



The Federal Supreme Court (F.S.C.) convened on 30.11.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Abdul Karim Hatem Hammoudi - his attorney, lawyer
Qahtan Hassan Mohsen Al-Mimar.

The defendants:

1. The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official Saman Muhsen Ebraheem.
2. Mayor of Baghdad / In addition to his post - his deputy, the legal employee, Saad Abdul Anis Muhammad.

The claim:

The plaintiff claimed, through his attorney, that according to Article (97/1) of the Municipal Administration Law No. 165 of 1964, which states: (All streets located within its borders and left to be used for public use shall be registered in the name of the municipality

Athraa



without compensation, that exists when this law comes into force or that occur thereafter in accordance with the laws in force or that fall within their boundaries when they are changed, and the title registration departments must correct the registration of these streets directly in the name of the municipality if they are registered in the name of others without a fee). the second defendant added an area of 12.18 square meters of the plaintiff's property, which bears the sequence of (129) its plots in the holy city of Kadhimiya, to the public road without right and compensation, and since this provision was from the aforementioned article, as well as the text of Article (53) of the law, which requires that a quarter of the real estate area be taken for free without compensation, contradicts the provisions of the constitution and causes serious harm to citizens, including the plaintiff, so he took the initiative to challenge before this court the unconstitutionality of the text of the aforementioned two articles of the aforementioned law for the following reasons:

First – that the incident of usurpation is verified in his claim, which requires the ruling is for him to pay compensation in line with the provisions of the Constitution of the Republic of Iraq for the year 2005 and the provisions of the Civil Law, as the claim for a similar wage is due by the realization of the usurpation. It is not considered a disclosure of the municipality's right to register it later without compensation, based on the provisions of the aforementioned article. Therefore, it requires legal protection and immunization of all moral behavior. The property transferring ownership over the real estate

Athraa



dealt with in the contested article because it is inconsistent with the provisions of the articles of the Constitution and the laws in force.

Second - The Iraqi judiciary was aware of this conflict with the constitutional text and did not take into account the text of Articles (53 and 97/1) of the Municipal Administration Law until after the emergence of the new trend of the Federal Court of Cassation, and that this new trend, specifically what came in the recent discriminatory decisions that went wrong, and it violated the laws in force, especially since the Expropriation Law No. (12) of 1981 is a subsequent law to the Municipal Administration Law. Therefore, the Expropriation Law is the relevant law, as Article 63 stipulates that (no text that contradicts the provisions of this law shall be enforced) accordingly, Articles (53 and 97/1) from the Municipal Administration Law are considered, their conditions are negated by the issuance of the Expropriation Law.

Third - the law may place restrictions on the owner's right to exercise his powers over his property, and the restriction may reach expropriation for the public benefit through expropriation, but the constitution and civil law stipulated in Article (1050) that the expropriation is in the public interest and that it be in return for fair compensation. The text of Articles (53 and 97/1) contradicts the provisions of Article (23) of the Constitution, which stipulates (First - Private property is inviolable, and the owner has the right to benefit from, exploit and dispose of it within the limits of the law. Second -

Athraa



Ownership may not be expropriated except for the purposes of public interest in return for fair compensation This is regulated by law).

Fourth - The right of ownership is safeguarded and may not be violated, and depriving the owner of it is only in the cases permitted by law. The Iraqi legislator has given full protection to this right in many legislations, including the provision of Article 1050 of the Civil Code which states (It is not permissible to deprive someone of his property, except in the cases determined by the law and in the manner prescribed by it, and this is in return for a fair compensation paid to him in advance) as stipulated in Paragraph (Second) of Article (1) of the Expropriation Law No. 12 of 1981 that one of the objectives of this law is to establish unified rules and bases for fair compensation for the expropriated real estate, guaranteeing the rights of its owners without prejudice to the public interest. For all of the foregoing reasons and for the reasons that appear to the Court, the plaintiff's request to call upon the defendants to plead and the ruling to cancel the text of Articles (53 and 97/1) of Municipal Administration Law No. 165 of 1964 for their unconstitutionality and for violating the text of Article (23) of the Constitution and Article 1050 of the Civil Code and Article (63) of the Expropriation Law No. (12) of 1981 and that the judgment decision shall be applied retroactively so that no one is deprived of this compensation. The case was registered with this court in No. (113/Federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the bylaw of the Federal Supreme Court No. (1)

