

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha

F.C.P.L.A. No. 810/2026

(Against the judgment dated 21.02.2026, passed by the Peshawar High Court, Peshawar in W.P. No. 274-P/2026)

Dr. Azhar Khan Jadoon

.....Petitioner(s)

Versus

Registrar, Peshawar High Court & others

.....Respondent(s)

For the Petitioner(s) : Sardar M. Nasir Ahmad Aslam Khan,
ASC
Mr. Tariq Aziz, AOR

For the Respondent(s) : N.R.

Date of Hearing : 21.08.2026

J U D G M E N T

Syed Hasan Azhar Rizvi, J.- Through the instant petition filed under Article 175F(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 (**‘Constitution’**), the petitioner seeks leave to appeal against the judgment dated 21.02.2026 (**‘impugned judgment’**) passed by a learned Division Bench of the Peshawar High Court, Peshawar (**‘High Court’**), whereby Writ Petition No. 274-P/2026 filed by him was dismissed and Notification No. 324-J dated 08.09.2025 (**‘impugned notification’**), issued by the High Court, whereunder the suit instituted against him by the present pro forma respondents Nos. 1 to 3 was transferred from the Court of Additional District Judge-II, Abbottabad, and entrusted to the Consumer Court, Abbottabad, as well as the order dated 18.12.2025 (**‘impugned order’**) passed by the said Consumer Court, declining to return the said suit to the earlier Court of the Additional District Judge, were upheld.

2. The brief facts giving rise to the instant petition are that the petitioner is the President of the Professional Education and Promotion Society, which runs the Women Medical & Dental Colleges, Murree Road, Abbottabad. The proforma respondents instituted a suit for declaration, permanent and mandatory injunction and rendition of accounts against the petitioner, primarily questioning their alleged ouster from the executive and general bodies of the said Society. The suit was being tried by the Additional District Judge, Abbottabad where the petitioner entered appearance, filed his written statement and the evidence of a number of the plaintiffs' witnesses had also been recorded. While the proceedings were pending, the High Court, in exercise of the powers conferred by Section 12A of the West Pakistan Civil Courts Ordinance, 1962 (**'Ordinance of 1962'**), as inserted through the West Pakistan Civil Courts (Amendment) Act, 2025, issued the impugned notification, whereby certain cases pending before the District Judges and the Additional District Judges, including the above suit, were transferred to the Special Courts purportedly with a view to ensuring expeditious disposal in terms of Article 37(d) of the Constitution. Consequently, the suit was transferred from the Court of the Additional District Judge, Abbottabad to the Consumer Court, Abbottabad. The petitioner, questioning the jurisdiction of the transferee Court to entertain and adjudicate upon a civil dispute concerning the internal management of a society, moved an application seeking return of the suit to the court of competent jurisdiction. The Consumer Court, however, dismissed the application vide the impugned order, primarily on the ground that the suit having been transferred pursuant to the directions of the High Court, the transferee Court lacked the authority to return or transfer it back. The operative part of the impugned order is reproduced hereunder for ease of reference:

'Sardar Nasir Aslam Advocate through his clerk has submitted application for transfer of the case back to the regular Court of learned ADJ-II. The case in hand was transferred to this court under the special order of Honorable Peshawar High Court,

bearing No. 324 dated 08-09-2025, therefore, this court is not competent to transfer back the case to the court of learned ADJ-II. In the circumstances, the application is rejected. Announced. File for the evidence of defendant on-07-01-2026.'

Feeling aggrieved, the petitioner invoked the constitutional jurisdiction of the High Court calling in question both the impugned notification and the impugned order. However, the Division Bench of the High Court, vide impugned judgment, dismissed the said writ petition. Hence, the instant petition.

3. We have heard the learned counsel for the petitioner at some length and have also gone through the material available on the record, particularly the impugned judgment.

