

THE LEGALITY OR OTHERWISE OF PAYMENT OF PROPERTY TAX BY HOLDERS OF STATUTORY RIGHT OF OCCUPANCY IN NIGERIA

BY

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Abstract

This work is centered on property tax payable by the holder of Certificate of occupancy. Our aim is to examine the Land Use Act of 1978 to ascertain if the provisions made for ground rent charge is payable by all land holders or is peculiar to those with certificate of occupancy. One of our objectives in this work is to scrutinize the relevant provisions of Land Use Charge Law which confers the state powers to collect charge on ground rent, tenement rate etc to ascertain whether it is lawful for the state to consolidate both collections conferred on the local government by the Constitution (as amended) and that of state. The methodology adopted in this work is doctrinal while the approach employed is descriptive. We utilized primary sources such as the Constitution, statutes, text books etc. and secondary sources such as the journal articles, internet etc were used. In view of the findings and conclusion, we therefore recommend the National Assembly to amend the Land Use Act particularly section 10(b) of the said Act to bring the entire land owners into tax net and not only the Holder of Certificate of Occupancy.

Keywords: Certificate, Occupancy, Land, use, Charge, Holders, Constitution, Rent, Rate, Tax. Property

1.0. Introduction

Ground rent is a property tax charged and collected by a government on land with a certificate of occupancy or right of ownership, payable by a property owner in a given period¹. The collection is to be made by state government. The liability to payment of ground rent does not lie on whether improvement has been made on the land. As long as there is ownership over a property whether improved or not, the owner will be liable to payment of ground rent². Ground Rent Calculations by a state government is not affected by improvements, developments, and structures built on land³. From the definition, it became clear that liability to payment of this tax is tied on certificate of occupancy. If this is so, could it be that property owners who failed to apply for certificate of occupancy will be exonerated from payment of this tax? We shall find out in the course of this discuss!

Another issue to be determined in this work is to ascertain whether the state government has powers to consolidate both state and local government tax as a single component tax.

2.0 Land Use Act⁴

Originally, the law that made provision for charge of ground rent is Land Use Act. For one to be liable to payment of this tax, he must be a land owner and must have a certificate of occupancy over the said property. The certificate of occupancy is a legal document issued by the government that proves that a person owns land in Nigeria⁵. There are certain amounts fixed by the governor to be payable by the Land owner as rent. Where the land owner fails to make the payment for ground rent, he may lose the title over the said property.

Section 10 (b) of the Act ⁶ provides for payment of Ground Rent, only on properties with Certificate of Occupancy (C of O) but it was observed that some States of the Federation went ahead and enacted a law wherein it placed Land Use charges, rates and levies on both the certified land and

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¹ Daily Trust, 'FCT, States Lose Trillions Of Naira To Unpaid Ground Rents' *Daily Trust* (25 September 2023) <<http://www.dailytrust.com>> accessed on 15 January, 2024.

² Emphasis mine.

³ O Umah, 'What Is Ground Rent, Who Should Pay And Who Should Collect It' *SabiLaw* (June 26 2018) <<http://www.sabilaw.org>> accessed on 15th January, 2024.

⁴ 1978.

⁵ Refer to section 9 of the Act.

⁶ Land Use Act 1978.

uncertified land. Some of those levies or rates are meant to be paid as one off but subsuming same made it automatically an annual tax. This goes contrary to provisions of the Land Use Act and Constitution. There is a laid down procedure for provisions of Land Use Act to be amended. Until such is done, the state has no power whatsoever to *suo motu* effect the change. The Constitution is clear on the mode of alteration or modification of the Land Use Act. By virtue of Section 315 (5) (d) of the Constitution, the Land Use Act shall not be altered or modified except in accordance with the provision of Section 9 (2) of the Constitution which provides for mode of altering the provisions of the Constitution i.e for the Land Use Act to be validly altered, it must comply with the laid down procedure for alteration or amendment of the Constitution.

Again, in reaction to the query of whether it could be right for a property owner who ordinarily ought to have applied for certificate of occupancy to be exonerated from payment of ground rent on the ground that section 10 (b) of the Act provides for rent to be paid by land owner with certificate of occupancy, it is the law that one cannot be allowed to benefit from his mischief. In as much as the letters of law concerning this issue is clear and direct which if eyes are closed tax evaders would hinge on it to escape tax payment (ground rent). However, while advocating that the law be amended to cover this lacuna, it should be noted that the government on her part could conduct a search or survey to create a data base of land owners who failed to fulfill the requirements of the law. In so doing, the government can revoke the right granted to the said persons over the property without compensation⁷. The government could do so on the ground that by virtue of section 1 of the Act, the Governor is regarded as the trustee of all land in a state and the same Act made provisions conferring the Governor with power of revocation.

