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LEVEL: 400

COURSE: LAND LAW (LPB 402)

TEST

The legal issues for determination are

1. Whether the Governor’s act of demolishing Tarzan hotel was unconstitutional
2. Whether Mr Ajah’s claim would be successful in court

In answering the first legal issue, I would be relying on Section 28 of the Land Use Act. Section 28 (1) provides that a right of occupancy may be revoked by the governor for overriding public interest.

Section 28(2) provides for the meaning of overriding public interest in the case of a statutory right of occupancy

Overriding public interest in the case of a statutory right of occupancy means--.

(a)       the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;

(b)       the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;

(c)        the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

In order to correctly revoke a person’s right of occupancy, the purpose of the demolition must be stated, there must be a valid notice, and the occupier would be entitled to adequate compensation.

 In the case of **C.S.S. Bookshops Ltd v. Registered Trustees of Muslim Community in** **Rivers State**, the court held that where a right of occupancy is stated to be revoked for public purpose, there is a need to spell out the public purpose in the notice.

There is also the need for a valid notice to be given. **Section 28(6) of the Land Use Act** provides that the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.

In the case of **Federal Government of Nigeria v. Chief Rasaki Akande**, it was held that the Governor is empowered to revoke a right of occupancy only after issuing a notice.

Also, according to **Section 44 of the Land Use Act,** the procedure for the service of a notice is by delivering it personally to the person on whom it is to be served or leaving it at his address. In the case of **Ononuju v. A.G. Anambra State,** the court held that publication in the gazette of a notice of revocation without a personal service of the same on the person does not make the revocation valid.

 On the issue of compensation, Section 29 of the land Use Act provides that where a right of occupancy is revoked for public purpose, the holder shall be entitled to compensation for the value of the land at the date of revocation of their unexhausted improvements. Any occupier whose right of occupancy is revoked is entitled to adequate compensation.

Although in the scenario given, the Governor made an Executive Order which provides for demolition of any building of which its owners are in contravention of the provisions of the legislations in place, and Section 5 of the Quarantine Act also provided for fine and imprisonment as penalties for not following the law, and which the same is provided for in Sections 34(8) and 36(6) of the Land Use Act.

I think the Governor’s act was unconstitutional because he did not give valid notice to Mr. Ajah and also Section 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that every Nigerian has the right to acquire and own immoveable property. The Governor’s demolition of Mr. Ajah’s property without notice is against such right, and the preamble to the constitution provides that any law contrary to the provisions of the constitution is void.

 In answering the second legal issue, Mr Ajah’s claim would be successful in court due to the lack of valid notice and the absence of any form of compensation by the Governor according to Sections 28(6), 29 and 44 of the Land Use Act.

 In conclusion, Mr. Ajh should go ahead and sue the Governor.