Republic of the Philippines
Supreme Court
Manila

EN BANC

JUSTO Q. SINAG, ALEJANDRO E. LUISTRO, RAULITO C. PASTORIN, RUBEN M. SANCHEZ, RAMIRO R. BAUTISTA, EDUARDO C. DEL ROSARIO, REYNALDO R. DE LOS REYES, MARCELINO T. MACALALAD, MARY ROSE D. PASNO, MARIO R. SECRETO, MERCELITA R. ROSALES, PEDRO CANOBAS, RICARDO P. SECRETO, ROCHELLE S. DE JOYA, MYRA A. HERNANDEZ, ROMEO R. DE LOS REYES, JUAN MATALOG, CONRADO R. BAQUE, JOSELITO S. SECRETO, HERMOGENES DE LEON, ISABELO B. SECRETO, DOMINGO ESPIRITU, SEGUNDO T. TIVIDAD, AZUCENA M. DIGNO, BENITO JUVY P. GUINTO, FLAVIANO V. CAIBIGAN, NAPOLEON A. SINAG, ERMEDIO B. GADIAN, LEON CAISIP, FLORENCIA C. SANGLAY, JUDING CANELA, RODELITO PASTORIN, TERESA C. NOCHE, LYDIA P. ELADIA, LEONIDA C. MATALOG, ELSA NOAY, VIOLETA M. DE LOS REYES, GERONIMA G. SAGALA, ANNALEAH S. PASTORIN,

G.R. No. 234228

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,*
LAZARO-JAVIER,
INTING,
ZALAMEDA,**
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

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* On official leave.
** No part due to prior participation in the proceedings before the Court of Appeals.

AIDA S. VALENCIA, ELEONORA V. SALEM, CASIANA P. RELEVO, VILMA C. DIGNO, AMOR QUIROZ, PILAR PATULOT, ADORA SALAZAR, AMELIA MENDOZA, NENITA V. MENDOZA, PRECIA NAVARROZA, TRINIDAD V. SINAG, LUCIANO M. PATULOT, BERNARDO V. MERCADO, FERMIN M. DE LEON, EDUARDO R. MENDOZA, and LIGAYA C. MERCADO,

Petitioners,

-versus-

THE HONORABLE SANGGUNIANG PANLALAWIGAN NG BATANGAS, THE HONORABLE OFFICE OF THE PROVINCIAL ASSESSOR OF BATANGAS, THE HONORABLE OFFICE OF THE PROVINCIAL TREASURER OF BATANGAS, THE HONORABLE OFFICE OF THE MUNICIPAL TREASURER OF CALACA, BATANGAS, and BARANGAY SAN RAFAEL, CALACA, BATANGAS,

Respondents.

Promulgated:

February 25, 2025

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DECISION

GESMUNDO, *C.J.*:

This Appeal by *Certiorari*[1] seeks to reverse and set aside the October 26, 2016 Decision[2] and the August 16, 2017 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 104369, which dismissed the appeal filed by Justo Q. Sinag, Alejandro E. Luistro, Raulito C. Pastorin, Ruben M. Sanchez, Ramiro R. Bautista, Eduardo C. Del Rosario, Reynaldo R. De los Reyes, Marcelino T. Macalalad, Mary Rose D. Pasno, Mario R. Secreto, Mercelita R. Rosales, Pedro Canobas, Ricardo P. Secreto, Rochelle S. De Joya, Myra A. Hernandez, Romeo R. Delos Reyes, Juan Matalog, Conrado R. Baque, Joselito S. Secreto, Hermogenes De Leon, Isabelo B. Secreto, Domingo Espiritu, Segundo T. Tividad, Azucena M. Digno, Benito Juvy P. Guinto, Flaviano V. Caibigan, Napoleon A. Sinag, Ermedio B. Gadian, Leon Caisip, Florencia C. Sanglay, Juding Canela, Rodelito Pastorin, Teresa C. Noche, Lydia P. Eladia, Leonida C. Matalog, Elsa Noay, Violeta M. De Los Reyes, Geronima G. Sagala, Annaleah S. Pastorin, Aida S. Valencia, Eleonora V. Salem, Casiana P. Relevo, Vilma C. Digno, Amor Quiroz, Pilar Patulot, Adora Salazar, Amelia Mendoza, Nenita V. Mendoza, Precia Navarroza, Trinidad V. Sinag, Luciano M. Patulot, Bernardo V. Mercado, Fermin M. De Leon, Eduardo R. Mendoza, and Ligaya C. Mercado (Sinag et al.), former officials and residents of Barangay Dacanlao, Calaca, Batangas (Brgy. Dacanlao), on the ground of improper remedy.

According to the CA, the proper remedy should have been to file a petition for review on *certiorari* under Rule 45 of the Rules of Court directly with this Court because the issues raised involved pure questions of law.

Antecedent Facts

The present controversy traces its roots from a dispute over barangay shares in real property taxes (RPT). Barangay San Rafael, Calaca, Batangas (Brgy. San Rafael) purportedly issued a resolution requesting the Municipal Treasurer of Calaca, Batangas to withhold the amount of PHP 41,435,765.19 representing its share in the RPT collected from FELS Energy Living Stone, Incorporated. Sinag et al., on the other hand, argued that the collected RPT

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1 *Rollo*, pp. 9–53.

2 *Id.* at 55–69. The October 26, 2016 Decision in CA-G.R. CV No. 104369 was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a Member of the Court) of the Eleventh Division, Court of Appeals, Manila.

3 *Id.* at 71–74. The August 16, 2017 Resolution in CA-G.R. CV No. 104369 was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a Member of the Court) of the Former Eleventh Division, Court of Appeals, Manila.

rightfully belongs to Brgy. Dacanlao, as Brgy. San Rafael was already abolished and had been merged with Brgy. Dacanlao.[4]

On June 23, 1997, the Sangguniang Panlalawigan of Batangas (Sanggunian) enacted Ordinance No. 05, series of 1997 (Ordinance No. 5), titled, "*Declaring the Abolition of Barangay San Rafael and its Merger with Barangay Dacanlao, Municipality of Calaca and Instructing the COMELEC and All Other Concerned Agencies as Mentioned in Sections 9 & 10 of the Local Government Code to Effect the Mandatory Requirements to Complete the Said Abolition in the Period Set Forth in the Mentioned Section of the Local Government Code.*"[5]

