
**EXAMINATION OF THE OF REQUIREMENTS FOR PUBLIC PURPOSE IN THE
ACQUISITION OF LAND IN NIGERIA***

Abstract

The provision of basic needs like food, clothing, shelter, heat, production of goods, exchange of goods and services, leisure and recreation, spiritual engagements and satisfaction, territorial sovereignty, wealth creation, and many others have been satisfied with the use of land. There are two rights of occupancy introduced by the Land Use Act. The first is the Statutory Right of Occupancy granted by the State Governor pursuant to Section 5(1) of the Land Use Act and Customary right of Occupancy granted by the Local Government Chairman pursuant to Section 6 (1) of the Act. Section 5(2) provides that upon the grant of a statutory right of occupancy under the provisions of sub-section (1) of this section, all existing rights to the use and occupation of the land, which is the subject of the statutory right of occupancy, shall be extinguished. This section has been misconstrued to mean that the vested right under sections 34 and 36 of the Act are automatically extinguished once the Governor grants a statutory right of occupancy over the same parcel of land. In this article, we shall consider the interpretations given by our courts to truly appreciate the intendment of the drafters of the provisions of Section 5(2) of the Land Use Act 1978.

Introduction

Land is a free gift of nature. Most human activities are dependent on it. Man, naturally relies on land to satisfy his material, social, political, cultural and physical and even his spiritual desires. The provision of basic needs like food, clothing, shelter, heat, production of goods, exchange of goods and services, leisure and recreation, spiritual engagements and satisfaction, territorial sovereignty, wealth creation, and many others have been satisfied with the use of land.¹ The demand by both the public and private users of land for various uses such as residential, transportation, commercial, institutional and agricultural in both urban and rural areas require that land must be made available at the right time, in the right quantity and quality and at the right places.² Land also defines the extent of a community's boundary - the economic strength and socio-cultural heritage of a community. In this article, we are going to look at the various provisions of the Land Use Act as it pertains to the acquisition of land by the governors in Nigeria for public purposes.

What is land?

Section 13(3)³ defines land to include any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals. According to Mohammad,⁴ apart from the frequently economic importance of land, it remains the fulcrum of life

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¹ H. Briassoulis, 'Factors Influencing Land Use and Land Cover Change: Land Use, Land Cover and Soil Sciences', (Vol. 1), Encyclopedia of Life Support System (EOLSS), (2010), 21. <http://www.eolss.net.Eolss-sampleAll>. Accessed 17 May-5-2018.

² W. Morenikeji & Others, Land Administration problems in Nigeria: A case study of Oyo and Niger States, (Urban and Regional Planning Department, Federal University of Technology, Minna, 2001).

³ Interpretation Act of 1964.

⁴ M. B. Nuhu and A. U. Aliyu, 'Compulsory Acquisition of Communal Land and Compensation Issues: The Case of Minna Metropolis', South East Asia Journal of Contemporary Business, Economics and Law, (Vol. 8, Issue 4, 2015),

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and a symbol of pride and identity to the inhabitants. Every community apart from having a common boundary also works in common to fight any intruder to the land, as the land is owned communally and no distinct person may claim ownership of any part of such land. Land has an inherent value and also creates value. A plot of land, for instance, can provide a household with physical, financial and nutritional security, and provide a labourer with a source of wages.⁴ Land basically is essential for good livelihoods. It is also a potential resource for various socio-economic and political exploits. Efficient and effective land management therefore must be of great concern to governments in different jurisdictions as land is the most important economic asset to mankind.

A statutory definition of land was given in the Law of Property Act 1925 as follows:

land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other incorporeal hereditaments; also ... a rent and other incorporeal hereditament, and an easement, right, privilege, or benefit in, over or derived from land..

The English Interpretation Act⁷⁹ also defines land to include buildings and other structures, land covered with water, and any estate, interest, easement, servitude in or over land. The definitions of land in both the Law of Property Act 1925 and that of English Interpretative Act 1978 are merely inclusive and not exclusive. The above definitions include corporeal and incorporeal hereditaments as land. Corporeal hereditaments are physical objects: physical land and its attributes; while incorporeal hereditaments are rights, (not objects) - rent, charges, easements, profits. Flowing from the above definitions of land, any claim for compensation for revocation of land cannot exclude land itself, or any other hereditament, neither could such a claim exclude interest, right, easement or a privilege.

Omotola⁵ described land as an element which every man requires for his support, preservation and self actualization in an ideal society, and is a foundation for shelter, food and employment.⁶ Land is part and parcel of a given society without which man cannot exist. Deprive man of his land, you have left him bereft of meaning of his existence. Wigwe's description of land aligns with that given by Omotola when he described land as the most treasured commodity from the ancient time throughout the world which value in present time is still very high of which reason our whole existence and activity is/was tied to land and its ownership.⁷ Sir Edward Coke sees land as follows:⁸

land, in its restrained sense, means soil, but in its legal acceptation, it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, waters, marshes, furze and heath; it includes also houses, mills, castles and other buildings, for which the conveyance of land, structures upon it pass also. And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxim, *cugus est solum ejus est usque and coelum et ad in feros ...*

⁵ Omotola, J. A, *Law and Land Rights: Wither Nigeria?* (University of Lagos Akoka, Inaugural Lecture Series, 1988) 6.

