

146 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10990-2025 (O/M)
Date of decision : 21.05.2025

Avinash Kumar Petitioner

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Jagtar Kureel, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioner has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of mandamus for directing respondents No. 1 to 7 to take appropriate strict legal action including departmental inquiry against respondent No. 8 as well as against respondents No. 9 to 28 as they participated in the illegal acts of respondent No. 8.

2. Briefly, petitioner (Avinash Kumar) claims to be a co-owner of plot measuring 5 marla, situated at Bhadroya Road, Pathankot alongwith his brothers, namely, Amar Nath and Shashi Kumar. Petitioner claims that he and his brothers had inherited the said plot from their father and a boundary wall was constructed around the aforesaid plot area about 40 years ago.

2.1 Petitioner states that adjoining to their aforesaid plot of 5 marla, there is a constructed house of one Shri Satpal, who is residing

with his son, namely, Shri Vikramjit (respondent No. 8 herein). It is stated that Shri Vikramjit is working as Chief Sanitary Inspector in Municipal Corporation, Pathankot and his behaviour was not good towards petitioner and his brothers as he had an evil eye on the aforesaid plot of petitioner. Petitioner alleges that respondent No. 8 had been continuously harassing the petitioner and his brothers and had been threatening to demolish the boundary wall, so as to make a passage for his plot through the aforesaid plot of petitioner by using force as well as by using Government machinery.

2.2 Petitioner alleges that on 01.07.2023, at about 11.15 AM, respondent No. 8 alongwith his father, namely, Satpal, respondents No. 9 to 28 and other unknown officials, who were having hammers and iron rods with them, came to the plot i.e. plot of petitioner and started demolishing/dismantling the boundary wall towards northern side. Petitioner further alleges that he tried to intervene and asked private respondents for the reasons for doing so, whereby he was informed that they were employees of Municipal Corporation and were having official orders to demolish the boundary wall of petitioner. It is also alleged that when the petitioner tried to stop them, then private respondents threatened to kill him (petitioner) and finding no other option, petitioner immediately informed the police regarding the aforesaid incident, however, no immediate action was taken and by the time the police came to the spot, private respondents had already ran away from the spot. In order to substantiate the aforesaid assertion, petitioner places reliance upon certain screen shots from CCTV footage, wherein petitioner claims that respondents No. 8 to 28 are clearly visible.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Heard.

5. A perusal of the writ petition would reveal that in para-9 thereof, following plea has been made :-

“9. That as respondents No. 1 to 7 have not taken any action against respondents No. 8 to 28 and other accomplice, therefore, respondent No. 8 became more adamant and head strong towards the petitioner and he openly threatened that he will make out another passage for his house by forcibly taking possession of 5 Marla plot of petitioner. The petitioner finding no other option has immediately approached the Civil Court by filing Civil Suit which was listed before the learned Civil Judge (Junior Division) Pathankot titled as Avinash Kumar Versus Commissioner MC Pathankot and others bearing CS No. 660 of 2023. In this Civil Suit learned Civil Judge vide order dated 07.07.2023 has restrained the respondent No. 8 and Municipal Corporation, Pathankot from interference into the peaceful possession of above mentioned 5 Marla plot of petitioner. Copy of Civil Suit is annexed herewith as Annexure P-9 and copy of order dated 07.07.2023 is annexed herewith as Annexure P-10.”

6. Apparently, as regards the alleged incident stated in this writ petition, the petitioner has already availed his legal remedy by filing a civil suit. In the plaint (Annexure P-9), following pleas have been taken :-

“Sir,

It is respectfully submitted as under :-

1. That the plaintiff is resident of above noted address and peace loving citizen and owner of plot/property along with his brothers namely Amarnath and Shashi Kumar as mentioned in the jamabandi and the said plot/property is

constructed with four walls and adjoining to the house of the plaintiff as mentioned in the site plan marked ABCD shown in red colour and the defendant no. 4 is also the co-owner in the Khasra no's of the ownership of the plaintiff but having no concern with the ownership of each other. (Copy of jamabandi and site plan attached).

