

Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his “Fiqhi” Facebook Page

Answer to Question:

Whoever revives a barren land in respect to the Kharaaji land

Abu Taqi Al-Maqdasi

(Translated)

Question:

Assalaamu Alaikum Wa Rahmatullahi Wa Barakaatuhu,

This is a question related to the lands and it is as follows: After reading the book, “Economic System in Islam” and the subject of the lands it became apparent to me that the description of the land is either ‘Ushriyah or Kharajiyah with the evidences that came in this subject area... It became clear to me also that the neck of the Kharaaj land belongs to the state whilst its benefit belongs to the individual. There were also sufficient evidences in respect to this! As for by question then it relates to what was quoted on page 136 about the subject of reviving the barren lands and its text stated the following: *“Whoever cultivates a barren land in Kharaji area where no Kharaj has been imposed on it before he owns its land title (raqabah) and its benefit if he is Muslim. If he is non-Muslim, he owns its benefit only.”* So how am I meant to reconcile between what was mentioned previously and what is mentioned in this paragraph in respect to the ownership of the neck of the Kharaaji land?? And in particular as there is no evidence attached to the last paragraph?? And Jazaakallahu Khairan

Answer:

The agricultural land and the barren lands each have their own Ahkam that regulate them in accordance to the Shar’iyah evidences related to them. We will explain the details of this as follows:

Firstly: The evidences of the agricultural land which include amongst them:

1 – Muslim extracted a Hadeeth on the authority of Jabir in his Saheeh who said: The Messenger of Allah (saw) said: «فِيَمَا سَقَتِ الْأَنْهَارُ، وَالْغَيْمُ الْعُشُورُ، وَفِيَمَا سَقَى بِالسَّائِبَةِ نِصْفُ الْعَشْرِ» **“In respect to that which has been irrigated by the rivers and rain a tenth is due and in respect to that which is irrigated by the waterwheel (i.e. by hand artificially) half of a tenth is due”.** (Note: another variation of the Hadeeth in English: **“A tenth is payable on what is watered by rivers, or rains, and a twentieth on what is watered by animals.”**) This text is ‘Aamm (general) meaning that it applies to every agriculturally cultivated ‘Ushri land unless there exists a text that specifies this general text.

2 – After the Fat’h (Conquest) a new problem arose in respect to the conquered lands outside of the general text and the Kharaaj was set (for it). Abu ‘Ubaid said: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ، عَنِ ابْنِ أَبِي ذُنَيْبٍ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فَمَنْ أَسْلَمَ مِنْهُمْ قَبْلَ إِسْلَامِهِ، وَأَحْرَزَ إِسْلَامَهُ نَفْسَهُ وَمَالَهُ» عَنِ الزُّهْرِيِّ، قَالَ: قَبْلَ رَسُولِ اللَّهِ ﷺ الْجَزْيَةَ مِنْ مَجُوسِ الْبَحْرَيْنِ قَالَ الزُّهْرِيُّ: **“The Messenger of Allah (saw) accepted the Jizyah from the Majus of Bahrain. Az-Zuhri said: ‘Whoever embraced Islam from amongst them his Islam was accepted and his Islam safeguarded his life and property except for the land. That is because it is Fa’i (booty) for the Muslims because he did not embrace Islam initially whilst he was under no threat.’ This is what ‘Umar (ra) judged in accordance to in respect to the land of the Siwaad (in Iraq) when he said: “I saw (it correct) to keep the lands with their people and to place Kharaaj upon them...”**

As such the Hukm of the ‘Aamm (general) applies in its according to its generality “Every agricultural land in Dar ul-Islam which is Ushriyah land has the Zakaah due upon it”. According to the Ahkam Ash-Shar’iyah it does not go outside of this general text unless it is specified by another text i.e. “The Kharaaji land” in accordance to the Ahkaam Ash-Shar’i. In other words, every agricultural land in Dar ul-Islam has the Hukm that it is Ushriyah land

unless there is a specific evidence for a particular land indicating that it is Kharajiyah. This is detailed completely in our books.

