

THE ESSENCE OF THE LAND USE ACT, 1978, THE ABUSES AND ITS IMPACT ON THE AVAILABILITY OF LAND FOR HOUSING DEVELOPMENT IN NIGERIA

Steve Unachukwu

Abstract

The enactment of the Land Use Decree, 1978 now adapted as an Act of the National Assembly was targeted at consolidating the ownership of land in every state of the Federation in the hands of the Governor of such a state to hold in trust for the citizens of that state. The enactment of the Act stemmed from the need for more efficient, planned and controlled utilization of the land in every state for the optimum benefit of the members of the public. The coming into effect of the Land Use Act unlocked and made land hitherto in the hands of natives available for developmental purposes. However, in spite of the benefits of the Land Use Act, the Act has come under serious criticisms for various reasons among which is the unbridled abuse of power associated with the Governors of the various states in their acts of acquisition and allocation of lands in their states. Whether those arguments and the calls for the repeal the Land Use Act are frivolous or not should be left for future appraisal, the concern of this work presently is the tension associated with securing land for development of dwelling houses for members of the public following from the restricted naming of the overriding public purpose clause in the Land Use Act, 1978¹ and the abuses recorded in the past over acquisition of land for the needs of the various Housing Corporations and authorities in Nigeria.

1.1 Introduction

Land as a gift of nature is among the scarce resources bequeathed to mankind for its sustenance on the planet earth. Due to the limited nature of land, the quest to acquire and hold land becomes more stringent as the quantity of land available to communities dwindles. The relationship of man and land is better understood when it is considered and realised that there would be no human existence on the planet earth without land. Every developments made by man in the course of conquering and improving his environment was done on land. However, land is a thing capable of being owned. Infact majority if not all available lands are subject matter of one form of ownership or the other.

1.2 Concept of Land Ownership

Ownership as a concept is the greatest interest a person can have over a property as permitted by or in respect to law. It is a right which the Constitution recognises. By the provisions of the Constitution, every citizen in Nigeria shall have the right to acquire and own immoveable property anywhere in Nigeria.²

Unachukwu Stephen Chuka, Esq. L.L.M., (B.L.) Lecturer in the Department of Public/Private Law, Anambra State University, Igbariam Campus Phone No. 08035550743, e-mail: stevechuka@gmail.com or sc.unachukwu@coou.edu.ng*

¹ Section 51 of the Land Use Act, 1978, CAP L5, Laws of the Federation of Nigeria, 2004 defines Public Purpose in relation to compulsory acquisition of land.

² Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

In *Abraham v Olorunfunmi*³, Niki Tobi JCA (as he then was), defined ownership as “the totality of or the bundle of the rights of the owners over and above every other person in a thing. It connotes a complete and total right over a property. The owner of a property is not subject to the right of another person. Because he is the owner, he has the full and final right of disposition without seeking the consent of another party because as a matter of law and fact, there is no other party’s right over the property that is higher than that of his. He has the inalienable right to sell the property at any price, he can give it gratis i.e. for no consideration. The property begins and ends with him unless he transfers his ownership to a third party; he remains the allodia owner or absolute owner”.

1.3 Communal Ownership

This is another method of land ownership by which community or a group owns a piece of land. The groups have to be larger than the family which is the smallest land owning unit. This system of land ownership has been practiced in different ways in different parts of the world. For instance, in our very own continent Africa, this type of land ownership is practiced among the African Tribes. The tribes control the land and the Chief of the tribe and the Priest are endowed with the power to distribute the land between the masses but the farmers are not empowered to take any kind of decision regarding the land. The power of taking a decision regarding the land lies with the Chief or the Priest.

One of the main characteristics of ownership by native law and custom is that it lacks the individualistic connotation of ownership in the modern system. In the words of the Privy Council: “... the notion of individual ownership is quite foreign to native ideas” ...⁴

It is not true however that individual ownership was foreign to native customary laws before the advent of the British. *Au contraire*, as the French say, it can even be said that all family lands must have had their origin in individual ownership. It may be said that it is a point of fact that the traditional history given in support of the title of a family land usually traces the title to an individual founder who first acquired the land by the deforesting it.

