



Power Of A Governor For Compulsory Acquisition Of Land For Public Purpose Under The Land Use Act; A Critical Evaluation

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ABSTRACT

This paper discusses the power of the governor of a state under the Land Use Act to compulsorily acquire land within the territory of his State for overriding public interest/purpose. This power is exerted through the revocation of statutory rights of occupancy of title holders. It centers on the procedures for a valid revocation *cum* acquisition. The paper emphasized that such revocation must be for public purposes and the acquiring authority shall not successfully divert the property for personal or other purposes other than that mentioned. The provisions of the Land Use Act dealing on service of notice of revocation for acquisition was also analyzed. The Act directed that service of notice must be on the person or the title holder and the reason or purpose for the acquisition must be contained in the notice. The paper also evaluated the sections of the Land Use Act and the Constitution dealing on compensation. Compensation was said to be prompt, however, the paper insisted that compensation need not only be prompt, it must be adequate and reasonable. Further to that, it was argued that the definition of compensation by the Constitution and the Land Use Act are pivotal. The paper terminated its discussion with a summary of findings and drew a conclusion with some suggested recommendations

Keywords: Power, Governor, Compulsory Acquisition, Land and Public Propose

1.0 INTRODUCTION

The power of the governor in land administration under the Nigerian property jurisprudence is no longer new. Section 1 of the Land Use Act, vested the power of land administration on the Governor of a state. The section provided thus; subject to the provisions of this Act, all land comprised in the territory of each state in the federation are hereby vested on the Governor of the state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.¹ No doubt, the Act, revolutionized the land tenure system in Nigeria. One of the most profound changes introduced by the Act is the vesting of the radial title in land in every state of the Federation on the Governor of the state with a mandate to hold the land in trust and to administer it for the use and common benefit of all Nigerians in accordance with the provisions of the Act.² Several other sections of

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¹ Land Use Act 1978 s1.

² J Aliu and Others ‘The Operational Framework of the Power of the Governor to Revoke Land for Public Purpose.’ *International Journal of Advance studies in Ecology, Development and Sustainability*. Vol. 2(1) 2014, 53 <[https://www.internationalpolicybrief.orissn\(electronic\):1741ISSN\(pint\):1741-2763.](https://www.internationalpolicybrief.orissn(electronic):1741ISSN(pint):1741-2763.)> accessed 12/12/2022

the Act have equally conferred extensive powers of control and management on the governor over such land including the power to grant right of occupancy to any person for all lawful purposes and to issue certificate of occupancy to evidence same to fix and demand rent including penal rent in respect of land, to enter upon and inspect land comprised on any statutory right of occupancy, to grant license for the extraction from land of building materials not being a mineral within the meaning of the mineral Act and to grant consent for the alienation³

It is pivotal to observe that, one of the most far-reaching powers of control and management of land conferred on the Governor by the Act is the power to revoke rights of occupancy over land or compulsorily acquire land for public purpose under section 28 of the Act.⁴ The section provides thus: It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest: Overriding public interest in the case of a statutory right of occupancy means; (a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of⁵ For decades now, the issue of compulsory acquisition of land has constituted one of the most topical issues confronting Nigeria. The reason for the agitations by land owners each time there is a compulsory acquisition of land is not farfetched as such stems from the fact that whenever land is compulsorily acquired by government, it means that the land will never revert back to the owners.⁶ This is so, particularly when the land has been acquired for public purposes and compensation is paid for the acquisition. This is unlike requisition' of land where even though rent or compensation is paid, it later reverts back to the original owners at the completion of the use or purpose of which it was requisitioned.⁷

Section 29 of the Act made provisions for compensation, in case of revocation of land. The section reiterates that ' if a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 or in paragraph (a) or (c) of the sub-section (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements⁸ Compulsory acquisition of Land for public purposes without adequate compensation is not only unjust but a serious violation of the victims right to property guaranteed under the Constitution of the Federal, the Public of Nigeria 1999 (as amended), and the African charter on Human and People's Rights (Ratification and Enforcement).⁹

It is therefore, observed that the revocation power of the governor of a state under section 28 of the Act is subject to the provisions of Section 29 and 30 respectively. These sections provide for the compensation of persons, communities or corporate institution whose land are compulsorily acquired by the Governor of a state for public purpose. It is no doubt that ownership of property in land is a fundamental right granted under section 43 of the Constitution to wit; subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.¹⁰ No movable property or any interest in an immovable property shall be taken possession compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law that, among other things "requires the prompt

³ *Ibid.*

⁴ (n 2)153.

⁵ LUA s1978 s28(1) – (3).

⁶ S Nwachukwu, 'The Essence of the Land Use Act, 1978. The Abuse and its Impact on the Availability of Land for Housing Development in Nigeria' *Journal of Private and Public Law COOUJPPL* Vol. 2 (1) 2019, <<https://www.nigerianjournalsonline.com>> accessed 11/12/2022

⁷ *Ibid.*

⁸ LUA 1978 s29(1) – (7).

