

STATE INTERVENTION IN LAND HOLDINGS IN NIGERIA: AN APPRAISAL OF THE LAND USE ACT 1978

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Abstract

This paper examines the ample power and duties of a state Governor as prescribed by the Land Use Act 1978 (Cap. 202, L.F.N.1990). The powers and duties were accorded the Governor to enable him to effectively control and manage the land in his state. This position is taken by the legislature in order to make land acquisition easy for prospective investors, and for agricultural, industrial and residential purposes. To this end, all land comprised in the territory of a state has been vested in the governor, in trust, to be administered for the use and common benefit of all Nigerians. These powers and duties so vested in the Governor are not absolute. The Governor must act in accordance with the provisions of the Act. The paper concludes through exiting case laws that the courts have taken a firm stand by declaring any act of a state governor which is contrary to the provisions of the Act invalid. The paper therefore recommends that it is only by strict adherence to the provisions of the Act to achieve its objectives. It is also recommended that the court should invoke its equitable and inherent jurisdiction to allow the provisions of the Act to be effective. This will in no small measure whittle down the inadequacies and deflects in some provisions of the Act.

Introduction

The land use Act 1978 permeates every sphere of human endeavour ranging from Public Administration to Law. It is an aspect of state intervention in land holdings in Nigeria with particular emphasis on the powers and duties of the state Governor. Although certain powers are also granted to local governments in respect of same, we shall however in this paper limit ourselves to a review of the powers and duties of the state Governor. To that extent, the work will not concern itself with an elaborate examination of the entire provisions of the Act, but essentially with those provisions which vest in the Governor certain powers and duties. The major objectives of this work, therefore, is to consider the modalities in which proprietary rights in land has been transferred to the Governor of each state by section 5 of the Act. The methodology adopted here is to examine the provision of the Act with particular reference to the existing practiced by Nigeria courts in handling actual cases touching on the title to land and the approach of the arms of government which are charged with the implementation of the provision of the Act. The aim here will be to see to what extent the actual precepts confirm the theoretical position put forward by some of our courts. This paper concluded that the Governor of a state is vested with ample power to control and manage land in his state, but the same Act imposes certain duties which ensures the proper administration of the land in the state. The Governor therefore must act in accordance with the strict provision of the Act.

The Act in Perspective

The land Use Act which came into force on March 29, 1978 was promulgated by the then Federal Military Government. The prime purpose of the Act is to make land acquisition easy for prospective investors, and for agricultural, industrial and residential purposes (Cap 202, LFN, 1990). To this end, all lands comprised in the territory of a state is vested in the Governor who is to hold such land in trust, and administer it for the common use and benefit of all Nigerians.

Before 1978, various property rights were vested in various units of land holding; the family, community and the individual. All the units of land-holdings have alienable interest in land. An individual is free to deal with his land in the way he likes without causing injury to the members of the public. He can therefore sell, pledge or loan the land. He can also enter into tenancy agreements or mortgage his land without the consent of any body. (Felemo, 1989:24). In the case of a community or family land, the mode of alienation is regulated with laid down principles. In order to confer a valid or

at least a voidable title or interest in land, the consent of all the members of the family or the principal members of the family or at least the head of the family must be obtained (Atake, 1989, 86-87).

To achieve the purpose of the Act, there is a need for the government to control and manage land. The Governor, under the Act is vested with certain powers and duties to effectively control and manage all lands in the territory of his state. It is worthy to note here that government control and management of land has its genesis with the advent of the English law in Nigeria. With the reception into the country of English law, various land related statutes were made applicable in the country to make it possible for easy acquisition of land for economic and residential purposes due to the high commercial activities caused by inflow of immigrants. Under these laws, the largest possible interest that can be acquired in land is the *fee Simple* (Megarry, 1984-59).

Unlike customary ownership, a *fee simple*, may only be created by means of a deed of grant or by will, in which a form of word appropriate to a *fee simple* are employed. In the Northern part of the country before the promulgation of the Act, government control and management of law was made possible through the land tenure Law 1962. Under the law, the only interest that can be acquired in land is "a right of occupancy". The law declares that all lands in each of the states in Northern Nigeria, whether occupied or unoccupied as "native lands". By virtue of section 6 of the law, they are placed under the control and are subject to the disposition of the minister responsible for land matters who holds and administers them for the use and common benefit of the "natives." No title to the occupation and use of any such lands by non-native is valid without the consent of the minister. (Elias, 1971: 23 -23).

