101584 - If he finds treasure in a kaafir land

the question

I remember i found money which was buried in soil in a play area. it looked like it has been there for years. what should i have done?.

Detailed answer

Praise be to Allah.

If the buried wealth has any indication that it belongs to the kuffaar, such as their currency, then it is called rikaaz. The fuqaha' differed concerning one who finds rikaaz in a kaafir land which he entered peacefully:

1 – Some of them are of the view that he may take possession of it, and he does not have to pay anything on it. This is the view of the Hanafis.

2 – Some of them are of the view that he may take possession of it, but he should pay the khums (one-fifth). This is the view of the Hanbalis and of Ibn Hazm.

3 – Others are the view that he should not take possession of it, rather he should return it to the people of that land. This is the view of the Shaafa'is.

It says in al-Hidaayah, which is a Hanafi book: Whoever enters non-Muslim lands peacefully and finds treasure in the house of some of them should return it to them, so as to avoid acts of treachery, because that which is in the house belongs to its owner in particular. But if he finds it in the desert then it belongs to him, because it does not belong to anyone in particular, so this is not regarded as a act of treachery and he does not have to pay anything on it. End quote from Fath al-Qadeer (2/238).

See also al-Mabsoot (2/215) and Tabyeen al-Haqaa'iq (1/290).

Ibn al-Humaam said in his commentary: The words “in the desert” refer to land that has no owner.

Al-Nawawi narrated in al-Majmoo’ (6/51) that al-Raafa’i said: If he enters non-Muslim lands peacefully it is not permissible for him to take treasure whether by fighting or otherwise, just as he does not have the right to deceive them with regard to their belongings, so he has to return it to them.

See: Rawdat al-Taalibeen (2/289) and Sharh al-Bahjah al-Wardiyyah (2/144).

Ibn Hazm said in al-Muhalla (5/385): Whoever finds treasure that was buried by a kaafir who was not a dhimmi – whether it was buried during the Jaahiliyyah or not – four-fifths of it are permissible for him, and the other fifth must be divided as the khums of war booty is divided, whether he found it in the wilderness of Arabia or in lands that the Muslims conquered by force, or in lands whose people made a peace deal with the Muslims, or in his own house, or in the house of a Muslim, or in the house of a dhimmi, or wherever he found it. The ruling is the same as we have mentioned. End quote.

See: Sharh Muntaha al-Iraadaat (2/147).

It seems most likely – and Allaah knows best – that the second view is the correct one. If a person finds rikaaz in a Muslim land or elsewhere – it belongs to him, but he must pay the khums, because of the general meaning of the words of the Prophet (peace and blessings of Allaah be upon him): “And the khums is due on buried treasure.” Narrated by al-Bukhaari (1499) and Muslim (1710).

The khums must be spent as fay’ is spent, which is spent on the public interests of the Muslims. So it may be given to the poor, orphans, wayfarers, and relatives of the Messenger of Allaah (peace and blessings of Allaah be upon him), who are Banu Haashim.

Based on that, you have to pay the khums on this wealth, and whatever is left is yours.

And Allaah knows best.