



## Studying the role of lands reforms in possession of endowed properties

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### **ABSTRACT**

Endowment is one of the important Islamic traditions which has existed since the time of generous prophet (peace be upon him) and has been considered in the eras of innocent Imams (peace be upon them) and abundant emphases to it have been mentioned in the Islamic narrations; during the history, important works have been done by endowments; many scientific-therapeutic centers, religious schools and social good works have been done through this way, the Muslims of the world have utilized and utilize of the endowments blessings abundantly; but, in the period of land reforms which was executed by Reza Khan, many endowed properties were changed a lot that at current article, this important issue was considered. The results of study indicate that in the first and second stages of land reforms law with regard to this issue that in the womb of lands included in this law, there were a lot of endowed lands, the endowments were suffered from severe damages. In the first stage of land reforms of selling the endowment, it was accepted about special endowments and then in the second stage, the public endowments were included in selling; but, third stage of land reforms law didn't included the endowed lands; but, in the law of dividing and selling the rented properties to the revenue farmers, approved in 1969/1/13, the endowments were considered again in a manner that in the article 8 of law, it was ordained that the special endowments which have been rented according to the former laws should be converted to the better cases.

### **Keyword:**

Endowment, endowed properties, possession, lands reforms

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**INTRODUCTION**

Endowment is the best and most effective tool of social beneficence and it as as an institute which facilitates the constancy of alms; one of the privileges of Islamic religious law is this issue that promotes the Muslims on social beneficence, encourages them on giving alms in the good ways and charitable contribution for poor people and in addition to be customary among different nations in the past times, it has acquired more importance in Islam religion due to the emphasis of Quran and tradition; because of this, it has been discussed and scrutinized by jurists and different aspects of it have been included in the judicial criteria and rules (Shiri Shirvani, 2012: P.42).

In the judicial sources and Islam's laws, the principle is according to this issue that the endowed property can not be bought and sold. In other words, doing any kind of legal act which causes to transmit the absolute endowed property to the others isn't permitted. But, the conditions and situations are sometimes created which are necessary for keeping the endowment institute and endowment benefits against selling the endowed property. Therefore, in the valid judicial sources and Iran's civil law, in exceptional cases, selling the endowed property has been announced as a permissible affair, such as a time that the endowed property is destructed or a severe conflict is created between the endowment beneficiaries ( Mousavi Behbahani, 1995, P.91). Thus, endowment has been before Islam and Islam has emphasized on it; therefore, endowment is one of the traditions of prophet (peace be upon him) that Imam Ali, Fatima and Imams (peace be upon them) did it and at the time of absence, great and champion religious authorities have had endowments. But, one of the acts of Reza Khan was this issue that took the endowment from the religious authorities and did the land reforms, sold the endowed properties which had formal document as the personal property. Most of the arable lands of endowments have been assigned to the persons at the time of land reforms law and after approving the unique article of falsification of documents related to sell the immovable properties, water and endowed lands in 1985, 1993, they have been returned to the endowments. With regard to the importance of issue, in this article, the role of lands reforms in possession of endowed properties has been considered.

**Definition of endowment**

"Ghef" lexically means to stand or remain in the stood state and quiet (down) (Ebne Manzoor, 1984, P.395). And in the judicial term it is a contract that the result of it is to immure the origin and release its benefit (Mohaddes Noori, 1987, P.47). In other words, it is to immure a thing on behalf of its possessor to an aspect of aspects in a manner that sale of it is prohibited, it isn't transmitted to the heritage, isn't donative, isn't sold and isn't mortgaged, rented and lent and that property is consumed in a way that endower has determined (Moghniyah, Mohammad Javad, 2003, P.585).

Civil law in the article 55, has defined endowment in such a manner: Endowment is to immure the absolute property and consume its benefits in the way of God. With regard to this definition, the absolute endowed property remains intact, but its benefits and earnings are consumed for the endowment parties. Therefore, the endowment properties include those properties that their absoluteness has the

survivability and can not be transmitted, changed and converted, unless they have special conditions.