Secondly: Evidences related to the Ahkam of the barren land which include:

1 – Al-Bukhari recorded from ‘Aa’ishah (ra) from the Prophet (saw) that he said: «مَنْ أَعْمَرَ أَرْضًا لَيْسَتْ لِأَحَدٍ فَهُوَ أَحَقُّ» **“Whoever cultivated a land not belonging to anyone has the most right to it”**.

At-Tirmidhi collected a Hadeeth from Sa’eed Ibn Zaid from the Prophet (saw) who said: «مَنْ أَحْيَا أَرْضًا مَيِّتَةً فَهِيَ لَهُ» **“Whoever revives a barren land then it belongs to him,”** also related by Abu Dawud.

These texts are general in respect to the land becoming the property of anyone who revives it. If he revives it in the Ushr land, then he owns it and it will be an Ushriyah land upon which Zakaah is due if the one who revived it was a Muslim. And there would be Kharaaj due upon it if the one who revived it was from the Ahlu-dh-Dhimmah. That is because the Kaafir is not from the people upon whom Zakaah is due from and as such the Kharaaj is due from him because the agricultural land is not devoid of a payment allocation; either Zakaah or Kharaaj must be due from it.

As for if the revival was in the Kharaaj land, then the land would be Kharaajiyah, whether the one who revived it was a Muslim or a disbeliever from amongst the Ahl al-Dhimmah... This is like what Abu Yusuf, the author of ‘Al-Kharaaj’ stated when he said: “Al-Hasan Ibn ‘Imarah related to me from Az-Zuhri from Sa’eed Ibn Musayyib who said: ‘Umar Ibn Al-Khattab (ra) said: “Whoever revives a barren land then it is his and the one who fences it off does not have a right to it after three years”... Abu Yusuf said: The meaning of this Hadeeth in our view is that it applies upon the barren land that no one has a right in respect to it or any ownership. So whoever revives it and it becomes as such (i.e. revived) then it is his and he can cultivate it, rent it, dig rivers from it and build upon in respect to that which contains a Maslahah (interest). If it was in the Ushr land he would give the Ushr (i.e. Zakaah) from it and if it was Kharaaji land then he would give the Kharaaj from it...”

* Consequently, if the Muslim revives a barren land within the Ushr land then it would be Ushriyah and he would own its title and its benefit; and he would pay Zakaah from it; a tenth (Ushr) or half of a tenth. If a Kaafir from amongst the Ahl al-Dhimmah revived it, then he owns the title and benefit likewise and pays Kharaaj from it because he is not from the people of Zakaah. This is an explanation for what was mentioned in the ‘Economic System’ book: *“Whoever cultivates a barren land of the ‘Ushri land, he owned its land title (raqabah) and its benefit, whether Muslim or non-Muslim. For such land, the Muslim landlord is obliged to pay the Zakat (‘Ushr) of the plants and fruits, which are entitled for Zakat once the amount of the harvest has reached the Nisab. As for the non-Muslim landlord of such land, he pays the Kharaaj, not the ‘Ushr. This is because he is not from those who are subject to pay Zakat and because the land cannot be left devoid of a payment, either Kharaaj or ‘Ushr.”*

* And if he revives or cultivates Kharajiyah land then he owns it and the land is Kharaaji i.e. he owns the benefit and not the land title. The Kharaaj is due upon it and Zakaah upon the produce is the one who cultivated it was a Muslim, whilst Kharaaj would be due upon the land if the one who cultivated it was from amongst the Ahlu-dh-Dhimmah. This is the explanation for what was mentioned in the book ‘Economic System of Islam’: *“Whoever cultivates a barren land in a Kharaaji area where Kharaaj has been levied before it became barren, he owns its benefit only without owning its land title (Raqaabah), whether the landlord is Muslim or non-Muslim. Such a landlord is obliged to pay the Kharaaj because it is a conquered land. Therefore, the Kharaaj remains on it at all times, whether owned by a Muslim or non-Muslim.”*

