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LAND LAW TEST

LEGAL ISSUE

Whether the governor had the right to revoke the statutory right of occupancy of Cheif Ajah through an executive order and if it contradicts the constitution and land use act.

And

Whether Chief Ajah has a chance of success in an action contesting the legality of the governor’s action in demolishing his hotel.

The Land Use Act conferred Government with mandatory powers over land acquisition in Nigeria. Section 1 provides that from the commencement of the Land Use Act, all land comprised in the territory of each state in the Federation are vested in the Governor of the State and such Governor of that State and such land should be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.

From the scenario above, by virtue of Section 28 ( 1) of the Land Use Act 1978 empowers the Governor of a State to revoke a right of Occupancy for overriding public interest. This 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 purpose of the Federation - section 28 (2) (b). On the first issue,The President can write executive orders telling people to do things, and this holds the force of law. Applying this principle of law to the fact of this case, The Governor, in pursuant of the powers conferred on him under the Quarantine Law, made an executive order closing down all public places including bars, restaurants, hotels, clubs, event centers, among others of which can be classified as a Notice. In revocation of a right of occupancy the three requirements must be fulfilled,and they are PURPOSE, NOTICE, CONPENSATION. See the case of Obi v. Minister, FCT.

Overriding the public interest in this case is the pandemic Covid- 19 broke out in Kuzuland and the Governor gave an executive order to this effect. However Cheif Ajah disobeyed the order and was still operating his hostel which resulted in the demolition. Although the notice was not personally delivered as subject to Sec 44 of the Land Use Act and in the case of Lagos State Dev. & Property Corpn v Foreign Finance Corporation and Goldmark (Nig) ltd v Ibafon.

In addition , the governor has only the right to revoke Chief Ajah’s right of occupancy for the purpose of overriding public interest. The governor to this context only has right to revoke and not to demolish as it is unconstitutional and ultra vires , this can be seen in Sec 36 of the constitution of the federal republic of nigeria where a person is entitled to fair hearing and is only guilty upon proof and a chance in court. Therefore in resolving the second issues therefore, Chief Ajah can indeed successfully raise an action against the legality of the governors action to demolish his hotel. Relying on Sec 5 of the Quarantine law, it provides that fines and imprisonment should serve as a penalty for defaulters and that would have been a more appropriete measure to have been taken by the governor rather than demolition.

In conclusion, The governor having been vested with the power to revoke a right of occupancy by the Sec 1 of the Land Use Act on the grounds of overriding public interest, did give out an executive order which is to have the force of law especially durring this time of emergency pandemic. However defaulted in taking the appropriate steps, hence Chief Ajah can institute an action for compensation and as such the State High Court has the exclusive jurisdiction to house such matters.