In connection thereto, the Commission on Elections (COMELEC) issued Resolution No. 2987, providing the rules and regulations for the conduct of a plebiscite on February 28, 1998 for the implementation of Ordinance No. 5.[6]

In opposition, the residents and officials of Brgy. San Rafael filed a petition for the annulment of Ordinance No. 5 and COMELEC Resolution No. 2987, with prayer for the issuance of a temporary restraining order (TRO) to enjoin their implementation, before Branch 11, Regional Trial Court of Balayan, Batangas (RTC Branch 11), which was docketed therein as Civil Case No. 3442.[7]

On February 25, 1998, RTC Branch 11 denied the prayer for a TRO on the ground that it had no jurisdiction over the case. It opined that actions questioning an act, resolution, or decision of the COMELEC must be brought before this Court and not with the RTC.[8]

The case was elevated via a petition for review on *certiorari* filed before the Court on February 27, 1998 which was docketed as *G.R. No. 132603*.[9]

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4 *Id.* at 13–15.
5 *Id.* at 76–78.
6 *Id.* at 57.
7 *Id.* at 57–58.
8 *Id.* at 58.
9 *Id.*

Meanwhile, the COMELEC conducted a plebiscite on February 28, 1998. Majority of the voters ratified the abolition of Brgy. San Rafael and its merger with Brgy. Dacanlao.[10]

In its Resolution dated March 10, 1998 issued in *G.R No. 132603*, the Court directed the parties to maintain the *status quo* prevailing at the time of the filing of the petition.[11]

On September 18, 2000, the Court rendered a Decision in *G.R. No. 132603* upholding the validity of COMELEC Resolution No. 2987. The Court ruled that the issuance of COMELEC Resolution No. 2987 was a ministerial duty of the COMELEC that was enjoined by law and was part of its administrative functions; hence, the same could be questioned in an ordinary civil action before the RTC.[12] *Consequently, RTC Branch 11 was directed to proceed in resolving Civil Case No. 3442 as to the validity of Ordinance No. 5. The Court ordered that the execution of the result of the February 28, 1998 plebiscite be deferred depending on the outcome of Civil Case No. 3442.* The dispositive portion of the September 18, 2000 Decision reads:

> **WHEREFORE**, the petition for review is hereby *GRANTED*, and the assailed Order dated February 25, 1998, of the Regional Trial Court of Balayan, Batangas, Branch XI is hereby *SET ASIDE* and *ANNULLED*. The Regional Trial Court of Balayan, Batangas, Branch XI is ordered to proceed with dispatch in resolving Civil Case No. 3442. The execution of the result of the plebiscite held on February 28, 1998 shall be deferred depending on the outcome of Civil Case No. 3442.
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> **SO ORDERED**.[13] (Emphasis in the original)

In compliance with the above directive of the Court, Branch 9, RTC of Balayan, Batangas (RTC Branch 9) rendered its November 15, 2006 Decision[14] in Civil Case No. 3442, dismissing the petition for annulment for failure to overcome, by incontrovertible evidence, the presumption of constitutionality and validity of Ordinance No. 5.[15]

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10 Exhibit "H," Folder of Exhibits, p. 64, Certificate of Canvass of Votes and Proclamation by the Plebiscite Board of Canvassers.

11 *Salva v. Makalintal*, 394 Phil. 855, 861 (2000) [Per J. Buena, *En Banc*].

12 *Id.* at 866.

13 *Id.* at 867–868.

14 *Rollo*, pp. 79–88. The November 15, 2006 Decision in Civil Case No. 3442 was penned by Executive Judge Elihu A. Ybañez of Branch 9, Regional Trial Court, Balayan, Batangas.

15 *Id.* at 88.

Aggrieved, the residents and officials of Brgy. San Rafael elevated the case to the CA which was docketed therein as *CA-G.R. CV No. 88994*.[16]

Meanwhile, during the pendency of the appeal before the CA, the Sangguniang Pambarangay of San Rafael passed Resolution No. 29-09 dated June 13, 2009, titled, "*Kapasiyahang Humihiling sa Kagalang-galang na Sangguniang Panlalawigan ng Batangas na Muling Tangkilikin ang San Rafael bilang Barangay*," which was included in the Order of Business of the 26th Regular Session of the Sanggunian on July 30, 2009.[17] Items No. 11 and 13 of the Order of Business of the 26th Regular Session of the Sanggunian read:

> 11. Resolusyon No. 29-09 ng Barangay San Rafael, Calaca na may petsa ika-13 ng Hunyo, 2009 na may pamagat Kapasiyahang humihiling sa Kagalang-galang na Sangguniang Panlalawigan ng Batangas na muling tangkilikin ang San Rafael bilang Barangay.
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> . . . .
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> 13. 1st Endorsement dated 15th of July 2009 from Barangay Chairman Justo Q. Sinag of Barangay Dacanlao, Calaca re: Requesting your legal opinion and comments on the attached letter concerning the legality of withholding release of barangay RPT funds contrary to sec. 271 (d) of RA 7160 and also your possible intervention on the enforcement of the said provision.[18]

The Sanggunian referred Resolution No. 29-09 to its Committee on Laws, Rules and Ordinances, Committee on Ways and Means, and Committee on Barangay Affairs. The matter was taken up during a joint committee hearing on August 4, 2009, during which a Certification[19] from the National Barangay Operations Office was presented, explaining that Brgy. San Rafael was listed in the master list of barangays as of March 31, 2001; that it was abolished per Ordinance No. 5, but it was reinstated per Supreme Court decision in *G.R. No. 132603* and Memorandum issued by the Department of Interior and Local Government on February 12, 2001.[20]

The said committees submitted their Committee Report[21] recommending the passage of an ordinance to repeal Ordinance No. 5, considering that the condition for its enactment—the reduction in the number

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16 *Id.* at 12.
17 *Id.* at 59; RTC records, pp. 97–98.
18 RTC records, p. 72.
19 *Id.* at 82.
20 *Rollo*, p. 59.
21 *Id.* at 94–95.

of residents of Brgy. San Rafael below the minimum prescribed in the Local Government Code (LGC)—was no longer present.[22]

During the 27th Regular Session of the Sanggunian on August 6, 2009, Attys. Florencio De Loyola and Joel Atienza, both Provincial Board Members and Members of the joint committees, took up the Committee Report during the privilege hour of the said legislative session even though the same was not calendared for consideration on such session date. Citing time constraints, they moved for the suspension of the rules of the Sanggunian to exempt the proposed ordinance from the three-reading rule. Upon such motion, the Sanggunian suspended its own rules and expressly exempted the proposed ordinance from the three-reading rule.[23] On the same day, the Sanggunian enacted Provincial Ordinance No. 002, series of 2009 (Ordinance No. 2), titled, "*An Ordinance Repealing Sangguniang Panlalawigan Ordinance No. 05, Year 1997 Abolishing Barangay San Rafael, Calaca, Batangas, and Merging it with Barangay Dacanlao of Said Municipality.*"[24]

On September 8, 2009, Sinag et al.—as local government officials and residents of Brgy. Dacanlao—filed a Petition[25] to nullify Ordinance No. 2 with prayer for a TRO before RTC Branch 9 against the Sanggunian, the Offices of the Provincial Assessor and Provincial Treasurer of Batangas, the Office of the Municipal Treasurer of Calaca, Batangas, and Brgy. San Rafael (Sanggunian et al.), which was docketed therein as Civil Case No. 4877.