4. The principal contention advanced on behalf of the petitioner is that a Special Court is a creature of its parent statute and cannot exercise any jurisdiction beyond that expressly conferred upon it thereunder. Building upon this premise, it has been argued that the Consumer Court, established under the Khyber Pakhtunkhwa Consumers Protection Act, 1997 (**Act of 1997**), could entertain only such disputes as fall within the ambit of that enactment and, therefore, an ordinary civil suit could neither lawfully be transferred to nor adjudicated by it. According to the learned counsel, the newly inserted Section 12A of the Ordinance of 1962 merely provides a mechanism for transfer of cases and cannot be construed as enlarging the substantive jurisdiction of a Special Court. There can hardly be any cavil with the general proposition that a Special Court or Tribunal, being a creature of statute, ordinarily derives its jurisdiction from the enactment under which it is constituted and cannot travel beyond the limits prescribed therein. The proposition, however, does not resolve the controversy before us. The real question is somewhat different: *Whether the legislature, through a separate competent statutory enactment, can confer additional jurisdiction upon a Special Court to entertain and decide a case transferred to it?* The answer to this question must

necessarily be gathered from the language employed in Section 12A of the Ordinance of 1962, which reads as follows:

‘12A. Power to transfer cases to Special Courts or Tribunals. (1) *Notwithstanding anything contained in any other law for the time being in force, the High Court, under intimation to Government, may, if considers it expedient so to do in the interest of justice, transfer any case—*

(a) *from a court of District Judge or Additional District Judge to a Special Court or Tribunal; or*

(b) *from one Special Court or Tribunal to another Special Court or Tribunal.*

(2) *Upon transfer of a case under sub-section (1), any connected case or cases shall also stand transferred.*

(3) *A Special Court or Tribunal to which the case is transferred under sub-section (1), shall be deemed to be the court or Special Court or Tribunal, as the case may be, in which the case was originally instituted and shall have all the powers and jurisdiction of such court.*

(4) *A Special Court or Tribunal to which the case is transferred under sub-section (1), shall proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to recall and to rehear any witness who has given evidence and may act on the evidence already recorded.*

Explanation: *In this section the words “District Judge”, “Additional District Judge”, “Special Court” and “Tribunal”, shall have the same meaning as have assigned to them respectively by this Ordinance, the Code of Civil Procedure, 1908 or any special law for the time being in force.’*

Underlining is for emphasis.

5. The above provision, *insofar as relevant*, empowers the High Court to transfer any case from the Court of a District Judge or Additional District Judge to a Special Court or Tribunal. Significantly, sub-section (3) thereof not only recognizes the validity of such transfer but also expressly defines its legal consequences by providing that the transferee Special Court or Tribunal *‘shall be deemed to be the court or Special Court or Tribunal, as the case may be, in which the case was originally instituted and shall have all the powers and jurisdiction of such court.’* Sub-section (4) further

complements this scheme by requiring the transferee forum to proceed with the case from the stage at which it stood immediately before the transfer, without being bound to recall or rehear any witness whose evidence had already been recorded. A conjoint reading of these provisions leaves little room for doubt as to the legislative intent. This provision does not merely provide a procedural mechanism for transferring a case from one forum to another; it also expressly equips the transferee forum with the jurisdiction and powers necessary for its effective adjudication. Had the legislative intent been confined merely to the physical or administrative transfer of the cases, there was no occasion to enact sub-section (3) and specifically vest the transferee forum with '*all the powers and jurisdiction*' of the transferor Court. These words are neither incidental nor redundant; rather, they constitute the very foundation of the transferee forum's competence to proceed with and decide the transferred case. To construe the provision otherwise would render the express conferment of jurisdiction contained in sub-section (3) meaningless and, *at the same time*, frustrate the mandate of sub-section (4) requiring continuation of the proceedings from the stage already reached.

