

Republic of Iraq
Federal Supreme Court
Ref. 146 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/7/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Interpretation: the engineer Nusaif Jassim Al-Khatabi/ Governor of Holy Karbala.

The Subject of the Request: interpreting article (38) of Ministry of Education Law No. (22) for 2011.

The Claim

The Federal Supreme Court received the letter from the Holy Province of Karbala / Legal Affairs Department No. (10184) on 15/5/2023, which includes: ((At a time when our local administration appreciates the role of your esteemed court in achieving legal stability in the service of the public interest, we present to your esteemed court Article (38) of the Law of the Ministry of Education No. (22) of 2011, which stipulates that (the Ministry of Education has the right to dispose of lands belonging to the state and on which school buildings are built or lands that have been allocated for educational purposes in terms of construction. or demolition, reconstruction, or restoration supported by the plans of the Urban Planning Authority following the due procedures, and the ownership of this land is transferred to the Ministry of Education), whereas the Directorate of Education in Karbala Governorate requests the ownership of these lands without allowance, while the Directorate of Karbala Municipality refrains from transferring them without allowance, and its legal argument in this regard is that the disposal of real estate belonging to the municipality is subject to the law of sale and rent of state funds, hoping that your esteemed court will interpret the aforementioned legal

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article to serve the public interest)), the request was registered with this court in number (146/Federal/2023) and after scrutiny and deliberation, the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the application was submitted to interpret Article (38) of the Law of the Ministry of Education No. (22) of 2011, which stipulates that (the Ministry of Education has the right to dispose of the lands belonging to the state and on which school buildings are built or lands that have been allocated for educational purposes in terms of construction, demolition, reconstruction or restoration supported by the plans of the Urban Planning Authority following the due procedures, and the ownership of these lands devolves to the Ministry of Education), as the Directorate of Education In Karbala province it asks to own these lands without allowance while the Directorate of Karbala Municipality refrains from transferring their ownership without allowance, its legal argument in this regard is that the disposal of real estate belonging to the municipality is subject to the law of sale and lease of state funds, and the Federal Supreme Court finds that the request must be rejected in form of lack of jurisdiction, as the powers and competencies of this court are stipulated exclusively in Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and some other special laws, and none of those competencies and powers grants the court Competence to interpret the provisions of laws, except on the occasion of challenging its unconstitutionality, it also has no jurisdiction or authority to answer an inquiry received from one of the official authorities or one of the authorities in the state, since this court is not a body for issuing fatwas and stating opinions, especially since the subject matter inquired about and the text to be interpreted is likely to be the subject of an existing dispute and litigation before the competent judicial authorities other than this court, due to the lack of jurisdiction of this court to decide on what is stated in the application, nor to interpret the text of the legal article to be interpreted, and for the foregoing, the Federal Supreme Court decided to reject the request for lack of jurisdiction. The decision has been issued

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unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 29/Dhul Hijja/1444 Hijri coinciding with 18/July/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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