2026:AHC:60135-DB

A.F.R.

Reserved on 05.02.2026
Delivered on 24.03.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 37 of 2026

Civil Court Bar Association And Another

.....Petitioner(s)

Versus

High Court Of Judicature At Allahabad And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Santosh Kumar Mishra, Vinay Kumar Mishra
Counsel for Respondent(s)	:	Chandan Sharma, Ashish Mishra, C.S.C.

Along with :

WRIT - C No. - 42218 of 2025

Bar Association, Civil Court, Gorakhpur and another

.....Petitioner(s)

Versus

High Court Of Judicature At Allahabad And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Chandra Bhan Gupta, Hari Narayan Singh
Counsel for Respondent(s)	:	Rahul Srivastava, Ashish Mishra, C.S.C.

Court No. - 1

HON'BLE AJIT KUMAR, J.
HON'BLE SWARUPAMA CHATURVEDI, J.

(Per : Swarupama Chaturvedi,J.)

1. Instructions placed today are taken on record.

2. Heard Shri Pramod Pathak, learned Advocate holding brief of Shri Santosh Kumar Mishra, learned counsel for the petitioner, Shri Hari

Narayan Singh, learned counsel appearing for the petitioner in the connected matter, Shri Chandan Sharma and Shri Rahul Srivastava, learned counsel appearing for the respondents respectively.

3. Writ Petition No. 37 of 2026, filed by the Civil Court Bar Association, Maharajganj, was filed with a prayer in the nature of certiorari for quashing the Administrative Order dated 08.12.2025 passed by respondent no. 3, the Principal Judge, Family Court, Maharajganj, and the recommendation order dated 08.12.2025 of respondent no. 2, District Judge Mahrajganj, by which the cases were transferred to village court Nautanva and Nichlaul, District Mahrajganj.

4. Connected Writ Petition No. 42218 of 2025 was filed by the Bar Association, Civil Court, Gorakhpur, with the prayer to issue direction in the nature of certiorari quashing the administrative order no. 162/2025/Gorakhpur/Dated/Sept, 23, 2025, passed by the office of the District Judge Gorakhpur and also for quashing the administrative order dated 07.10.2025 passed by Principal Judge, Family Court.

5. Since both writ petitions challenge similar administrative orders directing transfer of maintenance proceedings from Family Courts to Gram Nyayalayas, they were heard together with the consent of the parties and are being decided by this common judgment. For the sake of clarity, however, the factual matrix of each petition is noticed separately wherever required.

6. The material facts in both petitions are not in dispute. It is a matter of fact that the Gram Nyayalayas Act, 2008, was enacted with the legislative object for providing access to justice at the grassroot level. Section 12(1)(b), read with the First Schedule Part II, point (v) to the Act, enable Gram Nyayalayas to entertain claims of maintenance arising under the Code of Criminal Procedure Chapter IX (Section 125 to 128) and Bharatiya Nyaya Suraksha Sanhita chapter X (Section 144 to 147). It is also clear that Section 16 of the Act empowers the District Judge to order transfer of pending proceedings, and that Section 18 provides an overriding provision in respect of criminal matters. At the same time, the Family Courts Act, 1984, provides for a special forum for adjudication of family disputes. Under Section 7, the Family Court exercise jurisdiction

akin to that of a Magistrate of the First Class under Chapter IX of the Code of Criminal Procedure, while Section 8 expressly exclude the jurisdiction of other courts in respect of matters falling within its scope. A notable and undisputed distinction between the two enactments lies in the appellate framework, whereas Section 19 of the Family Courts Act provides for an appeal directly to the High Court, Section 33 of the Gram Nyayalayas Act contemplates an appeal to the Court of Session, whose decision attains finality subject to constitutional remedies.

7. Learned counsel for the petitioners have vehemently contended that the impugned administrative orders are wholly arbitrary, *ultra vires* and contrary to the legislative intent underlying both enactments. It was argued that the Family Courts Act is a special Statute creating an exclusive forum for family disputes and, therefore, jurisdiction once vested in such court could not be divested by administrative directions. Emphasis was laid on the difference in appellate structures, with the submission that the transfer of proceedings from Family Courts to Gram Nyayalayas result in deprivation of a valuable statutory right of appeal to the High Court and relegated litigants to a different and restricted appellate forum.

8. He contended that the two enactments operate in distinct and separate fields, and were never intended to overlap one another. The petitioners submitted that the Gram Nyayalayas Act, 2008, did not lay down a complete or self-contained mechanism for the effective enforcement of maintenance orders, particularly those contemplated under Chapter IX of the Code of Criminal Procedure.

