**EGBEJI VICTORIA OLOR-OCHUWE**

**16/LAW01/066**

15/05/20

**LAND LAW II**

**LPB 402**

**LECTURER IN CHARGE: BARR. OLUBIYI**

ANSWER

The legal issue in the case scenario given is whether the act of the Government is considered to be unconstitutional.

The given case scenario is a depiction of **“revocation of right of occupancy for overriding public interest”**. By virtue of **Section 28 of the Land Use Act** a right of occupancy may be revoked by the Governor for overriding public interest. This power is exercisable in respect of either statutory right of occupancy or customary right of occupancy (also **Section 38 of the Act**). This power of revocation is also exercisable in respect of right of occupancy granted or deemed granted by the government. For the purpose of **Section 28 of the Act**, overriding public interest may include: alienation by the occupier of any right of occupancy or part thereof contrary to the provisions of the Act or any regulations made there under; requirement of the land by the government for public purpose, among others.

Also, by virtue of **Section 28(4) of the Act**, the Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the government for public purposes. In terms of **Section****28(6) of the Act**, any revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder. As such, notice of revocation is very crucial under the **Land Use Act**. The Governor is empowered to revoke a right of occupancy only after issuing a notice. The notice must state the particular reason for which the land is required; also the mode of service must comply with the provisions of the Act otherwise the notice will be considered void (**Section 44 of the Act** provides for mode of service of notices under the Act). The purpose of giving notice of revocation of a right of occupancy is to duly inform the holder of the steps to be taken to extinguish his/her right of occupancy. In the absence of a valid notice of revocation, the purported revocation of the right of occupancy will be ineffectual. Although the **Land Use Act** does not expressly state that the specific ground(s) of the revocation of a right of occupancy must be stated in the notice, however, following judicial decisions, where a right of occupancy is stated to be revoked for public purpose, there is need to spell out the public purpose in the notice of revocation.

Furthermore, by virtue of **Section 28(6) of the Act**, a notice of revocation of a right of occupancy must be given to the holder. By **Section 44(a), (b) and (c) of the Act,** any notice given required to be served on a person shall be effectively served on him/her:

1. by delivering it to the person on whom it is to be served;
2. by leaving it at the usual or last known place of abode of that person; or
3. by sending it in a pre-paid registered letter addressed to that person at his usual or last known place of abode.

A publication in the Gazette of a notice of revocation without a personal service of the same on the person(s) concerned does not make the revocation valid. As such, in the case of *S.O. Adole v Boniface B. Gwar (2008) 11 NWLR (Pt 1099) 562*, the ***Supreme Court*** held that notice of revocation of title and service of such notice to the holder are two mandatory requirements that have to be strictly complied with where a title to a piece of land is revoked. Where a person’s title to land is revoked, it should only be done for public purpose and/or for public interest – the ***Supreme Court*** emphasized this issue in the case of *Ibrahim v Mohammed (2003) 17 WRN 1*.

In relation to the given case scenario, the Governor after giving executive orders did as he stated in the order. Chief Ajah clearly violated the order of the Governor as it was for a public purpose and as such had his hotel demolished. Also, the Governor had given several warnings to Chief Ajah and as he did not comply with these warnings he had his hotel demolished as the consequence. Therefore, the Governor had every right to demolish the hotel as it was going against an executive order and it was for a public purpose.

In conclusion, Chief Ajah has little to no chances of success in pursuing this case as he was the one clearly in default of an executive order which was for a public purpose, even after being given several warnings (notices).