Name: Anajemba Adaobi Elsie

Level: 400

Matric number: 16/law01/036

The legal issue in the above case is

. Whether the governor had the right to revoke the statutory right of occupancy of Chief Ajah

Whether chief Ajah can bring a successful claim in court based on the unconstitutionality of the governors act.

Révocation of right of occupancy occurs when the governor extinguishes all right of occupancy vested in a person. According to Section 28(5) of the Land use Act , a governor may revoke a right of occupancy when there is a breach of any of the provisions contained in Section 10 which provides for what a certificate of occupancy is deemed to contained ( that the holder must pay the government all un exhausted improvements existing on the land at the time of entering and also that he shall always pay the stipulated rent, also the governor can revoke a statutory right of occupancy when there is a breach of any term contained in the right of occupancy or in the case of a special contract made under Secrion 8, also the governor can revoke a right of occupancy when the holder refuses to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the governor under Subsection 3 of Section 9 of the Act.

Also Section 28(1) states that a governor may revoke a right of occupancy for overriding public interest and Section 28(2) (b) states that when the government needs land for public purposes, it amounts to overriding public interest. Section 51 defines public purposes to include : For exclusive government use or for general public use, for or in connection with sanitary improvements of any kind .

However for a statutory right of occupancy to be revoked there are certain conditions to be met

1. Purpose : the purpose must be stated that is Section 28 overriding public interest . In AMALE V SOKOTO LOCAL GOVERNMENT, the government needed the land for expanding of the cattle market in sokoto, it sufficed as overriding public interest

2. Notice : Section 28(6) states that revocation of a right of occupancy shall be given to a duly authorized officer by the governor and it shall be passed to the holder. The notice should state the reason for the revocation. In L.S. P. D. C v Foreign finance corporation the plaintiff stated that no notice of forfeiture or notice of revocation of her statutory right of occupancy was given to her . Also the notice is expected to be personal. In OLATEJU V COMMISSIONER FOR L. H KWARA STATE, the respondent after compulsorily acquiring the appellants land only published it in the gazette and Nigerian Herald, it was held that that did not suffice as serving of notice. In ADOLE V BONIFACE B GWAR it was held that it is not enough to revoke a persons right of occupancy, it is mandatory to serve the person such notice and methods of serving of notice are listed in Section 44 of the Act which includes.

Serving the person directly

Leaving it at the usual or last known place of abode of that person.

3. Compensation : Section 29 (1)provides that a person who loses his land because the government needs it for a public use is entitled to compensation for the value of the unexhausted improvements at the date of revocation

In HORN V SUNDERLAND it was held that compensation implies that the loss to the seller must be completely made up to him and that he must receive a price that fully equals his pecuniary detriment

In the above case, the government established in his executive order that anyone who still continues business in public places shall have the business demolished , but Tarzan hotel owned by chief Ajah continued to operate, by virtue of Section 28(5) the governor has the right to revoke a right of occupancy when the holder does not comply with the terms of the contract, However in Section 28(6) , the government is meant to serve a notice through a duly authorized public officer and the notice is meant to be personal as can be seen in OLATEJU’s case and should also comply with the provisions of Section 44 of the act as can be seen in the case of ONONUJU V A. G ANAMBRA STATE. The governor however did not comply with the above before demolishing Chief Ajahs hotel.

With regards to the legal issue, the governors revocation of ChiefAjahs statutory right of occupancy would not have been unconstitutional because it is contained in the executive order but he didn’t comply with the necessary conditions so it is unconstitutional.

As a land law student I advise chief Ajah to go on with his case in court and charge the governor for not serving adequate notice.