Sinag et al. argued, among others, that Ordinance No. 2 is void and unconstitutional because: (1) its enactment disregarded the three-reading rule and publication requirements; (2) it was not approved by a majority vote in a plebiscite; (3) it was intended to circumvent a possible adverse decision in *CA-G.R. CV No. 88994*; and (4) the revival of Brgy. San Rafael was not supported by data from the National Statistics Office (NSO; now Philippine Statistics Agency [PSA]).[26]

Respondents Sanggunian et al. filed their respective Answers[27] to the Petition. Mainly, they alleged that the enactment of Ordinance No. 2 was an exercise of the plenary and legislative powers of the Sanggunian, which can repeal or modify its own ordinances. They further argued that since the issue on the validity of Ordinance No. 5 was still pending before the CA, it could be said that Brgy. San Rafael is not yet abolished, and thus, the plebiscite held

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22 *Id.* at 94.
23 *Id.* at 60.
24 *Id.*; RTC records, pp. 120–122.
25 *Rollo*, pp. 99–145.
26 *Id.* at 62, 113–133.
27 *Id.* at 148–152, 153–155.

was not necessary. They posited that there was no division of barangays to speak of because the merger did not actually materialize.[28]

On September 9, 2009, Executive Judge Cristino E. Judit of Branch 10, RTC, Balayan, Batangas issued a TRO against the implementation of Ordinance No. 2.[29]

Meanwhile, the CA, in its March 9, 2010 Resolution,[30] dismissed the petition in *CA-G.R. CV No. 88994* for being moot and academic in view of the enactment of Ordinance No. 2. According to the CA, the enactment of Ordinance No. 2 "virtually repealed" Ordinance No. 5, thereby reinstating San Rafael as a separate barangay and no longer a part of Brgy. Dacanlao.[31]

Going back to Civil Case No. 4877, RTC Branch 9 issued its December 2, 2010 Order[32] granting the prayer of Sinag et al. for the issuance of a writ of preliminary injunction. Later, RTC Branch 9 issued a Writ of Preliminary Injunction[33] dated January 26, 2011, against the implementation of Ordinance No. 2, particularly, restraining the alteration or modification of RPT records and the release to Brgy. San Rafael of its supposed share in RPT.[34]

Subsequently, Sinag et al. filed their Motion for Judgment on the Pleadings,[35] alleging that the Sanggunian et al. failed to tender any issue, and even admitted the material allegations of the Petition to nullify Ordinance No. 2. Sinag et al. proferred the following arguments:

First. The Sanggunian et al. admitted that there is a judicial decision upholding the validity and legality of Ordinance No. 5—referring to the ruling of RTC Branch 9 in Civil Case No. 3442. Petitioners pointed out that the CA, in dismissing *CA-G.R. CV No. 88994* for mootness, neither made any determination on the validity of Ordinance No. 5 nor reversed or set aside the said November 15, 2006 RTC Branch 9 Decision.[36]

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28 *Id.* at 150, 154.
29 RTC records, pp. 182–184.
30 *Id.* at 755–756. The March 9, 2010 Resolution in CA-G.R. CV. No. 88994 was penned by Associate Justice Japar B. Dimaampao (now a Member of the Court) and concurred in by Associate Justices Remedios A. Salazar-Fernando and Francisco P. Acosta of the Third Division, Court of Appeals, Manila.
31 *Id.* at 756.
32 *Id.* at 464–473.
33 *Id.* at 474–475.
34 *Id.* at 475.
35 *Id.* at 481–518.
36 *Id.* at 483–484.

Second. The Sanggunian et al. failed to specifically deny the assertion that a plebiscite was duly held on February 28, 1998 following the passage of Ordinance No. 5, wherein the constituents of the affected political units voted to affirm the merger of Brgy. San Rafael with Brgy. Dacanlao.[37]

Last. The Sanggunian et al. failed to specifically deny the alleged irregularities that plagued the passage of Ordinance No. 2.[38] Instead, they raised special defenses, arguing that the Sanggunian exercised its plenary and legislative powers in enacting Ordinance No. 2; that the Sanggunian and its members enjoy the presumption of regularity in the performance of their official duties; and that Brgy. San Rafael had the minimum number of inhabitants required by law to support its establishment as a separate local government unit (LGU).[39]

Ruling of the RTC Branch 9

In its October 14, 2013 Order,[40] RTC Branch 9 granted the Motion for Judgment on the Pleadings. It ratiocinated that since the material allegations in the Petition were not specifically denied as required under the Rules, they were deemed admitted. Thus, judgment on the pleadings was in order.[41]

Nevertheless, RTC Branch 9 dismissed the Petition for nullity of Ordinance No. 2 on the ground that Ordinance No. 5 was never implemented, i.e., the abolition of Brgy. San Rafael and its merger with Brgy. Dacanlao never materialized. In fact, Brgy. San Rafael had continuously maintained its corporate existence, having a complete set of duly elected barangay officials. In addition, the Provincial COMELEC Officer testified before the joint Committees of the Sanggunian that no disenfranchisement of voters had taken place.[42]

Accordingly, the requirements of plebiscite and publication were not applicable to Ordinance No. 2 because it neither created a new entity nor divided Brgy. Dacanlao. Hence, provisions on the creation, division, merger, and abolition of LGUs found no application in the instant case. Finally, RTC

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37 *Id.* at 484–489.
38 *Id.* at 509–513.
39 *Id.* at 495–504.
40 *Rollo*, pp. 218–242. The October 14, 2013 Order in Civil Case No. 4877 was penned by Presiding Judge Carolina F. De Jesus of Branch 9, Regional Trial Court, Balayan, Batangas.
41 *Id.* at 235–236.
42 *Id.* at 239–240.

