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Level: 400

Course Title: Land Law II

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ANSWER

The legal issue for determination is whether the acts of the governor was constitutional.

As provided for in **Sections 44 of Constitution of Federal Republic of Nigeria (CFRN) 1999 as amended**, no right over land can be forcefully acquired except in accordance with the relevant laws applicable. In this case, the relevant law is the **Land Use Act**, 1980 which is an existing law as provided by **Section 315(5) of Constitution of Federal Republic of Nigeria (CFRN) 1999 as amended.** The Land Use Act has special provisions for the acquisition of interest in land by any governor of a state in Nigeria. First and foremost, the governor must revoke the existing statutory right of occupancy in accordance with **Section 28 of Land Use Act** andapplied **Administrators/Executors of Estate of Sani Abacha v. Eke-Spiff**. Notice must be first given to the holder with the overriding public interest specifically stated as gotten in **Section 28(6) of Land Use Act** andas provided by the court in **S.O. Adole v. Boniface B. Gwar**. Public interest in this sense is as gotten in **Section 51 of Land Use Act** and as applied in **LSDPC v. Foreign Finance Corporation**.

Also, by the **Section 5 of the Quarantine Law**, the penalty for any default is stipulated as fine or imprisonment. With this stated, it is my view that the Executive Order as issued by the governor is autocratic and arbitrary as it is in contradiction with the provisions of the constitution, **Section 44 of Constitution of Federal Republic of Nigeria (CFRN) 1999 as amended,** and impedes on the right to acquire and own immovable property as provided in **Section 43 of Constitution of Federal Republic of Nigeria (CFRN) 1999 as amended**. Also, as provided in **Section 1(1) and (3) of Constitution of Federal Republic of Nigeria (CFRN) 1999 as amended,** any law that is inconsistent with the provisions of the constitution is null and void to the extent of such inconsistency. This was applied by the court in the case of **ANPP v. I.G.P.**

My **advice** to Chief Ajah is that he should bring a claim against the governor for damages for damage done to his hotel as the court has frowned at any form arbitrariness in relation to land; as the Governor acting on an Executive Order which is contrary to the Constitution and the Land Use Act. The court has frowned against this act of arbitrariness as seen in **CSS Bookshop v. Registered Trustees of Muslim Community in Rivers State.**