The Land Use Act, 1978 has operated for about 41 years now. This is considered time long enough for all the people who have one thing or the other to do with the Act to have undertaken an assessment of the impact of the application of the Act in the management of the scarce land resources in the country so as to make a fair determination as to whether or not the Land Use Act have worked as well as was envisaged. Efficient and fair utilisation of land for economic development was among the factors that motivated the promulgation of the Land Use Decree in the first place. Sustainable development requires government at all levels, to make available public facilities and infrastructure that guarantee safety and security, health and welfare, social and economic enhancement and protection and restoration of the natural environment. An important step in the process of providing such facilities and infrastructure is the acquisition of appropriate land for development.

From the time organised communal life and government started even till this moment, lands of many villages and communities were regularly required for public purposes such as burial grounds, playing fields, schools, churches etc. Since then, naturally, the demand for land for public purposes has expectedly increased, particularly, with the need for more land for

³ (1993) 1 NWLR (Pt. 155) 53 at 74, 75

⁴ *Amodu Tijani v Secretary S. Nigeria* (1915-21) 3 N.L.R. 24 at PP. 59-60

agricultural and industrial development projects. The demand for land became even more compelling in Nigeria when new states and local governments were created and new Capitals for the states and local governments needed to be developed. Following from this, the Federal and State Governments in Nigeria as well as statutory corporations have had occasions to exercise their powers of compulsory acquisition of occupied and unoccupied lands. This informed the promulgation of the Land Use Act by the Federal Government in 1978.

1.4 Some Relevant Provisions of the Land Use Act

One of the dominant reasons the Land Use Act was enacted was the nature of trusteeship of land holding in the past. Land was not accessible to the majority of the citizenry even when there were genuine needs for land. **Part I** of the Land Use Act provide thus:

1. Subject to the provisions of this Act, all land comprised in the territory of each State in the federation are hereby vested in the Governor of that 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.⁵
2. (1) As from the commencement of this Act;
 - a. All land in urban areas shall be under the control and management of the Governor of each State. And;
 - b. All other land shall, subject to this Act, be under the control and management of the Local Government within the area of jurisdiction of which the land is situated.

1.5 The Powers of the Governor of a State to Compulsorily Acquire Land.

Compulsory acquisition by way of loose definition is the power of the Government to acquire private rights in land without the willingness or consent of its owner or occupier in order to benefit society. According to Section 28 of the Land Use Act, 1978, dispossession of the vested interests of original land owners over their land can only be justifiable where such dispossession was done, following the due process laid down for compulsory acquisition of land by the acquiring authority and was done for overriding public interest or for public purpose.

What constitutes Public purpose was not defined in clear terms by the Land Use Act but the Land Use Act Cap L5, Laws of the Federation of Nigeria, 2004 in Section 51 thereof states that public purpose include the following:

- a) For exclusive Government use for general public uses;
- b) For use by anybody corporate directly established by law or by anybody corporate registered under the Companies and Allied Matters Act (g) (sic) 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;
- i) For educational and other social services.

For many decades, the issue of compulsory acquisition of land has constituted one of the most topical issues confronting our country, Nigeria. The reason for the agitations by land

⁵ Section 1 of the Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004

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 owner or owners. 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 purposes for which it was requisitioned.

There is no doubt that recent policy dialogues on land have clearly shown compulsory acquisition of land as an area filled with tension. From the perspective of government and other key economic actors, the continuous inefficient aspects of the process of land acquisition are seen as a clog in the wheel of economic growth and national development.⁶ On the other hand, the citizenry are living with a feeling of insecurity based on unabated threat of dispossession. Though the compulsory acquisition of land for developmental purpose may in the long run bring about unquantifiable benefits to the society, it is disruptive to the lives of people whose lands are being acquired. It displaces families from their ancestral homes, farms and businesses.

The greatest threat to the idea of compulsory acquisition of land is the real likelihood of abuse of the power of compulsory acquisition of land conferred on the Governor under the Land Use Act. Inconsistent and unfair procedures for the compulsory acquisition of land and inequitable compensation for its loss can reduce land tenure security, increase tensions between the government and its citizens and reduce public confidence in the rule of law. Where the government at all levels adopts unclear, unpredictable and unenforceable procedure, it is bound to create opportunities for corruption. Transparency is necessary to provide a balance between the need of the government to rapidly acquire land and the need to protect the rights of people whose lands may be required for such developments.