9. He further contended that the impugned orders had been passed primarily on the basis of an administrative view reflected in the letter of the Registrar General dated 16.12.2021. That communication suggested that the Gram Nyayalayas Act would have an overriding effect and that Gram Nyayalayas would exercise exclusive jurisdiction over maintenance matters. He pointed out that the said letter was issued in response to specific representations from Budaun and Sitapur, and was merely clarificatory in nature. It could not be treated as laying down any binding principle of law or as a source of jurisdiction. The petitioners emphasized

that administrative communications could not alter the jurisdictional scheme envisaged under existing laws.

10. On the other side, learned counsel appearing for the respondents supported the impugned orders by submitting that the Gram Nyayalayas Act, 2008 was a beneficial legislation intended to decentralize justice delivery and to provide inexpensive and speedy remedies at the grassroot level. He argued that Section 12, read with the First Schedule clearly brought maintenance proceedings within the jurisdiction of Gram Nyayalayas and that Section 16 expressly authorized transfer of pending cases. He contended that chapter (IV) of Gram Nyayalayas Act, 2008, provided for the procedure in criminal cases. He further relied upon section 18 to strengthen his arguments, which is reproduced below for the easy reference:

> "*18. Overriding effect of Act in criminal trial.- The provisions of this Act shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a Court of Judicial Magistrate of the first class."*

11. Learned counsel argued that petitioners had challenged consequential administrative orders without challenging provisions of the Gram Nyayalaya Act 2008 and The Family Court Act 1984. He further contended that after enforcement of the Gram Nyayalayas Act, 2008, the Gram Nyayalayas had been given the Civil and Criminal jurisdiction as per provisions of the Act. He referred Rule 30 of The Uttar Pradesh Gram Nyayalaya (Procedure and Practice) Rules, 2009, which provided that the Gram Nyayalaya should have exclusive jurisdiction in respect of matters covered by its jurisdiction and specifically conferred on it.

12. Having heard learned counsel for the parties and having perused the record, the questions that arise for consideration are whether an order passed under a statutory provision can be assailed without challenging the validity or vires of the provision under which such order has been made, and whether maintenance proceedings pending before a Family Court

constituted under the Family Courts Act, 1984 can be transferred to a Gram Nyayalaya in exercise of powers under Section 16 of the Gram Nyayalayas Act, 2008.

13. The question posed for determination is required to be considered in the light of the statutory framework governing both enactments and their respective fields of operation, and upon such consideration, we find that both the Family Courts Act, 1984 and the Gram Nyayalayas Act, 2008 are special legislations operating in distinct and well-defined spheres. Any possible overlap between both these statutes are required to be resolved by applying the principle of harmonious construction, so as to ensure that both enactments are given full effect without rendering any one redundant.

14. The objective of bringing The Family Court Act, 1984 is to bring an enactment to provide for the establishment of family court with a view to promote conciliation and secure speedy settlement of disputes relating to the marriage and family affair and for the matter connected therewith. Section 7 of Act of 1984 provides the jurisdiction of Family Court whereas, the provision of appeal lies in section 19 which states that an appeal shall lie from every judgment and order, not being an interlocutory order of the Family Court to the High Court on facts and law.

15. The objective behind enactment of The Gram Nyayalaya Act, 2008 is to establish Gram Nyayalaya at grassroot level for the purpose to provide access to justice to the citizen at their doorstep and to ensure that opportunity for securing justice is not denied to any citizen by reason of social, economic or other disabilities and the matters connected therewith or in identical thereto. The Act has made detail provision to provide jurisdictions, powers and authorities of the Gram Nyayalaya.

16. Regarding criminal jurisdiction, Section 12 makes the provision, whereas section 13 provides civil jurisdiction of Gram Nyayalaya. Section 12(1)(b) provides that Gram Nyayalaya may take cognizance of an offence on a compliant or on a police report and shall try all offences and grant relief, if any, specified under the enactments included in Part II of that schedule. Point (v) under the Part II of First Schedule deals with order for maintenance of wives, children and parents under Chapter IX of

Cr.P.C. 1973. Section 16 of the Act provides for transfer of pending proceedings by the District Judge or the court of Sessions to the Gram Nyayalaya, competent to try or dispose of such cases. Section 18 of the Act provides for overriding effect of the Act in criminal trial.

17. Provisions under Chapter VII of Act of 2009 provides for the appeal. Section 33 of Act, 2009, makes the provision for appeal in Criminal Cases and provides that an appeal shall lie from any judgment, sentence or order of a Gram Nyayalaya to the court of Sessions. It is also stated that the decision of Court of Session shall be final as no appeal of revision shall lie from the decision of court of Session. Although the proviso to section provides that nothing in this sub-section shall preclude any person from availing the judicial remedy available under Article 32 and Articles 226 of the Constitution of India. In other words, the Act provides for appeal to the court of Sessions from the judgment and order of Gram Nyayalaya and subsequently the aggrieved party can also approach High Court under Article 226, therefore, there is a layer of protection of rights of parties to the proceedings in every case.

