



The Federal Supreme Court (F S C) has been convened on 12.4.2017 headed by the 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:

Plaintiff: (mim.feh.mim.mim.jim) – his agent the barrister (sin.ain.lam).

Defendant: Mayor of Baghdad – his agent the assistant legal consultant (alif.sin.ain).

Claim

The agent of the plaintiff claimed that previously AL-Khasir first instance court in the Presidency of AL-Risafa federal appeal court issued in case No. (26/appropriation/2011) a decision judge with appropriating the real estate (3/77 dist. 1 AL-Khur) for the benefit of Municipality of Baghdad for a compensation of (759.625.000) Iraqi dinars, and the property of the aforementioned real estate is for their testator the poet (mim.mim.jim). The plaintiff wasn't satisfied with the abovementioned decision – as he claims- because it is violates the conditions which appropriation law requires in this concern, therefore, he proposed to challenge it for the following reasons:1- The specialized court violated provisions of article (23/2nd) of the constitution because the element of public benefit was not available in its challenged decision. 2- The specialized court violated article (10) of appropriation law because there are a planning and legal obstacles. One of these obstacles are field and architectural obstacles, as for the legal obstacle that the appropriated real estate is sequestered by the Presidency of the State and other bodies inhibits its property moving – according to appropriation law- to the ownership body. 3- The owner of the real estate was not

compensated (just compensation) and this violates provisions of article (13/4th) of appropriation law No. (12) For 1981 (amended). 4- The court violated provisions of articles (2/1st & 13/2nd & 23/2nd & 27/2nd & 37/2nd) of the constitution. 5- The appropriation law judge with expropriating the ownership judicially according to the second chapter of it, as well as the ownership should be expropriated consensually and the last one correspond with provisions of article (2/1st) of the constitution. 6- The cultural heritage for a person is not necessary to be an interest for many components of the community which is not interested in literature at all or the cultural heritage of that person, or he could be from the poetry filed such as the poet and the author (sin.ha). 7- Appropriation of the real estate abovementioned to build a museum did not accomplish the equality between the citizens which article (14) of the constitution requires, whereas the museum which will be built does not represent all intellectuals, but this museum will memorize a person not someone else (grandfather of the plaintiff). This appropriation will happen because of the belief or the sect, and this regarded a compulsive order to community and contradicts with the principles of democracy. 8- The judicial appropriation or compulsive shall be for a public benefit and the appropriation in this case is a memorizing of personal heritage and regards pure individual benefit. 9- The specialized court had violated article (137/2nd) of the constitution because the appropriation is to build a museum memorizing an individual heritage not someone else considered an intellectual coercion for most of opponents for the ideas of the owner, whereas his poetry and literature product represent a personal opinion not all opinions, as well as the appropriation regarded a coercion for surrounded people to the appropriated real estate because it is situating in a pure residence area. The residents in that area objected the project when the real estate observing committee visited it. 10- The specialized court violated provisions of article (130) of the constitution as following: - the appropriation changed the type of the real estate from residential to a governmental and this procedure needs a legislative intervention. - The law of municipality of Baghdad No. (16) for 1995 (amended) does not allows to appropriate the real estate or building museums, and the existed museums built according to a previous laws and the current law of appropriation had took this right from the municipality of Baghdad, which regarded a violation to the law. – The abovementioned appropriation by the municipality of Baghdad regarded a wasting of public funds and violates the laws and

