

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Abolala Soudavar,	:	
Plaintiff,	:	
v.	:	Civil Action No. 00-2506 (JDB)
Islamic Republic of Iran, Bonyad-e Mostazafan Va Janbazan, Sabt-e Ahval- e Koll-e Keshvat, and Hojjatol-Islam Nayerri	:	
Defendants.	:	

FILED

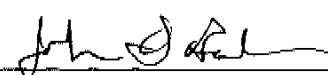
SEP 25 2002

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

Upon consideration of defendants' motion to dismiss and the submissions of the parties, and for the reasons stated in the Court's Memorandum Opinion issued on this date, it is hereby ORDERED that defendants' motion to dismiss be and hereby is GRANTED; and it is FURTHER ORDERED that plaintiff's complaint be and hereby is dismissed with prejudice.

Signed this 24th day of September, 2002.



JOHN D. BATES
United States District Judge

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FOR THE DISTRICT OF COLUMBIA

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Plaintiff,	:	
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v.	:	Civil Action No. 00-2506 (JDB)
	:	
Islamic Republic of Iran, Bonyad-e	:	
Mostazafan Va Janbazan, Sabt-e Ahval-	:	
e Koll-e Keshvat, and Hojjatol-Islam	:	
Nayerri	:	
	:	
Defendants.	:	

FILED

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

MEMORANDUM OPINION

Plaintiff Abolala Soudavar ("plaintiff") has brought this action against the Islamic Republic of Iran ("Iran"), an Iranian non-profit organization ("Bonyad-e"), an agency of the government of Iran ("Sabt-e") and the chief judge of the Revolutionary Court of Iran ("Nayerri") seeking compensation relating to the alleged 1993 taking of several parcels of land in Iran owned by plaintiff and his family.¹ Presently before the Court is defendants' motion to dismiss for lack of subject matter and personal jurisdiction. The Court finds that subject matter jurisdiction is lacking, and therefore grants defendants' motion.²

Background

Plaintiff is an Iranian national who has been resident in the United States since 1983. His

¹ In a parallel action in this Court also dismissed on this date, plaintiff sued Iran and another of its agencies seeking compensation for the 1979 naturalization of his ownership interest in an Iranian company. See Soudavar v. Islamic Republic of Iran, Civil Action No. 00-1719 (D.D.C. September 24, 2002). An earlier similar action was dismissed by the Fifth Circuit for lack of subject matter jurisdiction. Soudavar v. Islamic Republic of Iran, 186 F.3d 671 (5th Cir. 1999).

² The Court does not find it necessary to reach the personal jurisdiction argument.

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Complaint alleges that in November 1993 the Revolutionary Islamic Court of Tehran ordered the title to certain parcels of land owned by plaintiff transferred to Bonyad-e, an agency of Iran that administers and liquidates seized properties, that the judgment of that court was affirmed by defendant Nayerri, and that the title transfer was registered by defendant Sabt-e, a government agency with the responsibility for registering certain certificates. Plaintiff seeks compensation in the form of damages for this confiscation of his properties. He invokes the subject matter jurisdiction of this Court under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605(a)(2), the Treaty of Amity between Iran and the United States,³ and the Alien Tort Claims Act, 28 U.S.C. §1350.

Discussion

The Court concludes that there is no subject matter jurisdiction over plaintiff's claims under any of the sources plaintiff has identified. To begin with, of course, the FSIA provides the sole jurisdictional basis for suits against a foreign state in the courts of the United States. See Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 434 (1989). It is that statute, and not the treaty and other statute invoked by plaintiff, that is the only basis for subject matter jurisdiction over plaintiff's claims in this case. The FSIA, however, does not provide the requisite waiver of sovereign immunity under any of its exceptions.

Plaintiff invokes only the commercial activities exception to sovereign immunity under section 1605(a)(2) of the FSIA.⁴ Plaintiff's assertion that the taking of his property through the

³ See Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, June 6, 1957 (8 U.S.T. 899, T.I.A.S. No. 3853).

⁴ Plaintiff has specifically disavowed any reliance on the international takings exception under section 1605 (a)(3) of the FSIA. That is for good reason, as the international takings exception to sovereign immunity does not apply where a sovereign expropriates property from its

Iranian courts is commercial in nature is unpersuasive. The expropriation of property by a foreign state within its territory is a quintessentially government act, and hence not commercial activity causing a direct effect in the United States as is required under the commercial activities exception of section 1605(a)(2). See, e.g., Alberti v. Empresa Nicaraguense de La Carne, 705 F.2d 250, 256 (7th Cir. 1983); Carey v. National Oil Corp., 453 F.Supp. 1097, 1102 (S.D.N.Y. 1978), aff'd, 592 F.2d 673 (2nd Cir. 1979).

Plaintiff's assertions of subject matter jurisdiction under the Treaty of Amity or the Alien Tort Claims Act fare no better. Again, the Supreme Court has stated that the exclusive basis for jurisdiction over a foreign sovereign in a United States court is the FSIA. See Amerada Hess, 488 U.S. at 434. Moreover, neither Article III nor Article IV of the Treaty contains a waiver of sovereign immunity by Iran. Article III only assures access by nationals of one signatory state to the courts of another signatory state on terms no less favorable than those available to the local nationals. It does not create subject matter jurisdiction in such courts, and certainly does not identify claims that may be asserted in the courts of one signatory state against the other signatory state itself. Moreover, the treaty exception under the FSIA only applies when an international agreement expressly conflicts with the provisions of the FSIA, which is certainly not the case here. See Amerada Hess, 488 U.S. at 442. And although Article IV of the Treaty does deal with the taking of property without just compensation, it is focused solely on the property of nationals of one country within the territory of another state, not on protecting nationals against their own sovereign. See Jafari v. Islamic Republic of Iran, 539 F.Supp. 209, 214 n. 7 (N.D. Ill. 1982).


own nationals, because such a taking does not implicate principles of international law. See Siderman de Blake v. Republic of Argentina, 965 F.2d 699, 711 (9th Cir. 1992); De Sanchez v. Banco Central de Nicaragua, 770 F.2d 1385, 1395-96 (5th Cir. 1985).

Finally, the Alien Tort Claims Act does not provide a basis for subject matter jurisdiction against Iran or any other foreign state in a United States court. Such jurisdiction is available only if an exception to sovereign immunity under the FSIA is satisfied. See Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 805 n. 13 (D.C. Cir. 1984) (Bork, J., concurring). Moreover, the Alien Tort Claims Act only confers federal jurisdiction to hear tort claims by aliens if international law or a treaty provides a cause of action, and it is clear that neither international law nor any treaty prohibits the government of Iran from expropriating the property of its own nationals. See Jafari, 539 F.Supp at 215.

Conclusion

For the reasons discussed above, defendants' motion to dismiss is granted on the ground that this Court lacks subject matter jurisdiction over plaintiff's claims. A separate order will be issued on this date.

Signed this 24th day of September, 2002.



JOHN D. BATES
United States District Judge