⁹ S Unachukwu, 'The Essence of the Land Use Act 1978, The Abuse and Its Impact on the Availability of Land for Housing Development in Nigeria' *Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public law COOUJPPL* Vol. 2(1) 2019, 4. <[kttps://www.ngierianjournalsonline.com](https://www.ngierianjournalsonline.com)> accessed 11/12/2022

¹⁰Constitution of the Federal Republic of Nigeria 1999 (as amended).

payment of compensation therefore and give to any person claiming such compensation a right of access for determination of his interest in the property and the amount of compensation to a Court of law...¹¹ Similarly, the Universal Declaration of Human Rights, which is the cornerstone of modern interactional human rights law has also made sufficient provisions to guarantee and protect the rights of individual to own and enjoy immovable property. To wit; everyone has the right to own property alone as well as in association with others' and that 'no one shall be arbitrarily deprived his property.'¹² Therefore, in any case of revocation for public purpose, the acquiring authority must maintain and use the land for the purpose for which it was acquired and prompt and adequate compensation must be sacrosanct.

1.1 Conceptual Definitions

1.1.1 Power

Power is the ability to accomplish something. Whether the desired outcome is reached through collaboration, influence with or without authority, inspiration or sometimes, direct request to achieve a goal. The ability to act or not act, especially, a person's capacity for acting in such a way as to control (Someone else's) responses. It is the legal right or authorization to act or not act, a person's or organization's ability to alter by an act of will, the rights, duties, liabilities, or other legal relations either of that person or another.¹³ The right, ability, or capacity to exercise control, legal authority, capacity or competency, particularly authority to do some act in relation to lands, as to create estate therein or charges thereon Ability to act, potency, specifically, the property of a substance or being produces change, moral or physical.¹⁴ Power, is also the authority or capacity to act that is delegated by law or constitution.¹⁵ The legal authority to act in a specified capacity for another. It is the ability or capacity to perform or act effectively.¹⁶

The combined effect of the foregoing definitions, describes power as the capacity or ability to direct or influence the activities or behaviour of others. It could also influence the course of events. When power is very strong or excessive, it transforms into might. Power is exerted by a person authorized by the law or constitution to direct the affairs of an institution, organization, a community, region or state respectively.

1.1.2 Governor

In some systems of government, a governor is a person who is in charge of the political administration of a region or state.¹⁷ A Governor can be said to mean a chief executive officer of a state.¹⁸ Governor is one who governs; especially, the chief executive official of a state or colony.¹⁹ The Land Use Act defined Governor as "The governor of the state concerned."²⁰

A governor is a person directly elected by the people and in most cases have considerable practical powers. He heads the executive branch in each state depending on the individual jurisdiction with considerable control over government budgeting and the power of appointing many officials including judges.²¹

The foregoing definitions presupposes that a governor is a political leader charged with the responsibilities to govern or direct the affairs of a state, colony or region as the administrative head. In

¹¹CFRN s44(1).

¹²UDHR, Article 17(1) & (2).

¹³ B A. Garner, *Black's Law Dictionary* (8th ed. Thomson Business US, 2004) 207.

¹⁴ Allen W. R. and Others; *The New International Webster's Comprehensive Dictionary of the English Language* (Encyclopedic Edn. Typhoon International, 2004). 990.

¹⁵ Meriam – Webster's Unabridged Dictionary <https://www.meriam-webstar.com>. Accessed 11/12/2022

¹⁶ (n 2).

¹⁷Collins English Dictionary <<https://www.collinsdictionary.com>> accessed 11/12/2022.

¹⁸ B A. Garner, *Black's Law Dictionary* (8th edn. Thomson Business US, 2004) 717.

¹⁹ W R.Allen and Others, *The New International Webster's Compressive Dictionary of English Language* (Encyclopedia edn. Typhoon International US, 2004) 547.

²⁰ Land Use Act 1978 s51(1).

²¹ (n 2).

most jurisdiction or countries, the governor is usually elected through electoral processes by winning the vote of majority.

1.1.3 Compulsory Acquisition

There is no dictionary definition of the phrase compulsory acquisition as they are two distinct words. The Black's Law Dictionary defines the term compulsory as "Mandated by legal process or by statute."²² In the same vein, the term "Acquisition" has been defined as "the gaining of possession or control over something."²³ Compulsory acquisition is a situation in which the seller and the buyer of the land are forced into the market to effect land transaction, against the wish of the former. In a compulsory acquisition situation, the landowner is compelled by law to surrender and part with the ownership of his interest in favour of the acquiring authority on terms dictated by the Law. The prior consent of the land owner is neither sought nor obtained to acquisition transition even when as often happens, such acquisition apart from dispossessing the owner imposes very serious headship on him, such as the total extinguishment of his business or means of livelihood.²⁴ Under the Indian Land Acquisition Act, if in the opinion of the central government any land is required for the purpose of development, for any other purpose under this Act the central government may acquire such land under the provisions of this Act.²⁵ It is therefore observed that, compulsory acquisition is the process through which the government acquires land from private land owners, which required for any public purpose. The purpose, must be beneficial to the economic development of Nigeria. The exercise is carried out without the willing consent of the lands owner or its occupants.

