

Republic of Iraq
Federal Supreme Court
Ref. 191 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/8/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Applicant: Speaker of the ICR/ Mohammed Al-Halbousi.

Its Subject: Inquiring about the validity of housing cooperative societies in the purchase, survey, sorting, and sale of state-owned agricultural and princely lands and the legal basis for this.

The Request

The request of the Speaker of the Council of Representatives/ Muhammad Al-Halbousi, according to the letter issued by the Council of Representatives / President's Office No. (Mim.Ra./570 on 14/8/2022), which includes the following: Based on the provisions of Article (93/2nd, 3rd, and 4th) of the Constitution and according to the provisions of Article (27/1st) thereof, which stipulates that public funds are inviolable, and their protection is the duty of every citizen) the distribution of land to citizens is one of the topics that should be surrounded by the highest levels of organization, planning, identification, and legality, and it should not be available to any party. It is neither concerned nor competent under the legislation in force to seize, sort, allocate, and distribute land belonging to the State with or without allowance, Despite the clarity of the legislation in force in the statement of the competent authority (Mayorality of Baghdad and Municipalities) based on the provisions of Article (3) of Legislative Order No. (12) of 2004 (Removing discrimination between citizens to obtain residential land) published in the Iraqi Gazette No. (3989) on 11/11/2004, but some parties are trying to exercise this jurisdiction without the support of the law, such as (cooperative societies for housing) that sometimes take over the possession of state-owned land, sorting it and then selling it to citizens following procedures and work controls that are not

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consistent with the legislation in force, and perhaps the continuation of this dangerous phenomenon will ultimately lead to prejudice to the state's reserves and its land balance which should be distributed to citizens fairly and without discrimination following transparent and fair controls and procedures that guarantee the share of state employees who are proven to have the right to obtain a plot of land for housing purposes, although the authority of the state, ministries and non-ministry bodies, governorates, independent bodies and others, with their competencies and powers, cannot allocate plots of land for themselves to sort and distribute them to those who deserve them, including the Ministry of Finance, which owns the largest share of the lands belonging to the state, and it also does not have the right to sort, sell and distribute land to the beneficiaries until after approaching the municipality of Baghdad or the municipalities and taking their opinion in accordance with the texts and controls in force, it may sometimes apologize for responding to requests for land allocation received from those bodies, so how can cooperative societies for housing exercise the role of the municipality of Baghdad and municipalities and usurp their competencies and powers without relying on any law regulating their activities, especially the Cooperation Law No. 15 of 1992 amended by the First Amendment Law No. 27 of 1995 and the Second Amendment Law No. 7 of 1999, which did not stipulate in any of its articles to grant these associations the power to acquire land. Sorting and selling them, and to protect public funds, and approving a provision that has become binding on all based on the provisions of Article (94) of the Constitution. We ask the esteemed court to indicate whether the associations have the authority to buy, survey, sort, and sell agricultural and princely lands owned by the state, and the basis of the law... With appreciation)).

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the Speaker of the Council of Representatives was asking the Court to state his opinion regarding (whether housing cooperative societies have the authority to buy, survey, excrete, and sell agricultural and princely lands, owned by the state, and the legal basis for that?) According to the detail referred to in the request, the Federal Supreme Court finds that its competencies and powers are limited under

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Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and the articles contained in other special laws, not including expressing an opinion and advice regarding the inquiry contained in the request, as this court is not considered a body for expressing opinion and advice, The competence of the State Council in this based on the provisions of Article (6/1st and 6th) of the State Shura Council Law No. (65) of 1979 as amended by the State Council Law No. (71) of 2017, and therefore this court is not competent to decide on the inquiry referred to in the request or give advice regarding it, according to the principle of judicial independence stipulated in the Constitution of Articles (19, 87, 88, 89, 90, 91, 92/1st and 93) of the Constitution of the Republic of Iraq for the year 2005, and for the lack of jurisdiction of this court In answering what was stated in the request or giving opinion and advice regarding it, so the Federal Supreme Court decided to dismiss the request in form. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 12/Sufur/1445 Hijri coinciding with 29/August/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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