

**DOCUMENTS: STATUTES, JUDICIAL DECISIONS, CONVENTIONS,
TREATIES, DECLARATIONS, AND OTHER STATE PAPERS**

**URBAN ESTATES, INC. v. THE HON. AGUSTIN P. MONTESA, JUDGE,
COURT OF FIRST INSTANCE OF MANILA, AND THE CITY OF MANILA**

**G. R. No. L-3830
Promulgated: March 15, 1951**

DECISION

TUAZON, J.:

This case, brought here on appeal from an order of Judge Agustin P. Montesa denying defendant's motion to dismiss, concerns the authority of the City of Manila to expropriate a tract of land situated within the city limits and having an area of 49,553.10 square meters, more or less.

Urban Estates, Inc., defendant, alleged and offered to prove in support of its motion to dismiss, that the true, fair market value of the property in question is ₱1,002,074.00 and the assessed value ₱366,150.00; that this land is mortgaged to Juan E. Tuason for ₱470,530.00 and is used to secure an overdraft with the People's Bank & Trust Co. in the sum of ₱150,000.00, so that it has at least a loan value of ₱620,530.00; that the said land is a subdivision property and one-half of its total area has been sold already at a very fair and reasonable price, some lots having been paid for in full and down payments having been made on others; and that a big portion of the tract is reserved for playground as evidenced by Plan Psd-24832 duly approved by the National Urban Planning Commission and the Director of Lands.

But the trial court refused to receive evidence on these allegations on the theory that they were improperly made in a motion to dismiss; the court was of the opinion that a motion to dismiss assumes the truth of the facts stated in the complaint.

Section 4, Rule 69 of the Rules of Court, entitled "Defenses and Objections," provides: "Within the time specified in the summons, each defendant, in lieu of an answer, shall present in a single motion to dismiss or for other appropriate relief, all of his objections and defenses to the right of the plaintiff to take his property for the use specified in the complaint. All such objections and defenses not so presented are waived. A copy of the motion shall be served on the plaintiff's attorney of record and filed with the court with the proof of service." And in the *City of Manila v. Chinese Community of Manila*, 40 Phil. 349, this Court laid down this rule: "The very foundation of the right to exercise eminent domain is a genuine necessity, and that it necessity must be of a public character. The ascertainment of the necessity must precede or accompany and not follow, the taking of the land." The Court cited this passage in *Blackstone's Commentaries*: "So great is the regard of the law for private property that it will not authorize the least violation of it,

even for the public good, unless there exists a very great necessity thereof."

As the City itself, the plaintiff, objected to the substantiation of the facts set forth in the motion to dismiss, and since on their face and by their nature these facts are based on documentary proof, we will take them for granted instead of remanding the case to the court below for further proceeding.

The matter of the right of the Government to condemn urban private lands for subdivision or resale to private persons has been discussed so extensively in *Guido v. Rural Progress Administration*, G. R. No. L-2089, *De Borja v. Commonwealth of the Philippines*, G. R. No. L-1496, and *Arellano Law Colleges v. City of Manila*, G. R. No. L-2929, that we should think the question is no longer open, at least as far as inferior courts are concerned. Lest those decisions may have been misread or misconstrued, a few remarks are in order in further elucidation of their meaning.

The *Guido*, *De Borja* and *Arellano Colleges* decisions expressly recognize the power of the Government to expropriate urban lands or rural estates for subdivision into lots. What those decisions emphasize is the distinction, set in broad outline, between taking that inures to the welfare of the community at large and taking that benefits a mere handful of people bereft of public character. In explaining the distinction we mentioned public benefit, public utility, or public advantage as the universal test of the exercise of the right of eminent domain, and warned of the tendency to expand the construction of Section 4, Article XIII, of the Constitution "to the limit of its logic."

It is a matter of common knowledge that there were and there are lands, comprising whole towns and municipalities, which were or are owned by one man or a group of men from whom their inhabitants hold the lots on which their houses are built as perpetual tenants. These are *urban* lands. And there are private lands which it may be necessary in the public interest for the Government to convert into townsites and the townsites into house lots. It is also a matter of past and contemporary history that feudalism has been the root cause of popular discontent that led to revolutions and of present unrest and political and social disorders.

It was such lands taken for such purpose which we said the framers of the Constitution had in mind and which the National Government and, with appropriate legislative authority, the cities and municipalities may condemn. We stated that it is economic slavery, feudalistic practices, endless conflicts between landlords and tenants, and allied evils which it is the authority, nay the duty, of the State to abolish by acquiring landed estates by purchase if possible or by condemnation proceedings if necessary.

