

**ORDER SHEET
HIGH COURT OF SINDH, KARACHI**

**C.P.Nos.D-6641, 6642, 6643, 6644
& 6645 of 2015**

Date	Order with signature of Judges
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Present

**Mr.Justice Muhammad Ali Mazhar
Mr.Justice Agha Faisal**

1. Muhammad Yousuf
(C.P.No.D-6641 of 2015)
2. Khan Muhammad
(C.P.No.D-6642 of 2015)
3. Sheraz Khan
(C.P.No.D-6643 of 2015)
4. Ishaq Khan
(C.P.No.D-6644 of 2015)
5. Abrar Associate
(C.P.No.D-6645 of 2015).....Petitioners

Versus

Trustees of the Port of Karachi & others.....Respondents

Dates of hearing: 03.04.2019 and 12.09.2019.

Malik Khushhal Khan, Advocate for Petitioners.

Mr. Yawar Faruqi Advocate for Respondent No.1.

Mr. Tanveer Qabool, Advocate for Intervenor.

Mr. M. Jawwad Dero, Addl. A.G. Sindh.

Muhammad Ali Mazhar, J: The petitioners have brought these constitution petitions to challenge separate orders passed by IInd Civil Judge & Judicial Magistrate, Karachi, West on 15.5.2014 in Complaint Nos.680, 681, 682, 683 and 684/2014 and the judgments passed by Vth Additional District & Sessions Judge, Karachi, West in Criminal Appeal Nos.05, 06, 07, 08 and 09/2014.

2. The composite transitory facts as recounted in the petitions are as under:-

The respondent No.1 allotted Plot No.4/33, to the petitioner in C.P. No.D-6641/2015; Plot No.T-16 to the petitioner in C.P. No.D-6642/2015; Plot No.4/35 to the petitioner in C.P. No.D-6643/2015; Plot No.4/34 to the petitioner in C.P. No.D-6644/2015; and Plot No.4/27 to the petitioner in C.P. No.D-6645/2015. (All plots are situated adjacent to Boat Building Yard, West Wharf, Karachi). On allotment, the petitioners were handed over the possession and they also paid lease charges. After some time, the respondent No.1 threatened for their dispossession so the petitioners filed their individual Civil Suit Nos.1356, 1358, 1357, 1359 and 1372 of 2013 in this court which were disposed of with the directions to the respondent No.1 not to dispossess the petitioners from their plots without due process of law. The respondent No.1 filed complaints against the petitioners under Section 3 of Port Authorities Lands & Buildings (Recovery of Possession) Ordinance, 1962 for the eviction on the ground that the properties in question are required for parking of vehicles. The eviction order was passed and the appeals filed by the petitioners were also dismissed. The respondent KPT filed the reply in which they asserted that the premises were allotted for one year on temporary basis and as per Clause No.6 of the allotment, the petitioners are bound to vacate the land in question within one month without demanding any compensation and delaying tactics. The premises were allotted to the petitioner for running their business as per terms and conditions but the petitioners could not fulfill their obligations and tried to make unlawful construction to grab the properties, therefore, notices were served for recovery of possession under Ordinance, 1962.

3. The learned counsel for the petitioners argued that both the courts below failed to apply their judicious mind while deciding the complaints and appeals. He also raised the issue of jurisdiction that according to the Notification No.SRO,141 (KE) 2005 Karachi dated 14.11.2005, the Judicial Magistrate No.III was competent to try the complaints. It was also duty of both the courts below to determine whether the plots in question are required by KPT for some Development Scheme in terms of clause 6 of the allotment or the plots could be utilized for the

parking of vehicle of transporters. The trial court and appellate court also failed to appreciate that the magistrate is appointed by Federal Government and the learned magistrates who entertained the complaints had no jurisdiction to try the complaints. Under the notification, the Federal Government appointed the Judicial Magistrate No.III for the purpose of recovery of possession of KPT land hence no other Judicial Magistrate could hear the complaints. The ground raised for eviction in the complaints was also against the settled Clause 6 of the allotment order.

