected representative of the Liga can be *ex-officio* member of the Sangguniang Bayan of Bagac.^[13]

Thereafter, considering that she attended the sessions of the Sangguniang Bayan of Bagac, Shaikh requested for the payment of the salaries and allowances due her as President of the Liga-Bagac Chapter and *ex-officio* representative in the Sanggunian for the period from January 15, 2008 to March 31, 2008. On April 8, 2008, Vice-Mayor Teopengco sent a letter to Mrs. Angelina M. Bontuyan (Bontuyan), Municipal Budget Officer of Bagac, forwarding the documents relative to Shaikh's request for payment of salaries and allowances.^[14]

In a letter^[15] dated April 14, 2008, Mayor Del Rosario declined the request relative to Shaikh's claimed salaries and allowances. In denying the release of Shaikh's salaries and allowances, Mayor Del Rosario noted Labog's adverse claim to the office being occupied by Shaikh. Mayor Del Rosario was of the opinion that Shaikh's request could not be favorably acted upon until the determination of the issue as to who between Shaikh and Labog is the rightful President of the Liga-Bagac and consequently the *ex-officio* member of the Sangguniang Bayan of Bagac.

In a letter^[16] dated April 17, 2008, Vice-Mayor Teopengco informed Shaikh about the denial of her request furnishing her a copy of Mayor Del Rosario's April 14, 2008 letter. Vice-Mayor Teopengco further stated that he could not act on Shaikh's request in view of the said denial since matters pertaining to the administration of the Local Government of Bagac are within the discretion of its Mayor.

Even after the denial of her request for the release of her salaries and other emoluments, Shaikh continued attending the sessions of the Sangguniang Bayan of Bagac.

On March 4, 2009, Shaikh filed a Petition for *mandamus*^[17] seeking, among others, to compel Mayor Del Rosario and Vice-Mayor Teopengco to sign the documents necessary for the release of her salaries and other emoluments in connection with her *ex-officio* membership in the Sangguniang Bayan of Bagac for the period she had actually rendered her services. She further prayed that Bontuyan be ordered to receive, in her capacity as the Municipal Budget Officer of Bagac, all the documents

she tendered pertaining to her official functions.

Ruling of the RTC

In its Decision dated November 4, 2009, the RTC dismissed Shaikh's Petition for *mandamus*. The trial court ratiocinated that since there had been a failure of elections during the December 11, 2007 Liga ng mga Barangay Bagac Municipal Chapter, Shaikh had not been elected at all. Consequently, she did not acquire a right or title to the position that will make her a *de jure* or a *de facto* officer. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the instant petition for *mandamus* is hereby DENIED for lack of merit.^[18]

Aggrieved, Shaikh elevated an appeal before the CA.

Ruling of the CA

In its Decision dated September 7, 2012, the CA reversed and set aside the RTC's November 4, 2009 Decision and ruled that Shaikh is entitled to the salaries and emoluments of the office she held as a *de facto* officer. The appellate court held that there was no *de jure* officer occupying the *de jure* office during Shaikh's term as a *de facto* officer. Further, considering that Shaikh actually attended the sessions of the Sangguniang Bayan of Bagac, it becomes ministerial for the concerned municipal officers of Bagac to give her the salaries, emoluments, and other benefits due her. Thus, the CA opined that Mayor Del Rosario, Vice-Mayor Teopengco, and Bontuyan unlawfully neglected the performance of their respective duties by refusing to pay Shaikh the salaries, emoluments, and other benefits which she is entitled to. The dispositive portion of the CA Decision provides:

WHEREFORE, in view of the foregoing, *mandamus* on Appeal is hereby **GRANTED**. The November 4, 2009 Decision of the RTC of Balanga City, Bataan, Branch 1, is REVERSED and SET ASIDE. Accordingly, respondents are hereby ordered to release the salaries, emoluments and benefits due to Eva T. Shaikh for the period she actually rendered her services as *ex-officio* member of the Sangguniang Bayan of Bagac, Bataan.