Branch 9 held that Ordinance No. 2 enjoyed the presumption of validity and regularity.[43] The dispositive portion of the RTC Branch 9 Order reads:

> **WHEREFORE**, the foregoing considered, the petitioners' Motion for Judgment on the Pleadings is hereby **GRANTED**.
>
> Accordingly, judgment is hereby rendered **DISMISSING** the instant Petition for lack of merit.
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> SO ORDERED.[44] (Emphasis in the original)

Sinag et al. filed a Motion for Reconsideration,[45] but the same was denied by RTC Branch 9 in its December 10, 2014 Order.[46] RTC Branch 9 reiterated that Ordinance No. 5 never materialized, and that Brgy. San Rafael never ceased to exist despite the passage thereof, as it was even able to elect a complete set of barangay officials recognized by the COMELEC.[47] As to the alleged irregularities in the enactment of Ordinance No. 2, RTC Branch 9 again invoked the presumption of validity in its favor.[48]

Sinag et al. elevated the case to the CA by way of notice of appeal, in accordance with Rule 41 of the Rules of Court.[49]

Ruling of the CA

The CA dismissed the appeal on the ground that Sinag et al. availed of the wrong remedy. It determined that the proper recourse was to file a petition for review on *certiorari* under Rule 45 before the Court as the appeal involved only questions of law. According to the CA, there was no dispute as to the material facts in the present case and there was no need to evaluate the evidence on record. To buttress their motion for judgment on the pleadings, Sinag et al. harped on the judicial admissions of the Sanggunian et al., which served to remove admitted facts from the field of controversy. Sinag et al. were only assailing the ruling of RTC Branch 9 on the validity of Ordinance No. 2 vis-à-vis the pertinent provisions of the LGC.[50] The decretal portion of the CA Decision reads:

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43 *Id.* at 240–242.
44 *Id.* at 242.
45 *Id.* at 243–259.
46 *Id.* at 260–273.
47 *Id.* at 268–271.
48 *Id.* at 272–273.
49 CA *rollo*, pp. 13–15.
50 *Rollo*, pp. 66–68.

WHEREFORE, the instant appeal is hereby **DISMISSED** for being an improper remedy.

SO ORDERED.[51] (Emphasis in the original)

Sinag et al. filed a Motion for Reconsideration,[52] but the same was denied by the CA in its August 16, 2017 Resolution. Hence, this Appeal by *Certiorari*.

Petition

The instant Petition raises the following as issues:

I.

WHETHER THE COURT OF APPEALS COMMITTED GRIEVOUS AND REVERSIBLE ERROR IN CONVENIENTLY RULING THAT PETITIONERS' APPEAL UNDER RULE 41 WAS IMPROPER AND THE WRONG REMEDY[;]

II.

WHETHER THE TRIAL COURT COMMITTED GRIEVOUS AND REVERSIBLE ERROR IN IGNORING THE ABOLITION OF THE LEGAL EXISTENCE OF BARANGAY SAN RAFAEL BY THE SANGGUNIANG PANLALAWIGAN ORDINANCE NO. 5[;]

III.

WHETHER THE TRIAL COURT COMMITTED GRIEVOUS AND REVERSIBLE ERROR IN REFUSING TO APPLY THE CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR THE CREATION OF A BARANGAY IN THE PASSAGE AND EFFECTIVITY OF PROVINCIAL ORDINANCE NO. 002, 2009 REINSTATING BARANGAY SAN RAFAEL AS A LOCAL GOVERNMENT UNIT[; and]

IV.

WHETHER THE TRIAL COURT COMMITTED GRIEVOUS AND REVERSIBLE ERROR IN DECLARING THE VALIDITY AND CONSTITUTIONALITY OF PROVINCIAL ORDINANCE NO. 002, 2009 DESPITE PATENT AND ADMITTED IRREGULARITIES IN THE PASSAGE THEREOF.[53]

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51 *Id.* at 68–69.
52 CA *rollo*, pp. 157–167.
53 *Rollo*, p. 21.

Sinag et al. posit that the fact that such abolition and merger did not materialize is irrelevant because it is the ordinance which causes the abolition of a LGU and not the actual implementation which brings about the abolition.[54]

In any case, the November 15, 2006 Decision of RTC Branch 9 in Civil Case No. 3442 sustained the validity of Ordinance No. 5, as opposed to the passage of Ordinance No. 2 which failed to comply with the constitutionally mandated plebiscite.[55] Moreover, Brgy. San Rafael cannot be re-created because it failed to meet the required population.[56]

Sinag et al. put forth that the enactment of Ordinance No. 2 is replete with irregularities: no quorum was achieved during the hearing of the Committee on Laws, Rules and Ordinances, Committee on Ways and Means, and Committee on Barangay Affairs on August 4, 2009;[57] the Committee Report proposing the repeal of Ordinance No. 5 was not calendared as one of the matters to be taken up during the 27th Regular Session of the Sanggunian and was merely considered during the privilege hour;[58] and the Sanggunian had no power to suspend the three-reading rule because such power lies with the provincial governor.[59] In addition, Sinag et al. claim that the Sanggunian failed to comply with the provisions of the LGC, particularly: Section 59 which requires posting and publication; Section 385 which requires the conduct of a plebiscite and the recommendation of the Sangguniang Bayan concerned; and Sections 7 and 386 which require a minimum population as certified by the statistics office.[60]

In addition, Sinag et al. point out that the trial court made a factual finding that the abolition of Brgy. San Rafael and its merger with Brgy. Dacanlao never actually materialized, despite not being covered by the judicial admissions. The issue of whether or not the abolition and merger actually materialized is thus a question of fact.[61]

But even if such abolition and merger did not materialize as a matter of fact, Sinag et al. claim that RTC Branch 9 still erred because it is the ordinance itself which causes the abolition of a LGU—in this case, Ordinance No. 5. It is not the actual implementation of such ordinance which brings about

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54 *Id.* at 28.
55 *Id.* at 32–33.
56 *Id.* at 39.
57 *Id.* at 40.
58 *Id.* at 41.
59 *Id.* at 41–42.
60 *Id.* at 36–40.
61 *Id.* at 26–27.

abolition. It is the effectivity of the law which brings about its legal effects.[62] Notably, the November 15, 2006 Decision of RTC Branch 9 in Civil Case No. 3442 sustained the validity of Ordinance No. 5, and such ruling attained finality with the dismissal of *CA-G.R. CV No. 88994*.[63]

In their Comment,[64] the Sanggunian et al. contend that the petition should be dismissed because it was filed out of time. Citing *Banting v. Spouses Maglapuz*,[65] they argue that the erroneous or defective appeal filed by Sinag et al. will not toll the running of the reglementary period to file the correct remedy. Sinag et al. availed of an improper remedy by filing a recourse to the CA instead of filing a petition for review on *certiorari* under Rule 45 directly with this Court.[66]

Hence, for the resolution of the Court are the following issues: (1) whether Sinag et al. had availed of the proper remedy by filing a notice of appeal before the CA; and (2) whether the enactment of Ordinance No. 2 complied with constitutional and statutory requirements.