⁶ *ibid.*

⁷ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

⁸ *Jowitt's Dictionary of English Language*, (1977, 2nd ed), vol. 2, pp1058 – 1059.

The above definition is all embracing and simply implies that the owner of the soil is presumed to own everything beginning from the sky and down to the centre of the earth. This reasoning was applied by the Court of Appeal in *Ibrahim v. Yola*⁹ that according to principles of inherited English Common Law, land includes everything up to the sky and down to the centre of the earth. This means that a particular piece of land includes not only the physical soil but all buildings permanently attached to the soil or permanently fastened to anything which is attached to the soil.

The general basic rule is that, whatever is fixed, attached or annexed to the land is land itself. This view was expressed in *Buckland v. Butterfield*¹⁰ where it was held that a conservatory which was attached to a house by eight cantilevers, each 9 inches long, formed part of the land. The Court went further to state that a seller who wishes to exclude such fixture has to specifically indicate it in a contract of sale of such land. The *Buckland v. Butterfield*¹¹ case also buttresses the point that since the house is land, because it is fixed to the earth, anything which is fixed to the house also becomes land. However, anything merely placed upon the land but not fixed to it will not be regarded as forming part of the land no matter how heavy the object is and no matter how difficult to remove it. This principle was much illustrated in the case of *Berkley v. Poulett*¹² where a large statue made of marble and weighing nearly half a ton, was not regarded as part of the land, because it was not fixed down in any way.

The Court¹³ equally held that each case is different and should be determined based on its own circumstances, and so the intention of the parties is what matters in every circumstance or the purpose of the person who put the property in place whether to permanently affix or not. The above notwithstanding, in *Elistestone Ltd v. Morris*,¹⁴ Lord Clyde stated the fact that the purpose which the object is serving and not the intention or purpose of the person who put the object there is what matters.¹⁵ In *Shell Petroleum Development Co. of Nigeria Ltd v. Burutu Local Government Council*,¹⁶ caravans which are houses on wheels not permanently fastened to land were held not to be part of the land.

Both Common law and statutory definitions of land agree that land covers more than just the surface of the earth. Thus, the Property and Conveyancing Law of the Western Region¹⁷ defined land as:

land of any tenure, buildings or parts of buildings whether the division is horizontal, vertical or made in any other way and other corporeal hereditaments, also a rent and other incorporeal hereditament and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land.¹⁸

Under section 205 (1) (iv),¹⁹ land include minerals, top soil, subsoil, things above or below the soil, rights and privileges and other things derived from land. The general rule is that minerals are part of the soil and thus belongs to the owner of the surface.²⁰ There are however exceptions to this rule in Nigeria.

⁹ (1986) 4 CA (Pt. 1) 98, 113.

¹⁰ (1820) 2 Brod and Bing 54.

¹¹ *Supra*.

¹² (1976) 242 EG 39.

¹³ *ibid*.

¹⁴ (1997) 1 WLR 687.

¹⁵ *ibid*.

¹⁶ (1998) 2 NWLR (Pt. 565) 318.

¹⁷ The Property and Conveyancing Law of the Western Region 1959.

¹⁸ *ibid*.

¹⁹ English Law of Property Act 1925.

²⁰ *ibid*.

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Government owns both land and minerals as the people own merely leasehold interest in the property. In England, all gold and silver in gold and silver mine belong to the Crown and such cannot be worked by an individual even on their own land without license from the Crown.²¹

Section 3 of the Interpretation Act²² defines immovable property or land to include land and everything attached to the earth or permanently fastened to anything, which is attached to the earth or permanently fastened to anything, which is attached to the earth including minerals. While the definition offered by section 91 of the Nigerian Urban and Regional Planning Acts²³ excludes minerals in its definition. Generally, minerals are considered part of land but usually vested solely on the government with licenses granted to individuals, corporations for exploration of minerals.

Land is the most treasured commodity from the ancient time throughout the world and is still highly valued in our today's world. In fact, man's whole existence and activities seem to be tied to land and its ownership which had resulted to lots of disputes among men. Apart from private use of land by man, government often requires land to build offices or social amenities for public use. Most times, individuals resist this government move to obtain private land for government projects or where they agreed the property price may be outrageously expensive. In order to obtain land therefore when and where it is required by the government, every government in every jurisdiction exercises what is called power of eminent domain, a power of compulsory requisition and acquisition of land where the owners of a particular land can be compelled by the government to sell their land for it to be used for public purpose. The problem with this power of revocation however is that most times government converts acquired land to his or her cronies who put it to other use instead of particular purpose for which it is revoked, thus breaching the main purpose of revocation.

As for compensation for compulsory acquisition, compensation for compulsorily acquired land should not only be limited to land and other improvements permanently affixed to the ground but also include other inconveniences and other incidental expenses incurred by the owner.