In brief, the Constitution contemplates large-scale purchases or condemnation of lands with a view to agrarian reforms and the alleviation of acute housing shortage. These are vast social problems with which the Nation is vitally concerned and the solution of which would redound to the common weal. Condemnation of private lands in a makeshift or piecemeal fashion, random taking of a small lot

here and a small lot there to accommodate a few tenants or squatters is a different thing. This is true be the land urban or agricultural. The first sacrifices the rights and interest of one or a few for the good of all; the second is deprivation of a citizen of his property for the convenience of another citizen or a few other citizens without perceptible benefit to the public. The first carries the connotation of public use; the last follows along the lines of a faith or ideology alien to the institution of property and the economic and social systems consecrated in the Constitution and embraced by the great majority of the Filipino people.

Strickley v. Highland Boy Gold Min. Co., 50 Law Ed. 581, cited to bolster the plaintiff-appellee's case, is in reality against its contention. In that case the finding was that the plaintiff was a "carrier for itself and others (and) that the line (right of way) is dedicated to carrying for whatever portion of the public may desire to use it." The expropriation in that case was thus affected with public use and public interest. Our own railroad companies have been conferred with power of eminent domain.

Clark v. Nash, 49 Law Ed. 1085, mentioned in Strickley v. Highland Boy Min. Co. was a case in which the Supreme Court of Utah had found and decided that the plaintiff was "entitled to a decree condemning a right of way through defendant's said ditch, to the extent of widening said ditch one foot more than its present width, and to a depth of said ditch as now construed through the entire length thereof down to plaintiff's said land, for the purpose of carrying his said waters of said Fort Canyon creek to the land of the plaintiff for the purpose of irrigation, and is entitled to an easement therein to the extent of the enlarging of said ditch, and for the purposes aforesaid, and to have a perpetual right of way to flow waters therein to the extent of the said enlargement." This was the background of Mr. Justice Holmes' statement "that there might be exceptional times and places in which the very foundations of public welfare could not be laid without requiring concessions from individuals to each other upon due compensation." To condemn private land and give it to another is a far cry from "the condemnation of the land of one individual for the purpose of allowing another individual to obtain waters from a stream *in which he has an interest*, to irrigate his land, which otherwise would remain absolutely valueless." Similar rights of riparian owners are expressly recognized by our own Civil Code independently of constitutions.

Attempts are made to differentiate this Court's recent decisions from the present case. Actually the material differences which we can discern serve to show that there is less necessity for condemnation in this case than in either of the three cases before referred to, from the standpoint of the persons intended to be favored, let alone the public. In the first place, it has been seen that the land sought to be condemned here has actually been subdivided by its owners, who have spent considerable money for its improvements and in the laying out of streets, and is being offered for sale. Some lots in fact have already been sold and paid for in full or in part. The people on whose behalf this action has been instituted could acquire

the remaining lots by direct purchase from the defendant like those purchasers.

In the face of these circumstances, it would appear that in resorting to expropriation, the plaintiff was prompted, not by the unwillingness of the owners to part with their property but by the inability of the present tenants or squatters to meet the owner's price. By the simple expedient of eminent domain, the City would acquire the land for a price far below the capital invested therein and sell it at cost to help the homeless who, it is said in the appealed decision, have been forced to migrate from the provinces in search of safer haven in this city. What all this adds up to then is ceiling price for lands! If the price of lots for sale is beyond the reach of some people who want to buy, the city would bring down the price to the level the poor could afford. That the city authorities have no power to do such thing, however altruistic may be the motive behind their action, seems too obvious for argument.

In the second place, the remaining lots, after eliminating the lots that have already been alienated, are said to be about one-half of the entire subdivision, or smaller than the land involved in the Guido case. If the intention is to expropriate the lots that have been disposed of but have not been fully paid for, along with the rest of the entire tract, the purchasers have not been made parties, unlike the buyers to whom title has been issued and who have been included in the complaint but as to whose lots the complaint has been dismissed.

The order is reversed and the action dismissed with costs of both instances against the plaintiff.