Our Ruling

The Petition is impressed with merit.

We first pass upon the threshold issue.

To resolve whether Sinag et al. availed of the proper remedy from the dismissal of their Petition by RTC Branch 9, it is vital for the Court to determine whether the issues before the CA raised questions of fact or pure questions of law.

In *Olave v. Mistas*,[67] the Court explained the difference between a question of fact and a question of law. The Court simplified it in this wise:

> It is axiomatic that there is a question of fact when the doubt or difference arises as to the truth or falsehood of the alleged facts. On the other hand, a question of law exists when there is a doubt or controversy as to what the law is on a certain state of facts.[68]

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62 *Id.* at 28–30.
63 *Id.* at 32–33.
64 *Id.* at 326–329.
65 531 Phil. 101 (2006) [Per J. Austria-Martinez, First Division].
66 *Rollo*, pp. 327–328.
67 486 Phil. 708 (2004) [Per J. Callejo, Sr., Second Division].
68 *Id.* at 720.

Sinag et al. made several factual allegations regarding supposed irregularities surrounding the legislative process of passing Ordinance No. 2, i.e., Ordinance No. 2 was not included in the calendar of business of the 27th Regular Session of the Sanggunian; the Committee Report on which Ordinance No. 2 was based was merely recited during the privilege hour; Ordinance No. 2 did not undergo three readings before it was approved and the provincial governor did not certify it as urgent; there was no plebiscite conducted to ratify the ordinance; and that Brgy. San Rafael had a population of 611 persons only and thus, it did not meet the minimum population required for the creation of a barangay.

Whether or not these factual allegations were disputed by the opposing party, RTC Branch 9, nevertheless, swept them aside, broadly citing the presumption of regularity in the performance of duties and the presumption of validity of ordinances.

As the case of Sinag et al. hinges on the state of facts alleged by them, their appeal to the CA insisted on the truthfulness of their factual allegations, in opposition to the ruling of the RTC that these remained unsubstantiated. Before the CA could determine what the law is on a certain set of facts, it first had to determine, through an examination of the records of the case, what that set of facts was. That is to say, Sinag et al. sufficiently raised questions of fact before the CA.

That the Sanggunian et al. did not dispute the allegations, does not automatically detract from the appellate court's duty to evaluate such allegations and other evidence presented.

In *Shimizu Philippines Contractors, Inc. v. Magsalin*,[69] the RTC of Makati City dismissed a complaint for damages for failure of *Shimizu* to prosecute the case. The case was elevated to the CA via a petition for review under Rule 41. The CA dismissed the appeal on the ground that *Shimizu* should have filed a petition for review on *certiorari* directly before the Court under Rule 45 because the facts alleged in its appeal were admitted and undisputed. The Court reversed and set aside the dismissal, ruling that the appeal under Rule 41 was proper. The Court ratiocinated that although the facts *Shimizu* had presented in its appeal were admitted and undisputed, it does not immediately follow that the case necessarily involved only pure questions of law. The Court observed, citing *Olave*, that the CA still has to respond to

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[69] 688 Phil. 384 (2012) [Per J. Brion, Second Division].

factual questions such as whether, based on the records, there had been factual basis for the dismissal of the complaint.[70]

The circumstances of this case are on all fours with those in *Shimizu.* Notwithstanding the supposed undisputed records, the CA still has to ascertain the truthfulness of the facts alleged by Sinag et al., particularly the aforementioned circumstances surrounding the enactment of Ordinance No. 2.

Verily, as the appeal raised questions of fact, the mode of appeal to the CA, via Rule 41 of the Rules, is proper.[71] The CA, therefore, erred in dismissing the appeal. But even as We set aside the rejection of the appeal by the CA, a remand of the case to the CA would unnecessarily prolong the dispute. Considering that the records are already before this Court, and in the interest of justice, We resolve to determine the case on the merits.

Authority of the Sangguniang Panlalawigan to create, divide, merge, or abolish barangays

LGUs are the territorial and political subdivisions of the state. They are political and corporate units that have their own legal personality.[72] These are provinces, independent cities, component cities, municipalities, and barangays. As a political subdivision, the LGU is an instrumentality of the state in carrying out the functions of government. As a corporate entity, the LGU exercises special functions for the sole benefit of its constituents.[73]

Although LGUs are granted powers to carry out the functions of government, such functions do not mean the creation of *imperium in imperii* or a state within a State—political subdivisions do not enjoy complete autonomy.[74]

A barangay is the basic political and territorial self-governing body corporate. As the most basic LGU, it is subordinate to the municipality or city of which it forms a part.[75]

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70 *Id.* at 395–397.
71 *Olave v. Mistas*, 486 Phil. 708, 722 (2004) [Per J. Callejo, Sr., Second Division].
72 *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 697 (2008) [Per J. Brion, *En Banc*].
73 *Id.* at 697–698.
74 *Malonzo v. Zamora*, 370 Phil. 240, 247 (1999) [Per J. Romero, *En Banc*].
75 FR. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 961 (1996 ed.).

Political subdivisions are agencies of the community in the administration of local affairs, and the mediums through which the people act in their corporate capacity on local concerns. As the representative of its people, the creation, division, merger, abolition, or alteration of boundaries of the LGU requires the consent of its constituents through a plebiscite.[76]

Limitations on the creation, division, merger, abolition, or substantial alteration of boundary of barangays are carved in Article X, Section 10 of the 1987 Constitution, which states that:

> Section 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.[77]

Corollary, Section 6 of the LGC grants the Congress or the sangguniang panlalawigan or panlungsod authority to create, divide, merge, abolish, or alter boundaries of LGUs.

