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MATRIC NO: 16/LAW01/007

The legal issues in the case are

1. Whether or not the governor had a right to revoke Mr. Ajah’s right of occupancy
2. Whether his claim would be successful in court
3. Whether or not the governor has a right to revoke Mr. Ajah’s right of occupancy:

The governor didn’t have a right to ribeye Mr. Ajah’S right of occupancy has he did. Revocation of the right of occupancy is the right of the governor to withdraw the right of occupancy of a person. Before the right of occupancy of a person can be revoked, it must meet the following three criteria’s

1. There must be purpose

2. A valid notice

3. Adequate compensation

SECTION 28(1) provides that a right of occupancy may be revoked by the governor for overriding public interest this power is exercisable in respect of either statutory right of occupancy or customary right of occupancy. Any revocation by the governor, that does not meet the three criteria, would not be considered by the court

1. PURPOSE

The purpose is for overriding public interest of statutes S.28(2). It is valid, when it involves

(a) alienation by occupiers without consent of the governor

(b) the requirement of the land for public purposes of the government whether federal or state.

(c) requirement of the land for mining purposes on oil pipelines.

S.28(3) overriding public interest in the case of a customary right of occupancy, means:

(a) the requirement of the land by the government of the state or local government, for public purposes within the state

(b) the requirement of the land for mining purposes or oil pipelines

(c) the requirement of the land for the extraction of building materials

(d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sub-lease

Section 53 defines public purpose to include exclusive government use or general public use S.28(5) provides that the governor may revoke statutory rights of occupancy on the grounds of:

(a) A breach of any of the provisions which a certificate of occupancy is by S.10 Deemed to certain

(b) A breach of any term contained in the certificate of occupancy or in any special contract-S.8

(c) A refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been canceled by the governor.

Mr. Ajah met the first criteria which is purpose

(2) NOTICE OF CONSENT

Notice is essential before there can be a valid reallocation. S.28(6) provides that the revocation of a right of occupancy shall be dignified under the hand of a public officer duly authorized in that behalf by the governor and notice therefore shall be given to the holder. The notice given to Mr.Ajah was an order by the government, which does not constitute as notice, for it to constitute as notice, it must be given personally. In OBI V. MINISTER it was held that the service of of notice of revocation on the holder is a condition precedent to the validity of revocation by virtue if S.8(6) notice of revocation on the holder on the right of occupancy shall be given to the holder. The notice of revocation must be served personally to the holder. It can not be substituted by a general notice published in the gazette or newspaper. A publication of such acquisition can only follow after a personal notice has been given to the holder.

In ONONOYU V. A.G ANAMBRA STATE, it was held that a publication in the gazette of a notice of revocation without personal service of same on the holder does not make the revocation valid

(3) COMPENSATION

In regards to compensation, none of that such was given or allocated to him. Moreover S.29(1) provides that if a right of occupancy is revoked for the causes set out in paragraph b of subsection 2 of S.28 or in paragraphs (a) or (c) in subsection 3 of the same section, the holder and occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvement . S.29 (2) provides that if a right of occupancy is revoked for the causes set out in S.28 (2)(c) or S.28 (3)(b) the holder shall be entitled to compensation under the appropriate provisions of the mineral act or petroleum act or any legislation.

In HORN V. SUNDERLAND CORPORATION, it was held that compensation implies that the loss to the seller must be completely made up to him and that the loss to the seller must be completely made up to him and that is unless he received a price they fully equaled his pecuniary determinant, the compensation would not be equivalent to the compulsory sacrifice.

Section 44 of the 1999 Constitution guarantees prompt payment of compensation in terms of the provisions of section 30 of the Land Use Act, any dispute to the amount of compensation calculated in accordance with the act shall be referred to the appropriate Land Use and Allocation Committee. The higher court has jurisdiction to determine any questions as to persons entitled to compensation payable under the act. Section 39(1)(b) of the Land Use Act

1. The second issue which is Whether his claim would be successful in court

MrAjah’s claim would be successful in court has he has passed the three criteria , that is the governor did not possess any of the three criteria’s/ reason to demolish Mr. Ajah’s property and revoke his right of occupancy, but he did either ways which leads me to believe that his claim would be successful in court.

In conclusion, some may argue and state the fact they the quarantine laws, put the country in a state of emergency but it can not be said to be so as the quarantine law is not supreme to the land use Act neither is the executive order given by the governor(which did not serve as a notice).The governor after giving the executive order was supposed to follow the procedure in revoking the right of occupancy with a personal notice and therefore failure to do that meant he wrong.