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The Federal Supreme Court (F S C) has been convened on 3.28.2017 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 Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (gheen.saad.seen) his agent the barrister (aeen.hah.hah).

Defendants / 1- Minister of finance/ being in this capacity.

2- Minister of justice/ being in this capacity.

### Claim

The agent of the plaintiff claimed in case No. (3/federal/2017) that the head of the tenth committee for lands rights settlements had already issued a judgment by registering the tract No. (7 county 18/ alsora) again as a freehold by the name of his client (the plaintiff) and his partners according (to article 2<sup>nd</sup> of the law number 29 for 1938), then the representative of the real estate registration office and the representative of the ministry of agriculture informed him by cancelling all the decisions issued about the settlement, and the land return as domanial, his client initiated the case before the instance court of Al-madina against the defendants because of seizure of the tract without having the right for that, but the case was rejected because of the agricultural reformation law No. (117 for 1970), whereas the decisions that issued by the head of the settlement had been cancelled in its law No. (66 for 1969) (Amendment law for agricultural reformation law number 30 for 1958) and the defendants to hold on to insistence of the wrong jurisprudence, that the provisions of law No.(66 for 1969) includes AL-basrah as well with

retroactive, and this is illegal allegation, because expropriation was not obtaining any text of the law, and the geographic borders which the texts of provisions of law (66 for 1969) applied on, is the administrative borders for AL-amarah and AL-nasriyah provinces exclusively, and not including the other provinces, such as AL-Basra, as article (2<sup>nd</sup>-jeem) of the same law stipulated on (all the decisions issued according to the law 16 for 1965 which is forcible or enforceable), as well as the agent of the plaintiff made clear the private property is protected and cannot be expropriated for public benefits but with fair compensation, according to the law, and the expropriation was a confiscation and regards void and not immunized, especially if we knew that since the expropriation of the estate till the present time, the tract was not exploited, and transformed into an arid land (not valid for farming), at the end he requested to cancelling all the restrictions and the consequent real estate records on the estate (tract number 7 county 18/ alsora) since it was confiscated and till the present time, and re-register his client's shares (3) of (6) which shown in the photocopy of the title deed in the case, according to the article (139) of real estate registration law and article (553 civil) to the name of its legal owner (plaintiff), and to burden the two defendants all the expenses and the advocacy fees. After registering the case at this court, according to the third clause of article (1) of the bylaw of the FSC, and completing the needed procedures according to the clause 2<sup>nd</sup> of article (2) of the aforementioned bylaw. The day 3.28.2017 was set as a date for the pleading, and on that date the agent of the plaintiff attended as well as the agent of the first defendant, while the minister of justice did not attend, even his agent, the pleading proceeded in his absence, the agent of the plaintiff repeated the petition of the case and requested to judge according to it, and the agent of the defendant repeated the answering draft and requested to reject the case, also the agent of the plaintiff presented illustrative draft, he recited it, and it was attached to the file of the case. The court ended its scrutinizes, and where nothing left to be said, the pleading was ended, and the decision had been recited publicly on 3.28.2017.

## Decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff claims in the petition of the case No. (3/federal/2017) that the shares of the tract No. (7 county 18/alsora) were re-registered as a freehold by the name of the plaintiff and his partners, and the decision issued according to article (2<sup>nd</sup>) of the law No. (16 for 1965 amendment law for land settlement law number 29 for 1938) with a challengeable decision, consequently for the final decision on 1.8.1966, and the general directorate provided the plaintiff with (document of lands' record on 8.19.1967), then the agricultural reformation directorate in basrah informed the plaintiff that there is a law had been issued which cancelled all the issued decisions by the settlement, and the land (the subject of the case) returned domanial, according to the provisions of (the law number (66) for 1969), therefore it became involved into the agricultural reformation law (number 117 for 1970), then it was registered by the name of the Iraqi ministry of finance because of its involvement to the provisions of the law No. (53) For 1976 (state lands categories unifying law) after the agricultural reformation committee took a decision about it, and the issued decision gained the decision became final. The agent of the plaintiff clarified that article (2<sup>nd</sup>/jeem) of the aforementioned law (number 66 for 1969) cancelled all the issued decisions according to the law No. (16 for 1965) which is forcible or enforceable AL-amarah and AL-nasriyah provinces exclusively, and not including the other provinces, such as AL-Basra which was included with a wrongful jurisprudence by the employees of the agricultural reformation, because of the truthiness of the text. The court finds that the laws and the decisions issued about the tract number (7 county 18/ alsora) (the subject of the case), and what based on that of procedures and consequent registrations in the real estate records were completely executed, and claiming that there was a mistake by applying these laws which its validity were over by the end of its texts procedures applying duly, and it has no power of validity in the present time as for the tract of the plaintiff, and the request to judge by removing what the plaintiff requested in his case not including of the FSC competences, which determined in article (93 of the Republic of Iraq constitution for 2005), which is it

monitory on the constitutionality of the laws and the valid regulations, not the invalid. Based on that, the FSC decided to reject the case for non-competence, and to burden the plaintiff the expenses and the advocacy fees for the agent of the first defendant amount of one hundred thousand Iraqi dinars. The decision issued decisively according to the article (94) of the constitution and unanimously on 3.28.2017.