constitution as following: 1-Till today the heirs of late Mr. (mim.mim.jim) did not limit the succession of their (testator) aforementioned (the owner). Therefore, the project of the museum is useless because the heirs will sue everyone initiate a case in pretence of collectibles and the heritage of the owner, because the aforementioned real estate does not containing a collectibles, poetry diwans, furniture, calligraphies, artistic and poetry things belongs to the grandfather of the heirs. (The plaintiff) is one of the heirs, and the real estate is vacant registered by the name of the poet (mim.mim.jim). 2- There is no study for the project by the appropriated office, which makes the intention of appropriation as a personal motivation, and this what the public inspector in the municipality of Baghdad was told as well as the Prime Minister in 2015 by whom concerned about this matter, and this regarded a pure legal and constitutional violation. 3- in case that the project was executed. The appropriated should implement article (35/jim) of appropriation law No. (12) For 1981 (amended). 4- municipality of Baghdad did not allocate a budget for the project includes the general budget of the state, which makes the project of the museum form individual projects its purpose is the personal benefit. This project listed includes the sluggish projects, and this matter per se is a legal and constitutional violation, and the subject court should realize that before issuing the appropriation decision. 5- municipality of Baghdad rejected all attempts to correct the administrative corruption which produced from appropriation and according to saved minutes with the public inspector and investigation municipality judge. According to the aforementioned reasons, the agent of the plaintiff requested: ((to judge with cancelling the appropriation decision No. (26/appropriation/2011) issued by first instance court of AL-Khasir on 2.27.2012 which decided to expropriate the ownership of the real estate (3/77 dist. 1 AL-Khur) compulsively, whereas the heirs were compelled to execute it, and receiving unfair assessments amounts, because it were deposit on the court's vault and in case they did not receive it, these amounts will be unredeemable)). The agent of the defendant/Mayor of Baghdad/ being in this capacity answered the of the case as following: the appropriation was done according to first article of appropriation law No. (12) For 1981 and for the purposes of office's projects, whereas the abovementioned real estate was appropriated to make it (cultural project). Therefore, there is no violation to the constitution in this concern. As for the designing and legal obstacle, the designing office which is it the specialized

body in the municipality of Baghdad, it clarified there is not any designing obstacle of appropriation according to the necessities of the basic design of Baghdad city. As for the legal obstacle it is about the specialty of the specialized court, as long as the court decided to expropriated the ownership and the decision became final appealingly, so, there is no existence of legal obstacle. As for impoundments obstacles, these impoundments does not considered an obstacle from appropriating, whereas the real estate moves to the appropriated solely of all these impoundments and the rights of its owners moves to appropriation allowances according to article (16) of the valid law of appropriation. Assessing of appropriation allowances was accomplished by the assessment committee formed according to the provisions of valid appropriation law and according to approved controls by the property registration and taxes directorates, implementing to article (33) of the aforementioned law. The appropriation law had determined the methods of expropriation, but it does not includes in its texts what indicates to that consensual appropriated is obliged to the state's offices not the judicial appropriation. As for the clauses (5 & 6 & 7 & 8) in the petition of the case, it was answered abovementioned. There is no relation between the individual of the owner to change the type of the real estate according to the provisions of property registration law, and it does not need a parliamentary enactment according to what listed in the draft of the plaintiff. The municipality of Baghdad law No. (16) For 1995 had determined the aforementioned structures of the municipality. As for the service tasks, another laws are concerned with, such as municipality administration law No. (65) For 1964 and the basic design law No. (156) for 1971 and other laws. As for what related to executing the project –case's subject – it is left for the municipality of Baghdad, to be mentioned that the plaintiff remained exactor of the appropriated real estate. And there is no way to accuse the municipality of wasting the public funds, because this matter considered an offense against the municipality, and its agent have the right as clarified in its answering draft to initiate a penal case in this concern against the plaintiff and his agent. Finally, the agent of the defendant clarified that cancelling the appropriation is according the procedures shown in article (57) of appropriation law No. (12) For 1981 (amended) which has no place to be implemented on the case of the plaintiff, and to be mentioned that the plaintiff is one of the heirs and owns a part of real estate shares? Accordingly, the agent of the defendant requested to reject the case. After