The compulsory acquisition of land for public purposes without adequate compensation is not only unjust but a serious violation of the property right guaranteed under the Constitution of the Federal Republic of Nigeria⁷ and the African Charter on Human and Peoples Rights (Ratification and Enforcement).⁸ Public Lands Administration Decree No 36 of 1976 which is now referred to as Public Lands Acquisition Act of 1976, is still in force. This Act operates side by side with the Land Use Act of 1978.

It is incorrect to assume that the Land Use Act of 1978 has totally transferred ownership of land to the Governor of a state in Nigeria. The Governor was vested with contingent powers to acquire land in the circumstances where such acquisition is for public purpose and no more. It is important to state, however that in those instances where land is compulsorily acquired for a specific purpose and it turns out that same land is put to a use radically different purpose, this clearly violates the rule of law and makes the said action of the Governor liable to be struck down.

In other words, although the Act confers on the Governor the power to compulsory acquire land, it is power that must be approached with much discretion as such acquisition must at all times be for public purpose. Where it is not, the owners of such land are vested with the right to resist such abuse of power through an action to recover their land even though

⁶ The consent requirement in the Nigerian Land Use Act has been severely criticized in *Savannah Bank Nig. Ltd v. Ajilo* (1989) 1 NWLR (Pt. 97) 305.

⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁸ Cap A9 Laws of the Federation, 2004

compensation may have been paid.⁹ It is trite law that when land is acquired for public purposes, it must be used for the purpose for which it was acquired. The real controversy arises as to what constitute public purpose.

1.6 Public Purpose Under the Land Use Act, 1978

It has been observed that the Land Use Act did not make the definition of public purpose a closed shop. In that respect, to ascertain what constitutes public purpose in borderline situations, recourse can only be had to judicial authorities. One area that have generated much heat in the country as regards acquisition of land for public purpose is acquisitions done by the Governors of states and handed over to either the Federal Housing Authority or State Housing Development Corporations for Housing development. A close scrutiny of what transpires in such acquisition and subsequent allocations to members of the public will certainly raise doubts as to whether such an acquisition and allocation of land by the government of a state to a Housing Authority or Corporation owned by the Government of the Federation or a State for the purpose of building houses for public use can be said to be an overriding public purpose? There is no doubt that the answer obviously is yes to the extent that the Housing Authorities or Corporations build houses and make them available to members of the public to inhabit during their service years and relinquish same at the expiration of their service years.

However, a problem may arise where the Authority or Corporation to which such land acquired in dispossession of other citizens who were the original owners of such lands, resort to selling the houses built on the free land to members of the public at rates that may confer economic benefits on such Authority or Corporation. Where a parcel of land acquired for overriding public purpose was allocated to individuals by the acquiring authority but was not sold at an economic rate, a different scenario would have arisen but it is still contentious as to whether or not such practice offends the Land Use Act. It is, however, certainly beyond public purpose where the lands were compulsorily acquired and sold to members of the public as bare sites at an economic rate and the proceeds of such sale kept back by the acquiring authority or its agency. The later is common practice today in most of the states that comprise the South East of Nigeria.

Although compensation is enshrined in the Land Use Act, delay in payment of compensation or resettlement of displaced person is another serious problem of land acquisition facing the person whose right of occupancy has been revoked. When occasionally compensation is paid, it is hardly adequate. Finally, displaced persons are in most cases resettled in places without the required conveniences or comfort such as was in the previous property acquired. Original landowners may occasionally for these reasons resist the acquisition of their land, which result in delay in the take off of most projects for which land is acquired.

The Land Use Act has not succeeded in making land readily available to Nigerians because the process of accessibility to land is rigorous, tortuous and expensive. Allocation of land by the Government is selective and riddled with corruption to the extent that more lands are allocated to land speculators who hoard land and make it more expensive for persons who really need such land.