1.1.4 Land

Land is an immovable and indestructible three-dimensional area consisting of a portion of the earth surface, the space above and below the surface, and everything growing on or permanently affixed to it.²⁶ A judicial definition was given by the Supreme Court of Nigeria per *Adio*, JSC, in the case of *Salami v. Gbodoolu*²⁷ where the learned justice observed; "The word land" in its ordinary meaning, means any ground, soil or earth or the solid part of the earth's surface as distinguished from the sea". Real property, real estate and all that grows thereon, and the right to minerals underneath and the air space over it. It may include improvements like buildings, but not necessarily.²⁸ Section 78 of the Interpretation Act²⁹ provides *inter alia* "Land" includes any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include mineral. The combined effect of all the definitions reiterated above intends to establish the fact that land includes the earth, its surface, underneath, the space above. This is arguably pointing to the fact that minerals are inclusive.

1.1.5 Public Purpose

The Black's Law Dictionary defines public purpose as "an action by or at the direction of a government for the benefit of the community as a whole."³⁰ Under the Land Use Act, public purposes includes;

- (a). For exclusive Government use or for general public use,
- (b). For use by anybody corporate directly established by law or by anybody corporate registered under the Companies decree 1968 as respects which the Government owns shares, stocks or debentures.
- (c). For or in connection with sanitary improvements of any kind,

²² (n 18) 305.

²³ *Ibid*, 25.

²⁴ (n 2).

²⁵ Land Acquisition Act (1) 1894.

²⁶ (n 18) 892.

²⁷ (1997) 4 NWLR (pt. 499) 277.

²⁸ Gerald and H Kathleen, 'Interest' legal Dictionary, 2022 <<https://www.dictionary.law.com>>accessed 19 November 2022.

²⁹ Interpretation Act 1964, Cap. 123 LFN, 2004.

³⁰ (n 18)1267.

- (d). For obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government.
- (e). For obtaining control over land required for or in connection with development of telecommunications or provisions of electricity.
- (f). For obtaining control over land required for or in connection with mining purposes... planned urban or rural development, economic industrial or educational services.³¹

Aliu, opines that the definition of public purpose as contained in the land Use Act is similar to that of Florida Law, it carries several different meaning and in using it as a standard for the determining the limits of governmental actions, offers different levels of protection of property and money of private business individual....³² In essence, it does not matter if a private business made private gain from acquisition for private purpose, all that matters is that the public must be beneficial to all.³³

Public purpose, therefore is a governmental action or direction that purports to benefit the populace as a whole. It can as well be referred to as the purpose of providing facilities or services for the benefit of the public in connection with public health, safety, welfare or industrialization, Agricultural production, educational or urbanization. It is an action, which is elementarily earned at benefiting and/or promoting the citizens of a particular region state or colony.

2.1 Power of Governor of a State to Compulsorily Acquire Land

It is no longer news that under the Land Use Act, land in state territories are vested on governors, Governors have a lot of power to exercise in course of managing and administering the entire land in its state territory to the benefit of every Nigerian. The law is trite that the Governor of a state has power to grant.³⁴ And to revoke statutory right of occupancy³⁵ respectively. Understanding the powers of a Governor over land will help us find and ascertain the limits to their powers (especially as it affects compulsory acquisition and compensation).³⁶ A state governor has powers to revoke grants of rights of occupancy made by him or his predecessors. Failure to observe terms and conditions of a grant, failure to observe terms and conditions of a grant, failure to pay rent, or the use of land against its specified purpose or the need of land by government for overriding public interest and all possible grounds for revocation of grant.³⁷

No doubt, it is a constitutional right to own and use land and landed property in any part of Nigeria irrespective of our tribes, colour, birth, religion, political parties and social status.³⁸ Subject to the provisions of the Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.³⁹ Notwithstanding the guaranteed right to own immovable property, the law still empowered the Governor of a state to revoke such right for the purpose of acquisition for public purpose. Section 28 of the Act⁴⁰ provided thus;

³¹ LUA 1978, s50.

³² (n 2) 156.

³³ *Ibid.*

³⁴ LUA 1978, s 22.

³⁵ LUA, 1978 s28.

³⁶ O Umah , ‘Legality of Governments Compulsory Acquisition of Land and Payment of Compensation’ *Sabilaw* 2016 <<https://www.sabilaw.org>> accessed 13/12/2022.

³⁷ *Ibid.*

³⁸ *CFRN* s34.

³⁹ *Ibid*, s43.

⁴⁰ LUA 1978.

It shall be lawful for the Governor to revoke a right of occupancy for overriding public interests. Overriding public interest in the case of a statutory right of occupancy means; the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right to occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder; the 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 purposes of the Federation; the requirement of the land for mining purposes or for oil pipelines or any purposes connected therewith. Overriding public interest in a case of a customary right of occupancy means; requirement of the land by the government of the state or by local government in the state, in either case for public purposes within the State ...⁴¹

The foregoing provision of the Land Use Act presupposes that revocation power has been vested on the governor of a state to compulsorily acquire land and landed properties for the use of either the state, local government or the government of the Federation. It can as well acquire land for the purpose of mining and oil pipelines or purpose connected therewith. It must be emphasized that this power vested on the governor must be observed in the manners and procedures provided under the Act.