> Section 6. *Authority to Create Local Government Units.* – A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.[78]

The creation, division, merger, abolition, or alteration of boundaries of LGUs may be done by Congress through a law in the case of a province, city, municipality, or any other political subdivision. In the case of a barangay, except in Metropolitan Manila area and in cultural communities, such may be done by the sangguniang panlalawigan or sangguniang panlungsod concerned through the passage of an ordinance, subject to the mandatory requirement of a plebiscite conducted for the purpose in the political units affected.[79]

Section 7 of the LGC provides statistical indicators that must be complied with for the creation or conversion of LGUs, while Section 8

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76 *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 698 (2008) [Per J. Brion, *En Banc*].
77 CONST., art. X, sec. 10.
78 Republic Act No. 7160 (1991), sec. 6, Local Government Code.
79 *Sarangani v. Commission on Elections*, 389 Phil. 719, 728 (2000) [Per J. Buena, *En Banc*].

expressly states that these requisites must also be observed in the case of division and merger of political subdivisions.

> Section 7. *Creation and Conversion.* – As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:
>
> (a) Income. – It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;
>
> *(b) Population. – It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned*; and
>
> (c) Land Area. – It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.
>
> Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).
>
> Section 8. *Division and Merger. – Division and merger of existing local government units shall comply with the same requirements herein prescribed for their creation*: Provided, however, That such division shall not reduce the income, population, or land area of the local government unit or units concerned to less than the minimum requirements prescribed in this Code: Provided, further, That the income classification of the original local government unit or units shall not fall below its current income classification prior to such division.
>
> The income classification of local government units shall be updated within six (6) months from the effectivity of this Code to reflect the changes in their financial position resulting from the increased revenues as provided herein.[80] (Emphasis supplied)

Particularly, with respect to barangays, the manner or form of their creation is provided in Section 385 of the LGC, while Section 386 of the same Code enumerates the requisites for their creation.

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[80] Republic Act No. 7160 (1991), secs. 7 and 8, Local Government Code.

> Section 385. *Manner of Creation.* – A barangay may be created, divided, merged, abolished, or its boundary substantially altered, by law or by an ordinance of the sangguniang panlalawigan or sangguniang panlungsod, subject to approval by a majority of the votes cast in a plebiscite to be conducted by the COMELEC in the local government unit or units directly affected within such period of time as may be determined by the law or ordinance creating said barangay. In the case of the creation of barangays by the sangguniang panlalawigan, the recommendation of the sangguniang bayan concerned shall be necessary.
>
> Section 386. *Requisites for Creation.* – (a) A barangay may be created out of a contiguous territory which has a population of at least two thousand (2,000) inhabitants as certified by the National Statistics Office except in cities and municipalities within Metro Manila and other metropolitan political subdivisions or in highly urbanized cities where such territory shall have a certified population of at least five thousand (5,000) inhabitants: Provided, That the creation thereof shall not reduce the population of the original barangay or barangays to less than the minimum requirement prescribed herein.
>
> To enhance the delivery of basic services in the indigenous cultural communities, barangays may be created in such communities by an act of Congress, notwithstanding the above requirement.
>
> (b) The territorial jurisdiction of the new barangay shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.
>
> (c) The governor or city mayor may prepare a consolidation plan for barangays, based on the criteria prescribed in this section, within his territorial jurisdiction. The plan shall be submitted to the sangguniang panlalawigan or sangguniang panlungsod concerned for appropriate action.
>
> In the case of municipalities within the Metropolitan Manila area and other metropolitan political subdivisions, the barangay consolidation plan shall be prepared and approved by the sangguniang bayan concerned.[81]

The instant case indeed involves the *division* of Brgy. Dacanlao into its two former constituent LGUs. The Court does not agree with the submission of the Sanggunian et al. that Ordinance No. 2 is merely an affirmative declaration of Brgy. San Rafael's continued existence as such. The language of Ordinance No. 2 does not align with this interpretation. The very object of Ordinance No. 2 is the express repeal of Ordinance No. 5; it is not merely declaratory. Further, the text of Ordinance No. 2 itself states that Brgy. San Rafael was abolished and merged with Brgy. Dacanlao through Ordinance No. 5.

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[81] Republic Act No. 7160 (1991), secs. 385 and 386, Local Government Code.

PROVINICIAL ORDINANCE NO. 002
Year 2009

. . . .

. . . .

WHEREAS, through a series of event [sic] – natural, legal, and political, Barangay San Rafael in Calaca, Batangas was abolished and merge [sic] with Barangay Dacanlao, a neighboring or adjacent barangay, effected through Sangguniang Panlalawigan Ordinance No. 05, S. 1997 on the basis that it has no [sic] enough inhabitants to constitute a barangay;

. . . .

SECTION 4. REPEAL OF EXISTING ORDINANCE. To carry out the purpose and intents of this ordinance, Sangguniang Panlalawigan No. 05 Series of 1997 abolishing Barangay San Rafael, Municipality of Calaca, Batangas and merging the same with Barangay Dacanlao, is hereby repealed and revoked. The Provincial Assessor of Batangas is hereby mandated to reconcile all their existing records with the provisions of this ordinance and all properties within the territorial jurisdiction of Barangay San Rafael be declared appropriately.[82]

Anent the trial court's proclamation that Brgy. San Rafael never lost its corporate existence, such finding should be viewed in the proper context.

Recall that in *G.R. No. 132603*, the Court issued a resolution directing the parties to maintain the *status quo* prevailing at the time of the filing of the petition, or as of February 27, 1998. The plebiscite conducted to ratify Ordinance No. 5 was held after said date, or on February 28, 1998.

In resolving *G.R. No. 132603*, the Court remanded the case to RTC Branch 11, and ordered that the execution of the result of the February 28, 1998 plebiscite be held in abeyance depending on the outcome of Civil Case No. 3442.

In compliance with the directive of the Court, RTC Branch 9 proceeded with Civil Case No. 3442 and later, rendered its Decision thereon on November 15, 2006 by upholding the validity of Ordinance No. 5. However, such ruling did not immediately become final and executory as the case was elevated to the CA which was docketed therein as *CA-G.R. CV No. 88994*. On March 9, 2010 the CA dismissed the petition in *CA-G.R. CV No. 88994* for being moot and academic. According to the CA, the enactment of Ordinance

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[82] *Rollo*, pp. 96–98.