1.7 Acquisition of Land for Overriding Public Purpose and Diverting Same to Other Purposes.

⁹ Stodie Ventures Ltd v. Alamieyeseigha (2016) 4 NWLR (Pt. 1502) 271

At this point, an examination becomes extant of some judicial decisions on the perceived abuses or high handedness exhibited by the Federal and State Governments where they acquire lands for overriding public purposes and convert such lands to lands available for private or commercial purposes. This will enable us to discover the impact of judicial intervention in the interface between land owners and governments that acquire such lands for overriding public purpose. We shall discuss this part, looking at judicial authorities on the subject matter as they stand.

Earlier in the case of *Ereku v. The Military Governor of Mid-Western State*¹⁰ it was held by the Supreme Court of Nigeria that compulsory acquisition of land for the use of private persons or company is unauthorized. In the case of *Maiyegun v. Governor of Lagos State*¹¹, the Court of Appeal held that the law is well settled that the acquisition of land by the Government from a private individual or company for re-allocation to another private individual or company does not qualify as public purpose within the provision of the Land Use Act.

*In Stodie Ventures Ltd v. Alamiyeseigha*¹²

The appellant instituted an action against the respondents at the High Court of Bayelsa State sitting at Yenagoa.

In the action, the appellant claimed against the respondent a declaration of title to a parcel of land measuring 5336.919 square meters situate at Ovom, Onopa, Yenagoa Local Government Area of Bayelsa State. He also sought for a perpetual injunction restraining the respondents from further acts of trespass upon the land and damages for trespass. According to the appellant, a Limited Liability Company, it purchased the land by virtue of a written contract in 2008 from Gbesleseimo Family of Fambue Compound, Ovom, Yenagoa, Yenagoa Local Government Area of Bayelsa State who were the owners of same from time immemorial. That it took up vacant possession of the land until 2010 when the respondents trespassed on same.

The respondents on their part did not deny that the appellant purchased the land from the Gbesleseimo Family but claimed that the said land was allocated to them by the Government of Bayelsa State after the government compulsorily acquired the land together with others for overriding public interest or public purpose. The 1st respondent was the Governor of Bayelsa State then who exercised the power granted to him as the Governor of the State under the Land Use Act and compulsorily acquired the said land. However, the alleged compulsory acquisition did not comply with the statute enabling the Bayelsa Government to compulsorily acquire land for public purpose. Also rather than using the land for the public purpose or overriding public interest, the 1st respondent turned round and allocated some of the plots to his wife, the then First Lady of Bayelsa and himself, the then Governor of Bayelsa State in their private capacities for private purposes.

When the respondents entered the land and commenced work thereupon, the appellant initiated a civil proceeding against them before the High Court of Bayelsa State sitting at Yenagoa. The matter was heard by the trial court and after its consideration of the evidence

¹⁰(1974)10 SC 59,

¹¹ (2010) LPELR-CA/L/126/07

¹² (2016) 4 NWLR (Pt. 1502) 271

adduced before it, it entered judgment and held that the claimant failed to establish its case by credible evidence and dismissed its case.

Aggrieved, the appellant appealed to the Court of Appeal and the Court of Appeal held:

On meaning of overriding public interest in the case of statutory right of occupancy-

An overriding public interest in the case of statutory right of occupancy means the requirement of the land by 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.¹³

On Onus on party who asserts that land was acquired by government

A party in a land dispute who asserts that land was acquired by the Government, as the respondents in the instant appeal, must not only prove that the land was acquired pursuant to Section 28(1) and (2) of the Land Use Act but also that sub-sections (6) and (7) of the section and Section 44 of the same Act were duly complied with.¹⁴

The Court stated further, Per ORJI-ABADUA, JCA¹⁵ as follows:

It is thoroughly reprehensible that the 1st defendant, who was the Governor of Bayelsa State as at the time the said compulsory acquisition was made seemingly for an overriding public interest, later allocated the said land to himself and his wife who was then the First Lady of Bayelsa State.

If indeed the land was compulsorily acquired by the Bayelsa State Government during the tenure of the 1st respondent as the Governor of Bayelsa State and who turned round and allocated the said plots to his wife and himself, the burden shifted from the appellant to them and the law imposed on them the duty to prove not only that the land was acquired pursuant to Section 28(1) and (2) of the Land Use Act, but also that sub-sections 6 and 7 of that Section were duly complied with. No Government or individual has any right to acquire land compulsorily and alienate or transfer it to another private individual or body for his or its private use.