(Sgd.) PEDRO TUAZON

WE CONCUR:

(Sgd.) MANUEL V. MORAN
 " RICARDO PARAS
 " F. R. FERIA
 " GUILLERMO F. PABLO
 " CESAR BENGZON

(Sgd.) SABINO PADILLA
 " MARCELIANO R. MONTEMAYOR
 " ALEX. REYES
 " FERNANDO JUGO
 " FELIX BAUTISTA ANGELO

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

ANGEL GENUINO v. GERONIMO PRUDENTE, ET AL
Case No. 196
Promulgated: October 28, 1951

DECISION

PEREZ, M.:

This is the petition of Angel Genuino of General Trias, Cavite, for the following:

"(1) To declare that no proceedings of registration as contemplated by the Election Code was held in all the six (6) days of registration in the said precinct No. 20 of the barrio of Santiago, General Trias, because the Members of the Board of Election Inspectors failed to act as they could not act with freedom due to the atmosphere of fear and terrorism created and imposed by Teodoro Loyola and his armed followers, not only upon the Board but also upon those inhabitants of the said barrio who were compelled to register not only twice but several times under fictitious names in order to unduly increase the number of the registered voters in the said barrio; to declare null and void the registry list of voters prepared under the circumstances described in the body of the petition and in the preceding clause, the same not being the registration provided by law, under the inherent power of the Commission to promote a free, clean and orderly election; to order a new registration for the real, genuine qualified voters of the said barrio to be held in such a place as the Commission might indicate;

"(2) To order the immediate transfer of the polling place in the said precinct No. 20 from the barrio to the poblacion nearest the public plaza or the municipal building, in order to prevent the respondent Teodoro Loyola and his armed henchmen to influence not only the Members of the Board but also such qualified voters as might want to register and generally to give such Members of the Board and the qualified voters of the barrio of Santiago full and complete freedom to exercise their rights of suffrage;

"(3) To order the immediate criminal prosecution of Teodoro Loyola, Felicidad Gemo, Zosimo Alcaraz, one Neong and others for serious violation of the Election Code; and

"(4) To order that all election paraphernalia, especially the registry list and the voters affidavits, be brought to this Honorable Commission for inspection by the same."

The respondents deny the allegations of the petitioner that the registration of voters in the six days fixed by law in Precinct No.

20, General Trias, Cavite, has been accomplished through fraud, violence, duress, and wholesale irregularities and contend that this Commission has no jurisdiction to annul the list of voters prepared by the board of inspectors in said precinct.

Before considering the other questions at issue in this case, we must pass first upon the contention of the respondents that this Commission has no jurisdiction to entertain the petition to declare null and void the list of voters prepared by the board of inspectors of Precinct No. 20. The contention of the respondents is not only fundamental to the case before us, but it also raises a question which strikes at the very objective of the creation of the Commission and the nature of the powers granted to it. We find it therefore fitting and necessary to discuss the organization of this Commission and analyze the nature and objects of the powers granted to it in the Constitution and in the existing election laws.

The Commission on Elections, is a direct creation of the Constitution, Article X, Section 1 of which expressly provides that "there shall be an independent Commission on Elections composed of a Chairman and two Members to be appointed by the President with the approval of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed." This independence of the Commission was principally intended to remove all interference from both the Executive and Legislative branches of the Government, except as provided in the Constitution, and as further strengthened by the Constitutional provision that "the Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution." The Constitution has further provided other guarantees whereby the members of the Commission on Elections are free from undue interference from other departments of the Government, as well as from financial problems and private business entanglements so that the honest, fearless and uncompromising interpretation and enforcement of the provisions of the election law is assured.

With respect to the powers of the Commission, Section 2, Article X of the Constitution provides as follows:

"Sec. 2. The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest elections. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court.

"No pardon, parole or suspension of sentence for the violation of any election law may be granted without the favorable recommendation of the Commission."

It is clear from the foregoing constitutional provisions that the Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and to decide, save those involving the right to vote, all administrative questions affecting the elections. The Constitution further recognizes the full weight and scope of its mandate to the Commission on Elections to insure free, orderly and honest elections by placing at the disposal of the Commission on Elections all law enforcement agencies and instrumentalities of the Government to act as its deputies.

To strengthen further the powers of the Commission to prevent the traffic of the right of suffrage or the infringement of the prohibitive provisions of the election laws, the Constitution prohibits the pardon, parole or suspension of sentence of any person found guilty of violations of the election laws, unless the Commission should itself so recommend favorably such pardon, parole or suspension of sentence.

