

Republic of Iraq
Federal Supreme Court
Ref. 79 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/10/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Sabeeha Khadhim Shaheen – her agent the Barrister Shawkat Sami Fadhil.

The Defendants: 1. The Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

2. Head of the National Investment Commission/ being in this capacity – his agent is the legal counselor Hamid Abid Hassoun.

The Claim

The plaintiff claimed by her agent that the first defendant had already issued order No. (6) for 2017 (the system of selling and renting real estate, state lands, and the public sector for investment purposes and leasehold) published in the Iraqi Gazette by the number (4458) on 21 August 2017 according to the provisions of item (3) of Article (80) of the Constitution and Article (10/5th/Alif) and (3/1st) of investment law No. (13) of 2006, and the article (3/first) of the Investment Law No. (13) of 2006. The article (4/1st) of it listed (owning the land allocated for residential projects within the basic design with a sale allowance of 10% of the land value, provided that the investor delivers

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the external infrastructure of the project free of charge, and allocates 10% of the area allocated to the residential project to the owner to invest it). This paragraph was amended under article (1) of Regulation No. (5) of 2018 published in the Iraqi Gazette No. (4491) on 14 May 2018 (amendment of the system of selling and renting real estate, state land, and the public sector for investment purposes and leasehold on it No. (6) for 2017) which made the sale allowance 2% of the value of the land instead of 10%, and article (4/3rd/Alif) of the order (case subject) stipulated that the land allocated to industrial projects outside the basic design should be owned by a sale allowance of 15% of the real value of the land, and since these articles are contrary to the article (9/6th/1 and 3) of the Investment Law No. (13) of 2006, which stipulated (the Authority aims to encourage investment through work on what comes: Sixth: Facilitate the attainment of properties which regarded necessary for the building of projects in the form specified by the Commission in coordination with the relevant authorities as follows: 1. With an allowance for residential projects that fall within the basic design. 3. With an allowance of the rest of the non-residential projects), and the investment on the plot of (the plaintiff) in that way was arbitrary and was not in exchange for fair compensation, violation of the provisions of the Constitution and damaged the public interest and private interest of the State. Therefore, when it was submitted and to provide a direct and influential case interest in the plaintiff's legal and financial status from initiating the case, there was a realistic and continuing harm caused to it by the application of the order (case subject) and it did not

saady

Republic of Iraq
Federal Supreme Court
Ref. 79 / federal /2021



Kurdish text

benefit from the text which requested to be annulled, and because the Federal Supreme Court is responsible for controlling the constitutionality of the laws and regulations in force in accordance with article 93 of the Constitution, the plaintiff requested to call upon the defendants/ being in their capacity to argument and to judge by unconstitutionality of the article (4/1st and 2nd) of the order No. (6) of 2017 amended by order No. (5) For 2018, for violating the provisions of articles (23/1st and 2nd) and (27/1st and 2nd) of the Constitution and article (9/6th/1 and 3) of the Investment Law No. (13) of 2006 amended and to oblige the defendants to issue new regulations that facilitate and do not violate the work of the law, while burdening them expenses, fees and advocacy fees. The case was registered with this court in the number (79/federal/2021) and the legal fee was collected according to the article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and the defendants were informed of their petition and documents in accordance with article (2/1st) of the aforementioned Bylaw and the first defendant's agent (the Prime Minister/ being in this capacity) replied according to the answering draft dated 15/July/2021 and he requested to reject the case against his client for the incompetence of the Court of its trying according to the provisions of the article (93) of the Constitution and article (4/1st) of its law No. (30) for 2005 which was amended by law No. (25) for 2021. Challenging this order shall be before the Administrative Court in accordance with article (7/4th) of Law No. (65) of 1979 amended (State Shura Council Law) and the plaintiff has not provided proof of ownership of her shares of the land

saady

Republic of Iraq
Federal Supreme Court
Ref. 79 / federal /2021



Kurdish text

(case subject), as she was not affected by the implementation of the order in question for the reasons and other reasons in the list requesting the dismissal of the case against his client because of the lack of jurisdiction of the honorable court in trying the case, and for the failure of the plaintiff to rely on a provision of the Constitution, and her claim of violating the law; moreover, his client has a substantiation in the law and the Constitution. The second defendant (Head of the National Investment Commission/ being in this capacity) replied according to the letter numbered (Qaf/6559) of (11 August 2021), including that the plaintiff's appeal did not comply with the article (6) of the Civil Procedures Law No. (83) of 1969 and article (6) of the Court's Bylaw and requested that the case be dismissed for the reasons listed in the aforementioned draft. After completing the required procedures, a date was set for the case and the parties were informed in accordance with the provisions of article (2/2nd) of the aforementioned Bylaw. On the appointed day the court was convened, the agent of the plaintiff Shawkat Sami, the first defendant, his agent legal counsel Haidar Ali Jaber both attended. The agent of the second defendant the legal counsel Hamed Abdul Hassoun attended too. The public in presence argument proceeded. The agent of the plaintiff repeated the petition and requested to judge according to it. The first defendant and the second defendant replied and requested to reject the case for the reasons listed in their drafts. Each party repeated its previous statements and requests, and where there is nothing left to say, the end of the argument has been made clear and on 26 October 2021 was appointed as the date for the