In the case of *Samuel Ononuju v. A.G., Anambra State & Ors.*¹⁶ The suit that gave rise to the Appeal was filed at the High Court of Anambra State, Nnewi Judicial Division where the appellant sought for a declaration, damages, injunction etc. against the acquisition made for the purpose of the 3rd respondent on the ground that it was not properly made in accordance with the Land Use Act, 1978.

The Supreme Court emphatically stated that the validity of the title of the Government will depend on the validity of the acquisition in accordance with the laid down principles of relevant laws and since the 3rd defendant is claiming to have derived title from the 1st and 2nd defendant, i.e., the Government, his fate would be determined by theirs. It was further entrenched that the plaintiffs would not be required to establish their title to the land in dispute especially so when the defendants were not seriously challenging their title to the land. It was further opined that no one, including the Government can deprive a holder or

¹³ At P. 292, paras, A-B

¹⁴ At P.292, paras. C-D

¹⁵At P. 292, Paras E-H

¹⁶ (2009) 10 NWLR (pt. 1148) page 182,

occupier of a parcel of land unless the land is compulsorily acquired in accordance with the Land Use Act, e.g. for overriding public interest or for public purpose by the Local Government or State Government.

Also in *Baba-Iya v. Sikeli* (2006) 3 NWLR (pt. 968) page 508, **Kekere-Ekun, J.C.A** (as she then was) pronounced that the general onus of proof is on the party who is asserting his right. However, by Section 137 (2) of the Evidence Act, the *onus* shifts to the adverse party once the party asserting his right has adduced sufficient evidence that ought reasonably to satisfy a jury that the fact sought to be proved has been established. She further held that in order to prove that the appellant's land was acquired by the Kano State Government, the respondent who was relying on this assertion must prove not only that the land was acquired pursuant to Section 28(1) and (2) of the Land Use Act, but also, that sub-sections 6 and 7 of that section were duly complied with. Section 28(1) and (2) bestowed on the governor of a State the right to revoke a right of occupancy for overriding public interest.

In the **Alamieyeseigha** case¹⁷ the Court of Appeal stated further that it is pertinent to highlight that an overriding public interest is the case of a Statutory Right of Occupancy means the requirement of the land by Government of the State or by Local Government in the State, in either case, for public purposes within the State or requirement of the land by the Government of the Federation for public purposes of the Federation. The Court relied on the case of *Wuyah v. Jama'a L.G., Kafanchan*¹⁸, where Ogbuinya J.C.A expressed the view that the law does not give license to anybody or individual, constituted authority or Government to acquire compulsorily or otherwise any land that belongs to a person and alienate or transfer it to another private individual or body for his or its private use. The aim of the Act is not divest citizens of their pre-existing titles to land.

Finally, the Court in *Alamieyeseigha* case¹⁹, Per Orji-Abadua, J.C.A stated:

I would however say in passing that the public purpose for which the Government can compulsorily acquire lands are clearly defined in the Act and do not include acquisition for the purpose of making a grant to a third party. In Chief Commissioner, Easter Provinces v. S.N Ononye & Ors (1944) 17 NLR 142 it was held that the acquisition of land by the then Central Government of Nigeria in Onitsha for the purpose of granting a lease of it to a commercial company was not a public purpose within Public Lands Acquisition Ordinance Cap. 88.

The law on this subject matter seems to have been stated loud and clear to a point of becoming trite. However, a recent decision on the subject matter by **Iyizoba, J.C.A** in the case of *F.G.N v. AKINDE*²⁰, stands out as an odd decision capable of escalating the tension in the crisis-ridden issue of acquisition for overriding public interest. In that case, the respondents filed the action against the appellant in a representative capacity in respect of the land in dispute which they claimed belonged to their forefathers. The respondents claimed that the disputed land was used for farming and for building houses and that they depended on the products for their livelihood. The respondents contended that in 1976, the appellant informed them that their land had been acquired along with other lands in the neighbourhood.