No. 2 "virtually repealed" Ordinance No. 5. Thus, it was only with the dismissal of *CA-G.R. CV No. 88994* that Civil Case No. 3442 was terminated.

A careful study of the chronology of events reveals that from the effectivity of the *status quo ante* resolution, until the termination of Civil Case No. 3442, Ordinance No. 5 could not be implemented, despite the favorable outcome of the plebiscite. Consequently, Brgy. San Rafael could not be faulted for continuing to operate as its own political subdivision.

Nevertheless, the effectivity and validity of a law is not dependent on its actual implementation. Article 7 of the Civil Code provides that the violation or non-observance of laws shall not be excused by disuse or custom or practice to the contrary.

The final judicial declaration pertaining to Ordinance No. 5 was the ruling of RTC Branch 9 in Civil Case No. 3442 upholding its validity. Since the appeal before the CA was dismissed due to mootness—on the belief that Ordinance No. 5 had been repealed by a subsequent ordinance—the conclusion of RTC Branch 9 was never expressly overturned.

Given the foregoing, it is the duty of the Court to determine whether the division of Brgy. Dacanlao complied with the manner and the requirements provided in the Constitution and the LGC.

For an ordinance to be valid, it must pass the test of validity. As consistently held by the Court, a valid ordinance must not only be within the corporate powers of the LGU to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[83]

Failure to comply with the population requirement

For the creation of barangays, it is required that it must have at least 2,000 inhabitants, except in the municipalities and cities within the Metropolitan Manila area, as well as in other metropolitan political subdivisions which may be created by law and in highly urbanized cities, where the population requirement is at least 5,000 inhabitants *as certified by*

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[83] *Fernando v. St. Scholastica's College*, 706 Phil. 138, 157 (2013) [Per J. Mendoza, *En Banc*], *citing White Light Corporation v. City of Manila*, 596 Phil. 444, 459 (2009) [Per J. Tinga, *En Banc*].

the NSO, now PSA. This requirement is clearly outlined in Section 386 of the LGC, thus:

> Section 386. Requisites for Creation. – (a) A barangay may be created out of a contiguous territory which has a population of *at least two thousand (2,000) inhabitants as certified by the National Statistics Office* except in cities and municipalities within Metro Manila and other metropolitan political subdivisions or in highly urbanized cities where such territory shall have a certified population of at least five thousand (5,000) inhabitants: Provided, That the creation thereof shall not reduce the population of the original barangay or barangays to less than the minimum requirement prescribed herein. (Emphasis supplied)

The records of the case fail to disclose the number of inhabitants of Brgy. San Rafael at the time Ordinance No. 2 was enacted. Ordinance No. 2 simply provides:

> WHEREAS, records show that Barangay San Rafael has the requisite minimum number of inhabitants provided for by R.A. 7160[.][84]

The Committee Report[85] proposing Ordinance No. 2 is likewise opaque as it merely stated the condition that the number of inhabitants of Brgy. San Rafael had been reduced beyond the minimum prescribed by the LGC "no longer applies to this date." Neither the Committee Report nor the Ordinance No. 2 gave any specific basis for such statement.

Sinag et al. contended that such a conclusion was merely based on a List of Inhabitants (Exh. "F"),[86] the veracity of which had not been attested to. The Sanggunian et al. did not adequately contested this assertion. In fact, the Sanggunian et al. even admitted in their Answer that hundreds of barangays in Batangas and other provinces did not meet the population requirement, yet they have not been abolished.[87] Certainly, a determination of Brgy. San Rafael's population based on this List of Inhabitants falls short of the requirement that the population threshold be certified by the NSO/PSA.

In contrast, Sinag et al. presented NSO Certification[88] dated August 27, 2009—less than a month after Ordinance No. 2 was enacted—certifying that San Rafael had only 611 inhabitants as per the most recent census at the time. For accuracy, We lift pertinent portions from the Certification:

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84 *Rollo*, p. 97.
85 *Id.* at 94–95.
86 Exhibit "F," Folder of Exhibits, pp. 16–62, Barangay San Rafael, Calaca, Batangas List of Inhabitants.
87 RTC records, p. 266.
88 Exhibit "G," Folder of Exhibits, p. 63, National Statistics Office Certification dated August 27, 2009.

> This is to certify that based on the 2007 Census of Population (POPCEN 2007) conducted by the National Statistics Office, the total population of Barangay San Rafael, Calaca, Batangas as of August 1, 2007 is 611 persons.
>
> This is also to certify that the results of POPCEN 2007 were proclaimed and declared official by the President of the Philippines under Proclamation No. 1489 dated April 16, 2008.[89]

To be clear, there are not enough residents of the area to support the creation of a separate LGU. Crucially, Ordinance No. 2 was not supported by an NSO certification to establish compliance with the minimum required population under Section 386 of the LGC at the time of its enactment.

Failure to conduct a plebiscite

It is required by no less than the Constitution that the creation or division of a barangay be subjected to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

> ARTICLE X
>
> Section 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.[90]

This is echoed in Section 385 of the LGC, which in addition, requires that the period within which to conduct such a plebiscite be provided in the ordinance itself:

> Section 385. *Manner of Creation.* – A barangay may be created, divided, merged, abolished, or its boundary substantially altered, *by law or by an ordinance of the sangguniang panlalawigan or sangguniang panlungsod, subject to approval by a majority of the votes cast in a plebiscite to be conducted by the COMELEC in the local government unit or units directly affected within such period of time as may be determined by the law or ordinance creating said barangay.* In the case of the creation of barangays by the sangguniang panlalawigan, the recommendation of the sangguniang bayan concerned shall be necessary. (Emphasis supplied)

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89 *Id.*

90 CONST., art X, sec. 10.

Here, Ordinance No. 2 likewise fails to adhere to the requirements of the Constitution and the LGC as it lacks any provision regarding a plebiscite. Instead, Ordinance No. 2 provides that it shall take effect immediately upon signing by the Governor.[91]

The Sanggunian et al. contend that a plebiscite is not required because the Sanggunian merely exercised its power to repeal its earlier ordinance. However, it bears repeating that by repealing Ordinance No. 5, the Sanggunian sought the legal division of Brgy. Dacanlao and the creation anew of Brgy. San Rafael as a body corporate. The Sanggunian cannot turn a blind eye to these effects and ignore the statutory requirements for creation and division of barangays by the mere expedient of claiming that it was merely exercising its power to repeal ordinances.