18. After careful perusal of both enactments, we are of the considered view that the legislative intent behind both Statutes are for providing more litigant friendly and easily accessible judicial forums as evidenced by Section 9 of the Gram Nyayalayas Act, 2008, and the framework of the Family Courts Act, 1984. It further gets support from mandating that judicial proceedings be brought to the doorsteps of the litigants to eradicate socio-economic and geographical barriers. If both laws are interpreted harmoniously, then there is no conflict and both are different steps taken to provide more conducive environment to litigants having family disputes, where the effort is to mediate and resolve first, which requires a friendly atmosphere.

19. But even in the situation where two legislations, that too special legislations are to be analysed then the maxim "*leges posteriores priores contrarias abrogant*" is a well-settled rule of statutory interpretation, which is to be understood as wherever two enactments are irreconcilably inconsistent, the later enactment must prevail to the extent of such inconsistency. The underlying rationale is grounded in legislative intent as

the legislature, being presumed to be aware of the existing law, is taken to have consciously enacted the subsequent statute to either modify, override, or supplant the earlier provision. Thus, the later law represents the most recent expression of the legislative intent and must be given effect accordingly.

20. Although at the first place the harmonious construction resolves the issue in hand, but petitioners, without challenging the provisions of the enactment, raised the point of different appeal forums against orders passed by gram nyayalaya and family court, therefore this discussion is warranted. The Court must, however, exercise caution before applying this principle, and every attempt should be made to harmonize the provisions of the two statutes. Repeal by implication is not to be readily inferred unless the inconsistency is direct, irreconcilable, and such that both statutes cannot stand together or be given simultaneous effect. Only when harmonious construction fails, and the provisions are so contradictory that compliance with one would necessarily entail violation of the other, does the doctrine of implied repeal come into operation, thereby giving precedence to the later enactment.

21. In essence, the maxim serves as a rule of last resort, invoked only when reconciliation proves impossible. Its application ensures coherence in the legal system by preventing contradictory mandates from coexisting, while simultaneously respecting the supremacy of the latest legislative intent. Above principle assumes significance where two special statutes operate in the same field and contain conflicting provisions, the question of priority cannot be resolved merely by invoking the special nature of either enactment and in such circumstances, the later special statute is to be preferred.

22. Supreme Court in ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71***, has held that:

> "*9. It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows: Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd. [(1993) 2 SCC 144] ; Sarwan Singh v. Kasturi Lal [(1977) 1 SCC 750 : (1977) 2 SCR 421] ; Allahabad Bank v. Canara Bank [(2000) 4 SCC 406] and Ram Narain v. Simla*

Banking & Industrial Co. Ltd. [AIR 1956 SC 614 : 1956 SCR 603].

10. We may notice that the Special Court had in another case dealt with a similar contention. In Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd. [(1997) 89 Comp Cas 547 (Special Court)] it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The headnote which brings out succinctly the ratio of the said decision is as follows:

"*Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply."*

23. This principle of relying upon the later legislation, continued to be followed by the Supreme Court as it can be seen in ***KSL & Industries Ltd. v. Arihant Threads Ltd., (2015) 1 SCC 166***:

"*47. In a later case [Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71] the question arose in the context of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and SICA. It was contended that in view of the special provisions contained in SICA no proceedings could have been initiated under the Special Court Act. The Court observed that though Section 32 of SICA contained a non obstante clause, there was a similar non obstante clause in Section 13 of the Special Court Act. The Court observed : (Solidaire case [Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71] , SCC p. 73, para 9) "9. … This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail."*

24. In the facts of the matter, learned counsel appearing for petitioners as well as respondents placed reliance upon the decision of this Court in ***Smt. Siya Dulari v. Awadh Naresh***, ***Neutral Citation No.- 2024:AHC:42475***, against which the special leave petition (civil) diary no. 47561 of 2024 was filed before the Supreme Court by the bar association Etmadpur Agra but same was dismissed as withdrawn vide order of the Supreme Court dated 07.02.2025 but another special leave petition (civil) diary no. 49860 of 2024 filed by the respondent in the

same matter before the High Court is still pending without any stay order on the order of the High Court.

25. The reliance placed by the petitioner upon the judgment of this Court in ***Siya Dulari (supra)*** to assail the impugned transfer orders is misconceived. The aforesaid decision reiterates the settled principle that jurisdiction is to be created by the enactment and cannot be conferred or assumed by administrative directions or orders of transfer. It further holds that the jurisdiction of a Gram Nyayalaya is confined strictly to matters enumerated in the Schedule to the Act, and that any adjudication beyond such statutory limits would be a nullity in the eyes of law. However, the judgment does not lay down that the exercise of power under Section 16 of the Gram Nyayalayas Act is per se impermissible, rather, it clarifies that the issue of jurisdiction remains open to examination before the transferee court. Hence, as per this judgement, the established legal position is that the transfer can be made in accordance with law.

