

Republic of Iraq
Federal Supreme Court
Ref. 312 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 9/1/2024 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Abbas Abid Altis Tuain.

The Defendants: 1. Minister of Justice/ being in this capacity.

2. Minister of Agriculture/ being in this capacity.

The Claim

The plaintiff claimed in the lawsuit petition that he contracted with the Wasit Agriculture Directorate under the agricultural contract (rent) No. (41) on 31/1/2011, and to change the original locations of the original cadastro map approved by the Public Authority for Survey of District 11 Kafaifan North in Wasit Governorate in the real estate registration note in Taj al-Din of the first defendant and in the Wasit Agriculture Directorate of the second defendant, in 2016, when the Department of Agricultural Land updated the maps, i.e. converted them from paper to electronic in a device Computer and GPS application and delivery of these updated maps to the Directorate of Agriculture of Wasit for projection on the ground by the surveyors of this Directorate and the cadastrists of real estate registration, which happened is the projection of the original maps on the ground incorrectly based on incorrect points of indication and not originally indicated in the original cadastro map, and this is fixed in the many evidence attached to the lawsuit petition, this

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change led to the destabilization of civil peace between the residents of the province and its farmers and they became helpless, some of them lost part of their land area, and others increased the area of their land at the expense of others and crawled pieces on other plots, and this change led to the issuance of decisions by the concerned courts based on reports based on maps that changed the location from the original, including the decision (90/Beh/2021) issued by the Court of First Instance of Taj Al-Din on 5/4/2021, which acquired the final degree that obligated him (i.e. the plaintiff) to remove the transgression before him on plot numbered 16, based on the report of experts from the Real Estate Registration Department and the Wasit Agriculture Directorate, while the same court issued on 9/5/2021 its decision No. (117/Beh/2021), which acquired the final degree on 10/6/2021, due to the expiration of the legal period for cassation, based on the report of the expert of the General Authority for Survey, which indicates that plot 16 exceeded his agricultural contract located in plot 12/74, and the two decisions mentioned are contradictory issued on one subject, which is the boundary between plot 16 and 12/74, and between the same plaintiff litigants and the residents of plot No. 16, noting that the two plots above are adjacent to each other only, and that each of the aforementioned decisions is now due to be implemented in the Aziziyah Execution Department because they have acquired the final degree, and that their implementation together is a violation of prestige. The Iraqi judiciary, one of the two decisions must be correct and the other wrong, so the plaintiff challenged this court with the procedures of observing the real estate registration in Taj al-Din and the Wasit Agriculture Directorate, for violating the provisions of the Constitution of the Republic of Iraq for the year 2005 in articles (19/sixth, 46 and 27/first) thereof, which affirmed the right of the individual to fair treatment in administrative and judicial procedures and the

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inadmissibility of restricting the exercise of constitutional rights and freedoms, the inviolability of public funds and the duty of every citizen to protect them, therefore, the plaintiff asked this court to rule on the unconstitutionality of the administrative and technical procedures in changing the reality of the original cadastro map approved by the General Authority for Survey of the northern 11 Kafifan district, updated by the Department of Agricultural Lands, which was carried out by the Real Estate Registration Note in Taj Al-Din of the first defendant in addition to his job, and the Wasit Agriculture Directorate of the second defendant in addition to his job and causing the Taj Al-Din Court of First Instance to issue the judgment decision No. (90/Beh/2021). on 5/4/2021, and charge the defendants fees and expenses. The lawsuit was registered with this court at number (312/federal/2023) and the legal fee was collected for it, and the defendants are informed of its petition and documents in accordance with Article (21/1st and 2nd) of the court's rules of procedure No. (1) of 2022, and for the expiry of the period required for the answer, the court set a date for considering the case without pleading in accordance with Article (21/3rd) of the aforementioned rules of procedure, in which the court was formed and began to consider the case, the court scrutinized the plaintiff's requests and substantiations, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following judgment:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's claim is summarized in demanding a ruling on the unconstitutionality of the administrative and technical procedures in changing the locations of the original cadastro map approved by the

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General Authority for Survey of the District (11 Kafifan North) and updated by the Department of Agricultural Lands, which was carried out by the Real Estate Registration Note in Taj Al-Din of the first defendant, the Minister of Justice / being in this capacity, and the Wasit Agriculture Directorate of the second defendant, the Minister of Agriculture, being in this capacity, which caused the issuance of the Court of First Instance of a crown Debt to the decision of judgment No. (90/Beh/2021 on 5/4/2021), and the Federal Supreme Court finds that the plaintiff's request focuses on demanding a ruling on the unconstitutionality of the administrative and technical procedures issued by the departments of the first and second defendants / being in their capacity, whereas the jurisdiction of this court is limited by Article (93) of the Constitution of the Republic of Iraq for the year 2005, and its jurisdiction under Article (93/I) of the Constitution is limited to monitoring the constitutionality of the laws and regulations in force and does not extend to monitoring the constitutionality of administrative and technical procedures issued by the defendants / being in their capacity or their departments, and thus the plaintiff's lawsuit is subject to dismissal. In view of the above, the Federal Supreme Court decided to dismiss the lawsuit of the plaintiff Abbas Abdel Tus Ta'in for lack of jurisdiction and charging him fees and expenses. 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 edited on the session dated 26/Jamada Al-Akhira/1445 Hijri coinciding 9/January/2023 AD.

Judge
Jassim Mohammed Abbood

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President of the Federal Supreme Court