In the same vein, it has been observed that there cannot be a valid acquisition when the processes and procedures are violated by the acquiring authority. In the case *Gold Mark (Nig.) Ltd. v. Ibafor Co. Ltd.*,⁴² the Court held that there is no doubt, the government has the power and authority to acquire land compulsorily for public use, however, such power is exercisable in accordance with the proper procedure for acquisition, that is proper notice must be given to the owner of the land and reasonable compensation must be paid.⁴³

3.1 Overriding Public Purpose under the Act to be Maintained by Acquiring Authority

When a land or lands are acquired for public purpose, it is important for the government or acquiring authority to specify the very reason or purpose of such acquisition. Simply put, public purpose means the acquisition of privately owned or individual's land for the use of the government for the benefit of the state. Thus, when an individual's right in land are being revoked for the purposes of using it for community projects, then it can be said that such land has been acquired for public purpose. In such acquisition, government must show that such land is being acquired for public use and such land cannot be used for individual or personal benefits.

The Land Use Act provided thus:

Overriding public interest in the case of a statutory right of occupancy means, the alienation by the occupier ... the requirement of the land by the Government of the state or by the Local Government of 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 purposes of the Federation; the requirement of the land for mining purposes or oil pipeline or for any purposes connected therewith...⁴⁴

⁴¹ LUA 1978 s28 (1), (2) & (3).

⁴² (2012) 10 NWLR (PT. 1308)

⁴³ *Ibid.*

⁴⁴ LUA 1978 s28 (2) & (3).

The forgoing presupposes that public purpose arises when a Local, State Government or Government of the Federation requires land for use of development and the benefit of members of the society. When it comes to defining public purposes, there is great variety among national laws in the extent of specificity. In some countries, laws provide an itemized list of land uses that fall within the definition of public purposes such list includes;

Transportation uses including road, canals, high ways, railways, bridges, wharves and airports; public buildings, including schools, libraries, hospitals, factories, religious institutions and public houses; public utilities for water, swage, electricity, pass, communication, irrigation and drainage, dams and reservoirs; public parks, play grounds, gardens, sports facilities and commentaries...⁴⁵

Similarly, the land use Act gave sufficient definition of the phrase public purpose, to wit;

Public purposes includes, for exclusive use of for general public use; for use by anybody corporate registered under the companies and Allied Matters Act as respects, which the Government owns shares, stocks or debentures; for or in connection with sanitary improvements of any kind; for obtaining control over land contiguous to any part or over land the value of which will be enhanced by eh constitution of any railway, road or other public work or convenience about to be undertaken or provided by the Government; for obtaining control over land required for or in connection with development of telecommunications or provisions of electricity; for obtaining control over land required for or in connection with mining purpose; for obtaining control over land require for or in connection with planned urban or rural development or settlement; or obtaining control over land required for or in connection with economic industrial or agricultural development; for educational and other social services.⁴⁶

In *Ajibulu v. Lawson & Ors*,⁴⁷ the respondent's land was acquired by the Ogun State Government and later granted it to the 2nd appellant, a private company, the court held that compulsory acquisition of the respondent's land only for the purpose of transferring it to the 2nd appellant (a private company) is invalid and not for a public purpose, notwithstanding that the 2nd appellant used the land in carrying out Economic, Industrial and Agricultural Development same government activities. The position of utilizing the purpose it was acquired, was canvassed in the case of *Akinde & Ors v. Government of Nigeria & Ors*,⁴⁸ in this case, the disputed land was acquired for Federal Low Housing Scheme. The original scheme was abandoned and another, a "sight and service" scheme was introduced. It was held that since the land could no longer be utilized for the reason it was acquired, that it is, the Federal Government Low-Cost Housing Scheme, the Defendant ought to have returned same to the plaintiffs.

The forgoing implies that where land is acquired for any public purpose and subsequently granted to a private company to execute a project at a profit for the government. It could still be considered invalid. In effect, when there is failure of purpose for acquisition, the acquired land reverts to the original owner. This failure of purpose could arise in many ways. It could be said to have arisen where portion of the acquired was used for the public purpose and the remnant shared by the acquiring authority to their

⁴⁵ J M. Lindsay, 'Compulsory Acquisition of Land and Compensation', PPP In Infrastructure Resource Center for Contracts, Laws and Regulation (*PPPIRC*) 2012; 2, <<https://www.worldbank.org/pp>> accessed 13/12/2022.

⁴⁶ LUA, 1987, s 51(1).

⁴⁷ (1991) 6 NWLR (pt. 195) 44.

⁴⁸ (2007) Unreported, suit no. FHC/L/CS/629,198.

cronies or other private industries. In *Olatunji v. Military Governor of Oyo State*,⁴⁹ the Court of Appeal, per Salami JCA, held among other things that the acquiring authority is required to state one or a combination of the public purposes for which the land was being acquired in his notice to the holder of a right of occupancy to enable the holder or occupier to challenge the acquisition, the court went further to state that it is not for an individual to speculate or presume that his land is being acquired for public use, he must be notified as to why his land is being acquired by the government.