4. The learned counsel for the KPT argued that land was allotted on temporary basis. As per clause-6 of the allotment the petitioners are bound to vacate the land in question within one month. The petitioners violated the terms of allotment therefore, notices were served for recovery of possession under Section 3 (1) of Port Authorities Lands and Buildings (Recovery of Possession) Ordinance, 1962 and complaints were filed before the Judicial Magistrate, Karachi, West. The learned Judicial Magistrate was competent to entertain and adjudicate upon in accordance with law. Similarly, the appellate court decided the appeals by detailed and elaborated judgments keeping in view the facts and legal aspects. As regards jurisdiction, the learned counsel argued that this objection was never raised by the petitioners which cannot be agitated at this juncture. A position in the reply was also taken that the court of learned judicial magistrate III was lying vacant, therefore, the District & Sessions Judge Karachi, West transferred the complaints to the IInd Judicial Magistrate Karachi, West. The land is required for KPT Development scheme which includes a provision for parking area of trucks and trawlers of different transporters.

5. Heard the arguments. The surveillance of Port Authorities Lands and Buildings (Recovery of Possession) Ordinance, 1962 depicts that Section 3 of the Ordinance germane to the eviction of out-going lessees and unauthorized occupants from the land

under which the Port Authority after making an inquiry may issue a notice in writing requiring any such person to vacate such land or building and deliver vacant possession within such time as may be specified in the notice. The same section further exemplifies that if a person fails to comply with the notice, the Port Authority may file a complaint in writing to the authorized officer. According to clause (b) of Section 2 (definition clause), authorized officer connotes as under:-

“Authorized Officer means a Magistrate of the First Class appointed by the Central Government, by notification in the Official Gazette, to exercise all or any of the powers of an Authorized Officer under this Ordinance”.

6. At one fell swoop, Section 4 of the aforesaid Ordinance has to do with the proceedings before the Authorized Officer in which the Authorized Officer may issue show cause notice against whom the complaint is made why he should not be evicted from the land or building occupied by him and after giving such person an opportunity of hearing and making further inquiry as he may think fit, the Authorized Officer shall by an order in writing, either permit such person to continue in occupation of the land or building and or direct such person to vacate and deliver to the Port Authority vacant possession of the land or building and remove structure if any erected or built thereon by him within the period specified in order. Any person aggrieved by an order of the Authorized Officer passed under Section 4 may within fifteen days from the date of such order file an appeal to the District Magistrate.

7. In exercise of power conferred to the Federal Government under Clause (b) of Section 2 of the Port Authorities Lands and Buildings (Recovery of Possession) Ordinance, 1962, the Federal Government vide Notification dated 14.11.2005, published in the gazette of Pakistan on 20.12.2005, appointed Judicial Magistrate Court No.III, Karachi, West to exercise powers of Authorized Officer. For the ease of reference, the Notification is reproduced as under:

**“GOVERNMENT OF PAKISTAN
MINISTRY OF PORTS AND SHIPPING
[PORTS AND SHIPPING WINGS]**

NOTIFICATION

Karachi, the 14th November, 2005

S.R.O. 141 (KE)/2005:

In supersession of Notification No. S.R.O. 807(K)/62 dated 25th July, 1962 read with S.R.O. 1123(K)/70, dated 19th October, 1970 and in exercise of Power under clause (b) of Section-2 of the Port Authorities Land and Buildings (Recovery of Possession) Ordinance, 1962 (IX of 1962), the Federal Government is pleased to appoint the Judicial Magistrate Court No.III Karachi West (First Class Magistrate) (emphasis applied) to exercise all of the powers vested in Authorized Officer under the Ordinance.

