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ANSWER

LEGAL ISSUE

- 1). Whether the Governor in Kuzuland acted unconstitutional and unconscionably by demolishing Tarzan hotel.
- 3). Whether Tarzan Hotel was overriding public interest.
- 2). Whether Chief Ajah, the owner of Tarzan hotel can contest the Governor's action in court and get redress.

RULE

The consequences of the population pressure, urbanization and socio economic growth have great social and economic impact on land issues in Nigeria. Historically, land was operating under the customary law and was owned by communities and families but not individuals. While, in the North, land was operating under the Land Tenure Law and was owned by the government in trust for the people.

However, with respect to the scenario given in the above question, the major focus is on revocation of the Right of Occupancy. According to Section 28 of the Land Use Act 2004, a right of occupancy may be revoked by the Governor for overriding public interest. It is important to note that the power in question is exercisable in respect of either statutory right of occupancy or customary right of occupancy and also in respect of right of occupancy granted or deemed granted by the government.

Three requirements must be considered before there can be revocation. They are;

1. Purpose
2. Valid Notice
3. Compensation

With regards to purpose, the only purpose for revocation is known as overriding public interest as seen in Section 28 of the Land Use Act. Section 28 includes the criteria for alienation for overriding interest. While, Section 28 (5) of the Land Use Act provides for other grounds for revocation which includes in paragraph (ii) that a breach of any term contained in the Certificate of Occupancy or in any special contract made under the act. The case of *Obi v. Minister, FCT* reiterated these grounds. Also, *Amale v. Sokoto local government* stated that the governor has the power to revoke a persons right of occupancy for overriding public interest.

However, in *The administrators/ executors of the estate of general Sani Abacha (deceased) v. Samuel David Eke – Spiff & 3 ors*, it was held that it is unconscionable and unconstitutional to revoke a right of occupancy and allocate to another person for a

personal purpose. With regards to valid notice, Section 28 (6) of Land Use Act states that notice must be given to the owner. Which after given title of the holder shall be extinguished on receipt. In Lagos state development & property corporation v. Foreign finance corporation, it was stated that the notice must specify the purposes cauterized in the Act and failure to do so is however a breach pf Section 33(2) of the Land use act thereby making it unconstitutional.

The leading case of S. O adole v. Boniface b. Gwar states two mandatory requirements of notice and they are;

1. The holder of the right of occupancy must be put on notice
2. The notice must be served to the holder (personally).

In Olateju v. Commissioner for L & H kwara state, it was stated that a publication of the revocation in a gazette is not enough and will not suffice or serve as a personal notice. Ononuju v. A.g. Anambra state states that if notice is not served personally, it does not make the acquisition valid.

Finally, compensation is provided for in Section 29 of the Lnd Use Act which states that an occupier should be entitled to compensation for the value at the date of revocation of their exhausted improvements if the occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of Section 28 of the Land Use Act. The mode of accessing compensation should be the value of the property in the open market.

APPLICATION

With regards to the scenario, the action of the governor is found to be constitutional because he was simply upholding the Quarantine Law, which made an executive order closing down all public places. The leading case here is that of Obi v. Minister, FCT. And the leading section of the Act is Section 28 (5) of the Land Use Act.

CONCLUSION

I would advise Chief Ajah not to contest the Governors action in court as the act is constitutional. However, the best he can do is to seek the assistance of the Land Use and Allocation Committee as stipulated in Section 2 (2) so that the amendment of the Law can be pitched in.