¹⁷ *Op.cit*, footnote 18

¹⁸ (2011) LPELR CA/K/7/2007, Ogbuinya J.C.A

¹⁹ *Op.cit* footnote 18

²⁰ (2013) 7N.W.L.R (PT. 1353) 349

They claimed that they were not served with acquisition notice before they were driven away from the land and their buildings demolished, after which the appellants divided the land into plots and sold them contrary to the appellants' reason for the acquisition which was for the construction of Low Cost Housing Estate.

In defence, the appellants claimed that the disputed land was acquired in 1976 by the Federal Government of Nigeria by acquisition notice No. 344 of 4/3/76 and published in Gazette 13 Volume 63 of 11/3/76. The appellant claimed that the notice of acquisition was published in the newspapers and same circulated to various villages that were affected. They claimed that the respondent refused to collect compensation from the Government.

At the end of trial, the trial court, granted some of the respondents' reliefs and refused others. Dissatisfied with the judgment of the trial court, both the respondents and the appellant respectively appealed and cross- appealed to the Court of Appeal.

At the Court of Appeal, the appellant contended that the residential layout or site and services scheme was a housing scheme and not a change from the original purpose of acquisition. The cross-appellant, on the other hand, queried the pleadings of the appellants at the trial court wherein they submitted that the acquisition was dealt with in accordance with the State Land Act; and whether the acquiring authority could divert land acquired for public purpose to any other use upon failure of the purpose for which it was acquired. They also raised the question as to whether the sale of the acquired land under the site and services scheme of the appellants met the purpose of the acquisition. The Court of Appeal considered Section 3 (2) of the Public Lands Acquisition Act, Cap, 167, Laws of the Federation of Nigeria, 1958 and Section 2 of the State Lands Act, cap, 45, Laws of the Federation, 1958 respectively and held thus:

On the meaning of "public purpose" in relation to government acquisition of land.

The definition of public purpose includes instances, where land is acquired from private individuals or communities, laid out into plots and subsequently re-allocated to corporate organization or private individuals under an industrial or housing scheme. The court relied on the decision in *Oviawe v. Integrated Rubber Products (Nig.) Ltd.*²¹

On When land becomes State Land

By virtue of Section 3 (2) of the Public Lands Acquisition Act, where any lands have been acquired under the Act, such land to the extent of the estate or interest acquired therein becomes State Land. In other words, once land is shown to have been validly acquired, it is deemed to be state land for the purposes of the State Lands Act from the date of such acquisition, and may be dealt with in accordance with the provision of the Act notwithstanding that the purpose for which such lands were acquired has failed or that all or any of such lands are no longer required for the purpose for which they were acquired or are being used.²²

The court stated further, Per IYIZOBA, J.C.A.²³ as follows:

²¹ (1997) 3 NWLR (Pt. 492) 126 P. 370, paras D.E

²² At Pp. 370-371, paras H-A

²³ At page 372, paras, C-E

The effect of this law is far reaching and indeed deals a devastating blow to the cross-appellants' case. This explains the concerted effort of learned counsel to whip up every conceivable reason to declare the law inapplicable. Learned counsel consequentially queried "whether the said provision of S. 3 (2) of the Public Lands Acquisition Act can be sustained so as to empower the acquiring authority to divert lands acquired for public purpose to any other purposes upon failure of the purpose or if no longer required for that purpose?" The short answer to this query is that the provision of the law is clear and unambiguous.

On when land is properly acquired for public purpose:

A land is said to be properly and duly acquired in accordance with the law, if proper notices of the acquisition was given to the land owners as required by law and the purpose of the acquisition must be for public purpose in accordance with the law²⁴.

On when acquiring authority can rely on Section 3 (2) of the Public Lands Acquisition Act:

The acquiring authority can only rely on the provisions of Section 3(2) of the Public Lands Acquisition Act if the acquisition has been done properly and in good faith. An acquisition which is void *abinitio* or done *mala fide* cannot seek refuge under the section. To rely on the section, the onus is on the defendant to prove good intention at the time of the acquisition. The Court referred to the following cases²⁵.

On Status of land acquired for public purposes but subsequently granted to private company for industrial project:

The Court stated concerning this issue that where a land was acquired for public purposes by the government and same was subsequently granted to a private company for an industrial project, it falls within the definition of acquisition for public purpose. The court referred to *Oviawe v. Integrated Rubber Products (Nig.) Ltd (1997) 3 NWLR (Pt. 492) 126* (Pp. 368 – 369, paras G-A).