Section Officer (P-II)”

8. The learned counsel for the petitioners robustly argued that the learned Civil Judge & Judicial Magistrate while passing the order on complaints failed to appreciate as to whether the KPT required the premises for development scheme or not. He further argued that the provision for space of parking of vehicles does not come within the ambit of development scheme and the notice issued for eviction was in violation of the terms and conditions of the allotment. One more crucial facet cannot be lost sight that according to the notification issued by the Federal Government, the Authorized Officer having jurisdiction to try the cases was Judicial Magistrate Court No.III, Karachi, West but the cases of the petitioners were assigned to IInd Civil Judge & Judicial Magistrate, Karachi, West in violation of the notification issued by the Federal Government for assignment of job to the Authorized Officer. According to the petitioners the question of jurisdiction was raised but it was not considered whereas the KPT raised the divergent plea that throughout the proceedings this question was never raised by the petitioner so at this belated phase, such objections cannot be entertained. The office order dated 12.08.2013 issued by the learned District & Sessions Judge, Karachi, West put on view that in pursuance of Federal

Government's notification, the Civil Judge & Judicial Magistrate III, Karachi, West could exercise the powers of Authorized Officer but through this notification the learned District Judge withdrawn the jurisdiction of KPT from Judicial Magistrate Court No.III, Karachi, West and assigned the jurisdiction to Civil Judge and Judicial Magistrate No.II, Karachi, West to hold sitting once in a month in the office of the Karachi Port Trust. The Office Order is reproduced as under:

**“OFFICE OF THE DISTRICT AND SESSIONS JUDGE KARACHI WEST
NOA/W/2073/2013 Karachi Dated 12.08.2013.**

OFFICE ORDER:-

The Jurisdiction of K.P.T. is hereby withdrawn from Civil Judge and Judicial Magistrate III, Karachi West and the Civil Judge and Judicial Magistrate-II, Karachi West is hereby allowed to hold sitting once in a month in the office of the Karachi Port Trust, Karachi for recovery of K.P.T dues in summary proceedings under section 84 of KPT Act, 1886 etc., till further orders.

**Sd/-
District and Sessions Judge,
Karachi West”**

9. Another Office Order dated 02.06.2016 is also available on record which shows that the learned District & Sessions Judge, Karachi, West again directed the learned Civil Judge & Judicial Magistrate-III, Karachi, West to hold sitting of premises of Karachi Port Trust twice in a month full day and at the same time in the same notification the learned Civil Judge & Judicial Magistrate-II, Karachi, West was also directed to hold sitting at premises of Karachi Port Trust twice in a month full day to deal and dispose of pending cases. The said Office Order is also reproduced as under:

**“OFFICE OF THE DISTRICT & SESSIONS JUDGE KARACHI WEST
No.A/W/1952/2016, Karachi Dated: 02.06.2016**

OFFICE ORDER:-

In continuation of this office letter No.A/W/8332/2015 Karachi dated 11.11.2015 the learned Civil Judge & Judicial Magistrate-III, Karachi West, is hereby directed to hold sitting of premises of KARACHI PORT TRUST twice in a month full day to deal with the cases pertains to the Port Authorities Land and Building (Recovery of Possession) Ordinance 1962.

The learned Civil Judge & Judicial Magistrate-II, Karachi West is also directed to hold sitting at premises of KARACHI PORT TRUST twice in a month full day to deal and dispose of pending cases pertains to the Port Authorities Land & Building (Recovery of Possession) Ordinance 1962.

Order to take immediate effect.

Sd/-
District & Sessions Judge
Karachi West

10. Incontrovertibly, the individual complaints were decided by Second Civil Judge & Judicial Magistrate-II, Karachi, West vide order dated 15.05.2014 and the individual complaints were also filed under Section 3 of the Port Authorities Lands & Buildings (Recovery of Possession) Ordinance, 1962 by Karachi Port Trust in the year 2014 before the Court of IInd Civil Judge & Judicial Magistrate, Karachi, West. Seeing as the question of jurisdiction was raised with the plea that the impugned orders are coram non iudice, therefore, vide order dated 03.04.2019, we issued notice to the learned District & Sessions Judge, Karachi, West to elucidate whether the Federal Government after issuing notification dated 14.11.2005 issued any further notification for the appointment of Judicial Magistrate-II as Authorized Officer to try the complaints filed by the Karachi Port Trust. In compliance of the directions, the learned District & Sessions Judge, Karachi, West vide letter dated 08.04.2019 informed the learned MIT-II of this court that no notification was issued by Federal Government after issuing the notification dated 14.11.2005 for appointment of Judicial Magistrate-II, Karachi, West and in continuation of the same letter he conveyed another letter on 17.05.2019 to the MIT-II of this court which is reproduced as under:

“OFFICE OF THE DISTRICT & SESSIONS JUDGE KARACHI WEST

No.A/W/1691/2019, Karachi.

