

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 43/federal/media /2013



Kurdish text

The Federal Supreme Court (F S C) has been convened on 3. 9. 2013 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 Plaintiff: appellant (against) (alif. jim. mim.) his agent (sin. ain. jim.).

The Defendant: appellant/ Saadia Municipality Directorate / being in his capacity his agent his jurists (ain. alif. ha.) and (ghain. shin. mim.).

The Claim:

The plaintiff's agents (sin. ain. jim.) claimed that on date 10/1/2005 his client reviewed Baquba branch of the Property Disputes Resolving Committee demanding ownership of the (30/145 2m Saadia) property in accordance with the decisions concerning the ownership of the trespassers, which had facilities demolished by the Municipality of Saadia according to the provisions of the decision of the Revolutionary Command Council (dissolved) No. (154) of 2001, before entering it included the map of the expansion of the municipal boundaries, the Judicial Committee decided to reject the case from the jurisdiction because the mentioned property was registered in the name of the

Municipality of Saadia and was not confiscated or seized or detained for political or ethnic reasons or one of the situations covered by the provisions of the law of the Authority for the Property Disputes Resolving Committee No. (6) of 2006 and that the municipal law drew special ways to own it and because the property (the subject of the case) No. (30/145 2m Saadia) of its category leftover and it is freehold return to (Saadia Municipal Directorate) and the plaintiff (alif. jim. mim.) it is overridden, so the Directorate of Saadia Municipality, based on the provisions of paragraph (2) of the resolution of the Revolutionary Command Council (dissolved) No. (154) of 2001, removed the mentioned transgression and rapist the country estate above. Saadia Municipality Directorate prosecutes the case No. (46/beh/2012) according to the provisions of article (197) of the civil law before the First Instance Court of Saadia requested of the comparable wage for the period from (1/6/2006 to 12/4/2012), the mentioned court rejected the case for incompetence – because the subject of the case – is under the provisions of the Revolutionary Command Council (dissolved) No. (154) of 2001, where paragraph (9th) of the decision mentioned prevented the courts from hearing the cases arising from the execution of its rulings. Saadia Municipality Directorate challenges against the decision (46/beh/2012) issued in the above primitive case appeal with the Diyala Federal Appellate Court for the reasons stated in its appeal list dated 18/11/2012. The Diyala Federal Appellate Court proceeded to hear the appeal case under No. (23/heh sin/2013) and decided on 13/2/2013 on behalf of the First Instance Court of Saadia to conduct the disclosure of property (30/145 6m Saadia) - the subject of the case - and the plaintiff (the appellant) requested on his draft 6/3/2013 postponement the appeal for a case before the FSC for the reasons contained in his above draft. The Diyala Federal Appellate Court decided to postponement the appeal pending the resolution of the case before the FSC and sent the case by it to the FSC for consideration where the plaintiff requested and based on Article (9) of the FSC's Law

No. (30) of 2005 to consider the case, as it is one of the former regime's arbitrary policies and affected by the map (1038) of 1983 (80) citizens, including the plaintiff himself, and because of the lack of competence of the Appellate Body of the Diyala Federal Appellate Court to consider it, and that its decision issued to conduct an inspection of the property exceeded in 1961 and before the issuance of the ownership decision for the houses (858) on 1/6 /1980. The legal prohibition of proceeding with the subject matter of this case under item (9th) of decision (154) of 2001 and Law No. (17) of 2005, this constitutes a dangerous precedent in the history of the Iraqi judiciary when it considers it by the Diyala Appellate Court at the level of an appellate body. In other words, he requests a ruling on the illegality of considering an appeal against the ruling in the case (46/beh/2012) issued by the First Instance Court of Saadia, for the following reasons:-

Law (7) of 2005 stipulated in Article (3) that the prevention of courts from hearing cases regarding abuse decisions and the laws of the Ministry of Higher Education and Scientific Research and the Ministry of Education and Tax continues in effect, and Paragraph (9th) of decision No. (154) of 2005 valid and issued by the Revolutionary Command Council (dissolved) also prevented the courts from hearing the cases resulting from the irregularities in this decision. Therefore, the ban is considered continuous according to Law No. (17) of 2005 above. The item (5th/1) of decision (154) of 2001 making the subject matter of this case within the jurisdiction of the governor as (a committee is formed by the governor in every sub-district and district headed by the head of the administrative unit....) accordingly, the subject matter of the case is not subject to the provisions of Article (197) of the Civil Law on which the appellant relied in filing a case claiming a comparable wage, after registering the case, paying the fee, and completing the required procedures in accordance with paragraph (2nd) of Article (2) of the FSC's Bylaw No. (1) of 2005. A date was set for the hearing in which the court was formed and the two parties were called upon, so the agent of the

defendant, (ghain. shin. mim.), did not attend even though he was notified of the date of the hearing in accordance with the law. The agent of the defendant repeated what was stated in his answering draft, requesting rejection of the case for the reasons stated therein, then requesting that the case petition be dismissed because the agent of the plaintiff was not present. The court decided that the proceeding in the case claimed justice; the defendant's agent repeated his previous statements as there was no remaining thing to say, and the end of argument and decision has been made clearly public.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff (appellant (against)) is challenging the lack of competence of the appellate body of the Diyala Federal Court of Appeal to hear an appeal against the ruling the decision of Judgment No. (46/beh/2012) issued by the First Instance Court of Saadia in the case filed before it by the defendant (the appellant) Saadia Municipality Directorate / being in his capacity to claim a comparable wage for the works of the property No. (30/144 6m Saadia) exceeded by the plaintiff, based on the provisions of Article (197) of the Civil Law, for the reasons he mentioned in his petition, since the Diyala Court of Appellate decided to proceed with the appeal case (23/heh sin/2012) above and took a decision on 13/2/2013 on behalf of the First Instance Court of Saadia to conduct an examination of the property (the subject of the case) then he decided to postponement the appeal case upon the plaintiff's request in order for him to file this case before the FSC and upon scrutiny of the FSC's jurisdiction stipulated in Article (4) of its Law No. (30) of 2005 and in Article (93) of the Constitution of the Republic of Iraq, it was found that this court is not competent to supervision the procedures it takes Courts of first instance, courts of appeal, and the Court of Cassation when hearing the case, as it is not competent to supervision the judgments issued by these courts. Therefore, the case must be rejected from

incompetence of jurisdiction of this court from considering it, so the FSC decided to reject the case from incompetence of jurisdiction and to charge the plaintiff with the case all fees and attorney fees for the defendant's attorney / being in his capacity the jurist (ghain. shin. mim.) amount one hundred thousand Iraqi dinar (100,000 dinar) the decision was immanence and decisively according to the provisions of article (2nd) of the article (5) of FSC's Law No. (30) of 2005 and the article (94) of the Constitution and had made clear public3/9/2013