**Kinds of endowment**

Endowment according to its beneficiaries is divided into public and special endowments. The purposes of public endowment are the charity affairs and this kind of endowment isn't special for determined class or group like endowment on poor people, scholars, schools and mosques and in the opposite point of it, there is special endowment and it is a kind of endowment which is special for determined and specific class or group like endowment on children or persons and special class of people (Moghniyah, 2003, P.586).

**The role of lands reforms in possession of endowed properties****First stage of land reforms**

The lands reforms law was approved in the date of 1960/5/14 and execution of it began practically by approving the reformatory law of lands reforms law in the date of 1962/1/9 which was named as the first stage of execution of land reforms and with stage-by-stage changes of land reforms and with regard to this issue that in the womb of lands included in this law, there were a lot of endowment lands; therefore, the endowments were suffered from severe damages. Selling the endowment at first was accepted about special endowments and then in the last stages of execution of lands reforms law, the public endowments were also included in selling that we explain them.

In the article 2 of first law of land reforms, the quorum of possession was specified for each person in the whole of the country, three notes of this article have been about the special endowment and specify its duty; in the note 1 of mentioned article, the share of special endowments has been also included in the quorum inserted in the article and it has been determined that from the endowment for each one of the beneficiaries, it has remained in the form of special endowment up to the amount determined in the article 2, surplus on it has been sold; according to the article 90 of civil law, the resulted funds are consumed for buying another property. In the clause 9 of article 3, the land reforms law, Astan Qods Razavi and public endowments are excluded from inclusion in the article 2.

Article 2 of land reforms law in 1961 expresses: «The maximum land possession of each person in the whole of the country such as connected or separated pieces is totally 400 Hectare (fallow and under cultivation) of water farming lands or 800 Hectare (fallow and under cultivation) of dry farming and unutilized land or an amount of water farming, dry farming or unutilized land that total of them doesn't exceed from maximum of dry farming and water farming lands (each Hectare of water farming land will be accounted equal to two Hectare of dry farming and unutilized land) and the possessor according to his tendency can select his intended land from the lands belonged to himself as much as the amount determined in above.

Note1- About the lands which have been endowed in special form till the date of delivering this bill to the parliament, they will remain as they were before in the form of special endowment for each one of the beneficiaries up to the amount determined in this article and the funds resulted

from surplus sale of intended endowments are allocated to buy another property by control of ministration of endowments so that according to the article 90 of civil law to be acted. About the lands that are endowed in special form till after the date of delivering this bill, the total of shares of beneficiaries must not exceed from the permitted amount determined for a person and the amount of a land which is specially endowed in this form, will be subtracted from the total of lands which according to this same article remain in the possession of possessor.

According to this note, as it is understood from its text easily, the special endowments were changed to an significant extent; in fact, by delivering the land reforms bill, the right of each one of the beneficiaries stipulated in the same law was reduced up to 400 Hectare of water farming lands or 800 Hectare of dry farming lands and this note expresses that if the special endowment is after the date of delivering this bill, the total of right of beneficiaries will be as much as the amount determined in the article 2; for example, if the special endowment has ten beneficiaries, only the same 400 or 800 Hectare will be exerted and the rest must be sold that here it is unlike the articles 88 and 89 of civil law again in which the cases of selling the endowments have been mentioned; according to the religious laws, the most of jurists have consensus that selling the endowments should be prevented as much as possible. Although, in the note of article 2 of land reforms law, it had been said that surplus on them must be sold and another property must be bought and it is somehow in confirming article 90 of civil law that says: «The absolute endowed property about sale permission, approximately is converted to the endower's purpose», but in the land reforms law, no permission according to the article 88 of civil law is seen.

Note 2- About the lands which have been endowed specially and publicly till the date of delivering this bill to the parliament, the share of special endowment will be included in the first part of note 1 and about the lands which have been endowed specially and publicly after the date of delivering this bill, it will be included in the second part of note 1.

In the note one, the special endowment has been considered and limited; but, note 2 in addition to the special endowments has attacked on public endowments and this oppression holds tru about public endowments more than special ones.

Note 3- About special endowments, the duties according to this law have been entrusted on possessor by their legal custodians and substitute.