Dated: 17.05.2019

To.

**The Learned
Member Inspection Team – II
Honorable High Court of Sindh
Karachi**

Subject: CONSTITUTIONAL PETITION NO.D-6641/2015

Reference: H.C. Letter No.1328/MIT-II/C.P. No.6641/2015
Dated : 08.04.2019.

With reference to the subject captioned above, it is submitted that the Federal Government is pleased to appoint the learned Judicial Magistrate, Court No. III, Karachi West to exercise all the powers vested in Authorized Officer under the ordinance vide Notification No. S.R.O. 141 (KE)/2005 dated 14th November, 2005.

It is, further, clarified that no Notification issued by the Federal Government for appointment of learned Judicial Magistrate-II, Karachi West. [emphasis applied]

Sd/-
District & Sessions Judge
Karachi West”

11. In the reply of Karachi Port Trust, an impression was tried to be conveyed that since the Court of Judicial Magistrate-III, Karachi, West was vacant, therefore, the cases were assigned to the Judicial Magistrate-II, Karachi, West which does not seem to be a correct outlook as nothing was produced by the counsel for the Karachi Port Trust that the court was vacant and the cases were transferred by the District Judge. Rather the title of the individual complaints unequivocally display that it was originally instituted in the Court of IInd Judicial Magistrate, Karachi, West. The report submitted by the learned District & Sessions Judge, Karachi, West is also clear in this regard that the Judicial Magistrate-II, Karachi, West was never appointed as Authorized Officer by the Federal Government and the one and only notification issued for the Authorized Officer by the Federal Government was for the appointment of Judicial Magistrate-III, Karachi, West. Much emphasis was made that the question of jurisdiction was never raised before the concerned Magistrate or the appellate authority but it is also well settled exposition of law that question of jurisdiction can be raised at any stage which goes to the roots of the case. It is not mere technicality but the jurisdiction to try the complaint is conferred to the Authorized Officer by the law and under the notification issued by the Federal Government specifically to exercise all the powers vested in Authorized Officer under the Port Authorities Lands & Buildings (Recovery of Possession) Ordinance, 1962. One more Office Order dated 11.11.2015 issued by District & Sessions

Judge, Karachi, West on the reference submitted by the Judicial Magistrate-II for transfer of cases is reproduced as under:

“OFFICE OF THE DISTRICT AND SESSIONS JUDGE KARACHI WEST

NO.A/W/8332/2015 KARACHI.

DATED: 11.11.2015

READ: REFERENCE IN KPT CASES MADE BY JUDICIAL
MAGISTRATE-II FOR TRANSFER OF CASES, VIDE
LETTER NO.508/2015 DATED: 07/11/2015.

OFFICE ORDER:-

The Federal Government of Pakistan vide Notification dated: 14th November 2005 is pleased to appoint the Judicial Magistrate – III Karachi West to deal with the cases pertains to the Port Authorities Land and Buildings (Recovery of Possession) Ordinance, 1962 (IX - 1962), so also exercise all the powers vested in Authorized Officer under the ordinance. In exercise of powers vouchsafed upon the undersigned by the Sub Section-1 of Section 17 of the Code of Criminal Procedure 1988, I, Ghulam Mustafa Memon, District and Sessions Judge, Karachi West, the institutional jurisdiction of matters related to Police Station Karachi Port Trust, pertaining to territorial jurisdiction of District West is hereby withdrawn from Civil Judge & Judicial Magistrate – II Karachi West and assigned to the Civil Judge & Judicial Magistrate – III Karachi West for disposal according to law.

