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LEVEL:400

COURSE: LAND LAW

QUESTION:The pandemic Covid- 19 broke out in Kuzuland. 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. Any public place which continues such businesses shall be demolished as provided in the executive order. S. 5 of the Quarantine Law provides fines and imprisonment as the penalty for default.

Recently, Tarzan hotel has been operating in defiance of this order despite warnings. As stipulated in the order, the governor demolished Tarzan hotels.

Chief Ajah, the owner of Tarzan hotel, has been expressing his displeasure on all media platforms. He believes the action of the Governor is unconstitutional and contravenes the procedures under the Constitution and the Land Use Act. For him, even if he were wrong, the punishment was unlawful. He has sworn to contest the Governor's action in court and get redress. Chief Ajah has approached you for your legal advice. Succinctly advise him with legal authorities as to his chances of success in court in an action contesting the legality of the Governor's action in demolishing his hotel particularly in the light of the Quarantine law, the Executive Order, the Constitution and the Land Use Act. Assume that the laws of Kuzuland are same as the relevant Nigerian Legislations.

The issue in this question is can Chief Ajah successfully contest the Governor action in court and get a redress.

Section 28 of the LUA states that 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. Section 28(2) states that overriding interest includes the following : alienation by the occupier of any right of occupancy or part thereof contrary to the provision of the act or any regulations made there under; Requirements of the land for public purpose; requirements of the land for mining purpose or for may purpose connected therewith.

For the government to revoke a right of occupancy it must fulfill three criteria

a. Purpose

b. Valid notice

c. Adequate compensation

A. Purpose: The purpose of revoking interest in land is generally what is called overriding public interest. 28(3) provides for other grounds for revocation.

In *Obi v. Minister of FCT* it was held that the governor has the right to revoke the right of occupancy on any grounds contained in Section 28(5) of the land use act.

Section 28 (4) Further provides that the governor shall revoke a right of occupancy in the event of a notice by or on behalf of the president of such notice declares such land to be required for public purposes.

B. Notice: This is another essential requirements. By virtue of section 28 (6) of land use act, a notice of revocation of right of occupancy must be given to the holder by any public officer duly authorized on behalf of the governor.

In *S.O Adole v Boniface B. Gwar* the supreme court held that notice of revocation of title and service notice to the holder are two mandatory requirement that have to be strictly complied with where a title to a piece of land is revoked.

C. Compensation: section 29 states that once a right of occupancy is revoked the holder of the land is entitled to compensation.

In *Horn v. Sunderland corporation* the court stated 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 equalled his pecuniary, detriment , the compensation will not be equivalent to the compulsory sacrifice.

This simply means that the governor as the right or power to alienate interest in land as

long as there is a purpose for it , notice has been served to the owner of the land and if his land is already alienated he will be given adequate compensation. The governor gave an executive order that no public operation should take place as a result of the covid 19 outbreak and Mr Tarzan operated his hotel business despite this order.

The purpose has been stated that in order to prevent covid 19 all businesses should be closed and any business in breach of that order the building shall be demolished. An adequate notice has been served to the people of Kuzuland. Since it was a punishment for a breach of order there is no compensation.

In conclusion I advise Mr Tarzan not to seek redress from the court because he went against an executive order given by the governor and this might lead to fine and imprisonment for default by virtue of Section 5 of the quarantine law.