2.1 Property Tax under the Act⁸

Property tax is an annual local government tax on real property or personal property based on a tax rate. It is a compulsory contribution to be paid by the tax payer with regards to his property, where the tax payer in return will receive benefits from the local authorities in the form of tangible and intangible services, community facilities, infrastructures and development projects for their employment⁹.

Going by the definition of tax under the Federal Inland Revenue Service (Establishment) Act 2007, a tax includes any duty, levy or revenue accruable to the government in full or part under this Act or any other enactment or law. This law tries to define tax in a way that whether a payment is christened, a levy, duty, fee or rate it will still qualify as tax as long as it is a revenue to the government, so the hitherto distinction by scholar between a tax and a levy, fee, duty or rates will no longer be feasible. A particular payment may be given any name but may still qualify as a tax by this definition. It doesn't matter whether it is called levy, charge, rent or otherwise once it will aid in generating revenue to the government it qualifies as tax¹⁰. The law is now very clear on what amounts to tax. In other words, a charge is placed or made by the government particularly a tax authority it doesn't matter the name given to it, it falls under the aforementioned Act (FIRSEA). This is why all states in Nigeria including the Federal Capital Territory collect property tax from applicants for certificate of occupancy, assignment or transfer of certificate of occupancy in Nigeria. This they do by requiring the applicant to exhibit valuation certificate of the property to be assigned, transferred in the property in respect of which certificate of occupancy is required. A tax based on certain percentage of the value of the property is usually imposed and it has to be paid before the Governor

⁷ Mixta Africa, 'C of O – Meaning and Importance' *Mixta Africa* (20 October, 2021 <<http://www.mixtafrica.com>> accessed on 15 January, 2024.

⁸ Land Use Act 1978, FIRSEA 2007.

⁹ MN Umenweke and SU Nweke-Eze, 'A Critical Appraisal of the Collection property Taxes by State Governments in Nigeria' (2016) Vol 6 *Nnamdi Azikiwe University Awka Journal of Public and Private Law*, Vol 3.

¹⁰ Oyesola Animashaun, O Y Abdul-Hamed, and Bimbo Atiola, *Changing Perspectives in the Law and Practice of Taxation in Nigeria: Essay in Honour of Professor MT Abdulrazaq* (Kwara State University: Hybrid Publication) P 4230.

signs the certificate of occupancy or ratifies the assignment or transfer of certificate of occupancy. This is a form of property tax because the tax, levy or fee is based on the value of the property involved in the transaction.

3.0 Land Use Charge Law

The Land Use Charge Law is a law which empowers relevant tax authority to impose charge on property. This law is applicable in Anambra State. It is otherwise known as Anambra State Property Land Use Charge Law¹¹ though has been suspended due to so many legal battles. The Land Use Charge Law was introduced with intention to harmonize all land-based rates and property charges (such as Tenement rate, Ground rent, Neighbourhood improvement charge etc) but on the contrary created serious confusion. The aforementioned taxes are single component laws and or independent taxes collectable by the state and local governments. The laws were consolidated as a single tax. The consolidation of these taxes posed a great danger considering the fact that the state does not have power to collect local government tax. Section 7 (5) of the constitution¹² placed the local government in a position to collect certain taxes consolidated (tenement rate, assessment of privately owned houses) with state tax.

Using Lagos State Land Use Charge Law¹³ as a case study, section 1 of the law¹⁴ provides that ‘Land Use Charge Law’ includes all property and Land Based Rates and Charges payable under the Land Rates Law, the Neighbourhood Improvement Charge Law and Tenement Rates Law. Section 2 (1) of the Law provides that subject to the provisions of this law, there is imposed a land-based charge, to be called Land Use Charge which shall be payable on all real property situate in the state.

Section 2(2) for the purpose of this Law, each Local Government Area in the State will be the body empowered to levy and collect Land Use Charge and collect Land Use Charge for its area of jurisdiction. (Referred to as in this Law as ‘the collecting authority’)

Section 2(3) Each Collecting Authority may delegate to the State, by a written agreement, its functions with respect to the assessment of privately –owned houses or tenement and the collection of rates for the purpose of levying and collection of such rates.