Order to take immediate effect.

Sd/-
District and Sessions Judge,
Karachi West”

12. In the case of **M.S Ahlawat versus State of Haryana & others, (AIR 2000 SC 168)**, the court held that to perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience. Coram non judice is a legal term typically used to indicate a legal proceeding that is outside the presence of a judge, with improper venue, or without jurisdiction. Any indictment or sentence passed by a court which has no authority to try an accused of that offence is violation of the law and would be coram non judice and a nullity. The jurisdiction cannot be conferred by consent nor can it be fettered unless there is a choice between more than one place in terms of jurisdiction. If the order or judgment is suffering from the vice of coram non-judice it may be quashed and set aside by the court when a special statute gives a right and also provides for a forum for

adjudication of rights. The expression and phrase “Coram non judice” is well-defined as under:

“Coram non Judice” means acts done by a court which has no jurisdiction, either over the person, the cause, or the process. *Secret v. Galloway Co.*, 30 N.W. 2d 793, 797, 239 Iowa 168. Acts done by a court which has no jurisdiction, either over the person, the cause, or the process, are said to be “coram non judice.” *St. Lawrence Boom & Mfg. Co. v. Holt*, 41 S.E. 351, 355, 51 W.Va 352, citing *Bouv. Law Dict.* When a court of general jurisdiction undertakes to grant a judgment in an action where it has not acquired jurisdiction of parties by voluntary appearance or service of process, the judgment is void and may be disregarded and it is ‘coram non judice’. *City of Monroe v. Niven*, 20 S.E. 2d 311, 312, 221 N.C. 362. [Words and Phrases, Permanent Edition, Volume 9A, Control – Couler].

1. Outside the presence of a judge. 2. Before a judge or court that is not the proper one or that cannot take legal cognizance of the matter. [Black’s Law Dictionary, Seventh Edition, Bryan A. Garner, Editor in Chief].

In the presence of a person not a judge. When suit is brought in a court without jurisdiction it is said to be coram non judice and any judgment is null and void. [*Wharton’s Law Lexicon*, 1976 reprint, p 260]. [K J Aiyer’s Judicial Dictionary [A Complete Law Lexicon], Thirteenth Edition, Thoroughly Revised by P.M. Bakshi].

an expression used where a court proceeds in a matter beyond its jurisdiction. The term was generally used in reference to proceedings before justices of the peace, the general rule being that if the want of jurisdiction appeared on the face of the proceedings, the proceedings were void, and no act done in pursuance of them could be justified; but this rule has been modified by the (UK) Justices Protection Act, 1848, section 2 of which requires the conviction or order to be quashed before an action can be brought. *Jowitt’s*, 2nd ed. When a suit is brought and determined in a court which has no jurisdiction in the matter, it is said to be coram non judice, and the judgment is void. *Wharton’s Law Lexicon*. A judgment given by a court which is not competent to deal with the matter is not *res judicata*, under section 11, Code of Civil Procedure, 1908. In the case of a foreign judgment also, if the judgment was pronounced by a court without jurisdiction. When proceedings are coram non judice, i.e. without jurisdiction or not before the proper Judge, they are not judicial proceedings e.g., (i) Examination of a person when no case is pending before the court. 12 Cr.LJ 326. (ii) Examination of a person for obtaining information under s. 190(c) upon which a case might be stated. 27 C.455 (iii) Proceedings under s. 512 when there is no proof of absconding. 1890 AWN 100. (iv) An inquiry under s. 202 when there is no complaint. 15 P.R. 1894 Cr. (v) Recording evidence out of court in the absence of accused. (1867) 8 W.R. 74. (vi) Examination of a person by District Magistrate, who only wants protection against Police. 35 A. 102. (vii) Enquiry into the misconduct of a pleader by a Judge, not the presiding officer of the court. 18 Cr.LJ 785 (viii) An inquiry under s. 159, Cr.P.C. when there is no report under s. 157. 4 CWN 351. (ix) Inquiry by District Magistrate as to why a village headman has resigned his post. 38 A. 32. [Prem & Saharay’s, Judicial Dictionary of Words and Phrases, Doctrines, Latin Terms & Legal Maxims, Second Edition by DR. H.K. Saharay and P.M. Bakshi, Volum-1 (A-C), 2016].