Land is God's gift to man to ensure his survival. It is on land that man lives and produces the food he eats; upon the land he builds; and when he dies, he goes back to earth. Land like air is a free gift of nature, but scarcity of land has made it an essential commodity, and a lot of controversies trail its ownership, unlike air which no individual can claim ownership of. No wonder Megarry²⁴ stated that the study of law is tortuous and an ungodly jumble.

Land before the arrival of the colonial masters to Africa was used by our forefathers as the great source of wealth. It was also regarded as a common wealth to be used for the benefit of the unborn, the living and the dead. Land comprises all naturally occurring resources as well as geographic land. Land is fundamental to the production of all goods and economic production. It is considered the most important when compared with other factors of production such as labour and capital. As such, no man ought to be deprived

²¹ A-G v. Morgan (1891) 1 Ch. 432, CA. By virtue of the English Coal Industry Act, for instance, coal is vested in Coal Authority and license is required to mine coal.

²² CAP 192 Laws of the Federation 1990.

²³ No. 88 of 1992.

²⁴ Megarry & Wade, The Law of Real Property, 5th ed (Sweet & Maxwell, London 1984) 1.

of his property without adequate plan to reinstate him on an equivalent land and other incidental losses covered as well.

Land acquisition and compulsory acquisition examined

Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is however of the view that no movable 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 Nigeria except in the manner and for the purpose prescribed by law. These conditions include prompt payment of compensation²⁵ and a right of access to court to determine the interest in the property and amount of compensation.²⁶ In this regard, section 47 (2) of the Land Use Act which has to do with an ouster clause, is in sharp contrast with the provisions of section 44 (1) (b) of the 1999 Constitution that made provision for right of access to court for determination among others the amount of compensation to a court of law or tribunal.²⁷ Ordinarily, this provision ought to be invalidated upon this ground due to the supremacy of the Constitution but this provision cannot easily be amended without first amending the provision of section 315 (5) of the 1999 Constitution which provides that nothing in this Constitution shall invalidate the Land Use Act. What this simply means is that the Land Use Act is enshrined in the Constitution and this entrenchment of the Act has been described to have been due to the Military regime which heralded its birth.²⁸ The Court in *Nkwocha v. Governor of Anambra State*²⁹ however arrived at a conclusion that the Land Use Act is not an integral part of the Constitution.

According to Wigwe,³⁰ compulsory acquisition, also known as eminent domain, is a power granted to the government to take private property for public use, without the willing consent of the owner, upon payment of adequate compensation. Governments of all ages have required appropriate land to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, as well as protection and preservation of artifacts and monuments to ensure sustainable development. In order to obtain land for such development, government reserves the right, or the power of compulsory acquisition of land.

Without the government's power to acquire land by force, the size and capabilities of our public infrastructure would become inadequate to serve the needs of society. Stated conversely, compulsory acquisition is where a government makes claim to a piece of land compulsorily not by agreement in order to carry out a public project such as building new roads or railways or other public construction projects. It is a tool for the control of land uses as well as land acquisition for developmental projects by the public authorities usually government. In Nigeria, compulsory acquisition can be exercised by both the federal or local governments when they consider such acquisition to be in the best interest of the community. The exercise of this power of eminent domain is usually influenced by laws which provide the basis upon which such acquisition may be carried out. With no legal instrument spelling out the *modus operandi* of land acquisition and revocation, governments would depend on the willingness of landowners to sell their land in to realize their plans for the State, and

²⁵ Section 44 (1) (a) of the 1999 Constitution (as amended).

²⁶ Section 44 (1) (b) of the 1999 Constitution (as amended).

²⁷ *Aderonpe v. Eleran* (2019) 4 NWLR (Pt. 1661) 141 SC.

²⁸ Smith Imran Oluwole, *Sideling Orthodoxy in Quest for Reality: Towards an Efficient Legal Regime of Land Tenure in Nigeria* (University of Lagos Press: 2008), 12,

²⁹ (1984) 6 SC 62.

³⁰ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

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this we all know would be nearly impossible as time and money would be wasted. Therefore, the power of compulsory acquisition of land is usually inserted in land laws as an exception to fully protected private property rights.

Section 44(1) of the Nigerian Constitution provides that 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 Nigeria except in the manner and for the purposes prescribed by a law. In the same vein, Rwanda's Constitution states that private property, whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by the law, and in return for fair and prior compensation.

In the world generally, and in Nigeria in particular, negative reactions have trailed the implementation of compulsory acquisition or eminent domain - as it is generally referred to in other jurisdictions. Due to the dire need of land for different purposes, the demand for land for public purposes has increased particularly the demand on the government for provision of agricultural and industrial related projects. Hence, the need for government's provision of exercise of its enormous power of compulsory acquisition of land in the Land Use Act of 1978, to ensure sustainable development and make available different public infrastructure and facilities that guarantee the security, health and social welfare of the citizenry.