In the enforcement and administration of all laws relative to the conduct of elections, the first duty of the Commission is to set in motion all the multifarious preparatory processes ranging from the purchase of election supplies, printing of election forms and ballots, appointments of members of the boards of inspectors, establishment of precincts and designation of polling places to the preparation of the registry lists of voters, so as to put in readiness on election day the election machinery in order that the people who are legally qualified to exercise the right of suffrage may be able to cast their votes to express their sovereign will. It is incumbent upon the Commission to see that all these preparatory acts will insure free, orderly and honest elections. All provisions of the Revised Election Code contain regulations relative to these processes preparatory for election day. It is incumbent upon the Commission on Elections to see that all these preparatory acts are carried out freely, honestly and in an orderly manner. It is essential that the Commission or its authorized representatives, in establishing precincts or designating polling places, must act freely, honestly and in an orderly manner. It is also essential that the printing of election forms and the purchase of election supplies and their distribution are done freely, honestly and in an orderly manner. It is further essential that the political parties or their duly authorized representatives who are entitled to be represented in the boards of inspectors must have the freedom to choose the person who will represent them in each precinct throughout the country. It is further essential that once organized, the boards of inspectors shall be given all the opportunity to be able to perform their duties in accordance with law freely, honestly and in an orderly manner, individually and as a whole. In other words, it is the duty of the Commission to see that the boards of inspectors, in all their sessions, are placed in an atmosphere whereby they can fulfill their duties without any pressure, influence and interference from any private person or public official. All these preparatory steps are administrative in nature and all questions arising therefrom are within the exclusive powers of the Commission to resolve. All irregularities, anomalies and misconduct committed by any

election official in these preparatory steps are within the exclusive power of the Commission to correct. Any erring official must respond to the Commission for investigation. Of these preparatory acts, the preparation of the permanent list of voters is the matter involved in this case, which to our mind is completely an administrative matter.

The respondents contend that the act of preparing the permanent list of voters involves the right to vote and that therefore the Commission has no jurisdiction to pass upon the matter. It is admitted that any question which involves the right to vote cannot be passed upon by this Commission because it is a judicial question which has been placed expressly by the Constitution outside of the competency of this Commission to decide. But for purposes of clarification it should be stated here that the judicial question of the right to vote has as its main objective the determination of whether a particular person has all the qualifications required by law to exercise the right of suffrage. The question of the right to vote affects directly the individual person whose right is being questioned and such person is a necessary and essential party to such a case. This question when brought to court presses upon the issue of whether a board of inspectors has properly decided that a specific person possesses all the qualifications of an elector and therefore entitled to be included in the list of voters prepared by the board of inspectors of the precinct wherein he resides. This is not the question now before this Commission. The question before us does not concern any particular individual or voter registered in Precinct No. 20 of General Trias, Cavite. The question before us does not single out the right of any particular individual to be registered in said Precinct No. 20 of General Trias. The petitioner does not seek to cancel from, or include in, the registry list of voters any particular elector. The petitioner does not question any decision of the board including in the list of voters any particular person for lack of qualification. Rather, the petitioner requests this Commission to set aside totally the registry list of voters prepared by the Boards of Inspectors of Precinct No. 20 and to order the preparation of a new list on the ground that the present list had been prepared against the free will of the board of inspectors, contrary to the provisions of the Revised Election Code and the instructions of this Commission and against all conceptions of honesty. In requesting this Commission to annul the registry list of voters in Precinct No. 20, General Trias, Cavite, his right to vote is not touched upon. The petitioner merely requests that the preparation of the registry list of Precinct No. 20 be conducted anew in a free, orderly and honest manner. The right of any individual to be included in or excluded from said list is not at issue. The Commission, in considering whether it should set aside the registry list of Precinct No. 20, does not seek to instruct the board of inspectors as to how it shall render its decision when a person applying for registration appears for inclusion of his name in the list of voters. On the contrary, the Commission in considering the petition desires to fulfill its bounden duty to see that the board of inspectors, in receiving applications for registration, will be able to decide the right of such applicant to be re-

gistered in the list of voters in a manner that all their actuations will be free, orderly and honest.

It may be contended that there is no specific provision of law empowering the Commission on Elections to declare as null and void any registry list of voters. This is an erroneous impression because the very provisions of the Constitution vest exclusively upon the Commission on Elections all authority to enforce and administer the laws relative to the conduct of elections. There is no question that the laws regulating the manner of how registration shall be conducted are laws relative to the conduct of elections. In other words, it is the duty of the Commission on Elections to see to it that the entire registration process and the preparation of the registry lists of voters as a whole are accomplished in accordance with the existing laws. It follows, therefore, that if certain registration and the consequent preparation of the registry list of voters are done in utter disregard of the procedure prescribed by law, the Commission has the duty and power to order that they should be again performed in accordance with law to correct whatever error might have been committed or to annul the entire registration and order a new one made to insure the preparation of a new list of voters which shall be in complete accord with the requirements of law and instructions of this Commission. It is a well-established doctrine that an express power granted to any administrative body carries with it those implied or incidental powers which are necessary to make these express powers effective. We consider the power of the Commission to annul a list of voters as an incident to its express power to see to it that the registration of voters are carried out in accordance with law. To deny this power to the Commission would be to deny the very reason for which it has been created by the Constitution.

