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MATRIC NO: 16/LAW01/130

400 LEVEL

LAND LAW 11

TEST

ANSWER

The legal issue in this scenario, is whether the actions of the governor are unconstitutional, and contravenes the provisions of the Land use act.

*Section 28 of the Land Use Act,* states that a right of occupancy may be revoked by the governor for overriding public interest. Also, before there can be revocation, three things must be considered; (a) The purpose for revocation (b) Valid notice (c) Adequate compensation. The purpose of revocation is for overriding public interest, and *Section 28(2)* defines what overriding public interest is. Here, overriding public interest includes, alienation by the occupier of any right of occupancy or part thereof contrary to the provisions of the act or any regulations made thereunder; requirement of the land by the government for public purposes; requirement of land for mining purposes or oil pipelines or for any purpose connected therewith; and requirement of the land for the extraction of building materials, in the case of customary right of occupancy, *Section 28(3).*  Also, revocation under *Section 28* must accord with the intendment of the act. Any exercise of power of revocation for purposes outside those outlined or enumerated by *Section 28,* or not carried out in compliance with the provision of the section will be against the policy and intention of the act and it will be declared void.

Also, according to *Sections 28(6) (7),* notice of revocation is very important. The governor is empowered to revoke a right of occupancy only after issuing a notice. The notice must state the particular purpose for which the land is required. In absence of a valid notice, the purported revocation will be ineffectual. . In  *The Administrators/Executors of the estate of General Sani Abacha (deceased) v Samuel David Eke-Spiff and 3 others,* it was held that it is unconscionable, unlawful and unconstitutional to take away a piece of land already allocated and relocate same to someone else without serving notice of revocation on the earlier allotted and not paying that person adequate compensation.

 The mode of service must comply with the provision of the act otherwise the notice will be void. In *S.O.Adole v Boniface B Gwar,* the supreme court held that notice of revocation of title and service of such notice to the holder are two mandatory requirement that have to be strictly complied with where a title to a piece of land is revoke. A publication in the gazette of a notice of revocation without a personal service of the same on the persons concerned does not make the revocation valid.

Also the *Land Use Act* prescribes the payment of compensation upon revocation of right of occupancy. Thus, according to *Section 29(1),* where a right of occupancy is revoked for public purpose, the holder or occupier shall be entitled to compensation for the value of land at the date of the revocation of their in-exhausted improvements. In *Horn v Sunderland Corporation,* it was held that compensation implies that the loss to the seller must be completely made up to him and that unless he received a price that fully equaled his pecuniary detriment, the compensation would not be equivalent to the compulsory sacrifice.

In applying the rule stated to the given scenario, three things were stated before a right of occupancy can be revoked. An executive order does not constitute valid notice, as notice must be given directly to the person whose right is to be revoked. Even though it was an order, it does not constitute a valid notice within the boundaries of the act. Also, under the *Quarantine Law,* the punishment for defaulting is fines and imprisonment, and not demolition of the building. The governor had erred in the law. Also, before a right of occupancy can be revoked, the person is entitled to adequate compensation.

My advice to Chief Ajah is that although he had gone against the law, the actions of the governor are unconstitutional, as the punishment is either fines or imprisonment and not a demolition of the building. Also the governor had failed to serve him with the proper notice as stated under the law and the executive order made by the governor does not amount to a valid notice. Finally he is entitled to adequate compensation as mentioned by both the constitution and the Land use act.