According to **IYIZOBA, J.C.A.**²⁶

The contention of the cross-appellants is that the appellants in their pleading and in their evidence in court, made it clear that the land was acquired for Federal Government Housing Scheme leading to the construction of Shagari, Gemade and other Estates. Owing to financial constraints, the appellants introduced Sites and Services Scheme resulting in demarcation of the land into plots allocated to interested members of the public for a token amount, a different purpose. The contention of the cross-appellant consequently is that the change of procedure from direct construction to allocation of plots to individuals to carry out the construction themselves meant conversion of the purpose of acquisition for a different purpose not authorised by law. This view was upheld by the learned trial judge in this judgment. After reviewing some decision of the Supreme Court, at page 316, his Lordship observed:

²⁴ At Pp. 371-372, Para, H-A

²⁵ (*Ereku v. Gov., Mid-Western State (1974) 10 SC 59; Bello v. Diocesan Synod of Lagos (1973) 3 SC 103; Obikoya & Sons Ltd, v. Gov., of Lagos State (1987) 1 NWLR (pt.50) 385; Osho v. Foreign Finance (1994) 4 NWLR (Pt. 184) 157 at P. 372, paras E-H*)

²⁶At page 369, paras B-H

In the instant case, since the land is question could no longer be used for the purposes for which it was acquired, i.e. for Federal Government Low Cost Housing Scheme, the defendant ought to have returned same to the plaintiffs’.

His Lordship, **Iyizoba, J.C.A** continued and stated:

With all due respect to the learned trial Judge, I am of the humble view that change of procedure from direct construction by Government to allocation of plots duly demarcated to interested members of the public for direct construction by the allottees meets the purpose of the acquisition. Even after direct construction by the Government, the houses are sold to interested members of the public. In either case, it fits within paragraphs (a), (c) and (i) of the definition of public purpose in section 2 of the Public lands Acquisition Act (as amended). If the learned trial Judge accepted the acquisition for Federal Government Housing Scheme as a valid public purpose within the law, there is no basis for holding that the change of procedure made it no longer a public purpose”.

The decision in *F.G.N v. AKINDE*²⁷ seems to be a complete departure from earlier authorities on the subject matter, majority which are to the effect that to divest citizens of their lands and confer ownership same on another or other citizens or institutions is a departure from overriding public purpose. Equally it is the position of other authorities, some of which were reviewed in this case that acquisition of land and allocation of same to another for the furtherance of the allottees business or commercial interest makes the acquisition void *ab-initio*.

In the instant case there is a departure from the original purpose of the acquisition of land to the extent that the Government which intended to build low cost houses for its citizens and probably retain the ownership of such houses while giving out possession to the occupiers turned around and started allocating the land to members of the public who could afford it for certain sums of money whether it is called a token or not. It is submitted, most humbly, that once such allocations are made for monetary purpose, it has acquired commercial undertone. In this situation the Federal Government divested itself of any interest on the lands allocated to private persons even when the land was originally acquired for public purpose where ownership would reside in the Government.

The criticisms and challenges that attend land acquisition and management practices such as the one exhibited in this case centers on the fact that there is no justification for removing a citizen (usually a peasant) from his land and further impoverish him and thereafter make a gift of the same land to another citizen (usually a citizen better placed financially than the original owner). The worst that happens in such occasions is that such lands are sold by the acquiring authority to improve its own finances to the detriment of the original owners of such land. Such is morally reprehensible and devalues the reputation of the acquiring authority (Government) before the citizenry. It is contended that the solution to the battles that arise in scenarios such as the one in this case should be found where:

1. The Government negotiates with the original owners of such land and acquires their land for fair value through a process of negotiation rather than compulsory acquisition. In such a situation, the land owners would have got a value beyond the

²⁷ *Supra*, footnote 26

present statutory value guaranteed them under the Land Use Act for their crops and unexhausted improvements on their land.

2. Where the land is to be used for residential purposes it would be better for the Government that needs land to settle its workers and citizens who are not indigenes of the places they are required to work, to negotiate with the owners of the land, open up the land with basic infrastructure and give a reasonable percentage of the land back to the owners of the land for their own use. In that situation tension will be reduced since the owners of the land were not completely weeded out of their land and same handed over to a wealthy class as is presently the case all over Nigeria.

