

Republic of Iraq
Federal Supreme Court
Ref. 104/ federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 22.9.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

The request:

The first instant court of Shat Al-arab requested the F.S.C. by its letter no. (119/beh/2013) on (20.8.2014) to decide the legitimacy of paragraph (3) text of the dissolved revolutionary command council decision no.(331) for 1980 as the following: the plaintiff (alif.kha.alif) initiated the lawsuit no. (119/beh/2013) before first instant court of Shat Al-arab against the defendant the manager of Shat Al-arab municipality being in this post requesting in it to remove the confiscation sign set on his real estate record no.(12/144) county (13) Kerdelan, as the municipality of Shat Alarab appropriated the mentioned real estate and grant the plaintiff the property of the part in which he built the house occupied by him according to the provision of the dissolved revolutionary command council decision no.(331) on (1.3.1980), the mentioned decision stated in paragraph 3 of it (who owned a plot under this decision, is not allowed to sell it, mortgage it, or set any estate of limitation on it

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unless for official party, it is not allowed to change the type of it beneficial), the mentioned decision is valid haven't been canceled or repealed therefore the court when considered the lawsuit in the session on (17.8.2014) decided to request your estimated court to decide the legitimacy of paragraph (3) of the dissolved revolutionary command council decision no.(331) on (1.3.1980) as it prevent the owner from making any action in his property, the text of the mentioned paragraph contradicts the provision of Iraq constitution and contradict the provision of the law general rules as the owner shall not be deprived from disposing his property, therefore we present this subject to your court to decide the constitutionality and legitimacy of paragraph (3) text of decision (331) of 1980. With respect. The request has been set under scrutiny and deliberation by the F.S.C. and it reaches the following decision.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the judge of first instant court of Shat Al-arab challenged the legality and constitutionality of paragraph (3) of the dissolved revolutionary command council decision no.(331) on 1.3.1980 claiming that it deprived the owner from disposing his property, this consider as violation to the constitution, by reviewing paragraph (3) of the dissolved revolutionary command council decision no.(331) on 1.3.1980 it state that ((who owned a plot under this decision, is not allowed to sell it, mortgage it, or set any estate of limitation on it

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unless for official party, it is not allowed to change the type of it beneficial)), we found that the plaintiff in the lawsuit no.(119/beh/2013) before the first instant court of Shat Al-arab against the defendant the manager of Shat Al-arab municipality being in this post requesting in it to remove the confiscation sign set on his real estate record no.(12/144) county (13) Kerdelan, as the municipality of Shat Alarab appropriated the mentioned real estate and grant the plaintiff the property of the part in which he built the house occupied by him according to the provision of the dissolved revolutionary command council decision no.(331) on (1.3.1980). paragraph (3) of the mentioned decision set restriction on the owner from disposing his property therefore the judge of the court challenged it, throw scrutiny it found that the plot on which the house of the plaintiff was built on is from the share of the plots (2/12 and 2/14) of county (13) Kerdelan, as the dissolved revolutionary command council decision no.(331) for 1980 in article (1) of it to conveyance without fee the two plots no.(2/12 and 2/14) Kerdelan to the municipality of Shat Al-arab and to register it by its name in the real estate registration department as free-hold, it decided in article (2) of it conveyance without fee or allowance the owners of the houses built on these plots according to the rules listed in paragraphs (a, b, c, d and h) of the mentioned article, article (3) of the decision set restriction who owned a plot under this decision, is not allowed to sell it, mortgage it, or set any estate of limitation on it unless for official party, it is not allowed to change

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the type of it beneficial, as the two plots was sorted according to the decision into housing plots, a houses was built on it including the house of the plaintiff, it was implemented within the implementation of the decision and it is no longer valid therefore the challenge is not based on constitutional substantiation, as article (93/1st) of the constitution of 2005 stated the jurisdictions of the F.S.C. to monitor the constitutionality of valid laws and regulations not the out of force as the subject of challenge as the decision was implemented and no longer is valid, therefore the F.S.C. is not competent to consider the challenge. therefore the court decided to dismiss it from this aspect. the decision has been issued unanimously on 22.9.2014