

Republic of Iraq
Federal Supreme Court
Ref. 84 / federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 18.11.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Ade Hatif Jabar whom are authorized in the name of the people to judge, they made the following decision:

The Plaintiff:

(ra.ha.dal.) his agent the attorney (alif.ha.ain.kha.).

The defendant:

the Speaker of the Iraqi council of representatives (I.C.R.)/
being in this post – his agents the legal officials (heh. mim.
sin.) and (Sin. ta. yeh.).

The claim:

The agent of the plaintiff claimed in the case petition presented before Ghamas first instant court, dossier no.(341/beh/2014) that the defendant being in this post legislated the law no.(13) for 2010 the property claiming committee law, it included in article (7/clause - 3rd) if the seized or confiscated property was sold to others and no essential changes happened to it, the judicial committee shall follow one of the following: (a) return the property to the original owner, and to compensate the last owner with the property value on the



date of last inspection) violate and contradict the valid constitution of 2005, as what stated in article 7 clause 3rd paragraph (a) is to be implemented on his client throw filing lawsuit before your court no.(114/b/2014) the plaintiff in it requesting to null the registration paper of the property no.(62) Alsharq which is register by my client name, then expropriate the property of him and return it to the plaintiff, therefore his client challenging the constitutionality of what stated in article 7 clause 3rd paragraph a of the mentioned law for the following reasons:

1. His client owned the property by buying it throw joint ownership removing lawsuit before Ghamas first instant court no.(5/beh/1991) therefore the ownership of the property wasn't throw seize or confiscate, all the procedures was by independent judicial parties that implemented the law. Then what if his client requested to introduce the president of the supreme judicial council being in his post beside him in the lawsuit to protect his rights as the judicial is the one that sold the property no.(62) Alsharq, and which is the judicial party that consider a lawsuit in which the president of the supreme judicial council being in this post is litigant in it.
2. The real state registration record of his client property indicate that it is free-hold.
3. The Iraqi constitution stated in article (23/1st) that ((private property is protected. The owner shall have the right to



benefit, exploit and dispose of private property within the limits of the law)) which means that the ownership of his client is protected by the constitution, what stated in article (7/3rd) is clear violation of this protect and violation to constitutional text.

4. The Iraqi constitution stated in article (23/2nd) (expropriation is not permissible except for the purposes of public benefit), in time paragraph (a) of clause 3rd draw the path to expropriate his client not for the purposes of public benefit which is constitutional violation.
5. What stated in article (7/3rd and paragraph a of clause 3rd of it) violates and contradicts the constitution, as the constitution stated in article (13/1st) (this Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception), also 2nd of the same article (no law that contradicts this Constitution shall be enacted, any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void), and what the preamble of the constitution stipulated (We, the people of Iraq, who have just risen from our stumble... have resolved with the determination... to respect the rule of law).

for all the aforementioned he requested the court to implement article (4) of the F.S.C. bylaw no.(1) for 2005 to accept his client lawsuit to rule the unconstitutionality and illegitimacy of article

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(7/3rd and paragraph (a) of clause 3rd) of the law no.13 for 2010. The defendant agents respond with the answering draft dated on 11.8.2014 requesting to dismiss the lawsuit because the F.S.C. is not competent to consider it according to it law and article (93) of the constitution. the court call upon the parties for argument, the plaintiff agent didn't attend despite the inform, the defendant agents has attended. the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff agent initiated the lawsuit, addressed it to Ghamas first instant court requesting the mentioned court to send it to the F.S.C., as the lawsuit was registered before the mentioned lawsuit by the no.(341/beh/2014), the court accoutered it legal fee on 1.7.2014 which wasn't addressed to the F.S.C. as required by article (46/1) of the amended civil procedure law no(83) for 1969, and article (4) of the F.S.C. bylaw no (1) for 2005, therefore the lawsuit is binding to be dismissed from the formal aspect. Accordingly the court decided to dismiss the lawsuit for the formal aspect and to burden the plaintiff the expenses and the advocacy fees for the defendant' agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, issued publicly on 18/11/2014.