A Latin Legal Maxim meaning for “not before a judge.” is a legal term basically used to indicate a proceeding which is legal in nature that is outside the authority of a judge (without a judge)

with improper presence, or without legal jurisdiction. Any indictment or sentence passed by a tribunal/court which has no authority to try an accused of that particular offence, is clearly in violation of the law of the land and would be termed as Coram non iudice. [Coram Non Iudice. Legal Maxim. Law Times Journal by Amol Verma, May 29, 2019].

13. It is well settled exposition and revelation of law that a pure question of law means a question which does not require any investigation into facts, but which could not have been met by a plea of fact if raised at the proper stage and ordinarily it will be a good argument as against a plea being a plea of law that it could have been met by an allegation of fact. The proposition is not open to contest that pure questions of law can be raised at any stage. It is the duty of the Court itself to apply the law whatever law is applicable on the admitted or proved facts. The law has to be given effect to whether or not it has been relied upon by a party. It is also envisioned in various judicial precedents that if a mandatory condition for exercise of jurisdiction by a court is not fulfilled, then entire proceedings which follow become illegal and suffer from want of jurisdiction. Judge must wear all laws of country on the sleeves of his robes and failure of counsel to properly assist is not complete excuse in the matter.

Ref: PLD 1965 S.C. 690 (Haji Abdullah Khan and others vs. Nisar Muhammad Khan and others). Almas Ahmad Fiaz versus Secretary Government of the Punjab Housing and Physical Planning Development, Lahore and another. (2006 S C M R 783). Haji Abdullah Khan's case PLD 1965 SC 90. Mansib Ali's case PLD 1971 SC 124. Gatron (Industries) Limited Versus Government of Pakistan and Others. (1999 S C M R 1072).

14. It is an admitted set of circumstances that vide Notification dated 14th November 2005, the Federal Government in exercise of Power under clause (b) of Section 2 of the Port Authorities Lands and Buildings (Recovery of Possession) Ordinance, 1962 (IX of 1962) was pleased to appoint the Judicial Magistrate Court No.III Karachi West (First Class Magistrate) to exercise all of the

powers vested in Authorized Officer under the Ordinance. The report of learned District and Sessions Judge, Karachi West unambiguously avowed that no notification for the appointment of Judicial Magistrate Court No.II Karachi West was ever issued as authorized officer in the aforesaid provision of law. It is manifesting from record that on ruminating this mistake and jurisdictional error, the learned District and Sessions Judge, Karachi West vide Office Order dated 11.11.2015, withdrawn the cases from Civil Judge & Judicial Magistrate No.II Karachi West and assigned to the Civil Judge & Judicial Magistrate No.III Karachi West for disposal according to law. The whys and wherefores lead us to a closing stage that learned Civil Judge & Judicial Magistrate No.II Karachi West had no jurisdiction to try the complaints filed by KPT and the orders passed by him are coram non judice. Seeing as initial orders are without jurisdiction therefore, the appellate court judgments affirming the said orders are also without jurisdiction and needs to be corrected. Objection to the jurisdiction cannot be construed or regarded as mere technicality but in pith and substance it has much significance. No court can assume the jurisdiction not provided under the law.

15. As a result of above declaration, the orders passed by the respondent No.3 on complaints and the judgments passed by respondent No.2 in appeals are set aside. The learned District and Sessions Judge Karachi West shall assign the complaints filed by KPT against the petitioners for de novo trial by the authorized officer i.e. Civil Judge & Judicial Magistrate No.III Karachi West for adjudication. The authorized officer shall decide the pending complaints within three months in accordance with law.

Karachi:-

Dated. 5.12.2019

Judge

Judge