

Republic of Iraq
Federal Supreme Court
Ref. 37/ federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 8.7.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, and it issued the following decision:

The Plaintiff:

(Lam. Sen. Shen.) – her agent the attorney (Alf. Ain.).

The Defendant:

Minister of Finance/ being in this post his agent the legal official (Aif. Fa'. Ha'.).

The Claim:

The agent of the plaintiff claimed that the Revolutionary Command Council (dissolved) issued its no.1223 decision on 13 November 1983, under which it decided, based on the provisions of article (2), of which it confiscated a piece of land (courtyard) belonging to the plaintiff (Lam. Sen. Shen.) numbered (161/9) province (29) (Barthiya) and this because it was not registered by

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the plaintiff, then, the Revolutionary Command Council (dissolved) issued the resolution no. (200) on 4/6/1991 and decided in an article (1) of it to return the piece of land confiscated under resolution (1223) on 13/11/1983 Above to its owners and decided in an article (2) of it: If it appears that the confiscated plot has been sold to others, then the Ministry of Finance will pay the price at which the piece was sold to its owners, and the ministry will take over the payment of the installments from the buyer if the price is installment to them. And based on the decision of the (dissolved) Revolutionary Command Council No. 200 of 4/6/1991, the plaintiff filed a lawsuit before the Judicial Commission in Basra Governorate and her lawsuit was dismissed, following the discriminatory decision issued by the appeals section in the Real Estate Claims Commission justifying its decision that the plaintiff is entitled And based on Resolution 200 of 1991, reviewing the parties that sold the plot to receive the sale allowance from them, and after the issuance of the Real Estate Claims Authority Law No. (13) of 2013, the plaintiff's lawsuit became covered by the provisions of Paragraph (Ha'.) of Article (3) of the aforementioned law and deserves compensation in accordance with the provisions of Paragraph (Ba'.) of Article (7) of the above-mentioned law, the plaintiff initiated a lawsuit with the Competent First Instance



Court to demand compensation for the confiscation of the above plot of land belonging to her. And while seeing the case, the plaintiff's attorney argued that Clause (Second) of the Revolutionary Command Council (dissolved) Resolution No. (200) of 1991 is unconstitutional.

After studying the above defense by the competent court of first instance, it decided: (accepting the reasons stated in the pleading session dated 3/13/2013 and instructing the plaintiff to file a lawsuit in this regard to the Federal Supreme Court and the original lawsuit be set aside).

Accordingly, the plaintiff's attorney filed the case before the Federal Supreme Court for the unconstitutionality of Paragraph (Second) of the (dissolved) Revolutionary Command Council Resolution No. 200 of 1991. The attorney of the defendant responded to the lawsuit petition that the subject matter of the lawsuit had already been decided by the judiciary in the lawsuit numbered (110/Ba'/2014) Court of First Instance _ Basra, and the other case numbered (485037) filed before the Real Estate Claims Commission / Judicial Commission in Basra Governorate is rejected following the discriminatory decision issued by the Appeal and Discrimination Section of the Real Estate Claims Authority, Also, Resolution 200 of 1991 is a legislation issued by a higher authority at the time that has a legislative capacity, which



leads to the response to the plaintiff's claim, and for the above reasons, she requested a dismissal of the case.

After registering the case with the Federal Supreme Court based on the provisions of Paragraph (third) of Article (1) of the Federal Supreme Court bylaw and after completing the required procedures based on the provisions of Paragraph (Second) of Article (2) of the aforementioned system, appointed on 7/8/2014 is the date for hearing the lawsuit and the court was formed in which the attorney for the plaintiff and the attorney for the defendant attended according to the agencies linked to the case file, and the public attendance proceedings were initiated.

The plaintiff's attorney repeated what was stated in the lawsuit's petition and requested the verdict accordingly, the defendant's attorney replied (I repeat what was stated in the response list dated 6/26/2014 and request a dismissal of the case). Each of the parties repeated his previous statements.

Whereas nothing left to be seed, the argument is closed, the decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that the plaintiff agent appeals against the unconstitutionality of Paragraph (Second) of the Revolutionary Command Council

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Resolution (dissolved) No. (200) for the year 1991, requesting its cancellation for the reasons stated in the lawsuit petition and filed the case against the defendant (the Minister of Finance / being in this post) and since the decision requested to be canceled was issued by The Revolutionary Command Council (dissolved), which had the authority to legislate, amend and cancel laws, and since the defendant is the Minister of Finance/being in this post, is not a successor to the dissolved Revolution Command Council after he assumed the legislative duties of the Iraqi Council of Representatives under Article 61 of the Constitution of the Republic of Iraq for the year 2005 Accordingly, the litigation is not directed to the defendant, the Minister of Finance/being in this post. Where it is required for the defendant to be a litigant, and upon his approval a judgment will result in the estimation of the issuance of a declaration from him, and he must be convicted or bound by something on the discretion of the evidence of the case (article 4/Civil Procedure Code) and that the defendant mentioned above does not have such right. Based on this, and since the litigation was not directed in the case, the court shall rule, even if on its own initiative, to dismiss the case without entering into its basis (Article 80 / Civil Procedure Law).

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Accordingly the F.S.C. decided to dismiss the plaintiff lawsuit and to burden her expenses with the advocacy fees for the defendant agent/being in this post his agent the legal official (Aif. Fa'. Ha'.). Amount of (one hundred thousand) IQ.D. This decision has been issued decisively based on the provisions of Article (5/Second) of the Federal Supreme Court Law No. 30 of 2005 and Article 94 of the Constitution of the Republic of Iraq for the year 2005 and by agreement and was publicly understood on 7/8/2014.