6. The argument that the jurisdiction of the Consumer Court must invariably remain confined to disputes falling within the ambit of the Act of 1997, overlooks not only the scheme of Section 12A but also the overriding effect expressly assigned to it by the legislature. Sub-section (1) thereof begins with a non obstante clause, '*Notwithstanding anything contained in any other law for the time being in force*', and thereafter empowers the High Court to transfer any case from the Court of a District Judge or Additional District Judge to a Special Court or Tribunal. Undoubtedly, this provision of law overrides any other law for the time being in force and has primacy over any other law relating to the same subject. Reference in this regard may be made to Major (Retd.) Barkat Ali and others v. Qaim Din and others (2006 SCMR 562). The use of the

expression '*any case*', read with the overriding words with which the provision commences, manifests a clear legislative intent that the power of transfer is not to be curtailed merely because the transferee Special Court, under its parent statute, would not ordinarily possess jurisdiction over the subject-matter of the case. Any such limitation contained in the parent law must, for the purposes of a transfer validly made under Section 12A, yield to the express legislative command. This intention is put beyond doubt by sub-section (3), which provides the necessary jurisdictional consequence of such transfer by expressly clothing the transferee Special Court or Tribunal with '*all the powers and jurisdiction*' of the transferor Court. Thus, the jurisdiction of the Consumer Court over the above suit does not emanate from the Act of 1997; rather, it flows directly from Section 12A. The former enactment establishes the Consumer Court and regulates its ordinary jurisdiction, whereas Section 12A creates an additional and case-specific source of jurisdiction in respect of cases transferred to it by the High Court. The two provisions, therefore, operate in their respective fields and admit of no legal conflict.

7. No doubt, a Special Court, being a creature of statute, cannot, *on its own*, assume jurisdiction over a matter falling beyond the limits prescribed by its parent law, nor can such jurisdiction be conferred upon it by consent, acquiescence or an administrative arrangement. That principle, however, has little application where the legislature itself intervenes and expressly enlarges the jurisdiction of the special forum for a specified purpose. Thus, once Section 12A authorizes the transfer of '*any case*' to a Special Court or Tribunal, and sub-section (3) simultaneously vests that forum with all the powers and jurisdiction of the transferor Court, the objection founded upon the limitations contained in the parent statute of the Special Court loses its legal basis. What the Consumer Court could not ordinarily entertain under the Act of 1997 thus becomes entertainable, for the limited purpose of the transferred *lis*,

by virtue of an independent and express statutory conferment of jurisdiction under the above provision. Any other interpretation would render the substantive part of Section 12A largely unworkable. If, despite a lawful transfer under sub-section (1) of Section 12A, the Special Court remained restricted exclusively to the subject-matter jurisdiction conferred by its parent statute, the legislative authorization to transfer cases from a District Judge or Additional District Judge to such Special Court would become meaningless. The legislature cannot reasonably be presumed to have first authorized such transfer and, in the same provision, intended the transferee Court to remain incapable of adjudicating the transferred matter. Sub-sections (1), (3) and (4), therefore, have to be read together as parts of one integrated statutory scheme.

8. The contention that the above suit could be tried only by the Principal Court of Civil Jurisdiction is equally misconceived. Admittedly, the suit was pending before an Additional District Judge when it was transferred to the Consumer Court. Once the High Court exercised the statutory power of transfer of cases under Section 12A(1), sub-section (3) operated to vest the transferee Court with all the powers and jurisdiction of the transferor Court in respect of that particular case. The relevant inquiry, therefore, is not whether the Consumer Court, while exercising its ordinary jurisdiction under the Act of 1997, constitutes the Principal Court of Civil Jurisdiction, but whether Section 12A authorizes it, for the limited purpose of the transferred lis, to exercise the jurisdiction of the Court from which the case was transferred. The language of sub-section (3) leaves no room for doubt in this regard. Any contrary construction would not only restrict the plain import of the expression '*all the powers and jurisdiction of such court*' but would also render the statutory scheme of transfer of cases contemplated by Section 12A substantially ineffective. It is a settled principle of statutory interpretation that a provision must be read as a whole and, as far as possible, effect must be given to every word employed

by the legislature so as to advance, rather than defeat, the object of the enactment. Reference in this regard may usefully be made to Saif-Ur-Rehman v. Additional District Judge, Toba Tek Singh and others (2018 SCMR 1885) and JS Bank Limited, Karachi and others v. Province of Punjab through Secretary Food, Lahore (2021 SCMR 1617).