Umah⁵⁰, reiterates that, “Overriding public interest is the sole and only purpose under the Land Use Act, upon which a Governor can compulsorily acquire land of any person. Unfortunately, the interpretation of the words “public purpose” is too wide that many undemocratic governors have hibernated under them to windup businesses of their opponents and enrich their own personal businesses.”⁵¹

4.1 Requirement for Services of Revocation Notice Under the Land Use Act

One of the most important legal means of revocation of statutory right of occupancy and a legal means of compulsory acquisition for public purpose is the issuance of notice on the possessor of the property and/or holder of the right of occupancy. The reason for the revocation notice is to notify the possessor of the right of occupancy that the process to extinguish his said right of occupancy has commenced. This being the case, there cannot be a valid compulsory acquisition of land without a “notice” to the holder of the right of occupancy. Under the provision of the Act.⁵² The 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. The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) of this section or on such later date as may be stated in the notice.⁵³

The combined effects of a provisions of the subsections reiterated above is that mere receipt of a notice for revocation to compulsorily acquire the property wherein he/she holds a statutory right of occupancy extinguishes the right. Although this is in conflict with the express provision of the constitution as regarding prompt payment of compensation.⁵⁴ Be that as it may, the law has laid down the procedures with which notices can be said to have been properly and effectually served and received by the holder of the statutory right of occupancy. The Act provided thus;

Any notice required by this Act to be served on any person shall be effectually served on him(a) by delivering it to the person on whom it is to be served; or (b) by leaving it at the usual or last known place of abode of that person; or (c) by sending it in a prepaid registered letter addressed to the person on his usual or last known place of abode; or (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office, or (e) if it is not practicable after reasonable inquiry to ascertain the name or address of holder or occupier of land on whom it should be served, by addressing it to him by the description of “holder” or “occupier” of the premises (naming them) to which it relate, and by delivering it to some person on the premises or, if

⁴⁹ (1994) LCN/029(CA).

⁵⁰ (n 36).

⁵¹ (n 36).

⁵² LUA, 1978.

⁵³ LUA 1978, s28 (6) & (7).

⁵⁴ CFRN, s44.

there is no person on the premises of whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.⁵⁵

This statutory provision has been given a judicial confirmation in Pretoria of judicial authorities by Nigerian Courts. In *Goldmark's* case,⁵⁶ the court held that before there can be effective and/or valid acquisition, there must be sufficient notice given to the occupier of the land and swift payment of a reasonable compensation. The two conditions precedent are sufficient notice and payment of a reasonable compensation. Where the government disobeys the law by not complying with the laid down procedures for the acquisition of property such acquisition is void and it is the duty of the Court to intervene between the government and the private citizen.⁵⁷ In *Ononuju v. AG Anambra State*,⁵⁸ the Court held that a publication in the gazette does not constitute sufficient notice. There must be personal service served on the affected person.

Similarly, in *Olatunji v. Military Governor of Oyo State*,⁵⁹ the Court held that the requirement that acquisition of private lands should be published in the national gazette only constitutes notice to the whole world cannot be taken as a substitute for the notice to be given to the individual owner of the land. Thus, nothing can waive the requirement of personal notice to the individual owner of the land compulsorily acquired. It should also be noted that such a notice to the individual land owner must be personally served on the individual concern.⁶⁰

The implications of the statutory provisions and vis-à-vis the judicial interpretations are that a valid revocation of a right of occupancy and the eventual compulsory acquisition or the property attached thereto requires compliance as to serve of notice of revocation personally on the land owner, holder of right of occupancy or occupier. It is trite to assert that mere publication at the national or state gazette cannot surface as a valid notice for the purpose of revocation and acquisition. In fact, the purpose of acquisition has to be stated on the notice of revocation that is to be served on the property owner.

In *Asho v. Foreign Finance*,⁶¹ The supreme Court held that the notice of revocation not having been duly served on the plaintiff was invalid. Similarly, in *Nitel v. Ogunbiyi*,⁶²

in this case, a notice of revocation was issued by the Kwara State Government, it purportedly acquired the respondent's large tract land adjacent to the General post office for the objective of construction of telephone exchange building for the appellant. The respondent had four structures on the said land and at the material times resident in Lagos, a Fact which the appellant conceded. The notice of acquisition was not serve on the respondent in Lagos where he resided but was posted on the building. The respondent thereupon instituted an action challenging the validity of the said acquisition and averred that since the service of the notice was not personal, the revocation was invalid and acquisition illegal. The Nigerian Court of Appeal upheld the respondent's claim that the right was not properly revoked as laid down in section 28(6) LUA. Achike J.C.A, insists that the condition of section 28(6) is that a notice of revocation or conciliation of the right of occupancy should be served personally on the holder any such notice purporting the revoke right of

⁵⁵ LUA 1978, s44.

⁵⁶ (2012) 10 NWLR (pt. 1308).

⁵⁷ (n 56)

⁵⁸ (2009) 10 NWLR (Pt. 1148) 182

⁵⁹ (1994) LCN/029(CA).

⁶⁰ *Ibid.*

⁶¹ (1991) 4 NWLR (Pt. 184) 157

⁶² (1992) 7 NWLR (Pt. 255) 543

occupancy by any officer duly authorized by the Governor is ineffectual if it fails to comply with this requirement.⁶³

In the recent Court of Appeal case of *Donli v. Abdulahi & Ors.*⁶⁴ the appeal which borders on the revocation of the statutory right of occupancy is against the judgment of the High Court of the Federal Capital territory Abuja. Hama Akawu Barka JCA, has this to say ... there can be no valid revocation of the right of occupancy where the holder has not been personally served ...⁶⁵ Also, in the case of *Orianzi v. AG Rivers State & Ors.*⁶⁶ the Supreme Court affirmed that the title holder is not only entitled to notice of the proposed revocation with the public purpose for the revocation clearly spelt out therein, he is also entitled to be heard on the proposed revocation of his title. Even where no label of judicially or quasi judicially may be placed on the governor to so act, his duty to act fairly cannot be denied since he has a duty to give notice of the intended revocation wherein he must spell out the public purpose of the intended revocation to the title holder.⁶⁷ In the case of *S.Adole v. Boniface*,⁶⁸ it was held that by virtue of section 28 of the LA, where title to a piece of land is revoked, it is mandatory to put the title holder on notice about the revocation. Therefore, notice of revocation of title and service of such notice to the title holder are therefore mandatory requirements that have to be strictly complied with.

