257974 - Is it permissible to allow some of his children to build on the land to the exclusion of others?

the question

A father is married to two wives, and he has four sons and two daughters from the first wife, and a son and daughter from the second. He owns a piece of land, and he allowed his children from the first wife to build on that land; he also allowed those who built an apartment to register it in his own name, but the land still belongs to the father. This land is controlled by the Department of Construstion and Development, and he is only allowed to build four houses there. The children are building an apartment for their mother on that land, and the three other houses belong to them. Hence the youngest son from the second wife has nothing, and the father is saying that his son from the second wife should have a share of the land, even if he cannot build anything on it. Is what he has done acceptable?

Detailed answer

Praise be to Allah.

Firstly:

The father should treat his children equally in terms of giving, because of the report narrated by al-Bukhaari (2586) and Muslim (1623) from an-Nu'maan ibn Basheer who said that his father came to the Messenger of Allah (blessings and peace of Allah be upon him) and said: I have given this son of mine a slave who belonged to me. The Messenger of Allah (blessings and peace of Allah be upon him) said: "Have you given a similar gift to your other children?" He said: No. So the Messenger of Allah (blessings and peace of Allah be upon him) said: "Then take back (your gift)."

According to a version narrated by Muslim (1623), the Messenger of Allah (blessings and peace of Allah be upon him) said: "O Basheer, do you have any other children?" He said: Yes. He said: "Have you given to all of them like you have given to this one?" He said: No. He said: "Then do not

ask me to bear witness for I will not bear witness to injustice.”

What is fair is to give the male the share of two females, as in the division of inheritance, because there is nothing more equitable than the shares allocated by Allah.

Please see the answer to question no. 22169.

Secondly:

If the father allowed some of his sons to build on the piece of land, then he has wronged the others whom he did not allow to do so, even if the reason was lack of space, because by doing this he has given them the opportunity to use the land, to the exclusion of the others.

Just as it is not permissible for him to rent the land to an investor and divide the rent among all his sons except this one, by the same token it is not permissible for him to allow them to build on the land to the exclusion of that one, unless he compensates him for that by giving him money of equivalent value to what his brothers have been given, to make up that.

In this manner, he can remove any resentment among the brothers, and do away with any causes that may give rise to grudges and severing of family ties between them.

Ibn al-Qayyim (may Allah have mercy on him) said regarding the issue of favouring some of one’s children in gift-giving:

That action could very likely lead to enmity among children and the severing of ties between them, as we see with our own eyes. If there was nothing in the sound texts of hadith to state that this is not allowed, then the fuqaha’ could have reached the same conclusion by means of analogy (qiyaas), in the light of the principles of shari‘ah which seeks to help people attain that which is in their best interests and ward off harm and mischief.

End quote from Ighaathat al-Lahfaan (1/365)

And Allah knows best.