Athraa



of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) of the same bylaw, and the attorney of the first defendant replied with the answer draft dated 9/14/2021, which included that the law under appeal, (Article 53) of it, is one of the regulatory laws in force and that was enacted several decades ago and that there is no constitutional violation in it, according to what was stated by the plaintiff's attorney, because the streets located within the municipal boundaries are for the public benefit and within the basic planning of cities, and the law (the subject of the case) regulates the registration of these areas in the name of the municipality, especially since the judicial decisions highlighted by the plaintiff deal with the subject under investigation according to the types of lands covered by the Municipal Administration Law, including Article (53), The Federal Supreme Court has also previously decided on the appeal in Article (97) of the law by its decision No. (108 unified with 124 / Federal / 2019), which became plea with the provisions it was decided upon, and thus the plaintiff's claim becomes obligatory to be dismissed and has no basis in the Constitution and the law. Also, the request of the plaintiff's attorney that the judgment issued by the Federal Supreme Court be retroactive is not supported by the law, and for the reasons presented above, the attorney of the first defendant requested to reject the plaintiff's suit and charge him with fees, expenses and attorney fees. The second defendant's attorney responded with the draft dated 9/20/2021, which included that what was stated in the lawsuit

Athraa



petition has no legal basis and it is binding to be dismissed formally and objectively, because the provisions of Article (97) of the Municipal Administration Law No. 165 of 1964 is valid authentic text in accordance with the law, it states that the roads for public benefits on behalf of the municipality are free and corrected if they are registered in the name of others. The general methods implemented by the Municipal Communities of the Municipality of Baghdad are implemented for public benefit and cannot be registered or owned by the private sector, which settled by the judiciary of the Federal Discrimination Court of all committees No. (82/Civil Extended Authority/2019) dated 3/18/2019. As for the request for cancellation (53) of the same law, as the text of this article came in accordance with the law and the Constitution and its beneficiaries took a quarter of the real estate area for the implementation of projects. Other effective texts of the Roads and Buildings Regulations No. 44 of 1935, as well as what was established by the judiciary of the Federal Court of Cassation in all its bodies, confirm the legality of the aforementioned article. As for the prosecutor's agent and based on the provisions of Article (63) of the Appropriation Law No. 12 of 1981, is invalidated by the provisions of Article (37) and after of the same law, which allowed the acquisition of a quarter of the real estate area free without compensation when there is an improved location and when it is not enough to complete, the legal owner shall complete the area of the legal quarter, and this is conclusive evidence of the validity, legality,

Athraa



and constitutionality of the aforementioned articles. Also, there is no conflict between the texts subject to challenge and the constitutional and legal articles mentioned by the plaintiff, as the text of the two articles subject to challenge does not affect private property, but rather the areas due for implementing public roads in accordance with the aforementioned detail. After completing the procedures in accordance with the provisions of the aforementioned bylaw, a date was set for the pleading and the parties were informed of it in accordance with the provisions of Article (2/Second) of the aforementioned bylaw. On the appointed day, the court was formed, so the plaintiff's attorney attended, as did the defendants' attorneys, and the public pleading commenced. The plaintiff's attorney repeated what was stated in the lawsuit petition and requested the judgment according to what was stated in it, the first defendant's attorney responded, requesting that the lawsuit be dismissed for the reasons stated in the answer list dated 9/14/2021, and the second defendant's attorney responded, requesting that the case be dismissed for the reasons mentioned in the answer list dated 9/20/2021, and each party's representative has repeated his previous statements and requests, and since there is nothing left to be said, the Court decided the conclusion of the pleading and appointed November 30, 2021, as the date for the issuance of the decision, in which the court was formed and issued the decision of the following ruling in public.

Athraa



The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff requested to call upon the two defendants, the Speaker of Parliament and the Mayor of Baghdad, in addition to their positions to plead and judge the unconstitutionality of Articles (53) and (97/1) of the Municipal Administration Law No. 165 of 1964, as amended, for violating the text of Article (23) of the Constitution, Article (1050) of the Civil Code, and Article (63) of the Expropriation Law No. (12) of 1981. When examining the plaintiff's lawsuit and what was stated in the defenses of the defendants' attorneys, the court reached the following conclusions:

1. Article (53) of the Municipal Administration Law No. (165) of 1964, as amended (The Council shall decide the following for the purpose of implementing the basic design and detailed designs and carrying out public services and utilities, taking what is required from the previously constructed or divided properties according to the approved design, provided that it does not exceed a quarter of the public area of each property free of charge, if The property was land, and when it was reconstructed, if it was a built property, and in the event that it required taking more than a quarter, the council must: expropriates more than a quarter in accordance with the Expropriation Law) and Article (97/1) of the same law states: "All streets located within its borders and left to be used for public use shall be registered in the name of the municipality without compensation that exist when this law comes into force or that occur

Athraa



after that in accordance with the laws in force or which It falls within its borders when it is changed, and the registration departments must correct the registration of these streets in the name of the municipality directly if they are registered in the name of others without a fee.) Article (53) is currently in force. And its unified 124 / Federal / 2019) on 20/1/2020, ruling that it is unconstitutional as far as private ownership of real estate that goes or part of it to the streets of an accident before or after its entry into force within the municipal boundaries.

2. This court had previously considered the case numbered (28 and its unit 29/Federal/2021) and issued its decisive decision on 25/8/2021, which included the ruling dismissing the plaintiffs' suit, which focused on the request to rule the unconstitutionality of Article (97/1) of the Municipal Administration Law No. (165) for the year 1964 because the same subject was previously considered and decided by this court under Resolution (108 and its unified 124/Federal/2019) and since the decisions of this court and based on the provisions of Article (94) of the Constitution and Article (5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 is final and binding on all authorities, so the constitutionality of Article (97/1) of the Municipal Administration Law No. (165) of 1964 cannot be reviewed again.

3. As for Article (53) of the Municipal Administration Law No. (165) of 1964, as amended, it came within the general context of the aforementioned law and in order to achieve the compelling reasons

Athraa



mentioned in it, and therefore it is necessary to implement the rest of the provisions of this law on the one hand, and on the other hand, what was stated In the text of the aforementioned article, it does not conflict with the provisions of Article (23) of the Constitution on which the plaintiff relied in his lawsuit, and which, according to Paragraph (Second) thereof, permitted the expropriation of property for the purposes of public interest in return for fair compensation, as the purpose of what was stated in the contested text is (to implement the design The basic and detailed designs and the implementation of services and public utilities), and that the fair compensation mentioned in the text of Article (23/Second) of the Constitution may be achieved in the improvement of the location or benefit of the remaining part of the property and an increase in its value due to the implementation of the basic design and detailed designs and the implementation of public services and benefits as stated in Article (53) whose unconstitutionality is challenged.

4. The plaintiff based his case on the fact that the contested texts violate the provisions of Articles (1050) of Civil Law No. (40) of 1951 and Article (63) of Expropriation Law No. (12) of 1981, and since the jurisdiction of this court is specified under Article (93). Of the Constitution and Article (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, where Clause (First) of Article (93) included that the jurisdiction of the Court is limited to monitoring the constitutionality of laws and regulations in force, as is the case with the item (First) of the aforementioned

Athraa



Article (4), so the consideration of the constitutionality of a legal text by this court depends on the extent to which that text agrees with the constitution. On the other hand, the second defendant, the Secretary of Baghdad, in addition to his post, is part of the executive authority and has nothing to do with the legislation of the contested texts. Thus, the litigation against him is not directed, which necessitates the dismissal of the case for him from this aspect. Against him and for all of the above, the Federal Supreme Court decided the following:

1. The ruling by dismissing the plaintiff's lawsuit for the second defendant, the Mayor of Baghdad / in addition to his post because the litigation was not directed.

2. The ruling by dismissing the plaintiff's lawsuit regarding the constitutional challenge to Article (53) of the Municipal Administration Law No. (165) of 1964, as amended, for the absence of a constitutional violation.

3. The ruling dismissing the plaintiff's lawsuit regarding the constitutional challenge of Article (97/1) of the Municipal Administration Law No. (165) of 1964, as amended, because it was previously decided upon by this court.

4. Charge the plaintiff with fees, expenses, and attorney fees for the defendants' attorneys, an amount of one hundred thousand dinars, distributed in accordance with the law. The decision was issued by agreement conclusively and binding on all authorities based on the provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/First and

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 113 / Federal / 2021



Kurdish text

5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2005 2021 and be publicly understood on 24 Rabi` al-Akhir 1443 AH corresponding to 30/11/2021 AD.

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