9. At this stage, however, we consider it appropriate to clarify that, although we agree with the ultimate conclusion reached by the High Court regarding the competence of the transferee Special Court, we are unable to endorse certain observations made in the impugned judgment regarding the nature and legal effect of the jurisdiction conferred by Section 12A. The High Court appears to have proceeded on the premise that, by virtue of the deeming provision contained in sub-section (3) of Section 12A, the Special Court is, for the purposes of the transferred case, elevated to or deputized as the ‘Principal Court of Civil Jurisdiction’. It has further described the resultant arrangement as a ‘hybridization’ whereby the general jurisdiction of a District Judge stands superimposed upon the limited framework of a Special Court. With respect, we find these propositions to travel beyond the language and purpose of Section 12A. The use of the expression ‘shall be deemed’ in sub-section (3) undoubtedly creates a legal fiction. Once the legislature commands a particular state of affairs to be treated as existing, effect must ordinarily be given not only to that fiction but also to such consequences as necessarily flow therefrom. However, it is equally well settled that a legal fiction cannot be extended beyond the purpose for which it has been created. Moreover, a deeming clause cannot be equated with a legal fiction so as to permit the assumption of an imaginary state of affairs that did not, *in fact*, exist. Reference in this regard may be made to Multiline Associates v. Ardeshir Cowasjee and others (1995 SCMR 362). In the present context, the fiction neither alters the institutional character of the transferee forum nor converts a Special Court into the Principal

Court of Civil Jurisdiction. The effect of the provision is more precise: it commands that, for the purposes of the transferred case, the Special Court shall be deemed to be the Court in which the case was originally instituted and shall possess all the powers and jurisdiction of such Court. Thus, the fiction attaches to the transferred *lis* and the jurisdiction necessary for its adjudication, rather than effecting any transformation in the constitutional or statutory identity of the transferee Court.

10. Similarly, we are also unable to subscribe to the reasoning that the competence of the Consumer Court to entertain the transferred suit flows from, or is fortified by, the circumstance that it is presided over by a District Judge or Additional District Judge. The jurisdiction of a Court is determined by law and not by the substantive designation, rank or personal capacity of the judicial officer who presides over it. A District Judge, while presiding over a Special Court, exercises the jurisdiction statutorily conferred upon that Special Court and cannot draw upon the ordinary jurisdiction of the District Court merely by reason of his substantive office. Conversely, where the legislature itself confers additional jurisdiction upon the Special Court, the existence of such jurisdiction does not depend upon the substantive judicial rank of its Presiding Officer. The source of jurisdiction in the present case must, therefore, be kept distinct from the identity of the Presiding Officer. The Consumer Court derives its ordinary jurisdiction from the Act of 1997. However, when a case is validly transferred to it in exercise of the power conferred by Section 12A(1), its jurisdiction to entertain and adjudicate that particular case emanates independently and directly from Section 12A(3). There is neither any necessity for hybridization of the two jurisdictions nor for treating the Special Court as having become an ordinary Civil Court. It continues to remain the same Special Court in its institutional character, but exercises an additional, case-specific statutory

jurisdiction in respect of the matter transferred to it, under the above provision.

11. Once the distinction is understood in the above terms, the apparent tension between the established principle that a Special Court cannot travel beyond the parent statute creating it and the jurisdiction conferred by Section 12A disappears. The former principle prevents a Special Court from assuming jurisdiction not vested in it by law; it does not prevent a competent legislature from conferring additional jurisdiction upon an existing Special Court through another statutory enactment. The source and limits of jurisdiction in either event remain statutory. We, therefore, approve the conclusion reached by the High Court that the Consumer Court, Abbottabad, is competent to proceed with the suit in question, though for the reasons recorded herein rather than, to the extent indicated above, those assigned in the impugned judgment. The observations in the impugned judgment suggesting that the transferee Special Court becomes the 'Principal Court of Civil Jurisdiction', that the statutory arrangement results in a 'hybridization' of jurisdictions, or that the competence of the transferee Court flows from the fact that it is presided over by a District Judge or Additional District Judge, shall not be treated as laying down the correct exposition of law.