2. *That the plot/property as mentioned in the suit is inherited to the plaintiff and his brothers from their father and the four walls of the plot is constructed almost 40 years back and till then there is no hindrance or disturbance in any manner.*

3. *That the defendant no. 3 who is senior sanitary inspector to defendant no. 1 and 2 Municipal Corporation, Pathankot is very adamant and head strong person continuously threatening to make a passage through the plot of the plaintiff forcibly to make another passage to his house and always tries to harass the plaintiff and his brothers.*

4. *That on dated 01.07.2023 at about 11.15 AM defendant no. 3 and 4 alongwith about 25 people who were armed with hammers (hathora) and iron rods etc. came at the plot of the plaintiff who was alone there at that time and started dismantling/braking the wall facing towards north side and on asking by the plaintiff why they are doing so they told that they are the employees of the Municipal Corporation Pathankot and they have order of Commissioner to break/remove the wall but despite of various request by the plaintiff they did not show or gave any copy of order and even started removing the malba in the tempoo which was brought by them and on the resistance of plaintiff to stop them to do illegal act of breaking the wall these persons threatened to kill the plaintiff. The wall broke by the defendants is marked X in the site plan.*

5. *That all the illegal act of the persons who were employees of defendant no. 1 and 2 as claimed by them and*

the tempoo was also of defendant no. 1 and 2 is captured in the photos and videos which were taken by the plaintiff from the mobile at that time and also in the CCTV camera installed at Karyana store in the street. (Copy of some photographs attached)

6. *That the plaintiff and his brothers have also given complaints to the concerned SHO, SSP, DC, Joint Commissioner etc. but no action is taken so far but rather the defednant No. 3 and 4 are became more adamant and openly threatening, boasting that they are the officers of Corporation and can do anything and will make a passage forcibly through the plot/property of the plaintiff and continuously threatening and abusing the plaintiff and his brothers. (Copy of complaints attached)*

7. *That the suit is very urgent in nature as detailed above so the plaintiff is filing the suit without giving any mandatory notice to the defendant no. 1 and 2.*

8. *That the plaintiff and his brothers requested the defendants a number of times not to do any illegal act as detailed above but they are adamant and refused to admit the genuine request of the plaintiff. Hence this suit.”*

6.1 Evidently, the averments made in the writ petition are almost similar to the pleas taken by the petitioner in the civil suit filed by him wherein ad interim protection already stands granted by learned Civil Judge (Junior Division), Pathankot, vide order dated 07.07.2023 (Annexure P-10).

7. Further, in paras 13 and 14 of the writ petition, following averments have been made :-

“13. That when police officials failed to take any action against the guilty officials then petitioner filed Criminal Complaint before the Ld. Ilaqa Magistrate, Pathankot, which was registered as COMI/110/2023 titled as Avinash

Kumar Vs. Vikramjit and others, which is pending for 17.05.2025. Copy of Complaint before Ilaqa Magistrate, Pathankot is annexed herewith as Annexure P-12.

14. That against the non-cooperative behaviour of police officials and finding that police officials are in fact protecting the respondents No. 8 to 28 and other accomplice, one application was filed before Hon'ble Punjab Human Rights Commission through Shashi Kumar, who is one of the brother of petitioner with request to initiate appropriate action against the guilty persons and with further request to protect life and liberty of petitioner. The application/complaint was registered before Hon'ble Human Right Commission as Complaint No. 6591/26/2023. In this complaint notice was issued by Hon'ble Commission and during proceedings the officials of Municipal Corporation, Pathankot has submitted their written reply dated 01.03.2024 wherein they have admitted the fact that respondents No. 8 to 28 and other accomplice were present at spot on the day and time of incident. The officials of M.C. Pathankot to safeguard their employees have stated that these persons are not breaking the boundary wall as per CCTV footage. The Complainant Sh. Shashi Kumar has filed replication to this reply on dated 04.09.2024 in which all the facts were clearly mentioned. Copy of Complaint filed before Hon'ble Human Right Commission is annexed herewith as Annexure P-13. Copy of Written Reply submitted by MC Pathankot is annexed herewith as Annexure P-14 and Copy of replication submitted by complainant is annexed herewith as Annexure P-15 respectively.”

7.1 A perusal of contents of paras 13 and 14, as extracted above, would show that petitioner has not only filed a criminal complaint before learned Ilaqa Magistrate, Pathankot, which is stated to be pending; rather,

one of petitioner's brother, namely, Shashi Kumar has also filed a complaint before Punjab State Human Rights Commission, which has been registered as complaint No. 6591/26/2023.

8. Considering the totality of circumstances, I am of considered view that since petitioner has already availed legal remedies before different forums including a civil suit, a criminal complaint before learned Ilaqa Magistrate, Pathankot and also a complaint has been filed by brother of petitioner before Punjab State Human Rights Commission; filing of instant writ petition before this Court can only be seen as an attempt by the petitioner to achieve some oblique motive, so as to browbeat the authorities for taking action against respondents No. 8 to 28. The matter is still pending before different forums and in case any finding based upon evidence is returned by the concerned courts, indicating involvement of respondents No. 8 to 28 in illegal acts of commission and omission, the concerned authorities would take appropriate action, however, at this stage, I find no compelling reason to interfere in this matter. The writ petition is accordingly dismissed, however, petitioner would be at liberty to pursue his remedies before appropriate forums, in accordance with law.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

21.05.2025

sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No