

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 79/federal/media/2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 17/11/2015 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 Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (ta.ain.sin.), his agent the attorney (ain.sad.teh.).

The Defendants:

1. Director of Al-Najaf municipality/ being in this post, his agents the legal officials (teh.qaf.) and (ha.sin.).
2. (sin.ain.beh.), his agent the attorney (mim.ain.sin.).

The Claim:

The agent of the plaintiff claimed that the second defendant has filed the lawsuit no.(95574) before property claims commission in Al-Najaf claiming that the plot no.(17421/2 Alforat neighborhood) is allocated to him according to the controls, Al-Najaf municipality management has allocated it for his client before it was registered by the name of the defendant, accordingly the committee decided to revoke the plot registration by the name of Al-Najaf municipality,

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and to revoke its allocation to his client, and to register it by the name of the second defendant, that decision was approved in the court of cassation after that his client (the plaintiff) filed objection of others lawsuit and the committee decided to revoke it decision dated on (9/1/2006) and to re-register it by the name of his client (the plaintiff), and to obliged the first objected against him (the second defendant in this lawsuit) extradition the property empty of the occupants, this decision was approved by the cassation committee, then the second defendant challenged that decision by the method of correcting the decision before the same committee which issued reversal decision to its previous one, and issued it decision no.(842/correcting the cassation decision/2014) which rule to reverse the decision of the judicial committee in Alnajaf issued on 12/12/2013 dossier no.(995574) and it decision no.(172/cassation /2014) on (2/2/2014), and justify that by that its decision issued on (2/2/2014) by the number (172/cassation/2014) was issued without noticing that (second Regional Judicial Committee) has already issued the decision no.(995574) on (9/1/2006) to cancel the registration of the plot the subject of the case by the name of Alnajaf municipality and revoke its allocation for his client (the plaintiff) and to register it by the name of the second defendant in real estate registry office, that decision obtained the degree of final when it was ratified by the cassation committee in real estate property conflict committee on (10/10/2006) no.(2520/cassation/2006) so that the committee decision become plea in what it adjudicated (article 105 evidence) and its not allowed to except an evidence that reverse the plea of this decision (article 106 evidence), the cassation committee didn't notice that his client has filed

challenge lawsuit according to article (224) of the civil procedures law that authorize the challenge throw the challenge of others to each decision issued by the court of first instant, appeal, or personal status to the person who wasn't litigant, representative, or third party in the case if the decision is exceed to him, according to that the committee decided to accept the challenge formally and decided to repeal its judgment on (9/1/2006) and to reject the case of first objected against (the second defendant) for lack the qualitative jurisdictions of the judicial committee, and revoke the land title (90/October 2006 dossier 1065) registered by the name of second defendant as result for implementing the decision of the judicial committee dated on 9/1/2006, and to re-register the real estate by the name of his client (the plaintiff) under the land title (93/July 2001 dossier 919) this decision was ratified cassation by the no.(172/2014) on 2/2/2014, as long as the decisions no.(842/correcting the cassation decision/2014) on 18/3/2014 issued by the cassation committee in property claims committee, and No.(161/property claims committee/2014) on 15/2/2015 issued by the cassation committee of property claims committee in the federal cassation court was violated the valid laws and the text of articles (13, 23) of the constitution. As the F.S.C. is competent to monitor the constitutionality of laws and valid regulations, and adjudicate it in the lawsuits resulted from implementing the federal laws, decisions, regulations and instructions according to article (93) of the constitution, therefore he requested to judge by unconstitutionality of the decision of the cassation committee in property claims committee no.(842/correcting the cassation decision/ 2014) on (18/3/2014) and the decision of the cassation

committee in property claims committee in the federal cassation court no.(161/property claims committee/2015) on 15/2/2015, and to repeal the land title (90/teh/2006 dossier 1065) related to the plot the subject of the case registered by the name of second defendant (sin.ain.beh.) according to the provision of article (139) of the valid estate registration law, and to burden the defendants all the expenses and advocacy fees. After the case was registered before this court according to paragraph (3rd) of article (1) of the F.S.C. Bylaw and completing the required procedures according to paragraph (2nd) of article (2) of the mentioned bylaw, a date was scheduled for the argument, the court convened and attended for the plaintiff his agent, attended for the defendants their agents, and continue with the argument in presence and public, as the F.S.C. has completed its investigations the argument is closed and issued the following decision on 17/11/2015.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the plaintiff requested in the case petition to oppose the judicial decisions and to rule by unconstitutionality of the cassation committee decision in property claims committee no.(842/correcting the cassation decision/ 2014) on (18/3/2014) and the decision of the cassation committee in property claims committee in the federal cassation court no.(161/property claims committee/2015) on 15/2/2015, and to repeal the land title (90/teh/2006 dossier 1065) related to the conflicting plot between the parties of the case, when referring to the stipulated jurisdictions of the F.S.C. in article (4) of its law no.(30) for 2005, and article (93) of the Iraqi republic

constitution for 2005, we found that it didn't include the jurisdiction to monitor the rules and decisions issued by courts or amend and repeal these decisions, that the law has set a method to challenge it, therefore the case lack it legal substantiation from the point of jurisdiction. Accordingly the court decided to reject the case, and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant's amount of one hundred thousand Iraqi dinars. The decision has been issued decisively according to article (94) of the constitution and unanimously on 17/11/2015.