

Ruling of Paying Zakāh on Land Received as a Gift

Darulifta Ahlesunnat (Dawateislami)

Question

What do the noble scholars and jurists of Islamic law say about the following: My father-in-law gifted my wife a 5 Marla plot of land and transferred possession to her at the same time. The plot is still registered under her name. My wife intends to sell the plot in the future. The current value of the land is much lower than 7.5 tola of gold but more than 52.5 tola of silver. Please provide guidance on whether it is obligatory to pay zakāh on the land or not.

Note – The questioner has further clarified that his father-in-law did not have the land as a business inventory. Instead, he kept it so his children could use it in the future.

Answer

In the inquired situation, it is not obligatory upon your wife to pay zakāh on this land. The detail regarding this is that one of the things on which zakāh becomes fard is business inventory. For anything to be categorized as business inventory one must have the intention of selling it at the time of purchasing it. However, if one did not purchase the asset, but instead received it as a gift or through inheritance, then it will not be considered business inventory and it is not obligatory to pay zakāh on it, even if one makes the intention of selling it. Therefore, in the inquired situation, this land will not become business inventory if your wife makes the intention of selling the land after receiving, and it will not be obligatory to pay zakāh on the land.

An asset will only become business inventory if it is purchased. If it is acquired in any way other than purchasing, such as it is received as a gift, then it will not be considered business inventory, even if one makes the intention of selling it. Thus, it is stated in Fatāwā ‘Ālamgīrī:

نية التجارة لا تعتبر ما لم تتصل بفعل التجارة وما ملكه بعقد ليس فيه مبادلة أصلاً كالهبة والوصية والصدقة فإنه لا يصح فيه نية التجارة وهو الأصح كذا في البحر الرائق ولو ورثه فنواه للتجارة لا يكون لها

Translation: The intention of selling is not taken into consideration unless it is accompanied by the act of trade. As for the asset one has acquired without any exchange, such as a gift, wasiyah (will), or sadaqah then making the intention of selling it is not valid. This is the asaḥ (most accurate) opinion, as mentioned in al-Baḥr al-Rā’iq. Therefore, if one inherits an asset and then makes the intention of selling it, it will not become business inventory. (Al-Fatāwā al-‘Ālamgīrī, Book of Zakāh, Ch. 1, Vol. 01, p. 174, Publ. Quetta)

This same point has also been mentioned in Mabsūt Sarakhsī, al-Hidāyah, al-Bināyah, and other books of fiqh.

When a plot of land is received as a gift, intending to sell it will not obligate zakāh on it, as mentioned in Khizānah al-Muftīn:

وإن ملك مالا يهبه، أو وصية، ونوى التجارة عند قبول الهبة والوصية لم يكن للتجارة

Translation: If one attains ownership of any asset as a gift or through wasiyah, and he intended to sell it at the time of accepting the gift or bequest, that asset will not become business inventory. (Khizānah al-Muftīn, Ch. 'Ibādāt, p. 862, Publ. Manuscript, Shāmilah)

Explaining why the asset does not become business inventory despite making the intention of selling it, it is stated in Fath Bāb al-'Ināyah, Radd al-Muḥtār, etc. (cited from former):

إذا قارنت نية التجارة الهبة، أو الوصية... لا تصير تلك العين للتجارة، لأن النية لم تقارن عملها

Translation: When the intention of trading accompanies gifting or wasiyah then that asset does not become business inventory. This is because the intention of trade did not accompany the action of trade. (Fath Bāb al-'Ināyah Sharḥ al-Nuqāyah, Vol. 01, p. 503, Publ. Dār al-Arqam, Beirut)

وَاللَّهُ أَعْلَمُ عَزَّ وَجَلَّ وَرَسُولُهُ أَعْلَمُ صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ

(Allah Almighty knows best and His Messenger صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ knows best.)

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