It is timely to quote in this case the following excerpt from the decision penned by Chief Abad Santos of the Supreme Court of the Philippines in the case of *Juan Sumulong vs. The Commission on Elections*, G.R. No. 48609, dated October 10, 1941:

"The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this Court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created—free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this Court should not interfere. Politics is a practical matter, and political questions must be dealt with realistically—not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies is in a peculiarly advantageous position to decide complex political questions."

In the light of all the foregoing considerations, we hold that the Commission has jurisdiction to entertain the question submitted by petitioner. We now proceed to a determination as to the veracity of the facts alleged by petitioner.

From the admission of Respondent Felicidad Gemo, chairman of the board of inspectors of Precinct No. 20, General Trias, Cavite, Respondent Sosimo Alcaraz, member of the board of inspectors of the aforementioned precinct nominated by the Liberal Party, and Respondent Marcelina Saliba, poll clerk of the said board of inspectors, it appears that 569 voters were registered in the list of voters in said precinct. The same respondents admitted that respondent Sosimo Alcaraz prepared in his own handwriting around 426 voter's affidavits among the 569 affidavits accomplished; that they agreed that the applicants for registration may take their oath before either the chairman or poll clerk, but that in the actual signing of the oath, it was Inspector Sosimo Alcaraz who would sign the subscription of the oath, notwithstanding that the oath was not taken before him; that Inspector Alcaraz signed his name in these 426 affidavits in 15 different ways; that when his attention was called to the 15 different signatures, Inspector Alcaraz replied that his different signatures were caused by the necessity of hurrying in signing his name since he had to sign the subscription to the oaths in 434 voter's affidavits; and that said respondent Alcaraz signed in only one manner in the four list of voters (E.F. 11) which contained his more than one thousand signatures. The aforesaid three respondents also admitted that although they did not personally know several applicants for registration, they did not, contrary to the existing rules and regulations, bother to request for identification but simply and immediately included them in the list. The same respondents further admitted that they did not question the right of Gavino Gutierrez to act as member of the board of inspectors representing the Nacionalista Party even though said Gavino Gutierrez could not or failed to produce any appointment or any written authority to sit in the board, and that in fact said Gavino Gutierrez prepared the voter's affidavits of 77 applicants and signed the subscription to their oaths. The same respondents admitted that Teodoro Loyola, candidate for vice-mayor for General Trias was allowed to go in and out of the polling place merely to give cigarettes to persons in the polling place although they know full well that he was a candidate for the office of vice-mayor in the forthcoming election and that he had no right to stay in the polling place. The same respondents admitted that they have read all the instructions of this Commission and the provisions of the Revised Election Code and that they knew that the agreement which they made among themselves that the oaths shall be taken before the chairman or the poll clerk but that the signatures to the subscription of said oaths shall be that of Inspector Sosimo Alcaraz is against and in violation of the said instructions of this Commission and the Revised Election Code. It also appears that in the apparent irresponsible procedure followed by the respondent members of the Board of Inspectors, three (3) voter's affidavits were not even signed by any member of the Board of Inspectors and one (1) voter's affidavits was signed by M. Jose, who, according to

Inspector Alcaraz himself was never authorized to assume as member of the board. These facts alone, without considering the contradictory statements among the three mentioned respondents themselves, their flimsy explanations, their hesitancy in answering questions as to why they insisted in committing acts which they knew and admitted are against our express instructions and the Revised Election Code, and their apparent unconcern as to whether or not they were complying with their duties in accordance with the general instructions and the law, constitute to our mind sufficient proofs to show that the registration of voters during the six days fixed by law in Precinct No. 20, General Trias, was made completely in contravention of the General Instructions of this Commission and the Revised Election Code. The respondent members of the board of inspectors have gone to the extent of considering the matter of the registration of voters as a farce and as an empty show. This Commission will not and cannot tolerate even for just a minute such a capricious travesty of the law. Neither will it permit anyone to ridicule the very principle upon which the foundation of our democratic way of life is based. We cannot find words sufficient to condemn their acts. We have very well grounded fears that to countenance such gross irresponsibility would mean to sow the seeds of violent discontent.