12. Section 9 of the Code of Civil Procedure, 1908, does not advance the petitioner's case either. The principle embodied therein, that civil courts have jurisdiction to try all suits of a civil nature except those whose cognizance is expressly or impliedly barred, is unexceptionable, but has little bearing on the controversy at hand. The present case does not involve an assumption of jurisdiction by implication. Rather, jurisdiction over the transferred suit flows directly from Section 12A(3). The petitioner's objection, therefore, conflates two distinct situations: the assumption of jurisdiction in the absence of statutory authority, which is impermissible, and the exercise of jurisdiction expressly conferred by the legislature, which

suffers from no such infirmity. It is also significant that the power of transfer under Section 12A(1) is vested exclusively in the High Court and may be exercised only when considered expedient '*in the interest of justice*'. The provision, therefore, does not contemplate an indiscriminate transfer of cases between ordinary and Special Courts. The notification issued by the High Court merely identifies and effects the transfer in exercise of the statutory power; it does not itself create or confer jurisdiction upon the transferee Court. The jurisdictional consequences of a valid transfer arise by operation of law under sub-sections (3) and (4) of Section 12A. Thus, the notification is the instrument through which the transfer is effected, whereas the statute itself is the source of the jurisdiction exercised by the transferee Court.

13. It is noted with great importance that the High Court, with regard to the impugned notification, has held that, being an administrative act of the High Court itself, it was not amenable to its constitutional jurisdiction under Article 199 of the Constitution. Reliance in this regard was placed upon Gul Taiz Khan Marwat v. Registrar, Peshawar High Court (PLD 2021 SC 391), wherein the Supreme Court examined the constitutional status of executive, administrative and consultative actions undertaken by the Chief Justice or Judges on behalf of the High Court. In our view, however, it is not necessary, for the disposal of the present petition, to endorse the broader proposition that every administrative act or notification issued by a High Court is, merely by reason of its source, absolutely immune from judicial scrutiny in all circumstances. The constitutional questions of such amplitude ought not to be determined more broadly than is necessary for resolution of the controversy before the Court. In the present case, the impugned notification has been issued in exercise of an express statutory power conferred by Section 12A; the competence of the transferee Court follows directly from sub-section (3); and no independent ground has been established before us to demonstrate that the

transfer itself was contrary to the statutory conditions governing exercise of that power. The petition can, therefore, be decided on this narrower and firmer ground without pronouncing upon the wider proposition formulated by the High Court regarding an absolute immunity of its administrative actions from constitutional scrutiny.

14. Even otherwise, no jurisdictional prejudice has been demonstrated by the petitioner. The transferee Court has not assumed jurisdiction prohibited by law; rather, it is exercising jurisdiction pursuant to an express statutory mandate. More importantly, Section 12A(4) preserves the proceedings already undertaken before the transferor Court and permits the transferee Court to proceed with the case from the stage at which it stood at the time of transfer. The transfer, therefore, neither extinguishes any substantive right of the parties nor deprives them of adjudication by a judicial forum competent under the law. A mere change of forum, when expressly sanctioned by the legislature and effected by the competent authority, does not, *by itself*, give rise to any legal grievance warranting interference. We are, therefore, of the considered view that the impugned notification issued by the High Court suffers from no illegality and that the Consumer Court rightly rejected the petitioner's application for return of the suit to the court of ordinary civil jurisdiction through the impugned order reproduced above. Consequently, the ultimate conclusion reached by the High Court calls for no interference, though its reasoning stands modified to the extent indicated hereinabove.

15. Before parting, it is clarified that our observations are confined to the competence of a Special Court or Tribunal to entertain and decide a case validly transferred to it under Section 12A *supra*. Nothing stated herein shall be construed as conferring upon any Special Court a general jurisdiction beyond its parent statute in respect of cases which have not been transferred to it in accordance with the said provision. Likewise, we have expressed no opinion upon the merits of the civil suit pending between the parties,

which shall be decided independently, strictly in accordance with law and on the basis of the evidence available on the record, without being influenced by any observation made either in the impugned judgment or herein touching upon the merits of the controversy.

16. For the reasons discussed above, leave to appeal is refused and the petition is dismissed. The impugned judgment is maintained, subject to the modification and clarification of the reasons recorded hereinabove. These are the reasons for our short of even date.

Judge

Judge

Islamabad, the
21st August, 2026
APPROVED FOR REPORTING
*M Farhan/ **