

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.55/federal/media/2016



Kurdish text

The Federal Supreme Court has been convened on 23/8/2016, headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami , Jaafar Nasir Hussein , Akram Taha Mohammed ,Akram Ahmed Baban, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman and Mohammed Rajab AL-Kubaisi, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: (Qaf.Dal.Ain), his agent the barrister (Ain.Kha.Mim).

The Defendants:

- 1-ICR speaker/ being in this capacity- his two agents the legal officials (Sin.Ta.Yeh) and (Heh.Mim.Sin).
- 2-The prime minister/ being in this capacity- his agent the legal counselor (Ha.Ain.Jim).

The Claim:

The plaintiff claimed that he was contracted for 22 donum, the area No.(2/691), county (6) AL-Jazira, with the legator of the appellees in the case that initiated between them and for (90) years. The history of the contraction was on 9/1/1982 and all the compensation had been paid, amount of eight thousand dinars. The court of subject considered him as exactor for the area that he contracted for a period more than (30) years because the period of the contract shall not be more than (30) years according to the article (740/1) from the civil law. It is the article that is challenged by its Constitutionality, the plaintiff sees that the text of the aforementioned article violates the Constitution according to many reasons, one of its that what was listed in the article (130) from the Constitution which stipulated

(Existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution.), the plaintiff sees the text of the challenged article by its unconstitutionality violates the provisions of Islam (the article 2 from the constitution) and sees that it violates the article (17) from the Constitution which treated the person right of personal privacy also the violates the article (37) from the Constitution which relates to that The liberty and dignity of man shall be protected and lastly the article (23) from the Constitution that the Private property is protected. For the above the plaintiff request from the court to decide the unconstitutionality of the article (740) from the civil law. After the case had been registered, a day of the argument was selected and on the determined date, the agents of the two parties attended. The agent of the plaintiff repeated his requests and request from the court to decide according to the case petition. The agents of the defendants repeated their previous requests and sayings that were listed in the drafts which were presented by them and requested from the court to reject the case for the reasons that listed. After the court completed the investigations, the end of the argument had been understood and the decision was understood publicly.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff claimed in his case petition that his client has already contracted to lease (22) donum and that was on 9/1/1982, for (90) years and with compensation of eight thousand dinars. After the case had been initiated by the owner before the court of the first instance, the court considered the plaintiff as exactor for the property that he was contracted for it for the period after the thirty years according to the article (740) from the civil law No.(40) for 1951. Based on this the plaintiff challenged the above article by its unconstitutionality because it violates some Constitutional texts that were listed in the case petition. The court found that the plaintiff didn't consider what listed in the article (4) from the bylaw of the FSC for 2005, which oblige a specific formality to either accept the challenge about the unconstitutionality of a law or reject it. It shall be before the court that tries the case, whether the court accepted and charged him to present this chal-

lenge by a case and send it to the FSC, or it rejected it. its decision can be challenged before the FSC. Whereas the plaintiff didn't consider this formality, the case is to be rejected for formality. From another side, the FSC found that the principles that were by the challenged article (740) from the civil law it is just a regulatory matters in order to achieve the balance between the two parties of the contracts especially that the aforementioned text didn't determine the renting period with 30 years, it allowed one of the parties of the contract to end the contract after 30 years in case that the contract was made for a period longer than that. The philosophy of the text corresponds with the jurisprudential rule (There is no denying that the sentences change with the change of time) added to that it is a legislative option and the FSC found no contradiction with any Constitutional text so the case became lacking for its Constitutional substantiation. For the second defendant, the prime minister/ being in this capacity- the FSC found that he can be a litigant, in this case, the litigant shall his admission lead to a judgment by assessing issuing an admission from him,, the article (4) from the law of civil arguments No.(83) for 1969 (amended). Based on the above, the FSC decided to reject the case and to burden the plaintiff all the expenses and fees of the advocacy for the agents of the defendants' amount of hundred thousand dinars divided between them equally. The decision had been issued unanimously and decisive according to the provision of the article (94) from the Constitution and was understood publicly on 23/8/2016.