

Supreme Court of India

Sharda Devi Khemka vs State Of U.P. And Ors. on 27 February, 1987

Equivalent citations: JT 1987 (1) SC 700, 1987 Supp (1) SCC 47

Author: M Thakkar

Bench: B Ray, M Thakkar, S Natarajan

ORDER M.P. Thakkar, J.

1. Special leave granted. Heard both the sides.

2. The High Court has not taken into consideration the question as to whether the jurisdiction of the Civil Court is barred in the context of Section 37 of the U.P. Urban Planning and Development Act, 1973. We do not propose to express any opinion on this question. It will be for the High Court to examine the question and to form its own opinion. In case the High Court was of the view that Section 37 is no bar to the jurisdiction of the Civil Court, the High Court should have protected the appellant who had withdrawn the suit solely in order to approach the High Court. The appellant had already approached the High Court by way of a writ petition, and if the High Court was of the opinion that it was a matter where the appellant should approach the civil court, the High Court should have passed an order directing the trial court to revive the suit by revoking the earlier order disposing of the suit as withdrawn in exercise of its powers under Section 151 of Civil Procedure Code in order that petitioner should not suffer prejudice by reason of the fact that High Court was directing the petitioner to make recourse to an alternative remedy. And by directing the trial court to proceed with the suit and dispose it of on merits in accordance with law. We, therefore, allow the appeal to this extent and remit the matter back to the High Court for hearing the appellant (and the respondents, if they choose to appear) afresh and for issuing appropriate directions to promote the ends of justice in the light of the aforesaid observations.

3. There will be no order as to costs.