

Republic of Iraq
Federal Supreme Court
Ref. 89/ federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 2.12.2014 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: (lam.sin.shin) her agent the attorney (alif.ain).

The defendants:

1. The president of the republic being in this post, his agent the chef consultants (feh.jim.).
2. The prime minister being in this post, his agent the consultant (ain.ain.).
3. 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 that his client has filed the lawsuit (110/beh/2014) before the Basra' First Instant Court

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requesting the defendant being in this post to compensate her amount of two billion and five hundred thousand dinars for the value of the plot owned by her No.(161/9) county (29/The Berdaiya) which was registered in her name in the Real Estate Registration Department in Abi Al-Khaseeb, which was confiscated based on the decision of the dissolved Revolutionary Command Council No.(1223) on 13.11.1983 due to the failure to fence the plot, then the dissolved Revolutionary Command Council issued the decision No.(200) on 24.6.1991, clause second of it stated that (if it appears that the confiscated plot of land has been sold to others, then the price at which the plot was sold will be paid to its owners), as the plot has undergone several transfers of property, the last of which was under the name of (ain.feh.ain.) who built the hospital on it. The agent of the plaintiff stated that his client filed the lawsuit before the Property Claim Committee and was rejected on 10.7.2005, the Property Claims law No. (13) of 2010 was issued, under article (3/1st/heh) of it his client has initiated lawsuit requesting to be compensate according to article (7/4th/beh) which stated (the last owner of the property shall retains it, the original owner to be compensate its value at the date of the last detection), during the argument the plaintiff claimed with the unconstitutionality of the dissolved revolutionary command council decisions for contradicting the constitution and the decision No.(200) for 1991 become invalid for contradicting the constitution

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as she explained, because compensating her the value of the plot with the price that the plot was sold for the first purchaser (qaf.jim) for amount of forty five thousand dinars violate the constitution, as the result of the plaintiff challenge before the Basra court which is submitted to the F.S.C., the dossier and the challenge file were sent to this court and get registered by the No(37/federal/ 2014) and was dismissed because the litigation is not directed to the minister of finance. The plaintiff initiated this lawsuit against the defendants requesting to rule the unconstitutionality of the dissolved revolutionary command council decision No.(200) for 1991 as it violate the constitution. The defendants were informed with the case petition, the agent of first-defendant responded with the answering draft dated on 31.8.2014 requesting to reject the case because the litigation is not directed for his client the president of the republic, as the challenged decision was issued of the dissolved revolutionary command council, and that the power of enacting the laws become of the I.C.R.. the agent of second-defendant responded with the answering draft dated on 7.9.2014 requesting to reject the lawsuit because the litigation is not directed for his client, as the challenged decision issued from legislation party represented by the I.C.R.. the agent of the Speaker of the I.C.R. responded stating that the challenged decision was issued for specific case in that time and was implemented for it therefore the F.S.C. is not competent to consider the invalid decisions, as well as the compensation request it

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also out of the court jurisdictions, and requested to reject the lawsuit. The court call upon the parties and started the argument in present, the plaintiff agent repeated the case petition requesting to judge according to it, adding that his client initiated the lawsuit (110/beh/2014) before the Basra first instant court and was delayed until the decision of this lawsuit, 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 owned the plot No. her No.(161/9) county 29 the Berdaiya which was confiscated based on the decision of the dissolved Revolutionary Command Council No.(1223) on 13.11. 1983 due to the failure to fence the plot, then the dissolved revolutionary command council issued the decision No.(200) on 24. 6.1991, to compensate the plot owners if it has been sold to others, with the price at which the plot was sold, as the plot has undergone several transfers of property, the last of which was under the name of (ain.feh.ain.) on February 1990 who built a hospital on it, as the plot was sold first time to the purchaser (qaf.jim) for amount of forty five thousand dinars therefore the plaintiff is objecting on this compensate the last lawsuit she initiate (110/beh/2014) before the Basra first instant court requesting the compensate amount of two

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billion and five hundred thousand dinars after losing the lawsuits before the property claim committee, she requested to rule the unconstitutionality of the dissolved revolutionary command council decision No.(200) for 1991, the decision No.(1223) of 1983 stated that ((landowners inside cities are obligated to fencing them with appropriate building materials and in a manner consistent with the surrounding residential areas, provided that this is done within a maximum period of two years from the date of the enforcement of this decision. otherwise, the plot will confiscated)), clause (2) of it stated ((the heads of administrative units, each within its competence, are responsible for any violations of the provisions of this decision)), therefore the mentioned decision provided proper period of time to fence the plot which two years in a consideration to the public interest, and it made the head of administrative unit the responsibility for not implementing that. the F.S.C. finds that the plaintiff is responsible for not fencing the confiscated plot, also the decision of the dissolved revolutionary command council No.(200) for 1991 stated that the plot shall be returned if it hasn't been sold, if it has been sold to another then the ministry of finance shall pay the price of which the plot was sold, as it was sold first time for amount of forty five thousand dinars as stated by the plaintiff, then this amount of money is the efficient compensation at the time of issuing the decision, the confiscation decision above mentioned didn't violate the constitution of that time because it represent

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penalty for who doesn't fence his plot that is within the city which is required by the public interest which to be advanced on the private interest when contradiction. Therefore the lawsuit is binding to be dismissed against the I.C.R. who replaced the dissolved revolutionary command council, in addition the litigation is not directed to first and second defendants because they are not relevant by the challenged decision. Accordingly the court decided to reject the plaintiff's lawsuit and to burden her the expenses and the advocacy fees for the defendants' agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, issued publicly on 2/12/2014.