The foregoing presupposes that personal service of notice of revocation and compulsory acquisition on the holder of a right of occupancy on the intention of the acquiring authority to compulsorily acquire his property and reason for the acquisition is to say the least a condition precedence for a valid acquisition.

5.1 Compensation to be Prompt and Adequate

The concept of compensation is quite pivotal when the issue of revocation is put under consideration. Compensation has been part of our land jurisprudence over some decades. It is not just a constitutional right of Nigerian citizens, whose properties are being compulsorily acquired, but it is global right. Under the American Convention on Human Right, it is provided that, "Every one whose right to use and enjoy property is deprived for reasons of public utility or social interest shall be entitled to payment of just compensation."⁶⁹ In Nigeria, no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigerian except in the manner and for the purposes prescribed by a law that, among other things; requires the prompt payment of compensation thereof; and gives to any person claiming such compensation a right of access for the determination of his interest in the property and amount of compensation to a Court...⁷⁰

The Nigerian Land Use Act provides as follows;

If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 of this Act or in paragraph (a) or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 of this Act or in paragraph (b) of subsection (3) of the same section the holder and the occupier shall be

⁶³ *Ibid.*

⁶⁴ (2022) LPELR – 58570(CA).

⁶⁵ *Ibid.*

⁶⁶ (2017) LPELR - 41737(SC) 78.

⁶⁷ (n 66).

⁶⁸ (2008) 11 NWLR (pt.1099) 562.

⁶⁹ ACHR 1968, Art. 21.

⁷⁰ CFRN, s44(1).

entitled to compensation under the appropriate provisions of the Minerals and Mining Act or the Petroleum Act or any legislation replacing the same.

If the holder or the occupier entitled to compensation under this section is a community, the Governor may direct that any compensation payable to it shall be paid-

- (a) to the community; or
- (b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or
- (c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.

Compensation under subsection (1) of this section shall be, as respects-

- (a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;
- (b) buildings, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement,⁷¹

The provision of the Act above emphasis on the unexhausted interest. However, there are no exhaustive parameters for which the court's compensatory orders could be based. Each case must be determined on its on strength. Judging from the provision above, a victim of land revocation is just at the mercy of the acquiring authority to determine and pay what it determines the value of the unexhausted improvement on the land to be. Conversely, the Constitution, which is the *grund norm*, has graciously provided a latitude for a better amount of compensation payable upon acquisition, the right to access court on questions regarding the quantum of compensation to be paid is also provided.

In *Amale v. Sokoto State Government*,⁷² the appellant's land and moveable properties situated at Koferkada, Kama market in Sokoto Metropolis were compulsorily acquired by the then military Governor of Sokoto State for the purpose of expanding the cattle (Kara) market by the Sokoto Local Government. The appellant was offered compensation for the acquired land but he refused to collect it. He then brought up an action for infringement of fundamental human right. On appeal, the court held that the revocation of the appellant's statutory right of occupancy was legal and could not constitute an encroachment of his fundamental right. *Fabiy*, JSC held that; the provisions of section 44(1) and (2) are very clear an unambiguous. It gave a right to action to an aggrieved party whose property was compulsorily acquired without complacence with the provisions of the section. Where, however, the acquisition complied with the provisions of the section, no cause of action accrued to the aggrieved party as such action would not be legal in the eyes of the law.

5.1.1 Prompt Compensation

Compensation is an integral part of the process of compulsory acquisition of land in Nigeria, it is important and cannot be overemphasized as a failure to compensate the occupier renders the acquisition a nullity. Whereas the Land Use Act provided that compensation should be paid to the holder of a right of occupancy whose property is compulsorily acquired for public purpose.⁷³ The Constitution provides that no immoveable property or any interest in any immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in an part of Nigeria... requires the prompt payment of compensation therefore....⁷⁴ Section 44 of the 1999

⁷¹ LUA 1978 s29.

⁷² (2012) 5 NWLR (pt. 1292) 201.

⁷³LUA 1978 s28.

⁷⁴ CFRN s44(1)(a).

Constitution of the Federal Republic of Nigeria (as amended) provided that no individual land should be acquired without compensation. The payment should as well be prompt and not delayed unnecessarily.⁷⁵ In *National University Commission v. Oluwo*,⁷⁶ the court stated that the rights of an individual to acquire property anywhere in Nigeria is enshrined in the Constitution and it carries with it the right to dispose such properties. Thus, any individual whose land the government compulsorily acquired is entitled to prompt payment of reasonable compensation.⁷⁷

The implication of the provision reiterated above is that the compensation has to be prompt, meaning it has to be paid on time as at when necessary to compensate for the loss and also adequate as against the provisions of the Land Use Act, which provides that service of notice of revocation extinguishes the statutory right of occupancy held by the holder.

