21375 - Rulings on revitalizing disused land

the question

What constitutes revitalizing disused land (al-mawaat)? What are the rulings on that?

Detailed answer

Praise be to Allah.

Al-Mawaat is that which has no soul. The meaning here is land which has no owner.

The fuqahaa’ (may Allaah have mercy on them) defined it as land which is not being used for a specific purpose and which is not owned by anyone whose ownership is protected by sharee’ah.

Two things are exempted from this definition:

(1)Land which has come under the protected ownership of a Muslim or a kaafir via purchase, as a gift or any other means.

(2)Land which serves the interests of owners whose ownership of land is protected, such as roads, courtyards and waterways, or lands which serve the interests of city dwellers, such as graveyards, garbage dumps, places designated for Eid prayers, woodlots and pastures. None of these may be acquired by revitalizing the land.

So if the land is not owned by a person whose ownership is protected, and it is not serving a specific purpose, and someone revitalizes it, then he becomes the owner of it, because of the hadeeth of Jaabir which was attributed to the Prophet (peace and blessings of Allaah be upon him): “Whoever revitalizes dead (disused) land, it becomes his.” This was narrated by Ahmad and al-Tirmidhi, who classed it as saheeh. There are other ahaadeeth which are similar in meaning, some of which are narrated in Saheeh al-Bukhaari.

Most of the fuqahaa’ of different regions agreed that possession of disused land may be taken by

revitalizing it, although they differed as to the conditions attached to that, except for the disused lands of the Haram (sanctuary of Makkah) and of ‘Arafaat, which cannot be taken possession of by revitalizing them, because that would make it too difficult to perform the rituals and because he would be taking land which may have to be used during the Hajj.

Revitalizing disused land may take several forms:

(1)If a person encloses it with a solid wall to keep others out, of the kind that is usually used for that purpose, then he has revitalized it, because the Prophet (peace and blessings of Allaah be upon him) said: “Whoever encloses land with a wall, it becomes his.” This was narrated by Ahmad and Abu Dawood from Jaabir, and classed as saheeh by al-Jaarood; a similar report was narrated from Samurah. This indicates that enclosing the land is one of the things by which a person earns the right to ownership. What should be borne in mind is what the word haa’it (wall) refers to in linguistic terms; if a person merely places stones, piles of dirt or a small wall around the land which does not keep anyone out, or he digs a ditch around it, then he does not take possession of it, but he will have more right to revitalize it than anyone else, and he is not permitted to sell it unless he revitalizes it.

(2) If he digs a well on the disused land and reaches water, then he has revitalized it. If he digs a well but does not reach water, then he does not take possession of the land thereby, but he will have more right to it than others, because he has started to revitalize it.

(3)If he brings water to the disused land from a spring or river, then he has revitalized it thereby, because the water is of more benefit to the land than a wall.

(4)If he drains water from disused land which was covered with water, because of which the land was not suitable for farming, and he drains the water so the land then becomes fit for that use, then he has revitalized it, because this is of more benefit to the land than the wall by building which, according to the report, one takes possession of the land.

Some of the scholars think that revitalizing disused land should not stop there; rather the matter should be referred to ‘urf (custom) and what the people count as revitalizing land, because

through this revitalizing process he will become the owner of the land. This was the view of a group of Hanbali imams and others, because sharee'ah made revitalizing the land the condition for taking possession of it, but it did not define precisely what was meant by revitalizing. So we should refer to what is regarded as revitalizing land according to custom.

The Muslim ruler has the right to give land to one who will revitalize it, because the Prophet (peace and blessings of Allaah be upon him) gave land to Bilaal ibn al-Haarith al-'Aqeeq, he gave land in Hadramawt to Waa'il ibn Hajr; and he gave land to 'Umar, 'Uthmaan and a number of the Sahaabah. But the recipient does not become the owner of the land just because he has been given it, unless he revitalizes it, but he has more right to it than others, so if he revitalizes it, it becomes his, and if he is unable to revitalize it, the ruler can take it back and give it to someone else who is able to revitalize it. 'Umar ibn al-Khattaab (may Allaah be pleased with him) took back land from those who were unable to revitalize it.

Whoever reaches a permissible thing first – apart from disused land – such as game [animals or birds for hunting] or wood, then he has more right to it.

If water that is permissible for everybody (i.e., water that is not owned by anybody) passes through people's lands, such as a river or the water of a wadi, then the owner of the higher land has the right to use the water for irrigation and to withhold it until it reaches the ankles, then he should let it flow to people further on, and so on in turn. The Prophet (peace and blessings of Allaah be upon him) said, "Irrigate (your land), O Zubayr, then withhold the water until it reaches the walls between the pits round the trees" (agreed upon). 'Abd al-Razzaaq quoted Mu'ammar al-Zuhri as saying, "We looked at the words of the Prophet (peace and blessings of Allaah be upon him), 'then withhold the water until it reaches the walls between the pits round the trees,' and it came up to the ankles." In other words, they worked it out from the story and found that it came up to the ankles, so they made that the standard for deciding how much the first one should take, then the next one, and so on. Abu Dawood and others narrated from 'Amr ibn Shu'ayb that the Prophet (peace and blessings of Allaah be upon him) ruled concerning the waterway of Mazoor (a well known wadi in Madeenah) that the (owner of the) higher (land) should withhold the water until

it reached the ankles, then the (owner of the) higher (land) should let it flow to the lower (land).

But if the water is owned, it should be divided among the owners based on the size of their land, and each of them may dispose of his share as he wishes.

The leader of the Muslims has the right to protect the grazing lands of the flocks belonging to the Bayt al-Maal (treasury) of the Muslims, such as horses used for jihad and camels given in charity, so long as that will not harm the people by making things difficult for them. Ibn ‘Umar (may Allaah be pleased with him) narrated that the Prophet (peace and blessings of Allaah be upon him) protected (the land of) al-Naqee’ for the horses of the Muslims. It is permissible for the ruler to protect the grass of disused lands for the camels given in charity, the horses of the mujaahideen, the cattle given as jizyah (tax paid by non-Muslim subjects of the Islamic state) and lost animals, if there is a need for that and if that will not cause hardship to the Muslims.