

PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

Writ Petition No. 1454-2022

Dr. Arshad Hussain

.....Petitioner(s).

Versus

Swabi Development Authority through its Project Director, etc.

.....Respondent(s).

For the Petitioner: Mr. Babar Hayat, Advocate.

For respondent(s):- M/s Farhad Qadeer, AAG,
Taimur Khan, Asstt: Attorney
General and Waheed Kamran
Advocate.

Date of Hearing: **23.10.2025**

JUDGMENT

WIQAR AHMAD, J.- Through this writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner Dr. Arshad Hussain seeks declaration that letters dated 16.09.2015 and the subsequent appellate order passed by respondent No. 3, whereby Plots No. 372-F and 373-F situated in Shah Mansoor Township, Swabi were cancelled, are without lawful authority and of no legal effect, and further seeks direction to the respondents to restore his ownership and deliver possession thereof.

2. The facts, as stated in the writ petition, are that Plots No. 372-F and 373-F were initially allotted to respondents No. 4 and 5 (Asif Khan and Shah Jehan) on 10.06.2005 after deposit of 1/4th of the total price. The petitioner purchased said plots in July, 2005 through proper transfer deeds executed before respondent's authorities after scrutiny of record, payment of transfer fees and recovery of all government dues. The transfer deeds carried endorsement that **“nothing outstanding against the plot,”** and the petitioner's name was duly recorded in the register of ownership maintained by the authority. Thereafter, when petitioner sought possession and permission to construct, no response was received from the authority. Later, after ten years, letters dated 16.09.2015 were issued by respondent No. 2 to the previous allottees cancelling the allotments on allegations of fraud and non-payment of down payment. No notice, show cause, or opportunity of hearing was provided to the petitioner, though he was the registered owner. The petitioner challenged those actions through writ petition No. 4322-P/2015 which was dismissed on the ground of alternate remedy under Regulation 28. The petitioner then filed an appeal before respondent No. 3, which too was dismissed without hearing. The present petition was thereafter filed assailing both the original and appellate orders.

3. Respondents Nos. 1 and 2 in their comments contended that the plots were illegally allotted ab initio since the original allottees had not deposited 1/4th down payment, hence both the initial allotment and subsequent transfers were void. They maintained that the cancellation was made upon recommendation of an inquiry committee and in accordance with the regulations. The petitioner's locus standi and bona fide were disputed and it was alleged that the writ was not maintainable owing to the earlier civil suit's withdrawal.

4. The petitioner, in his rejoinder, denied the allegations and placed reliance upon multiple inquiries, findings of the Public Accounts Committee, and official reports showing that the original allottees had indeed deposited the 1/4th payment along with the application forms. It was further demonstrated that senior officers of the SDA who were accused of embezzlement were tried before the Anti-Corruption Court and were acquitted, while subsequent inquiries by the Provincial Inspection Team and the Local Government Department exonerated them. The Public Accounts Committee, after examining the record, found that all allottees had deposited the requisite payment except for one plot (No. 211/C) which alone had been allotted without down payment and cancelled. Directions were repeatedly issued by the Secretary Local Government and the PAC to restore the plots

and hand over possession to the owners, but the respondents failed to comply.

5. Arguments heard and record perused.

6. The controversy revolves around the question whether the allotments of the plots in question were obtained without deposit of 1/4th down payment and whether subsequent transfer to the petitioner, a bona fide purchaser, could lawfully be cancelled without notice or hearing. It is an admitted position that the petitioner's name was recorded in the official register of ownership after completion of transfer formalities in 2005, that the transfer deeds were duly endorsed by the competent authority as **“nothing outstanding,”** and that the cancellation was made after a decade not against the petitioner but against the original allottees, then having no interest in the property. Such action, in clear violation of the principles of natural justice, cannot sustain in law. The record further reveals that multiple official and judicial inquiries have consistently held that the original allottees had deposited 1/4th down payment along with their applications and that the allegations of fraud and misrepresentation were unfounded. Even the anti-corruption proceedings culminated in acquittals and reinstatements of the concerned officers. The recommendations of the Public Accounts Committee and repeated directives of the Secretary Local Government to

restore the plots were ignored by the respondents without any lawful justification. This persistent defiance of official directions demonstrates mala fide and arbitrary exercise of power.

7. The respondents' contention that the cancellation was made by the Housing Officer under Regulation 13 is also untenable, as under the relevant Allotment Regulations only the Project Director, with concurrence of the competent authority, could exercise such power. The Housing Officer's action, therefore, is without jurisdiction and void ab initio. Even otherwise, no notice or opportunity of hearing was provided to the petitioner prior to cancellation, which offends Articles 4, 10A, and 24 of the Constitution of the Islamic Republic of Pakistan, 1973. The property rights of a bona fide purchaser cannot be extinguished by an administrative act without due process of law. In view of the above discussion, it is evident that the impugned cancellation letters dated 16.09.2015 and the appellate order passed by respondent No. 3 are illegal, arbitrary, and without lawful authority. The petitioner has been unlawfully deprived of his valuable rights for nearly two decades despite being a bona fide purchaser and registered owner. The respondents' conduct in ignoring official inquiries and directions of superior authorities also warrants serious censure.

8. For what has been discussed above, this writ petition is allowed. The impugned letters dated 16.09.2015 and the appellate order of respondent No. 3 are declared to be without lawful authority and of no legal effect. The respondents are directed to restore the ownership of Plots No. 372-F and 373-F in the name of petitioner in official record and to deliver possession thereof forthwith, preferably within sixty (60) days from receipt of this judgment. The respondents shall also ensure that no further adverse action is taken against the petitioner in respect of these plots without due process of law.

Announced on;
23rd of October, 2025
Arshad

--Sd/-
JUDGE

--Sd/-
JUDGE