In his dissenting opinion, Justice Alfredo Benjamin S. Caguioa reiterates the proposition that Ordinance No. 2 did not create a new political subdivision because Brgy. San Rafael was never abolished or merged with Brgy. Dacanlao. Thus, he finds himself in agreement with the contention of the Sanggunian et al. that Ordinance No. 2 is a valid expression of the legislative power of the Sanggunian to alter and repeal its own ordinances. As correctly framed by Justice Caguioa, the abolition of an LGU has two components: (1) a law or ordinance abolishing an LGU or merging it with another, and (2) that the law or ordinance be approved by a majority of the votes cast in a plebiscite in the political units directly affected. The contention of the dissent is that the second component is missing, in view of the Court's Decision in *G.R. No. 132603*.

With due respect to Justice Caguioa's view, the Court does not come to the same conclusion. To reiterate, the Court's September 18, 2000 Decision in *G.R. No. 132603* ordered "[t]he execution of the result of the plebiscite held on February 28, 1998 shall be deferred depending on the outcome of Civil Case No. 3442." Such deferral thus admits: (1) the conduct of a plebiscite, and (2) the results thereof. The deferral merely affected the implementation of the ordinance and cannot in any way be taken as to nullify the conduct of the plebiscite or the results thereof.

Thus, on February 28, 1998, both constitutional requirements for the abolition of Brgy. San Rafael were satisfied. There was a valid ordinance, which had already been approved by a majority of the votes cast in a plebiscite in the political units directly affected. On even date, Brgy. San Rafael was already abolished by valid legislation. It was just that the implementation of the effects of such abolition was put on hold by virtue of the March 10, 1998

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[91] RTC records, p. 122.

status quo order, and later the September 18, 2000 Decision of the Court in G.R. No. 132603.

To allow Ordinance No. 2 to simply repeal Ordinance No. 5 by reasoning that the latter lacked the requirement of a plebiscite, would be to turn a blind eye to the existence of the February 28, 1998 plebiscite – and by extension, ignoring the will of the people, which had already been made known through such plebiscite.

On the alleged failure to observe the proper legislative processes

Lastly, Sinag et al. argues that the Sanggunian committed several irregularities in passing Ordinance No. 2 without due regard to its rules of procedure. Chiefly, they argue that the Sanggunian committed grave abuse of discretion in dispensing with the three-reading rule without authority to do so.

For ordinances enacted by local government units, the manner in which ordinances may be enacted depends on the internal rules of procedure of the sanggunian. Consistent with the national policy to devolve powers of the national government and empower political subdivisions, the LGC grants the sanggunian the authority to adopt its own parliamentary procedure and legislative process. Section 50 of the LGC enumerates the scope of the sanggunian's power in adopting its own parliamentary procedures through its internal rules of procedure, to wit:

> Section 50. *Internal Rules of Procedure.* – (a) On the first regular session following the election of its members and within ninety (90) days thereafter, the sanggunian concerned shall adopt or update its existing rules of procedure.
>
> (b) The rules of procedure shall provide for the following:
>
> (1) The organization of the sanggunian and the election of its officers as well as the creation of standing committees which shall include, but shall not be limited to, the committees on appropriations, women and family, human rights, youth and sports development, environmental protection, and cooperatives; the general jurisdiction of each committee; and the election of the chairman and members of each committee;
>
> (2) *The order and calendar of business for each session*;
>
> (3) *The legislative process*;

> (4) *The parliamentary procedures which include the conduct of members during sessions*;
>
> (5) The discipline of members for disorderly behavior and absences without justifiable cause for four (4) consecutive sessions, for which they may be censured, reprimanded, or excluded from the session, suspended for not more than sixty (60) days, or expelled: Provided, That the penalty of suspension or expulsion shall require the concurrence of at least two-thirds (2/3) vote of all the sanggunian members: Provided, further, That a member convicted by final judgment to imprisonment of at least one (1) year for any crime involving moral turpitude shall be automatically expelled from the sanggunian; and
>
> (6) Such other rules as the sanggunian may adopt.[92] (Emphasis supplied)

Sinag et al. made references to certain internal rules—for instance, Sections 3 and 9 of Rule VIII[93]—and alleging that based on these provisions, the Sanggunian did not have the authority to dispense with the three-reading rule commonly adopted in other legislative bodies.

Upon review of the records, the Court finds that Sinag et al. failed to allege and prove the contents of the internal rules of procedure of the Sanggunian. They even failed to at least cite verbatim the provisions relied upon. Indeed, the allegations in their pleadings only reflected their interpretation of the alleged rules, without quoting the actual rules for the consideration of the courts.

In *Social Justice Society v. Atienza, Jr.*,[94] the Court categorically held that courts are not required to take judicial notice of local ordinances. The Court discussed the tenet in this wise:

> Even where there is a statute that requires a court to take judicial notice of municipal ordinances, a court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is obligated to supply the court with the full text of the rules the party desires it to have notice of.[95]

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92 Republic Act No. 7160 (1991), sec. 50, Local Government Code.

93 *Rollo*, pp. 41, 307.

94 568 Phil. 658 (2008) [Per J. Corona, First Division].

95 *Id.* at 685, *citing* 29 AmJur 2d 156, Evidence, Section 126, *citing Faustrum v. Board of Fire & Police Comm'rs*, (2d Dist) 240 III App 3d 947, 181 III Dec 567, 608 NE2d 640, app den 151 III 2d 563, 186 III Dec 380, 616 NE2d 333.

In any case, with our disquisition on the failure of Ordinance No. 2 to comply with the constitutional and statutory requirements, it is no longer necessary to go into further detail regarding the alleged failure of the Sanggunian to observe proper legislative procedures, in order to resolve the main issue at hand, which is the validity of the challenged ordinance.

Ordinance No. 2 must be struck down for being void. It cannot repeal Ordinance No. 5, which enjoys the presumption of validity regardless of its actual implementation, and which may only be amended or repealed by another valid law.

ACCORDINGLY, the Petition is **GRANTED**. The October 26, 2016 Decision and the August 16, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 104369 are **REVERSED** and **SET ASIDE**. Provincial Ordinance No. 002, series of 2009, titled, "*An Ordinance Repealing Sangguniang Panlalawigan Ordinance No. 05, Year 1997 Abolishing Barangay San Rafael, Calaca, Batangas, and Merging it with Barangay Dacanlao of Said Municipality*" is declared **VOID**.

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice

See Dissent

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On Official Leave)
RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

(No part)
RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice