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The Federal Supreme Court (F S C) has been convened on 2.12.2018 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-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (sin.mim.alif) – her agent the barrister (qaf.heh.ain).

The Defendants: 1- Minister of labor and social affairs/ being in this capacity- his agents the jurist officials (mim.ain) & (ha.ain.ha).

2- Third party/ Mayor of Baghdad/ being in this capacity – his agent the jurist official (alif.sin.ain).

### The Claim

The agents of the plaintiff claimed that the first defendant initiated the case against their client at AL-Karkh first instance court numbered 2980/beh/2016 and he requested to expropriate the real estate No. 8/9011 county 20 AL-Dawoodi according to the decision revolution leadership council (dissolved) No. (251) for 1986, and the court issued on 12.19.2016 a decision by rejecting the case and that decision was approved appealingly. The cassation court decided to vetoing the decision, therefore the court of appeal judged by relying on vetoing decision to void the real estate record entry and re-register it by the name of Baghdad's Mayoralty. The appealing decision was vetoed, and the case was restored to its court and it is still in pleading. No decisive decision were token about it yet. The agents of the plaintiff challenged it before the FSC in pretence that the revolution leadership council (dissolved)

decision No. (251) for 1986 violates the constitution, and they initiate the case against the defendants the Minister of labor and social affairs/ being in this capacity and the third party Mayor of Baghdad/ being in this capacity claiming that expropriating the plot which belongs to the plaintiff is violates the constitution because their client is the owner of the real estate. The property is protected according to article (23) of the constitution and it must not be expropriated but for public benefit in return of a fair compensation. The decision of revolution leadership council (dissolved) No. (251) for 1986 did took this matter in consideration. The agents of the plaintiff requested to reject the decision of revolution leadership council (dissolved) aforementioned because it is violates the constitution. The Ministry of labor and social affairs had dedicated a plot with 1200 M2 area for the plaintiff to build a kindergarten with a subsidized price, but she did not build the kindergarten. So, the Ministry requested to expropriate the plot according to clause (3) of 1<sup>st</sup> of revolution leadership council decision (dissolved) abovementioned which stipulates on (the project shall not be exploited for another purpose which the loans is granted for, all the loan period. Otherwise the project must be expropriated (as a land and building). The agent of the first defendant answered with a draft dated on 12.28.2017 after he was notified with the petition of the case which listed that the plaintiff had been granted the approval to build a kindergarten and the aforementioned plot was allocated for her from Baghdad's Mayoralty with a price (75) Iraqi dinars for one square meter. She paid off 25 %, and the rest pays off as an installments for five years, and a request of getting raw materials from the Ministry of industry and minerals were proceeded for her since 1993, but she did not build the kindergarten and left it vacant. While the instructions allows to expropriate the kindergarten in case of infringing it and not exploit the plot. The agent of the first defendant requested to reject the case. The court called upon the parties of the case, and the agent of the plaintiff attended as well as the agents of the first defendant/ being in this capacity and the agent of the second defendant. The agent of the plaintiff repeated what listed in the petition of the case, and the agents of the first defendant repeated what listed in their draft and requested to reject the case. The agent of the defendant the third

party repeated her request of rejecting the case. Therefore, whereas nothing left to be said, the end of the pleading made clear and the court issued the decision publicly.

The decision:

After scrutiny and deliberation by the FSC, the court found that the litigation of the plaintiff against the defendants Minister of labor and social affairs and Mayor of Baghdad/ being in their capacity violates provisions of article (4) of civil procedure law which obliges that the defendant must be a litigant. His admission must be followed by a judgment that an admission had been issued from him, and he must be suited or obliged according to approving the case. Whereas, the request of the plaintiff is to judge by unconstitutionality of revolution leadership council (dissolved) decision No. (251) for 1986 which judge by expropriating the plot which allocated to build a kindergarten on it. Therefore, the litigation in this case if it is approved must be directed to whom issued the unconstitutional challenged decision, or against who supersede legally. In this case the litigation of the defendant Minister of labor and social affairs and the third party Mayor of Baghdad/ being in their capacity are not whom issued the decision (challenge subject) and not whom supersede it. Accordingly, the litigation is not directed in the case. Therefore, the court decided to reject the case for this reason, and to burden the plaintiff the expenses and advocacy fees of the defendant's agents and the third party amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision issued decisively and unanimously on 2.12.2018.