saady

Republic of Iraq
Federal Supreme Court
Ref. 79 / federal /2021



Kurdish text

issuance of the decision, in which the court was formed and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court and after reviewing the plaintiff's case, it became clear that its conclusion included: (Challenge the unconstitutionality of article (4/1st and 3rd) of the order No. 6 of 2017 amended by order No. 5 of 2018, for violating Provisions of articles (23/1st and 2nd) and (27/1st and 2nd) of the Constitution of the Republic of Iraq 2005 and article (9/6th/1 and 3) of investment law No. (13) of 2006 amended, as well as the demand for the obligation of the defendants/ being in their capacities by issuing new regulations that facilitate the work of investment law No. (13) of 2006 and do not violate it, while burdening them expenses, fees, and advocacy fees for the reasons detailed in the petition). The Federal Supreme Court finds that the plaintiff's case must be dismissed in the form of a pre-adjudication of the unconstitutionality of article (4/1st and 3rd) of order No. 6 of 2017 amended by order No. 5 for 2018, Based on the decision of this court in the number (80/federal/2021) on 6/10/2021, for the reasons referred to in detail, on the basis of which it was decided to dismiss the challenge of unconstitutionality, as the judgment above-mentioned included ((The Cabinet, based on its powers listed in the article (80/1st) of the Constitution, is responsible for planning and implementing the state's policy, including investment and project construction, including housing projects to solve housing problems and

saady

Republic of Iraq
Federal Supreme Court
Ref. 79 / federal /2021



Kurdish text

rebuild infrastructure, where article (26) of the Constitution stipulates the following (the State shall guarantee the encouragement of investment in the various sectors) whereas the State's duty according to the aforementioned text is to encourage the investment including the industrial and residential sector, also, the Cabinet if necessary is having the power of exemption from the procedures that realted by selling and leasing the State's funds according to the article (40) of selling and leasing the State's funds Law No. (21) for 2013 which stipulated ((the Cabinet have the right, if necessary, to decide the selling the State's funds, movable or leasing it with exception from the procedures stipulated in this Law)). Thus, there is freedom for the Cabinet when selling and leasing state funds to exclude part of these properties from the procedures listed in the law in order to encourage investment and these measures are correct as long as they are consistent with the Constitution and do not depart from it or constitute a violation of its provisions since these articles do not contain a constitutional violation, the plaintiff's claim is due to be rejected in the absence of a constitutional violation, and the plaintiff's violation of the challenging texts (9/6th/1 and 3) of the Investment Law No. (13) of 2006 and his request to rule that the defendants are obliged to issue new regulations, this court is not competent to try this case as its jurisdictions are defined by Article (93) of the Constitution of the Republic of Iraq 2005 and Article (4) of Its Amended Law No. (30) of 2005, none of these jurisdictions were mentioned by the plaintiff above, and from this aspect, the case should be dismissed)). Since the judgments of this

saady

Republic of Iraq
Federal Supreme Court
Ref. 79 / federal /2021



Kurdish text

court are binding on all authorities on the basis of article (94) of the Constitution of the Republic of Iraq 2005 and article (5/2nd) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, the judgments of the Iraqi courts that obtained the degree of decisions are a plea for the rights detailed by it, and it is not permissible to accept evidence that contradicts the authority of the provisions based on the provisions of articles (105 and 106) of the 1979 Amended Evidence Law No. 107, and to pre-adjudicate the plaintiff's case in accordance with the aforementioned detail, which means that there is no interest in initiating the case, and since the constitutional action is in the interest of existence or absence, as it is a basis for its acceptance, if this court rules on the constitutionality of a law or its provision or unconstitutionality, the status of the decisions and mandatory of all authorities and individuals, which it enjoys, the judgement issued by it, it would deny and execute the interest of the plaintiff, if the case is re-filed to challenge the unconstitutionality of the same law that the court has already judged by its constitutionality whether the case is brought by the same plaintiff or another plaintiff, and since the case is not valid for conduct without interest on the basis of article (6) of the Civil Arguments Act No. (83) of 1969 amended and article (6/1st) of the Bylaw for conducting the functioning of the Federal Supreme Court above, which required in the interest to be a case, direct and influential in the legal status of the plaintiff, and must be in place and available as soon as the case is conducted until a decision has been handed down, and because of the plaintiff's lack of

saady

Republic of Iraq
Federal Supreme Court
Ref. 79 / federal /2021



Kurdish text

interest in bringing the case for a pre-adjudication, the plaintiff Sabeeha Khadhim Shaheen case is required to be dismissed formally, and to burden her the fees, expenses, and the advocacy fees for the agents of the first and second defendants/ being in their capacities, the legal counselor Haydr Ali Jaber and the legal counselor Hamid Abid Hassoun amount of one-hundred thousand Iraqi dinars divided between them equally. The decision has been issued unanimously according to the provisions of the articles (93 and 94) of the Republic of Iraq Constitution for 2005 and articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) for 2005 which was amended by the Law No. (25) for 2021. The decision has been made clear on 19/Rabee Al-Awal/1443 Hijri coinciding 226/October/2021 AD.

Signature of the President
Jassim Mohammed Abbood