Yet the foregoing contemptible acts were not enough. The whole procedure of registration had to be further tainted and vitiated by terrorism. The testimony of Andres N. Nocon, inspector of the Nacionalista Party for the said precinct, who rendered services as such on October 12 and 13, 1951 deserves serious consideration. Both in his direct testimony and especially in his cross examination Inspector Nocon has clearly shown how he was subjected to threats and intimidation by Teodoro Loyola, a candidate for vice-mayor in the municipality of General Trias. Inspector Nocon testified that in the morning of October 12 Teodoro Loyola, who had no right to stay within the polling place during the meeting of the board of inspectors entered and called him and brought him to a room adjacent to the room where the board of inspectors was holding its meeting and pointing a revolver at his chest warned him not to make any objection to the procedure being followed in the registration of voters in the said precinct, otherwise he would be liquidated. After this warning and upon their return to the session room Teodoro Loyola sat beside Inspector Nocon continuing his threatening attitude. After the members of the board of inspectors took their lunch on October 12, several army soldiers arrived at the house where they were eating and again before Inspector Nocon could talk to the soldiers, he was brought to a corner by Candidate Teodoro Loyola and was threatened to be liquidated if he would make any report to the soldiers relative to the illegal acts committed in the registration of voters. When they arrived in the polling place to resume the registration, Candidate Loyola brought Inspector Nocon to the window of the room where they were holding session to show him about 35 armed men who were in the bamboo grove behind the schoolhouse and who according to Teodoro Loyola were under his control.

Considering together all these evidence submitted, there is no doubt that the members of the said precinct were completely at the mercy and under the control and whim of Candidate Teodoro Loyola who came in and out of the polling place at will. The authority and power of the board of inspectors of Precinct No. 20 were completely nullified because Candidate Teodoro Loyola and Inspector Sosimo Alcaraz, representing the Liberal Party, ordered and dictated the manner of how the registration of voters was to be carried on in Precinct No. 20, General Trias, Cavite, in contravention of existing election laws.

In view of all the foregoing, it is hereby ordered: (1) That the registration of voters in Precinct No. 20, General Trias, Cavite, be immediately set aside and the list of voters for the forthcoming election prepared by the board of inspectors of said precinct on September 28 and 29, October 5, 6, 12 and 13, 1951 be declared null and void; (2) That a new registration of all the qualified voters residing in Precinct No. 20 of General Trias, be held on November 1 and 2, 1951; (3) That Chairman Felicidad Gemo, Member Sosimo Alcaraz and Poll Clerk Marcelina Saliba, all of Precinct No. 20, General Trias, Cavite, be immediately removed from office as such chairman, member and poll clerk, without prejudice to whatever criminal action that may be taken against them and administrative action against the chairman and poll clerk as public school teachers; and (4) That copy of this decision together with the transcription of the testimony taken by the Commission in this case be referred to the Provincial Fiscal of Cavite for such criminal action as may be necessary against Teodoro Loyola, candidate for vice-mayor in General Trias, Chairman Felicidad Gemo, Member of the Board of Inspectors Sosimo Alcaraz, and Poll Clerk Marcelina Saliba, all of Precinct No. 20, General Trias, after further investigation of the matter.

With respect to the petition for the transfer of the Polling place for Precinct No. 20, the Commission resolved that the polling place for Precinct No. 20 shall be at the Schoolhouse of Barrio Santiago until further orders.

Let the Secretary of the Commission furnish copies of this decision to all parties concerned.

SO ORDERED.

(Sgd.) RODRIGO D. PEREZ, JR.
Member

I CONCUR:

(Sgd.) LEOPOLDO ROVIRA
Member

IMPERIAL, CH., concurring;

I CONCUR in the decision, and hereby add the following considerations:

The Constitution provides: First, that there shall be an independent Commission on Elections; Second, that the Commission on Elections shall have exclusive charge of the enforcement and ad-

ministration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law; Third, that it shall decide all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors; and Fourth, that other agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly and honest elections.

The procedure for the conduct of elections are provided for in the Revised Election Code, in the General Instructions approved August 21, 1951 by the Commission on Elections, and the other orders promulgated from time to time by the Commission, including the forms and other paraphernalia necessary for the holding of the elections in accordance with law. This procedure as legally laid out, regulate firstly, the preparatory acts for the exercise of the right of suffrage on the day of the elections; and secondly, all the acts necessary and essential during and after the actual votation itself, terminating on the proclamation of the result of the elections.

