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**MATRIC NO. : 16/LAW/01/012**

**COURSE: LAND LAW II**

**TEST ANSWER:**

 The legal issue from the case scenario is whether the action taken by the governor was unconstitutional.

A right of occupancy can be defined as the right to use and occupy land. **Section 28 of the Land Use Act** provides that a right of occupancy can be revoked for overriding interest by the governor. This applies to both statutory and customary right of occupancy. A statutory right of occupancy applies to urban areas as in the case scenario given, while other area or rural areas applies to customary right of occupancy. Such overriding interest includes mining purposes, extraction of building material etc. **Section 28 (6) of the Act** states the governor can revoke a right of occupancy only after issuing a notice to the holder of the right of occupancy. However it is not stated in the Act but the notice must state the particular public purpose for which the land is required. In the case **Obi v. Minister of FCT**, it was held that the service of notice of revocation on the holder of a right is condition precedent to the validity of the revocation. It also held that a notice of revocation must be served personally to the holder of the right of occupancy. It cannot be substituted by a general notice published in the gazette or newspaper. Publication should follow after personal notice has been given.

Applying these principles to the case scenario, we can see that an executive order was given that all restaurants, hotels, clubs, etc should close and the quarantine law provided fines and imprisonment as the penalty for default. An executive order constitutes a general notice and not a personal service to the holder which is Chief Ajah; therefore the executive order does not constitute a notice of revocation as stated in **Section 28(6) of the Act.**

Furthermore, the governor’s action of demolishing Chief Ajah’s hotel is unconstitutional and unlawful as the quarantine law provided only for fines and imprisonment as the penalty for default and not demolition of property. This follows the principle drawn from the case of **CSS Bookshops ltd v. Registered Trustees of Muslim Community in Rivers** , which held that any exercise of the power of revocation for purposes outside those outlined by **Section 28** **of the Act** or not in compliance with the provisions will be against the policy and intention of the Act would be void.

 In conclusion, I would advise Chief Ajah to seek redress against the governor in the any competent court of jurisdiction because the actions of the governor as mentioned above were unconstitutional. He would be entitled to compensation for the hotel he lost as **section 29 & 33 of the Act** provides that where a right of occupancy is revoked for the public purpose, the holder shall be entitled to compensation.