Despite the laudable reasons for compulsory acquisition by the government, the act of compulsory acquisition had been described as an area usually filled with tension.³¹ The topic does not generate such interest or excitement for most people except to those in academic settings, among law students or legal practitioners. Wigwe³² summarized the effect of exercise of eminent domain on the citizens thus:

The people...feel unsecured and the fear of unknown relocation might grip them because they are threatened with dispossession. Though the compulsory acquisition of land for developmental purposes may in the long run bring unquantifiable benefits to society but it is disruptive to people whose land have been acquired. It displaces families from their ancestral homes, farmers from their fields, and businesses from their neighbourhoods. This may separate families, greatly interfere with livelihoods, deprive communities of important cultural or religious sites and cut off networks of social relations. A poorly handled compulsory acquisition process may leave people homeless and landless, with no way of earning a livelihood.³³

The law of natural justice demands that a man deprived of his property should be given adequate compensation or alternative property-in this case land- or be put in a position to enable him feel as if he was not deprived of his property at all. It is an unjust act and a serious violation of the rights guaranteed under the Nigerian Constitution, the African Charter on Human and People's Rights (Ratification and Enforcement) Act³⁴ to compulsorily acquire private land without adequate compensation. At times lands are revoked without being put to the purpose for which it was

³¹ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

³² *ibid.*

³³ *ibid.*

³⁴ Cap A9 Laws of the Federation 2004.

revoked. In situations where a particular land is compulsorily acquired for a specific purpose and it turns out that the property cannot be put to the particular use for which it was originally revoked, courts have held such revocation and acquisition *void*³⁵ and returned back to the owner even when compensation had been paid for non-compliance with the rule of law or failure to meet the requirements of the law.

There is no doubt that the procedure for compulsory acquisition requires adequate notice to be given to the owner³⁶ and compensation paid for acquiring the property. There is also a legal requirement that the acquisition must be for public purpose. For any revocation of private property to be considered valid therefore, the following conditions must be met:

- i) A notice of acquisition of such property must be specific and precise as to the particular property to be acquired;
- ii) The particulars of the public purpose for which such property is acquired must be given; and
- iii) The acquiring authority must give notice of intention to acquire the property before publishing same in the gazette.³⁷

The laws governing compulsory acquisition of property are partly property law and part administrative law which dictates governance procedures. Principles of administrative justice and good governance often require that such powers are bound by legal rules which allow for hearing and appeals and even judicial review. In Nigeria, the Land Use Act of 1978 is the law governing land revocation and acquisition. Sections 28 and 29 thereof provide that:

- (1) It shall be lawful for the governor to revoke a right of occupancy for overriding public interest.
- (2) Section 28 of the Land Use Act empowers the governor to revoke for overriding public interest any right of occupancy he had earlier granted. Overriding public interest includes when the government requires the land for public purposes, projects or infrastructural developments. Subsections of section 28 make provisions to guide the governor of a State in the exercise of his vast powers of control of land within his territory. One of the pre-conditions for the exercise of this power of revocation is that it must be shown clearly to be for overriding public interest. In other words, any compulsory acquisition must be within the confine of the provisions of section 28 of the Act otherwise the exercise of such power may be declared invalid.³⁸

Of great importance is the ousting of court's jurisdiction under section 47(2) of the Land Use Act and its attendant implications.³⁹ There is a tendency for the power of compulsory acquisition bestowed on the government to be abused. For instance, an unfair procedure for compulsory acquisition of land and inequitable compensation for its revocation or loss may lead to feeling of insecurity by the aggrieved party and loss of confidence in the rule of law. This therefore calls for clear cut policies that define specific purposes for which land may be acquired by the Nigerian Government. There is need for transparency, use of fair procedures in land acquisition and provision

³⁵ *Doggo v. Ashdene Association (Nig) Ltd & Ors* (2022) LPELR – 56910 CA.

³⁶ *Santos Estate v. Associated Properties & Trust PLC* (2022) LPELR -56937 (CA).

³⁷ *Provost v. Edu* (2004) MJSC.

³⁸ *G.C M Ltd v. Travellers Palace Hotel* (2019) 6 NWLR (Pt. 1669) 507 SC.

³⁹ *Benue State Urban Development Board & Ors v. Asuakor* (2019) LPELR - 47233 (CA).

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of equitable compensation. And also, need for the amendment of section 49 of the Act to ensure transparency in land revocation transactions.

Requirements for Public Purpose in the acquisition of land in Nigeria

The Governor is empowered under section 28 of the Land Use Act to revoke a right of occupancy for public purposes.⁴⁰ Revocation for public purpose is an exception to the general rule under the Constitution that no one can be deprived of his property except as provided by law. The Land Use Act did not expressly define an overriding public interest, but it however defines acts that constitute overriding public interest. It also distinguishes what public interest entails under statutory right of occupancy on one hand, and under customary right of occupancy on the other hand. For instance, situations where Governor may revoke statutory right of occupancy for public purpose include:

1. the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right of occupancy or part thereof contrary to the provisions of the Act or of any regulation made there under;
2. the requirement of the land by the Governor 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 purpose of the federation; and
3. the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.⁴¹

Other conditions where the Governor can also exercise the power to revoke a statutory right of occupancy are provided for under section 28 (5) of the Act thus:

1. in the case of a breach of any of the implied provisions which a certificate of occupancy is by section 10 deemed to contain;
2. where there is a breach of any term contained in the certificate of occupancy or in any special contract made under section 8 of the Act; and
3. in the case of a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Governor under subsection (3) of section 9 of the Act.

