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LEVEL: 400 LEVEL

The issues are as follows;

1. Whether the governors act of demolishing the Tarzan hotels is constitutional
2. Whether the Governor properly revoked the right of occupancy of Chief Ajah in accordance with the provisions of the Land Use Act
3. Whether any court has jurisdiction to entertain Chief Ajah’s suit

An executive order is an order given by a president or a governor of a country or state which must follow the already laud down rules of the country in other words the executive order must not be repugnant with laid down rules of the land i.e., the constitution and other relevant laws. The penalty for disobeying an executive order should be trial in a court of competence.

The Land Use Act provides in Section 28 that right of occupancy maybe revoked by the governor for overriding public interest. Section 28(2) provides that overriding public interest includes:

1. Alienation by occupier of any right of occupancy or any part thereof contrary to the provisions of the act or other regulations
2. Requirements of the land by the government for public purpose
3. Requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith

Section 28(5) provides that the governor may revoke a right of occupancy on grounds of:

1. A breach of any pf the provisions in section 10
2. A breach of any of the provisions in section 8
3. Refusal to pay or neglect to accept a certificate of occupancy as issued by the governor in evidence of an existing right of occupancy which was cancelled by the governor.

For a valid revocation these three conditions should be adhered to:

1. Revocation for public purpose
2. Notice of revocation
3. Compensation

Section 51(1) provides for the definition of public purpose. Hence any revocation must be based on any instances provided for in section 51(1) to be valid, this is evident in Lagos State Development & Property Corporation v Foreign Finance Corporation. The notice of revocation must be served personally to the occupier of the land, section 28(6) provides for this; also evident in Obi v Minister of FCT and Ononuju v AG Anambra state. Also, adequate compensation for the value at the date of revocation should be paid to the occupier as provided in section 29(1) (2).

Section 39 and 41 of the Land Use Act provide that the high court and area court of customary court has the jurisdiction on matters on statutory right of occupancy and customary rights of occupancy respectively.

In application of the above rules, it is obvious that the governor violated the rules of the Land Use Act. The governor ought to have revoked the rights of occupancy of chief Ajah and not demolish his hotel. The governors executive order was constitutional but his penalty for Chief Ajah’s disobedience was not constitutional, what would have been constitutional will be the arrest of Chief Ajah following trial in a court of competence. The high court or the area or customary court is the court to entertain this matter.

Conclusion

If Chief Ajah goes to court he will be granted a compensation has required by the land use act. Also, he disobeyed an executive order of which caused his predicament hence the legal maxim *ex turpi causa non oritur* *actio* may work against him which means a plaintiff will be unable to pursue legal remedy if it arises in connection with his own illegal act.