SO ORDERED.^[19]

Mayor Del Rosario, Vice-Mayor Teopengco, and Bontuyan moved for reconsideration, but the same was denied by the CA in its Resolution dated March 6, 2013.

Unconvinced, Mayor Del Rosario filed the present petition.

The Issue

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT MAYOR DEL ROSARIO, VICE-MAYOR TEOPENGCO, AND BONTUYAN MAY BE COMPELLED BY *mandamus* TO ORDER THE RELEASE OF THE SALARIES AND EMOLUMENTS CLAIMED BY SHAIKH.

The Court's Ruling

The petition is meritorious.

Mandamus has been defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law.^[20] Under Section 3, Rule 65 of the Rules of Court, a person aggrieved by the unlawful neglect or refusal of tribunal, corporation, board, officer or person to perform their legal duty may ask the court to compel the required performance.

From this Rule, there are two situations when a writ of *mandamus* may issue: (1) when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled.^[21]

It must be stressed, however, that the extraordinary remedy of *mandamus* lies to compel the performance of duties that are purely ministerial in nature only. The peremptory writ of *mandamus* would not be available if, in the first place, there is no clear legal imposition of a duty upon the office or officer sought to be compelled to act,^[22] or if it is sought to control the performance of a discretionary duty.^[23]

For *mandamus* to lie, the following requisites must be present: (a) the plaintiff has a clear legal right to the act demanded; (b) it must be the duty of the defendant to perform the act, because it is mandated by law; (c) the defendant unlawfully neglects the performance of the duty enjoined by law; (d) the act to be performed is ministerial, not discretionary; and (e) there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.^[24]

In this case, Mayor Del Rosario contends that *mandamus* will not lie to compel him to order the release of Shaikh's salaries and emoluments. He argues that he is not mandated by law nor is it his duty to give the salaries and emoluments claimed by Shaikh. He points out that the subject act being attributed to him by Shaikh is not among the duties of a municipal mayor as enumerated under Section 344 of the Local Government Code.

The Court agrees that ordering the release of the salaries and emoluments of a member of the Sangguniang Bayan is not among the duties imposed upon the Municipal Mayor.

Section 344 of the Local Government Code provides:

SEC. 344. *Certification, and Approval of Vouchers.* - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer

certifies to the availability of funds for the purpose. **Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved.** Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as the GSIS, SSS, LBP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed. x x x (Emphasis supplied).

The intent of the Local Government Code to give to the Vice-Mayor, as the presiding officer of the Sangguniang Bayan - and not to the Municipal Mayor - the administrative control over the funds of the said local legislative body, is clear in the provisions of Section 445(a)(I) which states:

SEC. 445. Powers, Duties, and Compensation. - (a) The vice-mayor shall:

(1) Be the presiding officer of the sangguniang bayan and sign all warrants drawn on the municipal treasury for all expenditures appropriated for the operation of the sangguniang bayan; xxxx

In *Atienza v. Villarosa*^[25] (*Atienza*), the Court ruled that the specific clause in Section 344 which provides that "[v]ouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned" prevails over the clause in the same section which states that "approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed."

In the said case, the Court also noted under Section 39 of the Manual on the New Government Accounting System for Local Government Units, the authority and duty to approve vouchers for expenditures for the operation of the Sanggunian pertain to the Vice-Governor or the Vice-Mayor, as the case may be.

Following these, the Court held that the Vice-Governor, as the presiding officer of the Sangguniang Panlalawigan, has the administrative control over the funds of the said local legislative body. As such, it is also the Vice-Governor which has the authority to sign all warrants drawn on the provincial treasury for the expenditures appropriated for the operation of the Sangguniang Panlalawigan. Thus:

Reliance by the CA on the clause "approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed" of the above section (Section 344) to rule that it is the Governor who has the authority to approve purchase orders for the supplies, materials or equipment for the operation of the *Sangguniang Panlalawigan* is misplaced. This clause cannot prevail over the more specific clause of the same provision which provides that "vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned." The Vice-Governor, as the presiding officer of the *Sangguniang Panlalawigan*, has