26. It is also significant to note that the petitioners have not challenged provisions of the Gram Nyayalayas Act, 2008, in particular Sections 12, 16 and 18 thereof, which constitute the very source of the power to entertain such proceedings and to effect transfer. In absence of any challenge to the vires or applicability of the statutory provisions, the validity of the action taken thereunder cannot be assailed in isolation. It is a well settled legal principle that where an administrative or consequential action is founded upon a statutory provision, the same cannot be set aside without first dislodging the statutory foundation itself. The impugned orders, having been passed in exercise of powers provided in the enactment, cannot be termed as without jurisdiction so as to warrant interference under Article 226 of the Constitution.

27. This view finds support in a catena of judgements including the judgement of the Supreme Court in ***V.K. Majotra v. Union of India, (2003) 8 SCC 40***, wherein the limits of judicial review and the impermissibility of issuing directions contrary to statutory provisions without assailing their vires have been discussed and then it was held that:

> "*8. We have perused the pleadings of the writ petition and the counter-affidavits filed by the respondents before the High Court. Counsel for the parties are right*

in submitting that the point on which the writ petition has been disposed of was not raised by the parties in their pleadings. The parties were not at issue on the point decided by the High Court. Counsel for the parties are also right in contending that the point raised in the writ petition was neither adverted to nor adjudicated upon by the High Court. It is also correct that vires of Sections 6(2)(b), (bb) and (c) of the Act were not challenged in the writ petition. The effect of the direction issued by the High Court that henceforth the appointment to the post of Vice-Chairman be made only from amongst the sitting or retired High Court judge or an advocate qualified to be appointed as a judge of the High Court would be that Sections 6(2)(b), (bb) and (c) of the Act providing for recruitment to the post of Vice-Chairman from amongst the administrative services have been put to naught/obliterated from the statute-book without striking them down as no appointment from amongst the categories mentioned in clauses (b), (bb) and (c) could now be made. So long as Sections 6(2)(b), (bb) and (c) remain on the statute-book such a direction could not be issued by the High Court. With respect to the learned Judges of the High Court, we would say that the learned Judges have overstepped their jurisdiction in giving a direction beyond the pleadings or the points raised by the parties during the course of the arguments. The writ courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to notice on the additional points to satisfy the principles of natural justice. Parties cannot be taken by surprise. We leave the discussion here."

28. The aforesaid principle got reiterated by the Supreme Court in ***Edukanti Kistamma v. S. Venkatareddy, (2010) 1 SCC 756,*** *which is as follows*:

"*22. It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (vide P. Chitharanja Menon v. A. Balakrishnan [(1977) 3 SCC 255 : 1977 SCC (L&S) 378 : AIR 1977 SC 1720] ; H.V. Pardasani v. Union of India [(1985) 2 SCC 468 : 1985 SCC (L&S) 482 : AIR 1985 SC 781] ; and Govt. of Maharashtra v. Deokar's Distillery [(2003) 5 SCC 669 : AIR 2003 SC 1216]).*"

29. The Supreme Court has consistently taken the view that a consequential order cannot be assailed in isolation, as see in ***Dhanraj v. Vikram Singh and others, 2023 SCCOnline SC 724***, where the Supreme Court has held that:

> "*We are of the view that in absence of any specific challenge to the validity of the statutory provisions, the High Court ought not to have undertaken the exercise of going into the question of repugnancy. We fail to understand the propriety of the observation that the law departments of the State and the Union should have a dialogue to remove the discrepancy."*

30. In the present case, the impugned orders are administrative in nature and do not by themselves, adjudicate upon the rights of individual litigants and orders are passed in accordance of law as appears from the statutory provisions discussed above.

31. In view of the foregoing discussion, we are not inclined to exercise jurisdiction under Article 226 of the Constitution of India. The challenge to impugned orders is not maintainable in the absence of any challenge to the validity of the statutory provision under which it is passed, and further, applying the settled principle that a later enactment prevails over an earlier enactment in case of inconsistency, the transfer of maintenance proceedings from the Family Court constituted under the Family Courts Act, 1984 to the Gram Nyayalaya under Section 16 of the Gram Nyayalayas Act, 2008 is held to be valid.

32. Accordingly, both writ petitions are **dismissed**. No order as to cost.

(Swarupama Chaturvedi,J.) (Ajit Kumar,J.)

March 24, 2026
Shiv