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The Federal Supreme Court (F S C) has been convened on 19.1.2015 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff : Menem Jafar Yusuf his agent Abdul Sada Shihab al-Abadi.

The Defendants : 1- Speaker of House of Representatives / being in this capacity- his Jurists (sin. ta. yeh.) and (ha. mim. sin.).

2- Director of Basra Municipality / being in this capacity – his jurist (ha. kaf. mim.).

The Claim:

In his lawsuit petition, plaintiff (mim. jim. yeh) claimed that the municipality of Basra/ being in this capacity filed the suit No. (592/beh/2014) in front of the first instance of Basra Court, in which he requested a ruling obliging him to lift the violations and abide by the building permit approved by him in accordance with the plans submitted by him, during the hearing of the case, Prosecutor (mim. jim.) argued that article (95) (bis) was unconstitutional of the

Municipal Administration Law No. (165) and Article (1<sup>st</sup>) of item (4<sup>th</sup>) of the Revolutionary Command Council (dissolved) No. (296) of 1990 violated some of those articles for certain constitutional provisions, including Article (100) of the Constitution of the Republic of Iraq. In the light of this plea, he filed a lawsuit before the court, and the first instance of Basra Court decided to accept the appeal against the unconstitutionality and to resume the preliminary case before it. The case before this court included his argument that article (7<sup>th</sup>) of the Revolutionary Command Council (dissolved) decision was unconstitutional and article (94/2/3) and paragraphs (1/jim) and (2/6) of article (95) bis of Municipal Administration Law mentioned before for the interconnection between them regarding the granting of the executive authority to impose a fine on violators. On the day of the argument of the case, the court was formed, and the agents of the parties attended and began the argument immanence and public, each repeating his previous requests and statements, where there was nothing left to say, the decision had made clear public.

### The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff (mim. jim. yeh) arguing the unconstitutionality of Article (95) bis of Municipal Administration Law No. (165) amended and article (1<sup>st</sup>) from the decision of the Revolutionary Command Council (dissolved) No. (269) of 1990, in order to give the above texts the power to impose a fine for violations related to their application, the plaintiff also argues that the above laws are immune from appeal. In examining the impugned articles that the plaintiff claims to have granted the executive branch the imposition of the fine, we note that this power is made during the application of the two laws above for irregularities in regulatory matters. It is at the heart of the work of those who implement them, noting that the Municipal Administration Law has

been restricted in some of its articles that the replacement of the fine must be offered to the competent court when the one who has been fined is not granted this fine. This is on the one hand and on the other it's about fortifying the articles of the law above from appeals. The FSC finds that the provisions contained in the Municipal Administration Law are not immune from appeal, as the law set a way to challenge the decision to impose the fine before an appeals panel in the Ministry of Interior headed by a judge, thus there is a force to push the immunity of the provisions of this law from appeal as claimed by the plaintiff. As for Revolutionary Command Council (dissolved) No. (296) of 1990 its fortification ended with the passage of Law No. (17) of 2005, which ruled in Article (1) of it to repeal the legal texts wherever they are contained in the laws and decisions of the Revolutionary Command Council (dissolved), which prohibit the courts from hearing cases arising from their application. Thus, the plaintiff's case has lost its legal and constitutional basis on these two sides and is condemned to be rejected. Accordingly, he decided to reject this for the first defendant, the speaker of the House of Representatives/ being in this capacity. As for the second defendant, the director of the municipality of Basra/ being in this capacity the dispute for him is not directed to the claim of unconstitutionality of some legal provisions and he is not fit to be an opponent in such a case on the basis of article (4) of the Civil Arguments Law amended No. (83) of 1969. Where it does not follow the assumption that he will be sentenced to what the plaintiff wanted, therefore he decided to rule by rejecting it from the side of the litigation and decided to charge the plaintiff the expenses of his lawsuit and the fees of the lawyers of the defendants/ being in their capacity the jurists (sin. ta. yeh.) and (heh. mim. sin.) and (ha. kaf. ain.) amounted one hundred thousand dinars distributed between them equally and the decision was issued decisively unanimously and understood publicly 19/1/2015.