In case of a customary right of occupancy, section 28 (3) of the Act provides that such land can be acquired by the Governor for the purpose of overriding public interest where:

1. the requirement of the land by the Governor 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;
2. the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;
3. the requirement of the land for the extraction of building materials; and
4. the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sub-lease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

⁴⁰ Section 28 (1) of the Land Use Act.

⁴¹ Section 28 (2) of the Land Use Act.

Revocation for public purpose as established in section 28 (2) (b) (c) and (3) (a) and (b) was further defined in section 57 (1) of the Act to include:

- (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 and Allied Matters Act as respects which the Government owns shares, stocks or debentures;
- (c) for or in connection with sanitary improvements of any kind;
- (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 mining purposes;
- (f) obtaining control over land required for or in connection with mining purposes;
- (g) for obtaining control over land required for or in connection with planned urban or rural development or settlement;
- (h) for obtaining control over land required for or in connection with economic, industrial or agricultural development; and
- (i) for educational and other social services.

The use of the word, “include” in the definition of public purpose has been interpreted as being inexhaustible. The Courts have had opportunities to consider what amounts to public purpose in a plethora of cases which also appear not exhaustive. In *Goldmark (Nig) Ltd v. Ibafor Co. Ltd*⁴² the Court held that

The law empowers acquisition of land by government when it is required for public purposes. What is public purpose is not defined in the Public Lands Acquisition Act but has been identified by the courts in numerous cases. The acquisition must be for *bona fide* public purpose. It is suggested that for a particular purpose to qualify as public purpose or public interest, it must not be vague and the way it benefits the public at large must be capable of proof. The test is what or not the purpose is meant to benefit the public and not just to aid the commercial transaction of a company or group of people for their own selfish or financial purpose.

According to Denyer-Green,⁴³ the grounds upon which compulsory purchase can be declared *ultra vires* for failure to meet public purpose include: (a) where the use of compulsory acquisition powers is outside the statutory wording of the legislation; or (b) the misuse of powers bestowed on the acquiring authority; or (c) a breach of the rules of natural- justice which requires impartiality by the decision-maker and the right to hear and be heard in a matter affecting a person’s interest.

The above conditions are what to look out for to determine whether an acquiring authority's actions as regards compulsory acquisition for public purpose may be declared invalid or *ultra vires*. The Courts have held that it will not and does not constitute public purpose where a right of occupancy is

⁴² (2012) 10 NWLR (Pt. 1308) 291.

⁴³ B., Denyer-Green, *Compulsory purchase and compensation*, London, *Estates Gazette*, (1994), in Wordsworth Odame Larbi, *Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies*, (2008) FIG/FAO/CNG International Seminar on State and Public Sector Land Management Verona, Italy, September 9-10, p. 17.

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revoked for the purpose of conferring an interest in another individual or for another private use. In *Bello & Ors v. The Diocesan Synod of Lagos & Ors.*⁴⁴ a case decided under the Public Lands Acquisition Law⁴⁵ the Supreme Court concluded that:

It is not contended nor could it have been contended that the facilities of St. John's church are available for any other than the parishioners of the church and that the premises of the church are the private property of the parochial committee... There was never any purpose envisaged which enures for the general public. The 5th defendant (LEDB) requested the 4th defendants to deposit money with them and then armed with that money, they proceeded to use their statutory powers of acquisition against the plaintiff and over his property in order to divest him of his property and by some carefully planned design transfer the title, which they had purported to acquire to the 4th defendant in consideration of their monetary deposit.... It is a well settled principle of law (equity) that any authority empowered by the legislature to take compulsorily the land of another for a definite object will if attempting to take it for any other object be restrained by injunctions issuing from the courts. In the present case, continued the Supreme Court, "the . . . impression created is that a statutory body had used its power of compulsory acquisition to fulfill its purpose to satisfy a private institution. The LEDB was not the master of the situation; the LEDB was the agent, the hand by which property of the plaintiff was compulsorily taken from him to be handed over to the Church. It is well settled that a public body invested with statutory powers such as those conferred upon the LEDB must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably."⁴⁶

Also, in *Chief Commissioner, Eastern Provinces v. S. N. Ononye and Ors*⁴⁷ where the Central Government of Nigeria purported to acquire a particular land compulsorily in Onitsha for the purpose of granting a lease of it to a trading company. The action of the Government was held not valid and not within the range of the definition of public purposes.⁴⁸ In *Ereku v. Governor of Mid-Western State*,⁴⁹ the appellant sued at the Warri High Court claiming amongst others a declaration that the notice of acquisition and the compulsory acquisition of the land under the Public Lands Acquisition Law, Cap105 by the 1st defendant/ respondent was unconstitutional, *ultra vires*, irregular, *null* and *void*. The Government contended that the lease was in accordance with public purpose for which the land was acquired, because the purpose of the company was to advance the industrial and economic life of the State and the fact that public purpose included whatever resulted in the advantage to the public. Plaintiffs on the other part contended that a lease to a private company was not for a purpose of the State. The trial court held in favour of the government not that the acts of revocation

⁴⁴ (1973) ANLR 196.

