NAME: ZAMANI AMINA

MATRIC NUMBER: 16/law01/210

LEVEL: 400

COURSE: LAND LAW II

TEST

 The first legal issue is whether the act of the government is unconstitutional as to whether the governor had the powers to demolish the property of Mr Ajah.

 The second legal issue is whether Mr Ajah’s claim will be successful in court.

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 REVOCATION OF RIGHT OF OCCUPANCY FOR OVERRIDING PUBLIC INTEREST

 Revocation of the right of occupancy is the right of the governor to withdraw the right of occupancy of a person. Before the right of occupancy of a person can be revoked, it must meet the following three criteria’s

1. There must be purpose

2. A valid notice

3. Adequate compensation

SECTION 28(1) of the Land Use Act provides 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 occupancy. Any revocation by the governor, that does not meet the three criteria’s above would not be considered by the court.

 NOTICE OF CONSENT

Notice is essential before there can be a valid reallocation. S.28(6) provides that the revocation of a right of occupancy shall be dignified under the hand of a public officer duly authorized in that behalf by the governor and notice therefore shall be given to the holder.

In the case of OBI V. MINISTER it was held that the service of of notice of revocation on the holder is a condition precedent to the validity of revocation by virtue if S.8(6) notice of revocation on the holder on the right of occupancy shall be given to the holder. The notice of revocation must be served personally to the holder. It can not be substituted by a general notice published in the gazette or newspaper. A publication of such acquisition can only follow after a personal notice has been given to the holder.

 In ONONOYU V. A.G ANAMBRA STATE, it was held that a publication in the gazette of a notice of revocation without personal service of same on the holder does not make the revocation valid

COMPENSATION

Section 29(1) provides that if a right of occupancy is revoked for the causes set out in paragraph b of subsection 2 of S.28 or in paragraphs (a) or (c) in subsection 3 of the same section, the holder and occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvement.

 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 the loss to the seller must be completely made up to him and that is unless he received a price they fully equaled his pecuniary determinant, the compensation would not be equivalent to the compulsory sacrifice.

The governor has the right to revoke the rights of occupancy if it’s pertaining to public interest as seen in section 28(1) of the Land Use Act but the governor is also to give notice.

 The demolishing was stated as a punishment in the executive order but it is still unconstitutional that the governor did so because it was done without any notice and he didn’t give orders as pertaining to Section 44 of the Land Use Act. Where there is no notice in line with what is provided in Section 44 of the Land Use Act then ones actions are unconstitutional.

1. The second legal issue is whether Mr Ajah’s claim will be successful in court.

Is that Mr Ajah can be successful in his claims and will be given compensation

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CONCLUSION

 The governors actions are seen as unconstitutional, therefore Mr Ajah is entitled to compensation. The quarantine law is not supreme to the land use Act neither is the executive order given by the governor; which did not serve as a notice. The governor after giving the executive order was supposed to follow the procedure in revoking the right of occupancy with a personal notice and therefore failure to do so.