5.1.2 Adequate Compensation

Another important issue that should be examined is whether compensation or resettlement as stipulated in the LUA is adequate or not. The Act did not clearly state what constitute an adequate compensation, hence the land owner is at the mercy of the acquirer, to determine what he thinks is fair and adequate for the acquisition. The compensation due is the sum equivalent to rent paid by the occupier when the right of occupancy is revoked.⁷⁸ This means that if a person paid no rent, he is not qualified for compensation but his piece of land is taken away compulsorily' by the government. The implication of this provision is that compensation cannot also be paid for bare land. This is inadequate. Compensation should be calculated on the basis of what would have occurred had the land not been acquired. In *Lemboye v. Ogunsiji*,⁷⁹ the Court of Appeal declared that section 47 of the LUA does not have same legislative force as section 236 of the 1979 Constitution (section 272 of the 1979 Constitution) on the strength that the Act is an existing law which cannot be inconsistent with any of the provisions of the Constitution.

If the Constitution section 44(1) provides for compensation of both movable and immovable property, and bare land is an immovable property, then compensation should be paid for its acquisition.⁸⁰ Regarding buildings, installations and improvements in the land, the compensation to be paid is the cost of replacement as determined or assessed by the designated officer minus the depreciation plus interest at the current bank rate for any delay in compensation. This will only be adequate if the officer that determined the cost of replacement adopts the current market value of such property. Regarding, crops on in the land, the compensation to be paid is a sum equal to the value determined by the designated officer.⁸¹

This also is not adequate. It is suggested that an alternative land should be provided in addition to payment of the crops. This is fair enough or else many farmers will be displaced and sent out of job where they are not provided with any other alternative and this can lead to social upheaval. This may be important in encouraging agriculture. Generally, it is, suggested that, compensation should be paid for loss of use of a right of occupancy and for "disturbance" for all the instances of section 29(4) of the LUA. On the issue of resettlement of displaced persons, where land in respect of which a customary occupancy right is revoked and the land was utilized for farming purposes by the possessor, he is eligible for another land for the purpose.⁸² People should be compensated for disturbances and disruption including removal expenses and other cost which results from the compulsory acquisition process. In *Makun v. Federal University of Technology Mina*,⁸³ the appellant had sued the respondents among other things for an order

⁷⁵ Resolution Law Firm, 'Overview of Compulsory Acquisition of Land in Nigeria by Government' (2021), *mondaq*, <<https://www.mondaq.com>>

⁷⁶ (2001) 3 NWLR (Pt. 699) 90.

⁷⁷ *Ibid.*

⁷⁸ LUA s29 (4) (a).

⁷⁹ (1990)6 NWLR (pt. 155) 210.

⁸⁰ E Emudainohwo, 'A Critical Appraisal of the Method of Revocation in the Nigerian Land Use Act and Government's Compliance' *Baijing Law Review* Vol. 12 (3), 2021. <<https://www.scirp.org>>

⁸¹ *Ibid.*

⁸²(n 75).

⁸³ (2011) LPELR-SC241/2002.

to pay certain sum of money being the balance due to the appellant for the compulsory acquisition of their land for public purpose. One of the issues formulated for determination at the High court was whether sections 38 and 47(2) of the LUA holds the jurisdiction of the High Court as to the relief of the appellants. Clearly, this case was a matter boarding on the quantum of compensation payable under the Act and covered b sections 2(2)(c), 30 and 47(2) of the Act. However, the appellant claims were dismissed by both the Appeal Court and the High Court based on the doctrine of *res justicata* having established that there were two earlier cases where the parties had issues and the subject matter was the same. Unfortunately, the Supreme Court also agreed that the Appeal Court lacked merit based on the same doctrine.⁸⁴

Furthermore, where the occupancy right of any land on which a residential building is erected is revoked the government (local or governor) may instead of compensation resettle the holder on any other land as alternative accommodation.⁸⁵ While it is agreed that alternative accommodation may prevent homelessness, this is not adequate because where the price of the land stipulated for resettlement is less than the acquired land, no reimbursement to the displaced person, that is, the LUA is silent on cases when value of the land for resettlement is less than the acquired land.⁸⁶ In other words, where the land for resettlement is of higher value, the displaced person is required to pay the “excess value” as a loan.⁸⁷ One worrisome aspect of the LUA is the prohibition of the courts in the determination of the adequacy or otherwise of the compensation payable.⁸⁸ Any dispute between the “occupier” or “holder” and the government regarding compensation payable is determined by the Allocation Committee.⁸⁹ Glad enough the courts have extricated itself from this provision and have consistently held that the ouster clause in section 47 of the LUA is so far as it conflicts with the Constitution is void. In the case of *AG of Bendel State & Anor v. Aideyan*,⁹⁰ the Supreme Court while commenting on the inviolability of the right to own property by the citizens remarked that such property can only be compulsorily acquired under the law and that a law must provide for the payment of adequate compensation to the land owner.⁹¹

