

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 42/federal/media /2015



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29.6.2015 headed by 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-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: Governor of Bm asra / being in this capacity his agent the jurist (ha. yeh. ha.).

The Defendant: Chairman of Al-basra provincial council / being in this capacity his agent the jurist (alif. qaf. zin.).

The Claim:

The agent of the plaintiff/ Governor of Basra/ being in this capacity claimed that on (11/2/2015) the defendant (Basra provincial council) issued its decision No. (213) in the where it is stated in item (1st) of it ((Stop the sale and rent of all land and real estate belonging to dissolved entities in Basra governorate and commit all concerned departments not to promote their sales and rent transactions except with the approval of the Basra Provincial Council)) Section (2nd) of the aforementioned decision included ((The real estate registration departments, state real estate, Basra municipalities and provincial municipalities are obliged to provide a detailed inventory of all

properties and plots belonging to dissolved entities in Basra province within thirty days from the date of the decision above)) the text of the item (3rd) from mentioned decision (The provincial council has the right to acquire the property and land referred to in accordance with the law). According to the provisions of article (31/11th/1) from the law of irregular provinces in the territory No. (21) of 2008 The Governor of Basra objected to decision (213) issued by the Basra Provincial Council on 11/2/2015 because the decision referred violates article (7/3rd) (the jurisdictions of reference of the Provincial Council) and that's with his letters No. (mim. mim. / alif./1411) on 2/3/2015 Governor's Office - in his objection, he noted that Section 1 of the Basra Provincial Council's decision had been limited to ((Sale and lease of all land and real estate belonging to the dissolved entities issued by the central government with the approval of the Basra Provincial Council, while all those lands and contracts belong to the Ministry of Finance based on the Law on the Management of Funds belonging to the dissolved entities No. (21) of 2005. With regard to item (2nd) of the mentioned decision, No. (1) of 2009 instructions for delivery of the implementation of the Law on the Management of Funds belonging to the dissolved entities referred to above to the State Real Estate Department in order to carry out the inventory of real estate belonging to the dissolved entities and to organize records and records of their own, and not related to the departments. Mentioned in the above decision to approve the inventory. As for item (3rd) of the above resolution, article (2) of Instructions No. (1) of 2005 The transfer and non-transferable funds of the dissolved entities stipulated in article 1 of these instructions shall be owned by the Ministry of Finance without allowance and registered in its name and have the right to dispose of these funds (by sale, rent or acquisition) and other actions of the owner - in accordance with the law - except excluded with a special text)) for the public benefit or for the implementation of projects on it there is no executive status of the council of the provinces that are irregular in the province No. (21) of

2008. When the agent of the plaintiff/ being in this capacity request was submitted, the court issued a decision to overturn the decision of the Basra Provincial Council (challenged) No. (213) of 2015 referred to above. The defendant's agent responded to the petition as follows: the paragraph (1st) from the challenged decision No. (213) of 2015 which issued by Basra Provincial Council obliged all departments in the province not to promote transactions (sale and rent of land and real estate belonging to dissolved entities) except with the approval of the mentioned council, based on the provisions of Article (2/1st) and Article (7/3rd) of the Law of The Irregular Provinces in the Territory No. (21) of 2008 (amended) by the law No. (19) of 2013 valid, this does not mean that the money is disposed of by sale or rent as stated in Article (1) of the Law on the Management of Funds belonging to dissolved entities (21) of 2005 and Article (2) of Instructions No. (1) of 2009. The defendant's attorney added that with regard to paragraph (2nd) of decision (213) for 2015, the real estate registration departments, state real estate and Basra municipality were obliged to provide a detailed inventory of all real estate to the dissolved entities, and there is no legal impediment to this assignment and it is not considered an infringement of the Law on the Management of Funds belonging to dissolved entities dissolved No. (21) of 2005 according to the provisions of article (7/7th) of the Law of The Irregular Provinces in the Territory No. (21) of 2008. As for the paragraph (3rd) from the mentioned decision the agent of the defendant answered it, department has an independent moral and financial personality and is entitled to sell and rent based on the Law on the Sale and Rent of State Funds No. (21) of 2013. As a result the agent of the defendant requested to reject the case. After the registration of the case on the basis of the provisions of article (1), paragraph (3rd) of the FSC's System No. (1) of 2005 and the completion of the reports in accordance with article (2) paragraph (2nd) of the above-mentioned system. On 29/6/2015, the court was appointed as date for the case, in which the court was formed, and the jurist lawyer (ha. yeh. ha.) attended