With regard to the first part of article 2 of mentioned law which has specified maximum possession of each person in the whole of the country totally from the connected and separated pieces equal to 400 Hectare of water farming lands or 800 Hectare of dry farming and unutilized lands, note one of this same article has considered the share of each beneficiary up to this same extent and the rest must be sold. By approving this law, the first step in selling the endowments began and it was a start for the next steps. Immediately, by passing several months since the first act of land reforms, the reformatory law of land reforms law was approved in 1962/1/9 that meantime of it, special endowment was more limited, in the article 2 of this law, the most agriculture possession of each person in the whole of

the country has been reduced to one ten six parts and in the note 4 of article 2 of reformatory law, the quorum of special endowments has been also determined up to the amount determined in the article 2 and it was stipulated that its surplus must be sold.

Note 4 of article 2 of land reforms law about this issue says: «About the properties which have been endowed specially till the date of 1960/12/5, for each one of the beneficiaries of endowed properties, they will remain in the form of special endowment as they were before up to the amount determined in this article and the funds resulted from selling the surplus of intended endowments are allocated to buy another property by control of ministration of endowments so that according to the article 90 of civil law to be acted».

The purpose of «determined amount» in the note 4 of article 2 of reformatory law includes the same one, ten, six pieces, namely 400 and 800 Hectare determined in the article 2 of the main law by approving the reformatory law were reduced to the six , one, ten pieces for each beneficiary and the realm of endowments became smaller again.

In the first stage of land reforms, the special endowments which were more than the extent specified in the law for beneficiaries, must be sold and it must be done according to the article 90 of civil law, the mentioned article expresses:

«The absolute endowment about sale permission is approximately converted to the endower's purpose». In this stage of and reforms, the public endowments according to the clause 9 of article 3 of law have been from exceptions and they remained immune from encroachment and sale.

Briefly, the government's act for re-buying the surplus properties of great possessors and selling them to the revenue farmers in Iran was named as the first stage of land reforms that in the meantime, although the public endowments remained immune, but if the special endowments were surplus on the amount specified in the law, selling them and converting them to the better cases would be necessary.

### **The second stage of land reforms**

In 1963/1/17, the ministers board approved the law of articles annexed to the land reforms law that according to it, five articles were added to the law and second stage of execution of reforms began, article 2 of it ordains: «The public endowed properties are rented to the farmers of that same endowed property in cash form by considering the endowment benefits to the long-term rent of ninety nine years. The cost of rent is revisable every five years».

And also about special endowment, it has been mentioned, «the special endowments in the event of necessity according to the civil law are bought by the government in order to be converted to the better cases and they are divided between the farmers, the funds resulted from selling this kind of properties are allocated to buy another property by custodianship of endowment so that according to the article 90 of civil law to be acted».

In the second stage of execution of land reforms law, as it is observed according to the articles annexed to the land reforms law dated in January 1963 approved by the ministers board, the endowments have been considered more. According to the article 2 of law, the lands of public endowment must be rented for ninety nine years which is revisable every five years. The lands of public endowment in order to b converted to the better cases according to the civil law are bought by the government and they are divided

between the farmers and the revenues earned from selling this kind of properties are allocated to buy another property by custodianship of endowment so that according to the article 90 of civil law to be acted. Dealing with endowed lands was arisen from government's policy about division of land between the farmers which hadn't included it in the first stage of land.

In this stage, some policies were thought for the special and public endowments. By policy of 99-year rent of public endowments, practically dominance of endowment's possessors on public endowments became less and they were often rented; on the other hand, the reasons which have been the permission of selling the endowments and have been mentioned in the jurists' sentences and ideas, were ignored about special endowments completely. As it was expressed in the issue of selling the endowments and it has been also mentioned in the civil law, selling the endowments is possible and convertible to the better cases only by holding conditions such as destruction and fear of bloodshed that by execution of land reforms laws, these cases were ignored.

Meantime the supplementary of land reforms law, the provisions of endowed properties generally were two kinds: One, public endowment properties and another, private endowment properties.