6.1 Summary of Findings

The power of the Governor for revocation of statutory right of occupancy is a practice under the Nigerian property jurisprudence. This practice was invented into the legal system by the Land Use Act 1978. The Act provided for processes and procedures to regulate the powers of the Governor to administer land within the state’s territory. The paper reveals the following;

- a. A state governor can actually revoke a statutory right of occupancy from a title holder. It does not necessarily matter whether the person is up to date in compliance with his obligations as a title holder under the Act. Once the land is marked as part of one which is to be used for public purpose, the Governor has the power to issue notice and effect revocation.
- b. It was found that the public purpose must be of benefit to most if not all the citizens, to wit; infrastructural development, roads, railways, airports, sewages, canals, public parks, educational institutions, health facilities or urbanization of an area of the community including police or military base or Federal or State low cost housing scheme.
- c. The paper observed that if a property is acquired for public purpose and is not utilized for such purposes, it shall revert to the title holder whether or not the process of compulsory acquisition

⁸⁴(n 83).

⁸⁵ LUA 1978 s33

⁸⁶ LUA 1978.

⁸⁷ LUA 1978, s33(2).

⁸⁸ LUA 1978, s47(2).

⁸⁹ LUA 1978, s30 & 47.

⁹⁰ (1989) NGSC 42.

⁹¹ *Ibid.*

- was already concluded by the acquiring authority. The implication is that the whole process of such acquisition is a nullity as the essence for which it was done is not actualized.
- d. Neither the Land Use Act 1978 nor the Constitution of the Federal Republic of Nigeria 1999 (as amended) considered that the title holder, whose land is compulsorily acquired for public purpose should be reasonably or adequately indemnified or compensated. Although, both legislations made mention of compensation, however, there was no reference as to the quantum or amount of compensation payable. Section 44 of the Constitution recommends compensation for both moveable and immovable properties affected or lost in course of the acquisition.
 - e. The Land Use Act in section 47(2) attempted to oust the jurisdiction of the court on matters relating to the extent or amount of compensation and matters related thereto. The 1999 Constitution insist that there must be prompt compensation for a compulsory acquisition process to be valid. This being the case, a holder of the right of occupancy still retains his title, unless and until he is indemnified.
 - f. The Land Use Act provides that mere service of the revocation notice on the title holder, extinguishes his right of occupancy. It was further revealed that there cannot be a valid revocation process without serving the title holder with the notice of revocation personally. The notice to be served on the holder of right of occupancy must state clearly the public purpose for which the revocation or acquisition is intended for. Publication on government official gazette is not a sufficient service of notice of revocation or compulsory acquisition.

6.2 Conclusion

This paper examined the power of the governor of a state to compulsorily acquire land for public purpose. It evaluated the provisions of the Land Use Act 1978, the Constitution of the Federal Republic of Nigeria 1999 (as amended) and several other legislations. Sections 28, 29, 33, 35 and 44 of the Land Use Act, which deals on revocation, compensation, resettlement option and service of notices were evaluated. In the same vein was section 44 of the Constitution which provides for prompt compensation of revocation victims and also protects the rights of the victims to seek redress in Court of Law.

From the foregoing, no doubt, the Governor has the constitutional right to acquire property for public purposes. Be that as it may, in many instances the government and its acquisition departments do not comply with the laydown procedures for acquisition of property whether from private individuals or communities. In several instances the government can acquire people property in disguise of public purpose and turn back to utilize it for personal interest or even gift them to their cronies.

It has been repeatedly argued that, the government always pay inadequate, insufficient and unreasonable compensation. Some, insist that, they will only pay for the improvement on the land. Most time they decide who does the valuation and amount that they can pay. However, in actual legal sense, the Constitution provides that both moveable and immovable property should be compensated for, that being the case, acquiring authorities ought to pay adequately and reasonably. Considering the meaning of the word compensation, which means to put the victim back in its place before the acquisition. The government should consider that amount of money to fix the acquisition victim back to their original state is far more than the cost of their improvement on the land.

Finally, it is observed that proper notices are not being served on title holders. At times, even when they are served, the notice will not contain certain important elements, like purpose of revocation and date within which the notice and acquisition formalities shall elapse. Ideally, relying on the provisions of section 44 of the CFRN 1999, compensation ought to have been paid before acquiring authority can take over the property.

6.3 Recommendations

1. The amendment of the Land Use Act is inevitable, to provide for prompt and adequate compensation of victims of revocation for compulsory acquisition. The amendment should allow full participation of the title holders in the process of acquisition. That is, they should have the opportunity to value

their property and determine what should ordinarily be the amount suitable to indemnify them for their losses.

2. The reversion of section 44 of the Land Use Act, to allow holders of statutory right of occupancy whose properties are acquired, the right to access the court of law for the determination of the amount of compensation due to them and the method or yardstick for valuation of the lost properties, both moveable and immovable.
3. The revision of Land Use Act, to include that when the public purpose for which acquisition is done fails, the property should revert to the title holders. It is also necessary to be certain without ambiguity that mere receipt of revocation notice cannot extinguish the right of occupancy and that notice must state the purpose of revocation. Personal service of notice on the title holder should be self-explanatory under the Act.
4. Section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provided for prompt compensation, should as well include that compensation be adequate. The section should define compensation and provide for the procedures to adopt in land acquisition in order to comply with prompt payment of compensation before dispossessing the land owners and occupiers of their interest.