the plaintiff's agent under the agency, a photo copy of which is attached to the case. The officer attended (alif. qaf.) as an agent for the defendant under the agency linked to the case and pleading commenced attendance case, the plaintiff's attorney repeated the petition and requested a verdict under which it was highlighted and highlighted by an explanatory regulation dated 29 June 2015. The defendant's attorney I repeat the draft and request that the case be rejected and both parties repeat their statements and where there is nothing left to say, the end of argument has been made clearly, the decision had made clear public.

The Decision:

After scrutiny and deliberation by the FSC found that the Basra Provincial Council already been issued its decision No. (213) on 11/2/2015, which includes stopping the sale and rental of all land and real estate belonging to dissolved entities in Basra province and obliging all relevant departments not to promote their sales and rent transactions except with the approval of the Basra Provincial Council. Likewise, obliging the real estate registration departments, state real estate, Basra municipality and the municipality of the governorate to submit a detailed inventory of the provincial council with all the real estate and plots of land belonging to the dissolved entities in Basra governorate within a period of thirty days from the date of the council's decision, the Provincial Council has the right to own the property and land referred to in accordance with the law and to object to the contested decision, which was mentioned in its letter No. (mim. mim/alif/1419) on 2/3/2015, as it was issued outside the jurisdictions of the Provincial Council stipulated in the Law of the Irregular Provinces in Territory No. (21) of 2008 (amended) this is based on its terms of reference, which are contained in article (31/11th) of the Law on Irregular Provinces in Territory No. (21) of 2008, which provides for ((1- The governor may object to the decisions of the provincial council or the local council in the following cases:

A- If it is contrary to the Constitution or the laws in force. B- If it is not the competence of the Council. C. If its violation of the federal government's general plan or budget. 2- The governor shall return the decision to the relevant council within a maximum (fifteen days) of the date of notification. If the council in question insists on its decision or if it is amended without removing the violation indicated by the lawyer, it should refer it to the FSC.) Since the Basra Provincial Council/ being in this capacity insisted on its No. (213) on 11/2/2015 in according to its draft linked to the case on 7/5/201. The appeal to this court shall satisfying in accordance with the legal requirements of article (31/11th) of Law of the Irregular Provinces in the Territory No. (21) of 2008 referred to above. And since the article (2) of the instructions to facilitate the implementation of the provisions of the Law on the Management of Funds belonging to dissolved entities No. (21) for 2005 and No. (1) for 2009 has decided that (The movable and immovable funds belonging to the dissolved entities stipulated in article (1) of these instructions shall be transferred to the Ministry of Finance without allowance and shall be registered in its name and may dispose of these funds by sale, rent or acquisition and other actions of the owner in accordance with the law except excluded by text.). In accordance with article(6) of the instructions mentioned above, the State Real Estate Department shall inventory the property belonging to the dissolved entities and regulate their own records and records, and under article (7) of the instructions above, the State Real Estate Department investigates the transferred funds belonging to and from the dissolved entities, clarification from those who have such information about them, such as banks, traffic department and corporate registration services. The FSC finds that the decision of the Basra Provincial Council No. (213) on 11/2/2015 with the content contained in it was issued outside its jurisdictions in Article (7) of the Law of the Irregular Provinces in the Territory No. (21) of 2008, although the council has the legal person and financial independence represented by its president or authorized by him (mim 2) of the law No. (19) of 2013 (The

First Amendment Law of the Irregular Provinces in the Territory No. (21) of 2008, not as the plaintiff / being in this capacity said in the petition. Accordingly, in violation of the resolution of the Basra Provincial Council, which is challenged No. (213) on 11//2/2015 of the law. The court decided to cancel for the reasons established above and to charge the defendant/ being in this capacity the fees attorney of the plaintiff the jurist's (pa. yeh. ha.) in a sum of (100,000 dinars) and the decision was issued by unanimously decisively on the basis of the provisions of article (94) constitution of the Republic of Iraq for 2005 and article (5/2nd) of the FSC Law No. (30) of 2005 the decision had made clear public on 29/6/2015