It is pertinent to note that prior to the promulgation of the Act, government ownership of land was made possible through compulsory acquisition through the Public land Acquisition Law and through the revocation of rights of occupancy under the land Tenure law 1962. Land so acquired is managed under the states land laws as state lands. The government for any public purpose is empowered to acquire land compulsorily for an estate in *fee Simple* or a term of years subject to the payment of compensation. (Cap. 48, LFN 1990). This statutory power under the states lands laws are only exercisable where the purported acquisition under the Public Lands Acquisition Laws has validly vested the ownership of the land in the government. The need for a vesting order before title passes to the government was reiterated in *City Property Development Ltd. V. Attorney General Lagos State And Ors.* (I.S.C. 92 1976: 114- 116).

The land Use Act 1978, has rightly been described as the most impactful of all legislations touching upon the land tenural system in Nigeria before and after full nation hood (Irikefe, 1984: 362). In the exercise of these powers and in the performance of these duties, the Governor must abide by the provisions of the Act. The Act has vested the control and management of the land in urban areas in each state on the Governor. All other land shall subject to the Act, be under the control of the local government within the area of jurisdiction of which the land is situated (Omotola, 1988: 11-12).

The only interest in land the Governor can lawfully grant under the Act is "Statutory Right of Occupancy". The Governor can not therefore grant absolute interest or *fee Simple* absolute to any person. The Act also empowers the Governor to revoke a right of occupancy in specific circumstance subject to payment of compensation. It is also worthy of note that the Act does not apply to land in the Federal Capital Territory. This was interpreted in the case of *Ona V. Atanda* (Ona V. Atanda, 1990: 135-140).

Some Powers of the Governor

Power to grant Statutory Right of Occupancy and the duty to issue certificate of occupancy.

The maximum interest any citizen is allowed in land is the right of occupancy but the developer owns his improvements on the land. (Oluyede, 1996: 324) The Governor cannot therefore grant absolute interest or *fee Simple* absolute to any person. It is also pertinent to note here that the issue of the certificate of occupancy is only *prima-facie* evidence of title of land covered by it and therefore rebuttable.

Power of Revocation and the Duty to Pay Compensation

The Act empowers the Governor to revoke a right of occupancy in specific circumstances stipulated in the Act. However the Governor is shouldered with the duty to pay compensation in the event of a revocation of a right occupancy. In *Ogunleye V. Oni*, the Supreme Court held that no

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one shall be deprived of his land unless the land is required compulsorily in accordance with the provision of the Act. (Ogunleye V. Oni, 2001: 126). The Supreme court also stated that in the event of compulsory acquisition of land by government, it should also pay adequate compensation to the owner and must give him the right access to a High Court for the determination of his interest in the property and amount of compensation due to him (A.G Bendel State V. Aideyan, 1989: 667).

Some other powers confirmed on the Governor by the Act include the duty to establish land Use and Allocation Committee and Land Allocation Advisory Committee. Power to grant licenses and to take building materials; power to enter and inspect land for improvements; power to make regulations etc. In the exercise of these power, the courts have ruled that the Governor must act in accordance with the provisions of the Act.

Conclusion and Recommendations

The powers and duties of a state Governor in respect of the land Use Act, 1978 are not absolute. In the exercise or performance of these powers and duties, the Governor must act in accordance with the clear provisions of the Act. This is the unmistakable, tone of section 1 of the Act. This writer has come to the conclusion in the analysis of some of the existing case laws on the powers and duties of the Governor that the courts have taken a firm stand by declaring any act of a state Governor which is contrary to the provisions of the Act invalid. This is a healthy development that will go a long way to fine tune the acts of the Governor for the purpose of achieving the laudable objectives of the Act.

This writer therefore, recommends that it only by a strict adherence to the provision of the Act and proper interpretation and construction of the provisions of the Act that will enable the Act to achieve the purpose for which it was made. It is also further recommended that the court should invoke its inherent jurisdiction to allow the provisions of the Act to be effective. This will in no small measure whittle down the inadequacies and defects in some provisions of the Act.

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