The authority of the Commission on Elections to entertain and decide whatever questions that may arise referring to any of these phases or any of these series of acts, is patent from the power-vesting provision of the constitution in its Sec. 2, Art. X, as above-stated. The Constitution empowers the Commission on Elections to decide all administrative questions affecting elections, save only those "involving the right to vote."

The issue raised in the present case, is whether or not the annulling of the registration in a whole precinct, in the face of clear and convincing evidence of fraud, irregularities and illegalities involves the delicate question of the individual voters "right to vote." In fine, and reduced to its barest terms, the issue at hand is the interpretation of the celebrated phrase, "involving the right to vote."

The list of voters is entirely different from the right to vote. The right to vote is a substantial one, which the law determines by requiring certain specific qualifications. The Registry List of Voters does not make a person a qualified voter. In the case of YRA vs. ABANO (52 Phil. 380-385), the Supreme Court declared: "Registration regulates the exercise of the right of suffrage. It is not a qualification for such right," and it cited the decision of the Supreme Court of Kentucky in the case of MEFFERT vs. BROWN (1909, 132 Ky. 201), where it was succinctly said that "the act of registering is only one step towards voting, and it is not one of the elements that makes a citizen a qualified voter. x x x One may be a qualified voter without exercising the right to vote. Registering does not confer the right; it is but a condition precedent to the exercise of the right." And well may we add: The right to vote pre-exists the registration because it emanates from the law and not from the registration. After all, when a qualified voter fails to register, it does not mean that he has lost his substantive and personal right to vote.

If the act of registering is only one step towards voting and it is not one of the elements that makes a citizen a qualified voter, it can be safely said that the act of registering is merely procedural,

and as such should come under the exclusive determining power of the Constitutional body, in this case the Commission on Elections, who has exclusive charge of the enforcement and administration of all laws relative to the conduct of elections. The procedure to be followed regarding the manner of conducting the election is under the exclusive power of the Commission. The qualifications required by law as to who can vote and/or who cannot vote is a question involving the right to vote and falls under the jurisdiction of the Courts. In other words, the first case refers to how a qualified voter may validly exercise his right to vote and the second case refers to the right to vote itself.

It is, therefore, our considered opinion, that in annulling a voter's list, the right to vote is not touched upon, inasmuch as the registration, which as we have already said is only one step towards voting, is the only thing affected by the nullification and not the right to vote, because this right continues preserved as established by law and will be protected by the fixing of a new date for registration.

The law in recognizing the importance of electoral registration has taken all the precautions by prescribing specific regulations which should be complied with in the compilation of the registry list of voters. When the evidence shows that these regulations have been wantonly transgressed and infringed resulting in the registration being made through wholesale fraud including the wholesale use of fictitious names and/or through the use of force, threats and violence upon the members of the board of inspectors and/or upon the voters who registered themselves, it is evident that this irregularity and illegality affects one of the most important phases in the electoral machinery, that is certainly not conducive to conducting clean, honest and free elections, which is the ultimate and primary object of the creation of the Commission on Elections. If the Commission does not have the administrative power and authority to remedy this anomalous situation by annulling the entire registration in precincts where these illegalities were committed, on the mere pretext that the question involves the right to vote, the avenue is opened wide for the complete paralyzation of the Commission on Elections, thereby preventing it from attaining the purpose for which it was created. All the phases of the conduct of elections, beginning from the establishment of the election precincts down to and including the proclamation of the results of the elections, can, by incidence, be challenged by raising collaterally the remote question that said phase or phases involve the right to vote. For example, in the designation of polling places, the authority of the Commission on Elections can be questioned alleging as pretext that the designation of the election precinct is a question that involves the right to vote, in view of the fact that the voter is compelled to exercise his right to vote at a designated place, and the designation will, therefore, be argued as a limitation on the right to vote, and as such is not within the power and authority of the Commission. Again, it can also be alleged that it is a question involving the right to vote for the Commission on Elections to annul the canvass made by a Municipal Board of Canvassers who disregarded the correct

election returns and instead took into account the fraudulent one. Nevertheless, the Supreme Court in the case of *MINTU, et. al., vs. ENAGE, et al.*, (G. R. No. L-1834) held that the Commission on Elections did not act in excess of its jurisdiction or with grave abuse of discretion in annulling the canvass made by the Municipal Board of Canvassers of Tanza, Cavite, of the votes cast in only some of the 18 precincts.

