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JUDGMENT SHEET

LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.16679/2026

Fareha ***vs.*** **Asad Bashir etc.**

JUDGMENT

Date of Hearing:	21.04.2026
Petitioner by:	Mr. Muhammad Saqib Qadeer, Advocate.
Respondent No.1 by:	Mr. Naheed Khalid, Mr. Asad Bashir and Ch. Irfan Sadiq Tarar, Advocates.

Anwaar Hussain, J. By way of factual background, it is noted that the petitioner is the biological mother of four minor daughters, namely, Khadija Asad, Sarah Asad, Fatimah Zahra Asad and Zohra Asad ("**the minors**"), who are presently in the physical custody of their father, respondent No. 1 ("**the respondent**"), since August 2024. On 17.08.2024, the respondent filed a petition under Section 7 of the Guardians and Wards Act, 1890 ("**the Act**"), before the Guardian Judge-III, Lahore ("**the Guardian Court**"), seeking his declaration as guardian of the persons of the minors. The petitioner, upon gaining knowledge of the proceedings, appeared before the Guardian Court, filed written reply, and raised a preliminary objection to the maintainability of the said petition, along with an application seeking decision of the said objection, in the first instance. The Guardian Court, *vide* impugned order dated 14.02.2026, dismissed the said application. However, *vide* order dated 25.02.2026, *inter alia*, following issue was framed:

"(1). ……

(2). Whether petition is not maintainable in its present form?"

2. Learned counsel for the petitioner contends that there is a distinction between the term "custody" and "guardianship", which has

not been kept in sight by the Guardian Court. Adds that the respondent, being real father, already enjoys the status of the guardian, by operation of law, and in the absence of any disqualification, there exists no occasion for invoking Section 7 of the Act. Adds that at the time of filing of the petition under Section 7, the respondent admittedly had physical custody of the minors, which reflects *malafide* on part of the respondent to seek the declaration as a guardian. In support of his contentions places reliance on case reported as *Ms. Shazia Akbar Ghalzai and another v. Additional District Judge, Islamabad (East) and 2 others* **(2021 MLD 817 Islamabad)**. Further, contends that the course adopted by the Guardian Court is self-contradictory inasmuch as on the one hand, the application of the petitioner that the petition of the respondent under Section 7 of the Act is not maintainable has been dismissed, and on the other hand issue *qua* maintainability has been framed.

3. Conversely, learned counsel for the respondent supported the impugned findings while submitting that the petitioner herself has filed a petition under Section 7 of the Act, for appointment as guardian of the two of the younger daughters, in addition to another application for grant of custody of the minors and therefore, she cannot object to the maintainability of the application filed by the respondent, under Section 7 of the Act.

4. In rebuttal, learned counsel for the petitioner acknowledges that the petitioner has also filed an application for appointment as guardian of the two daughters as well as an application for grant of custody of the minors, however, contends that only after the respondent is declared unfit in the proceedings initiated by the petitioner, application under Section 7 of the Act filed by the respondent can be entertained.

5. Arguments heard. Record perused.

6. The following questions of law arise for determination:

   i. Whether a real father, already having physical custody of the minors, can file a petition under Section 7 of the Act?

ii. Whether the course adopted by the Guardian Court is sustainable in law?

7. Before addressing the questions of law involved, it is pertinent to observe that the "grant of custody" and the "appointment and/or declaration as a guardian", under the Act, carry different scope and implications; however, any detailed examination of that distinction is not relevant in the peculiar facts and circumstances of the present case inasmuch as admittedly the petitioner has also moved two separate applications—one for the grant of custody of the minors and the other under Section 7 of the Act, for her appointment as guardian of the two, out of the four, minor daughters.

8. Adverting to the legal questions involved and before answering the same, it is appropriate to reproduce the relevant statutory provisions of the Act. Section 7 of the Act provides as under:

> "Where the Court is satisfied that it is for the welfare of a minor that an order should be made—
>
> (a) appointing a guardian of his person or property, or both; or
>
> (b) declaring a person to be such a guardian, the Court may make an order accordingly."

Whereas Section 19(b) of the Act contemplates as follows:

> "Nothing in this Chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—
>
> (a) ……
> (b) of a minor whose father is living and is not in the opinion of the Court, unfit to be guardian of the person of the minor"

A plain reading of Section 7 shows that the legislature has consciously employed two distinct expressions, namely "appoint" and "declare," thereby recognizing that a person may already possess the status of a guardian in law, yet may seek formal affirmation of such status from the Court. Section 19(b), on the other hand, places a restriction upon the power of the Court, at the stage of the declaration and/or appointment, so as to avoid unnecessary displacement of a natural

guardian. The provision does not, however, create an express bar against the invocation of jurisdiction under Section 7 of the Act by the natural guardian. The interpretative exercise must proceed on settled principles that where the legislature has used clear and distinct expressions, the same must be given their independent meaning. The word "declare" appearing in Section 7 of the Act cannot be rendered redundant by conflating it with the word "appoint," nor can Section 19(b) of the Act be stretched beyond its plain language to create a prohibition, which the legislature has not expressly enacted.

