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LEVEL: 400

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COURSE TITLE: LAND LAW

**LEGAL ISSUES**

1. Whether the action by chief Ajah constituted as breach of executive order
2. Whether the governor has such power to demolish the property of Chief Ajah
3. Whether such action was done for purposes of overriding public interest

**RULE**

**Sec**tion 28 provides that before there can be a valid revocation of rights of an occupier of land, there must be 3 elements present: purpose, whether there is adequate notice and compensation.

The purpose must be overriding public interest. Which is defined in the section 28(2). It maybe revoked for public purposes as defined under the section 51 of land use act in order to gain control over land for the interests of the country at large and not for private or personal use.

Notice is provided in section 28 of land use act. In s,o adole v. Boniface. It was held that the notice of revocation and the service of it was mandatory.

Section 5 of quarantine law, an executive order stated that any public place in defiance of such order to close due to the pandemic shall be made to pay fine or imprisonment.

The constitution of the FRN 1999, Provides that every person shall have the right to own property. Also, in Amale v. Sokoto local government, the governor had compulsorily acquired land for a public purpose and the defendants argued that it was illegal, unconstitutional and in gross contravention of s,40 of 1999 constitution. It was held legal in this case so far compensation was given.

**APPLICATION**

Answering issue 1, the answer is YES. He was in breach of an executive order when he kept on operating his business and refused to follow directions of the governor

For Issue 2, the governor indeed had the power to revoke rights of occupancy but must ensure valid notice, adequate purpose and compensation. There was no valid notice in this case as section 44 of lanfd use act provides for procedure or mode of service which must be followed otherwise it shall be revoked. The notice is supposed to be personal, do not publicize. But in this case, the quarantine law provides for fines and imprisonments and not a demolision as he stated in his executive order. So, NO, the governor had no power to demolish the building.

For issue 3, YES, the action can be said to be done on grounds of overriding public interest since the tarzan hotel might be a future spread of the pandemic affecting the nation but the action is still to be considered ultravires.

ADVICE

I advice chief Tarzan that if he insists on taking the matter to court, he must then only rely on the defence of lack of public awareness of the said executive order since such action by the governor may be deemed unconstitutional for his failure to serve adequate notice first and also no law permits him to demolish the building. in the case of ononuju v. a. g Anambra, the court stated that the notice given was published in the gazette and court held it thus to be invalid by reason of this. He may therefore claim damages for the ultra vires action of the governor since he had a right to his property guaranteed under the constitution,

CONCLUSION

It is a different thing to threaten to demolish and to actually demolish a property where no law allows you to appropriately do so without any evidential notice directly to the offending party. In this case, the government could have simply fined or imprisoned him rather than carry matters into his own hand to demolish the property.