⁴⁵ Cap 167 of 1958 (as amended by the Public Lands Acquisition Miscellaneous Provisions) Act No. 33 of 1976. Here the definitions and scope of what constitutes public purpose for public acquisition is same with the definitions of public purpose under Section 51 of the Land Use Act.

⁴⁶ *ibid.*

⁴⁷ (1944) 18 NLR 142.

⁴⁸ *ibid.*

⁴⁹ (1974) 4 ANLR 695. McDennott Overseas Inc., is a Panamanian company incorporated in Nigeria whose objects, includes fabrication of structures for oil industries, relating to mining industry and economic and industrial development of the Mid - Western State of Nigeria in particular and the Federation of Nigeria in general.

was done on the ground of public purpose, but to declare the acquisition invalid might embarrass the government which may lead to series of hostility. On appeal to the Supreme Court, the revocation was invalidated on the ground that the PLA Law Cap 105 has defined what constituted public purpose and that the PIA Law (Amendment) Edict, 1972 by which it was sought to give additional power to the government of Mid-Western Nigeria to acquire lands for an industrial purpose is unconstitutional, *ultra vires* and *void*. The Court further held that an acquisition by the Government...for the private need of a private corporation or person is unlawful since by no stretch of imagination can one say that the enterprise of the McDermott Overseas Inc., beneficial though it might be can be regarded as being for "public purpose of the State."

In *Goldmerk (Nig.) Ltd. v. Ibafo Co. Ltd*^{2(H)} the Court held thus:

The law empowers acquisition of land by government when it is required for public purpose. What is public purpose is not defined in the Public Land Acquisition Act but has been identified by the courts in numerous cases. The acquisition must be for *bona fide* public purpose. It is suggested that for a particular purpose to qualify as public purpose or public interest, it must not be vague and the way it benefits the public at large must be capable of proof. The test is what or not the purpose is meant to benefit the public and not just to aid the commercial transaction of a company or group of people for their own selfish or financial purpose.

The Courts have also held that where the purpose for which the land was revoked fails, such revocation can be invalidated. Thus, in *Olatunji v. Military Governor of Oyo State*⁵⁰ the Court said:

...if a property is ostensibly acquired for public purpose and it is subsequently discovered that it has directly or indirectly been diverted to serve private need, the acquisition can be vitiated. The acquiring authority cannot rob Peter to pay Paul by divesting one citizen of his interest in a property and vesting same in another. ... if the acquiring authority can no longer find a public purpose for the land so acquired, the only avenue open to it is to de-acquire it and let same revert to the person in whom it was already vested.⁵¹

In *Osho v. Foreign Finance Corporation*⁵² where Obaseki, JSC in considering the validity of the exercise of revocation of right of occupancy by a Military Governor under Section 28 of the Land Use Act had this to say:

The purpose for which the power of revocation of a right of occupancy was conferred on the Military Governor of a State has been clearly set out in the Land Use Act. Any revocation for purposes outside the ones prescribed even though ostensibly for purposes prescribed by the Land Use Act is against the policy and intention of the Land Use Act and can be declared invalid and *null* and *void* by a competent Court of law. The Court of Appeal having found on the evidence that the Military Governor revokes the plaintiff's right of occupancy not in the manner and for the purposes prescribed by the Land Use Act was perfectly justified to have declared the revocation invalid, and *null* and *void*.

⁵⁰ (1995) 5NWLR (Pt. 397) 586 at 602.

⁵¹ Emphasis mine.

⁵² (1991) 4 NWLR (Pt. 219) 187.

Requirement for extraction of building materials

The local government has exclusive rights to land located in rural areas against all persons except the Governor.⁵³ This is because; ordinarily the local government is in charge of land in the rural areas and grants customary rights of occupancy to individuals.⁵⁴ However, the Governor may by the power conferred on him designate such land within such area as urban land.⁵⁵ The Governor may also in exercise of his power of revocation revoke or acquire land in the rural area for overriding public interest.

Under section 28 of the Land Use Act, the power of revocation of a right of occupancy for overriding public interest in the case of a customary right of occupancy include among others the requirement of the land for the extraction of building materials.⁵⁶ What is building materials? These are simply materials used for building as well as construction which are naturally occurring. This includes extraction of raw materials such as wood, timber, latex *et cetera* from forest reserve, sand, rocks, *et cetera* for building and construction purposes. On this ground, the Governor of a State may revoke a customary right of occupancy which ordinarily is within the power of the local government.