From the provisions above, it could clearly be seen that the State government has taken over the collection meant for the Local Government Council contrary to the provisions of the Constitution. The provision of Section 2(3) of the Law is against the legal maxim which says that delegate cannot delegate (*delegatus non potest delegare*). The Local Government simpliciter cannot validly delegate the assessment and collection of property rates to the state government. This is because in the first place, the powers are not vested in them or him and it is trite law that *nemo dat quod non habet*- No one gives what he does not have but on the Local Government Revenue Committee¹⁵.

4.0 Power of Local Government Council’s to Collect Rates

Section 7 (1) of the Constitution stipulates that every State shall ensure the existence of Local Government Councils under a law that provides for the establishment, structure, finance and functions of such Councils include collection of rates, radio and television licenses, and the assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State¹⁶. Even though the enabling law for the collection of these rates must proceed from the State House of Assembly, it is clear that the House of Assembly cannot confer on to the State tax authorities, the power to collect such rates having been constitutionally reserved for the Local Government Councils.

¹¹ 2010.

¹² 1999 Constitution as amended.

¹³ 2020.

¹⁴ Lagos State Land Use Charge Law 2020.

¹⁵ PITA, s.91 (1); KK Ezeibe, The Legality of consolidated property tax laws in Nigeria. A case study of Anambra State’s Property Land Use Charge Law (2013) Vol 3 No 1 *Business Law Review Nigerian Journal of Business and Corporate Law* p 35.

¹⁶ See the Fourth Schedule to the 1999 Constitution (as amended).

5.0 The Legality or otherwise of State Government's interference with the Local Government's property tax collection

It is not lawful for any tiers of government to collect taxes which should be collected by another tier of government pursuant to the Act. In the case of *Knight Frank and Rutley v AG (Kano State)*¹⁷ the issue was whether state governments had concurrent competence with local government council to embark on property assessments designed eventually to lead to tenement rate collection? The Supreme Court per Wali JSC said,¹⁸ 'the power to assess rates on privately owned houses or tenements for the purpose of levying such rate is within the exclusive statutory powers of each local government as conferred on it by section 7 (5) of 1979 constitution and paragraph 1 (b) and (1) of the fourth schedule¹⁹. In the *Knight Frank* case, Uwais CJN said that 'only local government councils have the power to collect same.

Juxtaposing the powers of the local government area in Nigeria to assess and collect certain taxes with what is applicable in other climes, it was found that internationally, as a level of government it has its own special concerns. To quote an American source; the standards of administration of property remain by and large far below accepted standard for other major taxes, as income and sales taxes. The reason is quite clear, 'The property tax has remained the responsibility of the lowest levels of government, which all too often cannot support good administration and cannot easily attract professional Workers, income and sales taxes, however, are administered by the federal and state Governments, which have far greater ability to attract competent personnel and to finance adequately the administration of their taxes,²⁰. Consequently, any tier of government that makes a tax assessment for a tax payer that does not have power to collect, contrary to the relevant provisions of the 1999 Constitution and the Taxes and Levies Act, does same without jurisdiction and the assessment is null, void and of no effect and the taxpayer is entitled to have the assessment quashed. Local government areas in Nigeria are to restrict themselves to the approved list and maximize the collection and application of the revenue to elicit voluntary compliance.

6.0 Conclusion

The state government has no power whatsoever to intrude into powers conferred on the local government by the Constitution (as Amended). Such Act of the state government is unlawful and illegal. It is a long age principle that delegate cannot delegate so any attempt made by the state government to divest the duties and or powers of collection conferred on the local government by the law made by the state government shall be rendered void.

7.0 Recommendations

1. It is observed that the Land Use Act made provisions for payment of rent by the holder of certificate of occupancy; it is therefore recommended that the Act be amended to bring to the tax net the entire land owner rather than only certificate holders. With this there will be no room for tax evasion by tax payers or land owners.
2. It is further recommended that the States of Federation where Land Use Charge Law applies should amend the law to keep alive for the state only the tax conferred on her for collection and enact a separate law wherein the local government could exercise her functions of tax collection without state interference.
3. In the event the state was not very certain as to correctness of the tax collected by the local government remitted to her, the state could create a monitoring team who monitors the local government to ensure transparency and accountability.

¹⁷ 1998 7NWLR (pt 556) p 1-37.

¹⁸ *Ibid*, p.209 see also RACE Achara, 'Can Nigerian local government councils autonomously impose rates' (2003) Vol. 47 No.2, *Journal of African law* 221.

¹⁹ 1999 Constitution (as amended) section 7 (5) and Fourth Schedule paragraph 1 (b) and (j).

²⁰ AP Berker, *property Tax Problems Confronting State and Local Governments* (Knoxville: University of Tennessee,1969) p35.