93126 - He inherited some land then he put it up for sale – does he have to pay zakaah on it?

the question

We have a piece of land that we sold one month ago. This land belonged to a number of heirs, one of whom was a minor and reached the age of 18 one month before the land was sold. We decided to sell it a year before that date, but the issue of the minor heir meant that the sale was delayed until this year. Please note that we did not give the land to any agent to sell it and we did not come to any agreement with any purchaser at that time, rather we delayed it until that minor reached the legal age. My question is: Is there any zakaah on this land, knowing that it had been in the name of the heirs for 16 years but they had no intention of selling it until this year?.

Detailed answer

There is no zakaah on this land, because the majority of fuqaha' are of the view that for zakaah to be due on trade goods, a person must take possession of them with the intention of trading them. If he acquires it by means of inheritance he has not taken possession of it by means of his actions, so there is no zakaah on it even if he intends to sell it.

Ibn Qudaamah (may Allaah have mercy on him) said: Goods do not become trade goods unless two conditions are met:

(i)That he takes possession of it by means of his actions, such as buying, marriage, khula', accepting a gift, a bequest, booty, or earning of permissible things.

(ii)That he intends when taking possession of it to sell it. If he does not intend when taking possession of it to sell it, then it is not trade goods, even if he forms that intention later on.

If he takes possession of it by inheritance and intends to sell it, it does not become trade goods. Similarly, if a settled person intends to travel, the rulings on travelling do not begin to apply to him unless he takes action.

It was narrated from Ahmad in another report that goods may become trade goods by virtue of intention, because Samurah said: The Messenger of Allaah (peace and blessings of Allaah be upon him) commanded us to pay zakaah from that which we had prepared to sell. Based on this, when a person forms the intention to sell it, it becomes trade goods. End quote from al-Mughni, 2/336.

The former is the view of the Hanbalis, Hanafis, Maalikis and Shaafa'is.

See: Badaa'i' al-Sanaa'i', 2/12; Sharh al-Kharashi 'ala Khaleel, 2/195; al-Majmoo', 6/5; and al-Mawsoo'ah al-Fihqiyyah, 23/271.

With regard to the latter view, which was also narrated from Ahmad, it was regarded as more correct by Shaykh Ibn 'Uthaymeen, but he differentiated between one who sells land in order to earn money, make a profit and deal in it, and one who sells it because he no longer has any need for it. In the former case zakaah is due, but not in the latter.

Shaykh Ibn 'Uthaymeen (may Allaah have mercy on him) said: The second view concerning this issue is that as soon as the intention to sell it for trade purposes is formed it becomes trade goods, even if it came into his possession without him taking any action, and even if he took possession of it without intending to trade in it, because of the general meaning of the words of the Prophet (peace and blessings of Allaah be upon him): "Actions are but by intentions, and each person will have but that which he intended…" This man intended to deal in it, so he has to pay zakaah on it.

For example: if he buys a car to use it for transportation, then he decided to make it capital for the purpose of trade, then zakaah must be paid when one year has passed since he formed that intention. But if he has a car that he is using, then he decides to sell it, it is not trade goods, because he is not selling it for the sake of doing trade, rather it is because he no longer wants it.

Another example is if he has land that he bought to build on, then he decided to sell it and buy some other land. His offering it for sale is not for the purpose of trade, because the intention of selling in this case is not to earn money, rather it is because he no longer wants it. There is a difference between two people, one of whom makes it his capital for the purpose of trade and

another who decides he no longer wants or needs this thing, so he wants to sell it. In the first case zakaah is due according to the correct opinion, and in the second case no zakaah is due. End quote from al-Sharh al-Mumti' (2/626).

Conclusion: You do not have to pay zakaah, according to both opinions.

And Allaah knows best.