Government may acquire land for dumping of refuse or for disposal of waste materials otherwise known as dump site. Dump site as the name implies is majorly for discarding of refuse. It allows the correct disposal of solid urban waste, large enough to accommodate large refuse and reduces the risk of environmental pollution. The refuse invariably may be converted to renewable energy in form of gas which can be harnessed for other purposes.

Improper waste collection and disposal may result to environmental pollution which also results to continuous degradation of the environment. A well-structured sustainable waste management system is required to prevent the menace of improper waste collection and disposal. Government in order to make adequate provision for this may revoke or acquire individual properties.

Government may also revoke a property in order to obtain raw materials required for smelting or other industrial purposes, and for extraction of other building material such as granites, donamites, stones, iron ore for iron smelting, aluminum for production of long-term roofing sheet, gypsies for production of cement, *et cetera*.

Where there is need to revoke a right of occupancy for the purpose of extraction of building materials in accordance with section 28 (3) (c), such purpose must be clearly spelt out in the notice of revocation, failure to do so is detrimental to the validity of such revocation. In *Ballaine v. Attorney General of Cross River State & Ors*⁵⁷ the Court of Appeal referring to the decision of the Supreme Court in *Osho v. Foreign Finance Corporation*⁵⁸ stated that:

The purposes for which the power of revocation of a right of occupancy was conferred on the Military Governor of a State have been clearly set out in the Land Use

⁵³ Section 6 (4) of the Land Use Act.

⁵⁴ Section 6 of the Land Use Act.

⁵⁵ Section 3 of the Land Use Act.

⁵⁶ Section 28 (3) of the Land Use Act.

⁵⁷ (2017) LPELR – 43527.

⁵⁸ (1991) 4 NWLR (Pt. 184) 157.

Act. Any revocation for purpose outside the ones prescribed even though ostensibly for purposes prescribed by the Land Use Act is against the policy and intention of the Land Use Act and can be declared invalid and *null* and *void* by a competent Court of law. The Court of Appeal having found on the evidence that the Military Governor revoked the Plaintiffs right of occupancy not in the manner and for the purposes prescribed by the Land Use Act was perfectly justified to have declared the revocation invalid, and *null* and *void*.²¹

Apart from the need to establish the purpose of revocation of a property, other requirements for valid revocation must fall in line otherwise such revocation may be declared invalid. Adequate notices as well as payment of adequate compensation are criteria for valid revocation of a right of occupancy for extraction of building materials.

Requirement for mining purpose of oil pipelines or any purpose connected therewith

By virtue of section 43 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the right of every Nigerian to own, use and enjoy land anywhere in Nigeria is guaranteed. This right however is limited by the Land Use Act, which empowers Governor of a State to revoke rights of occupancy for public purposes. The Land Use Act provides that it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.⁵⁹ Overriding public interest in the case of a statutory right of occupancy includes:⁶⁰ the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.⁶¹ Overriding public interest in the case of a customary right of occupancy includes:⁶² the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.⁶³

Public purpose according to interpretative section of the Act includes for obtaining control over land required for or in connection with mining purposes.⁶⁴ The Act provides that if a right of occupancy is revoked for the purpose of mining as set out above, the holder and the occupier shall be entitled to compensation under the appropriate provision of the Minerals and Mining Act or the Petroleum Act or any legislation replacing the same.

In other words, the nature and quantum of compensation payable for revocation of right of occupancy for mining purposes is made available under the Minerals and Mining Act or the Petroleum Act. Therefore, the right of a landowner to be compensated for land compulsorily acquired for mining purposes is rooted specifically in the Nigerian Minerals and Mining Act,⁶⁵ the Petroleum Act and the Oil Pipeline Act. Compensation in this regard means the quantum of money to be paid by the government to a displaced land owner for loss of his land, disturbance and injurious affection occasioned by the displacement.

⁵⁹ Section 28 (1) of the Land Use Act.

⁶⁰ Section 28 (2) of the Land Use Act.

⁶¹ *ibid*.

⁶²Section 28 (3) of the Land Use Act.

⁶³Section 28 (3) of the Land Use Act.

⁶⁴ Section 51 (f) of the Land Use Act.

⁶⁵ *Mineral and Mining Act of 2007*, Cap 162 of Laws of the Federation of Nigeria, 2004.

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Under sections 164 and 104 of the Minerals and Mining Act, provision is made for the license holder to pay adequate compensation to a land owner for disturbance and damage to land or any crop, economic tree, building or work damaged, or removed by the mining license holder.⁶⁶ Liability is also imposed on the licensee to reimburse the Governor with the compensation money paid by the Governor on behalf of the licensee to the land owners. The implication of sections 164 and 107 is that the onus is on the Governor to pay compensation to displaced land owners, for Governor to be reimbursed eventually by the licensee. Whether or not adequate compensation was paid at any particular time to the displaced land owner is not made provision for under the Act. There is every likelihood of short changing the land holder by the Governor but the Act is silent on this. Neither the Land Use Act nor the Mining and Mineral Act defined losses to be accounted for in the assessment of compensation such as agricultural plot, dwelling houses, business premises, access to forest lands, traditional use rights, access to fishponds and fishing places, *et cetera*. The problem with this provision is failure to define what constitutes adequate compensation. However, the Court in *Commissioner of Lands v. Adeleye*⁶⁷ arriving at a conclusion that the general principle of fair market value of the land in question should apply. But it is doubtful if the fair market value of a property revoked can actually be paid, this is because valuation is usually done by the officials of the acquiring authority after consultation with the State Minerals Resource and Environmental Management Committee and a Government licensed valuer.