registering the case at this court according to clause (3rd) of article (1) of the FSC bylaw No. (1) For 2005, and after completing the required procedures according to clause (2nd) of article (2) of the aforementioned bylaw. The day 12.4.2017 was set as a date to try the case and on that the day the court was convened and the agent of the plaintiff as well as the agent of the defendant/ being in this capacity attended. The public in presence of both parties pleading proceeded, and the agent of the plaintiff repeated what listed in the petition of the case and requested to judge according to it by cancelling the appropriation decision of the real estate of late (mim.mim.jim) heirs and for the reasons listed in the petition of the case. The agent of the defendant answered and said that she repeats what listed in the answering draft and she requests to reject the case. Both parties repeated the previous sayings, whereas the case is ready to take a decision in it, the court decided to end the pleading and issued the decision publicly.

The decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff claims that previously AL-Khasir first instance court in the Presidency of AL-Risafa federal appeal court issued in case No. (26/appropriation/2011) a decision judge with appropriating the real estate (3/77 dist. 1 AL-Khur) for the benefit of Municipality of Baghdad for a compensation of (759.625.000) Iraqi dinars, which its ownership belongs to the heirs of late poet (mim.mim.jim). Because of dissatisfaction of the plaintiff about the aforementioned decision, he proposed to challenge it and requested to cancel it because it is violates article (123) of the constitution, and it is lacking to public interest element and there are designing and legal obstacles. As well as the owner was not compensate with a just compensation, and this matter violates provisions of article (13/4th) of appropriation law No. (12) for 1981 (amended), also the subject court had violated provisions of articles (2/1st & 13/2nd & 23/2nd & 27/2nd & 37/2nd) of the constitution and the appropriation was consensual which correspond with provisions of article (2/1st) of the constitution, and the cultural heritage for an individual is not interest for many components of the community, and appropriating of the abovementioned real estate to build a museum did not accomplish equality between citizens as article (14) of the constitution judged with. The appropriation in this case is a releasing for a personal heritage not for the public interest, and this violates provisions of article

(37/2nd) of the constitution, also the appropriation violated provisions of article (130) of the constitution because the appropriation changed the type of the real estate from residential to governmental and this matter requires a legislative intervention. The municipality of Baghdad in its law No. (16) for 1995 (amended) does not allow it to own or build museums, and existing museums were done according to previous laws, and the appropriation by the municipality of Baghdad regarded a wasting of public funds and violating laws and constitution because the heirs till now did not limit the succession of their testator, and the appropriated house did not contain any gleanings, poetry divans, furniture or manuscripts belongs to the testator of the plaintiff, but it is vacant real estate registered by the name of the poet (mim.mim.jim). This matter supports the heirs to raise lawsuits against who appropriate their testator real estate, and there is no study for the project which makes the appropriation has a personal motivation. As well as, the municipality of Baghdad did not allocate a budget for the project includes the public budget of the state, and this matter makes the project of the museum is one of the individual projects with private benefit, and this is a constitutional and legal violation. The agent of the defendant answered that the appropriation done according to the first article of appropriation law No. (12) for 1981 (amended) and for the purposes of office projects, whereas the real estate appropriated to build a cultural project on it, so, there is no violation to the constitution, as well as there are no designing or legal obstacles, and this appropriation was included in the basic design of Baghdad city. The agent of the defendant broached the other points listed in the petition of the case, and he clarified that these points are not true in listed details in the attached draft of the case's dossier. The FSC finds that cancelling appropriation decision which became final and retrieving the real estate to the owner moves the challenge out of its specialty stipulated in article (93) of the constitution and in article (4) of its law No. (30) For 2005, and the appropriation law No. (12) For 1982 (amended) had set the challenge methods about the decisions issued according to it. Accordingly, the court decided to reject the case formally for incompetence and to burden the plaintiff the expenses and advocacy fees for the agent of the defendant/ being in this capacity the legal consultant (alif.sin.ain) amount of (one hundred thousand Iraqi dinars). The decision issued unanimously according to article (94) of the constitution and article (5/2nd) of the FSC law No. (30) For 2005, and made clear on 12.4.2017.