The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Thurs, January 20, 2022 ■ י"ח שבט, תשפ"ב
סימן קנ"ג סעיף ז'

Overview

Siman 153 Seif 7 (c):

If an individual builds a *Bais HaKnesses* and gives it to the *tzibbur* it is treated like a *Bais HaKnesses* that belongs to the *tzibbur* but if he retained some ownership for himself it may not be sold without the permission of the *tzibbur* and the donor or his heirs. This discussion is limited to where there is another *Bais HaKnesses* but if there is no other *Bais HaKnesses* it is prohibited to sell since it is even prohibited to tear down a *Bais HaKnesses* until a new one is built. Any sacred item that is sold with the proceeds being redirected for another use may be sold without announcing that it is for sale and is not subject to the *halachos* of *ona'ah*. Something that may not be redirected towards a less severe sanctity must be announced before it is sold.

- According to Magen Avrohom Rema refers to where they already built a replacement *Bais HaKnesses* but if there were always two *Batei Kenesiyos* they may not sell one of them. Taz disagrees and maintains that even in this case one of them may be sold assuming that the one that remains is large enough to hold everyone for *davening*. Later authorities agree that even in a large city if they built another nicer *Bais HaKnesses* it is permitted to tear down the first one. (M.B. 41)
- When there is only one *Bais HaKnesses* it is prohibited to sell it even with the approval of the seven trustees and the residents of the city, even if the intent is to buy another *Bais HaKnesses*. (M.B. 42)
- It would be permitted to sell the *Bais HaKnesses* in a circumstance in which they will use the money to purchase another *Bais HaKnesses* and there is no concern that they will become negligent and not purchase the new building. In such a circumstance the old *Bais HaKnesses* may be sold by the seven trustees in the presence of the people in town. (M.B. 43)
- Rashba explains that an announcement is necessary before selling the land any time they cannot give away the property or sell it for a discount. (M.B. 44)
- Rema refers to a sale of land but the laws of *ona'ah* do apply when selling movable items. (M.B. 45)

Halacha Highlight

Selling a *Bais HaKnesses*

Rema Siman 153 Seif 7 (c)

אבל אין להם רק בית הכנסת אחת אסור למכרו

But if they only have one *Bais HaKnesses* it is prohibited to sell it

Shulchan Aruch and Rema discuss many different circumstances in which it may be permitted to sell a *Bais HaKnesses*. Rema adds that these allowances are limited to where there is another *Bais HaKnesses* in which the people can *daven,* but if they only have a single *Bais HaKnesses* that they wish to sell it is prohibited. The reason he gives is that it should be no worse than if they wanted to tear down an existing *Bais HaKnesses* which is prohibited until a new *Bais HaKnesses* is built. In his explanation of Rema's comment, Mishnah Berurah (ס"ק מ"א) explains that the second *Bais HaKnesses* must be large enough to hold all of the residents in town. If the other *Bais HaKnesses* is not large enough to hold everyone it is prohibited to sell first *Bais HaKnesses*.

Poskim point out that even if the second *Bais HaKnesses* is large enough to hold everyone for *davening* but in the second *Bais HaKnesses* they *daven* a different *nussach* than the members of the first *Bais HaKnesses*, it is considered as though there is no other *Bais HaKnesses* in town and it is prohibited to sell the first *Bais HaKnesses*. Teshuvas Mishnah Halachos (ח"ד סי' כ"ג) asserts that if there is another *Bais HaKnesses* that could hold everyone and *davens* the same *nussach* but it is far away from where the people live it is also considered as though there is no other *Bais HaKnesses* in town and it is prohibited to sell the first *Bais HaKnesses* (פסקי תשובות אות י"ד).

Sefer Piskei Teshuvos (שם) contends that in all the circumstances in which it is prohibited to close down a *Bais HaKnesses* whether by selling it or tearing it down in those same circumstances it is prohibited to sell to another group of Jews who will *daven* a different *nussach*. Even though the building will remain a *Bais HaKnesses,* it is prohibited since it effectively becomes an unusable *Bais HaKnesses* for the people who used to *daven* there.

Stories to Share

Who is the Owner?

מ"ב, ס' קנ"ג, ס"ק ל"ח: "ועל כן כשמכרו ז' טובי העיר..."

Today's amud continues discussing the sale of community property through the representation of the ז' טובי העיר. But it is often very difficult to determine precisely who qualifies in modern times.

In Eretz Yisrael, many shuls are built with government funds, compounding the complications. Although one needs to fill out the proper forms and arrange things, sometimes all or much of the building expenses are provided as a grant.

In Bnei Brak, there was a shul that needed to expand. They wished to sell and relocate to bigger premises but wondered who needed to make this decision final. Who were the ז' טובי העיר? One rav reasoned that the gabbai is the appropriate person. "The Shoel Umeshiv reasons that the person most involved in the needs of the community has this responsibility nowadays. (שו"ת שואל ומשיב מהדו"ק, ח"ב, ס' כ"ב) Clearly the gabbai fits this criterion."

But another person felt that a shul owned by the municipality should have no holiness at all. "A shul must have an owner to have holiness. How can holiness rest on something not given by a particular person or persons?"

When these questions reached Rav Yosef Shalom Elyashiv, zt"l, he disagreed on both accounts. "A shul owned by the municipality can certainly have sanctity. A shul's holiness has nothing to do with whether there is a specific owner or owners. As long as one has the rights to build the shul, it can become holy.

תל תלפיות, קובץ ס"ב

"As far as who makes such decisions in Bnei Brak, the answer is the owner—the municipality of Bnei Brak!"

קול תורה, קובץ נ"ד, ע' רכ"ט