

Beth Din Zedek Bnei Berak (Bnei Berak High Court)

Founded by Rabbi Nissim Karelitz (of blessed memory)

Under the leadership of Rabbi Sariel Rosenberg

Sunday, 14 Shvat 5780 (Feb. 9, 2020)

Halachic Ruling

Re: Plans to renovate the building erected in the old Vilna cemetery, to turn it into a concert hall

Since the earliest of times, Jewish cemeteries – the final resting places of our sages of early generations, venerated as angels – have been treated as holy places, lending them the aura of a place of prayer, where those in distress have come to cry and pour out their hearts. It is also inviolable that a Jewish grave is eternal and must not be moved, even after the passing of many centuries.

The halacha is quite clear and explained in the *Shulchan Aruch* (*Yoreh Deah* chap. 368, section A, and in the *Ram"o* there) that one may not behave in a light-headed manner in a cemetery – not take care of one's physical needs, not eat or drink or even take a shortcut through it, etc., as a show of respect to those buried there. The halacha is likewise clear that if the graves were emptied, G-d forbid, they may not be reused for any purpose, as spelled out in the *Shulchan Aruch* (*Yoreh Deah* chap. 324, section 6) that a grave that has been emptied may not be used to store grain or wood, nor as a hiding place for treasure, again in honor of the departed (as explained in the *Sha"ch* there, subsection 14).

Besides the sanctity of the area, one should know that it is customary in Jewish communities world-wide that the family (or the deceased himself during his lifetime) purchase the plot at full price to serve as a resting place for the deceased for eternity, as written in the Talmud (Bava Basra 112A) that it is disgraceful for a righteous person to be buried in a plot which is not in his ownership. It goes without saying therefore, that the burial ground does not belong to the community, and is not public property, but the sole possession of the deceased and his heirs, whether we know who they are or not. Community leaders do not have the right to sell the grounds, and if they sell it, the sale remains unauthorized and invalid. Even if they agreed to the destruction of part of the cemetery, or permitted construction in areas previously destroyed, their agreement to the project is irrelevant, as it is not their property, and descendants of the deceased may still demand that the area be left untouched.

[In addition to the above, there is a real danger that the renovation work may damage as yet untouched graves, or uncover the bones of deceased in graves previously violated. Even if the renovation is done under supervision, such a large building needs periodic maintenance, and who will ensure such supervision in the future?]

Therefore, in light of all the above, we rule that the sanctity of the cemetery dare not be violated. Even if damage has already been done, the sanctity still exists, and it maintains its status as the property of the original owners and their heirs. It is therefore forbidden to further aggravate the transgression and renovate the structure erected over destroyed graves, and definitely should the area be turned into a place of entertainment, it would be a violation of the sanctity of the cemetery. Therefore the building should be sealed and left as is.

Signed:

Rabbi Yehuda Silman

Rabbi Sariel Rosenberg

I also agree to what is written above, (signed) Chaim Kanievsky