382231 - There is a piece of land that the owner left behind when he travelled forty years ago; is it permissible to remediate it and make use of it?

the question

There is a piece of farmland that was abandoned by its owner forty years ago, when he migrated to another country. Is it permissible for me to remediate it?

Detailed answer

Praise be to Allah.

In the case of land that has an owner, it is not permissible for anyone to revive it, remediate it or use it in any way except with the permission of its owner, no matter how long its owner has been away, because Allah, may He be exalted, says (interpretation of the meaning):

{O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent} [an-Nisa’ 4:29].

The Prophet (blessings and peace of Allah be upon him) said: “It is not permissible to take the wealth of a Muslim except with his willing consent.” Narrated by Ahmad (20172); classed as sahih by al-Albani in *Irwa’ al-Ghalil* (1459).

And the Prophet (blessings and peace of Allah be upon him) said: “Your blood, your wealth and your honour are sacred to you.” Narrated by al-Bukhari (1739) and Muslim (1679).

And the Prophet (blessings and peace of Allah be upon him) said: “Whoever wrongs another with regard to a handspan of land will be encircled with it down through seven earths.” Narrated by al-Bukhari (2453) and Muslim (1612) from ‘A’ishah (may Allah be pleased with her).

So if we assume that the owner of the land is absent, or has died and has no heir, then the land reverts to the state, and it is not permissible for anyone to do anything with it without the permission of the state.

It says in *Kashshaf al-Qina'* (4/184): If someone whose rights are protected by sharia – such as a Muslim or a dhimmi [a non-Muslim living under Muslim rule] or a mu'ahid [one with whose country the Muslims have a peace deal] – owns the land, no one else has the right to claim it as his by reviving the land.

If [the owner] or one of his heirs is found, no one can take possession of the land by reviving it. Ibn 'Abd al-Barr said: The scholars are unanimously agreed that if land is known to belong to someone who is not without heirs, it is not permissible for anyone to revive that land except its owners. End quote.

If its owner is known, but he does not have any offspring or any heirs, no one can take possession of the land by reviving it, according to a hadith of 'A'ishah which she attributed to the Prophet (blessings and peace of Allah be upon him), which says that the land in that case will be regarded as fay' [booty acquired without fighting], and the ruler may allocate it to whomever he wishes.

Based on that, it is not permissible for you to revive this land, and there is no way to make use of it except by agreement with its owner or his proxy, or his heir if he has died.

And Allah knows best.