

Dar-ul-Ifta

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

نحمده ونصلى على رسوله الكريم

Waqf

1. Things which have been endowed as Waqf can neither be sold, nor given as gift; no one can become its owner nor can anyone be made its owner. This rule has been established in light of several books of jurisprudence(Fiqh). Thus in Durré Mukhtaar, it is said,

فاذا تمّ ولزم لا يملك ولا يُملّك ولا يعار ولا يرهن

“When Waqf (procedures) are completed and the Waqf has become effective, no one can become its proprietor, nor can anyone be made its owner and nor can it be given as a gift or be placed on mortgage.

In Shami, it is said,

قوله لا يملك اى لا يكون مملوكاً لصاحبه ولا يملّك اى لا يقبل التملك لغيره بالبيع ونحوه
لاستحالة تملك خارج عن ملكه

“In Waqf, neither shall the Sahib Waqf (that is the person doing the Waqf) enjoy possession nor shall he accept the possession of any one else whether it is by way of sale or otherwise, because that which is devoid of state of being possessed cannot be made subservient to someone else.

[Durré Mukhtar & Shami Vol 3, page 507]

And in Hidayah, it is found that,

واذا صح الوقف لم يجز بيعه ولا تملكه

“When Waqf is rightfully performed, then it is not fitting to sell it neither to make it belong to someone.

The author of Hidayah has used as proof to this rule, one unanimously approved Hadith reported by Sahih Bukhari & Sahih Muslim where the Holy Prophet has said, “What has been given as Waqf can neither be sold, nor can anyone inherit from it and nor can it be gifted to anyone.

[Hidayah Vol 1, Book of Waqf page 119]

And in Sharhe Wiqaya, it is written that:

فاذا صح الوقف لا يملك ولا يُملك الى قوله والاصح انه لا يجوز فان الوقف بعد الصحة
لا يقبل الملك كالحز لا يقبل الرقية

“When Waqf has been performed, then it is not possible for it to have an owner nor is it possible to give ownership to it. In fact, for it to have an owner or to be given ownership to it is forbidden. Because Sahih Waqf does not accept ownership just like freedom does not accept slavery.

[Sharhé Wiqaya, Vol 2, Book of Waqf]

And in Kanzul Daqâiq, it is written,

ولا يملك ولا يقسم

which means that “It is not allowed to make someone become owner of something which has been given as Waqf nor is it possible to divide and share it.”

[Kanzul Daqâiq, Kitabul Waqf page 256]

2. In only two circumstances, Waqf objects can be sold.

- (i) Where the person doing the Waqf has clearly given permission for sale in the Waqf Nama
- (ii) When the object of Waqf is in such a state where no profit can be gained out of it.

Only in those two cases can a Waqf be sold, Otherwise it is not allowed.

[Shami Vol 3 page 535]

3. The purpose for which the Waqif (Person doing Waqf) intended the Waqf, only for that purpose should the Waqf be used. It is not permitted to depart from the original intent of the Waqif. Thus in Shami, it is stated that:

صرحوا بان مراعاة غرض الواقفين واجبة

“It is obligatory (Wajib) to respect and obey the objectives of the persons doing Waqf.”

4. If someone has given any piece of land, house or any other valuable object as Waqf to the Masjid or as donation, then it is fitting that the property be used exclusively for the purpose of the Masjid.

Mufti Muhammad Ishaq Qadri Razvi

Director of Dar ul Iftah

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