As it was mentioned, in the first law and first stage of execution of land reforms, the public endowments have been excluded and they had remained immune from change and transformation; but in the second period of land reforms, the endowments such as public and special were placed in the text of reforms and since in Islamic laws, buying and selling the properties of public endowment was prohibited; therefore, the properties of public endowment had to be rented for 99 years to the farmers who were working on them. The cost of renting the endowed lands had to be paid in cash form and about determining the amount of rent cost, revision had to be done every 5 years. The lands of private endowment had to be bought by the government and after it, they had to be sold by instalments to the farmers who participated in the corporative societies, a money which was collected from selling these lands, had to be paid to the possessor of endowed land. This kind of land according to the above mentioned conditions may be even rented to the farmers for 30 years.

In the supplementary of land reforms law, the date of paying the cost to the possessors by the government was changed and depending on the lands that had taken from them, instead of 10 years, it was determined 15 years. Meantime studying the execution of land reforms law, it was even predicted that in the villages, the productive-agricultural corporations combined from possessors and farmers should be formed. The profit of these companies should be divided between the shareholders in proportion to the shares, but the amount of the shares in these companies depended on the area of land under cultivation and other conditions of agricultural production such as seed, domesticated animals, laborer, laborer's wage supplied by the members of company. The farmers who were working on the lands of village, had to be joined to the agricultural corporation. The works of these corporations had to be managed by a three-person board combined from representative of farmers,

representative of possessors and another person with agreement of two parties, and if this agreement wasn't achieved, the third person would be determined according to the determination of directorship of agriculture ministration. The acts for organizing the relations between the possessors and farmers on the properties of average and small possessors and even endowed properties which had been stipulated meantime supplementary of land reforms law, were named as the second stage of land reforms.

In the reformatory law of land reforms law approved in 1962/1/9, the most agricultural possession of each person, in the whole of the country has been reduced to one, ten, six pieces and in the note 4 of article 2, the quorum of special endowments has been also determined up to the amount determined in the article 2 and it was stipulated that its surplus must be sold.

Another problem which is seen in execution of this stage of reforms, is the explicit prevention from endowment, note 5 of reformatory law of 1962/1/9 says that since the date of approving this law, any kind of acts which are done for escaping from execution of provisions of this law even as the transmission, peace and endowment will be prohibited to the villages and in the event of doing them, they will be null.

The council of land reforms will be the authority for cognition of this issue that the transaction is included in the provisions of this note and the ministrations of registration and formal documents offices are obliged to reflect the council's certain theory in the registration offices and do the next operations according to the provisions of this law. It is observed that by prevention from endowment about villages, even the persons who really and purely for God have had the purpose of endowment, practically haven't been able to do this work and in the event of doing it, the endowment accomplished by the council of land reforms was considered null and this legal prevention was a non-religious real dam on the way of endowment which had taken the color of law to itself.

#### **The third stage of land reforms**

The third stage of land reforms law didn't included the endowed lands, but in the law of dividing and selling the rented properties to the revenue farmers, approved in 1969/1/13, the endowments have been considered again; in a manner that in the article 8 of law, it was ordained that the special endowments which have been rented according to the former laws, must be converted to the better cases. Of course, conversion to the better cases depends on the permission of selling the mentioned lands. In the event of survival of endowment, conversion to the better cases doesn't have any incompatibility with religious law.

#### **Conclusion**

Selling the endowment, at first was accepted about special endowments and then in the last stages of execution of land reforms law, the public endowments were also included in selling. The first law of land reforms was approved in the date of 1960/5/14. In the article 2 of mentioned law, the quorum of possession was specified for each person in the whole of the country. In the note 1 of mentioned article, the share of special endowments has been also included in the quorum inserted in the article and in has been determined that from the endowed property for each one of the

beneficiaries, it has remained in the form of special endowment up to the amount determined in the article 2, surplus on it has been sold, the resulted funds according to the article 90 of civil law are spent for buying another property. In the clause 9 of article 3, the land reforms law of Astan Qods Razavi and public endowments are excluded from inclusion in the article 2.

In the second stage of land reforms law, according to the articles annexed to the land reforms law, dated in February 1963, approved by the ministers board, the endowments have been considered more. According to the article 2 of the law, the lands of public endowment must be rented for ninety nine years which is revisable every five years. The lands of special endowment in order to be converted to the better cases, according to the civil law are bought by the government and they are divided between the farmers and the revenues earned from selling this kind of properties are allocated to buy another property by custodianship of endowment so that according to the article 90 of civil law to be acted.

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