2 – No ownership of Ushri or Kharaaji land by reviving (cultivating) it is not taken outside of this general text. As such, the Ushriyah is in respect to the Ushriyah land and the Kharaajiyah is in respect to the Kharijyah land unless there is a specific text mentioned for specific cases that are contrary to that. By examining the cultivation of barren lands within the Kharaajiyah lands a circumstance has been found that mentioned in a specific text in the case here the land becomes Ushriyah at the time of its revival (or cultivation) by a Muslim. This is the circumstance when the barren land is within the Kharaajiyah land however the Kharaaj has not previously been levied upon it. The texts that specify that include the following:

A – When the Muslims conquered the land of Iraq, Umar placed Kharaaj upon the agricultural land. There was also barren land there in Iraq which Umar did not place Kharaaj upon which

included within the land upon which the Basra was established upon and its surroundings. When the Muslims revived it, it was made Ushriyah land by the Ijmaa' As-Sahaabah. In this way the barren Kharaaji land that has not previously had Kharaaj levied upon it is exempted from the general text and its revival or cultivation by a Muslim makes it Ushriyah even if it was within the Kharaajiyah land which was conquered by force. This has been mentioned in more than one source from which we mention:

- It was stated in 'Al-Inaayah Fee Sharh Al-Hidaayah' when mentioning the Hadeeth of the Messenger of Allah (saw) about the reviving (or cultivation) of the barren land:

"And whoever revives a barren land, then according to Abu Yusuf it is considered to be in (accordance to) its scope. So if it was from the scope of the Kharaaj land (meaning close to it) then it is Kharaajiyah and if was from the scope of the Ushr land then it is Ushriyah). The Qiyaas (analogy) in respect to Basra was according to the opinion of Abu Yusuf, the student of Abu Hanifah, for it to be Kharaajiyah because it is from the land in the scope of (or close to) the land of the Kharaaj that 'Umar had imposed Kharaaj upon. However, it remained Ushriyah when the Muslims revived (or cultivated) it contrary to the Qiyaas. That was due to the Ijmaa As-Sahaabah. The author of 'Al-Inaayah Fee Sharh Al-Hidaayah' added: "The Qiyaas in respect to Basra was that it should be Kharaajiyah because it is close to the Kharaaj land. However, the Sahaabah levied the Ushr upon it and so the Qiyaas was left for their Ijmaa'."

- Similar to this was found in 'Dar ul-Mukhtar Wa Hashiyah' of Ibn 'Aabideen (Radd ul-Muhtaar) where he said: "And the Qiyaas is for the "land of Basra" to be Kharaajiyah according to Abu Yusuf because it is close to (or adjoining) the land of Kharaaj however the Qiyaas id abandoned due to the Ijmaa' As-Sahaabah (rah)."

* And it is clear from all of this that the barren land of Basra which did not have Kharaaj previously imposed upon it became Ushr land when Muslims revived or cultivated it. That means that the barren land which has not had the Kharaaj imposed upon it whilst being located in the Kharaaji land becomes Ushri land if Muslims revive or cultivate it. If, however, a non-Muslim cultivates it, it remains Kharaajiyah land in accordance to the generality of the text of the Hadeeth. This is the explanation that came in 'The Economic System of Islam': "*Whoever cultivates a barren land in Kharaaji area where no Kharaaj has been imposed on it before the he owns its land title (Raqaabah) and its benefit if he is Muslim. If he is non-Muslim, he owns its benefit only. The Muslim owner of such land is obliged to pay the 'Ushr with no Kharaaj on him. While the non-Muslim owner has to pay the Kharaaj, similar to the Kharaaj that was imposed upon its Kuffar inhabitants at the time of its conquest.*"

In this way the question that you asked about has been answered, not just the exact question but rather all of the branches related to the cultivation of barren lands, and may Allah be with you.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

02 Muharram 1438 AH

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The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/530426677154408/?type=3&theater>

The link to the answer from the Ameer's page on Google Plus:

<https://plus.google.com/100431756357007517653/posts/DKQFwG2JUmk>

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