The Oil Pipeline Act⁶⁸ also made provision for payment of compensation by a licensee to a displaced landowner whose land was compulsorily acquired for laying of oil pipelines.⁶⁹ Fourteen (14) days' notice of intention to enter land for mining should be given to the owner or occupier before a licensee or license holder can enter the land subject of mining.⁷⁰ Unfortunately, again, this Act fails to make provision for compensation for acquiring vacant land but it however recognizes compensation for injurious affection suffered by the land owner as a result of the acquisition or compensation for any damage done to any buildings, crops or profitable trees by the licensee.⁷¹ Where a licensee in the exercise of his rights does any damage that affects adjoining lands or other interests either directly or indirectly which results to injurious affection to any person, such a person shall be entitled to a claim for compensation and the licensee shall made good the injury by way of compensation.

The magistrate court has jurisdiction over issues of compensation under the Oil Pipelines Act, if the amount of compensation claimed is within the jurisdiction of the magistrate court, and if there be dissatisfaction as per quantum of compensation, appeal will lie to the High Court. Where however magistrate court has no jurisdiction over the amount on a claim, the High Court exercising jurisdiction in that area concerned will have jurisdiction over such matter.⁷² In this regard, both Magistrate Court and State High Court has jurisdiction under the Oil Pipelines Act to determine the compensation for a displaced land or title holder.⁷³

⁶⁶ *ibid*, sections 164 and 107.

⁶⁷ (1938) 14 NLR 111; *L. E. D. B. v. Joye* (1939) 15 NLR 50; *Chairman L. E. D. B. v. Olupinkwu* (1958) LLR 25.

⁶⁸ Oil Pipelines Act of 1956, Cap 07 LFN 2004.

⁶⁹ *ibid*, section 11 (5) (a).

⁷⁰ *ibid*, section 6 (1) and (2).

⁷¹ Section 11 (5) (a), section 20 (2) of the Oil Pipelines Act. Note that compensation for injurious affection is not contemplated under the Land Use Act. See Section 29 (1) of the Act.

⁷² Section 19 of

⁷³ *ibid*.

Any damage suffered by any person as a result of any breakage of or leakage from the pipeline or an ancillary installation, where the amount of compensation to be paid in such a situation is not agreed between a licensee and the holder, it shall be fixed by a court in accordance with Part IV of the Oil Pipeline Act.⁷⁴ Section 20(2) of the Oil Pipeline Act also enjoins a court awarding compensation under section 11 (5) to apply a just compensation in its assessment of compensation.

The basis for assessment of compensation under the Oil Pipeline Act include any damage done to any buildings, lion crops or profitable trees including damage done to any building or suffered by any person, as well as disturbance occasioned by the revocation. Courts have interpreted the injurious affection to mean some loss of value of land, or some damage done to land only and have nothing to do with personal damage. The Federal High Court has jurisdiction to entertain matters arising from, connected with or pertaining to mining by virtue of Section 251 (1) (n) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and sections 7 (1) (3) (5) and (8) of the Federal High Court Act. Impliedly, the State High Court no longer has jurisdiction in all matters listed in section 251 (1) (a) - (s) of the 1999 Constitution. The jurisdiction to determine all issues relating thereto, arising from or ancillary to such subject matter of section 251(1) have been exclusively bestowed on the Federal High Court. To support this assertion, the Court of Appeal in *Chevron Nigeria Limited v. Nwuche & Ors*⁷⁵ held that the Learned trial Judge fell into serious error in assuming jurisdiction to entertain the claims of the Respondents where by virtue of section 250 (1) (n) of the Constitution of Federal Republic of Nigeria 1999 (as amended) exclusive jurisdiction was conferred on the Federal High Court for matters pertaining to mines and minerals (including oil fields, oil mining, geological surveys and natural gas.⁷⁶ By these provisions, the jurisdiction of the State High Court has been expressly excluded or ousted in any matter arising from, connected with or pertaining to mines, minerals including Oil Fields, mining, geological surveys and Natural Gas, as listed in section 251 (1) (n) of the 1999 Constitution as amended.

Conclusion

The Land Use Act did not expressly define an overriding public interest. There is every need to amend the Land Use Act for the Act to expressly define what overriding public interest is to enable all and sundry to know what it entails especially where the rights of citizens are involved and also where exercise of discretions are equally involved.

⁷⁴ Section 11

⁷⁵ (2014) LPELR – 24291 (CA)

⁷⁶ Section 7 (1) (n) (3) (5) and 8 (1) of the Federal High Court Act, Cap. F12 Laws of the Federation of Nigeria 2004.