We are aware of the contention that inasmuch as the Commission on Elections does not have the power to include or exclude definite individual voters from the Registry List of Voters, much less should said Commission have the power to cancel a whole list of voters. It is our opinion that this contention or argument is not properly founded in the issues at hand. The inclusion or exclusion of an individual voter from the Registry List of Voters goes to the very substantive question as to whether or not the individual concerned possesses the proper qualifications to vote as required by law. The nullification of the entire Registry List of Voters on the other hand does not consider the question of qualifications of each individual, but only whether or not said list was made in accordance with the rules and regulations prescribed by law. The inclusion and/or exclusion of individual voters from the Registry List of Voters is a question to be properly submitted to the courts of justice and not to the Commission on Elections, because such question refers to the voter's qualification and the determination, thereof involves the substantive right of the voter to vote; and this question cannot be properly entertained by the Commission on Elections because the Constitution expressly excludes this function from its powers and authority.

(Sgd.) DOMINGO IMPERIAL
Chairman

RDP-rf

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

ANGEL GENUINO v. REMIGIO PRUDENTE, ET AL
Case No. 196
Promulgated: November 3, 1951

RESOLUTION

The petitioner, thru his Counsel, requests to set aside new dates for registration for Precinct No. 20 of General Trias, Cavite, on the following grounds:

(1) That the Commission has broad and inherent powers to set new dates for registration after annulling the registry list of voters for Precinct No. 20, Gral. Trias, without resorting to the provision of Section 9 of the Revised Election Code and that the approval of the President of the Philippines is not necessary because it is an independent Constitutional body and because it has exclusive powers to enforce and administer all laws regarding election;

(2) That the Commission even if it has to set new registration dates in Precinct No. 20 of Gral. Trias under the provision of Section 9 of the Revised Election Code, it does not need the approval of the President of the dates fixed by the Commission for the new registration, because the provision requiring the approval of the President in Section 9 is unconstitutional and void; and

(3) That should the Commission decide to deny this petition for any of the grounds above-mentioned, an immediate resolution thereon should be rendered to enable the petitioner to resort to proper proceedings to the Supreme Court;

The Commission after considering the petition resolved to deny as it hereby denies the said petition.

Let the Secretary of the Commission furnish copies of this resolution to all parties concerned.

SO ORDERED.

(Sgd.) DOMINGO IMPERIAL
Chairman

(Sgd.) LEOPOLDO ROVIRA
Member

(Sgd.) RODRIGO D. PEREZ, JR.
Member

Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

ANGEL GENUINÓ v. REMIGIO PRUDENTE ET AL
Case No. 196
Promulgated: November 5, 1951

RESOLUTION

A motion for reconsideration having been filed by Counsel for the respondents stating:

1. That the decision of the Commission is contrary to law;
and
2. That the decision of the Commission is contrary to the provisions of the Constitution which prohibits the Commission to decide questions involving the right to vote.

After hearing the motion, the Commission resolved to deny, as it hereby denies, said motion for reconsideration.

SO ORDERED.

(Sgd.) DOMINGO IMPERIAL
Chairman

(Sgd.) RODRIGO D. PEREZ, JR.
Member

(Sgd.) LEOPOLDO ROVIRA
Member

Republic of the Philippines
SUPREME COURT
Manila

REMIGIO PRUDENTE ET AL. v. ANGEL GENUINO, ET AL.,
G. R. No. L-5222 *

Promulgated: November 6, 1951

RESOLUTION

"The petition filed in G. R. No. 5222, Remigio Prudente, et al. vs. Angel Genuino, et al., to review on certiorari the decision of the Commission on Elections, is dismissed for lack of merit."

ANGEL GENUINO v. THE COMMISSION ON ELECTIONS,
G. R. No. L-5223 *

Promulgated: November 7, 1951

RESOLUTION

"In G. R. No. L-5223, Angel Genuino vs. The Commission on Elections, wherein the petitioner prays that the respondent Commission on Elections be required to order a new registration of voters in Precinct No. 20 of General Trias, Cavite, without seeking the approval of the President;

"It appearing that the basis of the petition is the President's communication withholding his approval to the new registration of voters in that precinct in view of the pendency in this Court of an appeal to review the ruling of the Commission on Elections; and

"It appearing further that this Court has already acted on the appeal, practically upholding the power of the Commission on Elections under the circumstances;

The petition is dismissed.

* These resolutions in effect uphold the decision of the Commission on Elections in the case of Angel Genuino v. Remigio Prudente, *et al.*, prom. October 28, 1951 and the resolution in the same case promulgated November 3, 1951.