9. Moreover, as a matter of general practice, it is correct that applications seeking appointment of guardian are more frequently instituted by third parties or strangers, particularly in situations where the natural guardian is either unavailable or has been declared unfit, however, this practice cannot be elevated to a rule of law so as to restrict the scope of Section 7 of the Act. Reliance placed on case of *Ms. Shazia Akbar Ghalzai and another supra* is misplaced. The ratio in the said case is contextual and turns upon the facts of that case. In the said case, the mother sought appointment as guardian, against the real father, and remained unsuccessful on the ground that she herself left the minors therein and the father in said case looked after the children and question of abduction was not proved, rendering the father therein unfit for the purpose of appointment of mother as guardian. Suffice to state that the said case does emphasize that the jurisdiction under the Act must be exercised within statutory contours; however, the same does not lay down an absolute proposition that a natural guardian is precluded from invoking Section 7 of the Act altogether.

10. Whereas in the present context, it cannot be overlooked that the disputes *inter se* parents often assume such a nature where mere existence of a legal status (as natural guardian) becomes insufficient for its effective exercise. Situations may arise where mother is in physical custody (although it is not the situation in the present case) and denies access to the natural guardian; where allegations of unfitness are levelled

against the natural guardian/real father in the manner that persuade third-parties (like schools where minor is enrolled) to decline the recognition of parental authority of the real father, as natural guardian, in the absence of a judicial declaration. In such contingencies, to hold that a natural guardian is remediless and should only seek remedy for visitation schedule would not only be an unduly restrictive interpretation of the statute but would also defeat the overarching principle of welfare of the minor, which remains the cornerstone of the Act.

11. Thus, while it may appear that a real father, being a natural guardian, does not require any declaration or appointment, a deeper and purposive interpretation of Section 7 read with Section 19(b) of the Act makes it evident that the law neither mandates such declaration nor prohibits it. Consequently, no jurisdictional bar can be said to exist against the maintainability of an application under Section 7 of the Act, at the instance of a natural guardian, particularly where circumstances necessitate formal affirmation of such status. Accordingly, question No. (i) is answered in the affirmative. The real father can file petition under Section 7 of the Act even if he is in physical custody of the minors. Moreso, in the present case, where the petitioner herself has also filed an application seeking appointment as guardian wherein she seeks to have the respondent/father declared unfit. In such a situation, if it were to be assumed that an application filed by the respondent under Section 7 is not maintainable, it would lead to an anomalous and impractical consequence. It would imply that in such cases, the father must first await a declaration of his unfitness at the instance of the mother of the minor(s), and only thereafter approach the Court again to seek appointment as guardian, as argued by the learned counsel for the petitioner. Such an interpretation would not only be artificial but would also result in multiplicity of proceedings, procedural absurdity, and an unnecessarily circuitous process, which the law does not contemplate. The law does not envisage that a natural guardian should be compelled to undergo successive rounds of litigation merely to have his status recognized or

affirmed. Viewed in the context of the present case, where the petitioner herself has put the status and fitness of the respondent-father in issue, the pre-emptive invocation of jurisdiction, of the Guardian Court, by the respondent under Section 7 of the Act cannot be said to be barred. Once such a dispute is brought before the Courts, the issue of guardianship becomes a matter requiring adjudication rather than a mere recognition of the status. The necessity and outcome of petition filed by the respondent, however, remain dependent upon the factual context and the welfare of the minors.

12. As regards question No. ii, it is observed that the Guardian Court, on the one hand, dismissed the application seeking decision on maintainability, and on the other hand, framed an issue on the same question. In first blush, this reflects an inconsistency in approach. However, the same is reconcilable on the premise that the Guardian Court declined to decide the question, at the threshold, and instead deferred it for determination upon recording of evidence alongwith issue No.1, regarding fitness of the respondent as guardian, keeping in sight the welfare of the minors.

13. In view of the facts and circumstances of the case, this Court is of the opinion that the impugned order does not suffer from any illegality. However, the petition filed by the respondent under Section 7 of the Act needs to be clubbed with the application filed by the petitioner under Section 7 of the Act for appointment as guardian, as also with the application under Section 25 of the Act filed by the petitioner, for grant of custody, to be examined and tried by one and the same Court, which Court shall determine, *inter alia*, whether the respondent's petition has been filed with *bonafide* intentions or is motivated in a manner affecting the custody rights of the petitioner; and the question of fitness of the respondent strictly in accordance with law, after framing fresh comprehensive issues. District Judge, Lahore to fix the cases before one Court.

14. **Disposed of** in above terms.

15. Since the main case has been disposed of, C.M. No.03/2026 filed for placing documents on record stands disposed of as well, having become infructuous.

(**ANWAAR HUSSAIN)**
Judge

Approved for reporting

Judge

Akram