Anambra State has a land policy that is fashioned along the line of suggestion in Number 2 above. Under the said policy, owners of land acquired for residential purpose by the Government of Anambra State are supposed to be given back 20% of the realizable residential plots of land realised from the acquired land as compensatory plot. Fair as that policy seems, it has so far failed to assuage the feelings of despondency and tension that arises among communities whose land are acquired by the Government of Anambra State for the following reasons:

1. There have been total lacks of transparency on the part of Government in declaring the accurate number of plots of land accruable to the communities whose lands are acquired. This has always been made possible by the secrecy and cult nature in which activities surrounding the acquisition and release of compensatory plots are shrouded. It is always a pathetic and embarrassing scenario where the Government through the Commissioner for Land responsible for acquisition and release of compensatory plots dedicate to the land owners and insist on the Estate Surveyor that should be appointed by the land owners to work with them in determining what is due to the land owning community. Even when what is due to the community is determined, the same Government in an intimidating fashion, hands over the plots due to the community to the Estate Valuer nominated by the Government and foisted on the neck of the land owning community. It is common place to discover that such Estate Valuer appropriates as much as 50% of the release plots to himself, the officials of the Ministry of Land and powerful individuals among the land owning community who identities are hidden in coded languages.
2. The second specie of fraud associated with such land policy as seen in Anambra State occurs in the land owning communities where the strong and greedy leaders of such communities employ the use of thugs to intimidate the weak and voiceless land owners into keeping quiet and purporting to agree to have the released lands sold for peanuts and have useless peanuts distributed to lucky ones among the land owners while the few that try to resist such mode of dealing with their property are denied even the peanuts without consequences because the Government of the day and its officials, particularly, of the Ministry of Lands are neck-deep in the said robbery of the poor. There are more than one hundred litigations concerning such acquisition of lands, release of compensation and compensatory plots going on presently in respect of lands acquired in Anambra State.

In the final analysis, it has become certain that the objectives of the Land Use Acts, 1978 to make land needed for the of development available to the Governments and authorities in Nigeria have been derailed and bastardised by unbridled greed and impunity on the part of

the acquiring authorities. Compulsory acquisition of lands of Nigerian citizens have ended up becoming night mares and sources of impoverishment for the land owners and many have died struggling under the weight of the high handed application of the provisions of Section 28(1) and (2) of the Land Use Act, 1978.

However, there have been benefits that accrued from the implementation of the Act to the extent that it made land needed the development of public infrastructure and institutions readily available to the various Governments which would not have been the case if the Governments were to be subjected to going cap in hand to beg land owning communities for land for the development of public infrastructure and institutions. The obvious truth is that the Act has outlived its usefulness and ought to be revisited in view of its inherent weakness that have unfolded over the years as well as the unparallel greed, arrogance and impunity being exhibited by the various Governments in Nigeria in the name of implementing the provisions of the Land Use Act, 1978. For instance, in the case of *GOLDMARK (NIG) LTD v IBAFON CO. LTD*²⁸, the Supreme Court had to intervene and knock down the high-handed purported acquisition of the 1st and 2nd respondents' land by the Federal Government and its agencies on the ground that there was breach of the procedure for acquiring lands as contained in the Public Lands Acquisition Act, Cap. 167, Laws of Nigeria and Lagos 1958, particularly, Sections 5 and 9. It was the case of the 1st and 2nd respondents that no notice of acquisition of their land was served on them and the acquisition was not for public purposes as:

- a. Required by law but for the private benefit of the 1st, 2nd and 4th appellants. The 3rd – 5th respondents did not put forward before the trial court any concrete evidence of notice being served on the claimants – 1st and 2nd respondents.
- b. There was ample evidence of transfer of the acquired respondents' land to the 3rd appellant, the Nigeria Port Authority and the purported lease by the 3rd appellant for a term of 21 years at the payment of rents by the 1st, 2nd and 3rd appellants.
- c. Further, there was evidence that the 1st, 2nd and 4th appellants engaged the land for their private gains and not for ports related matters.

The Supreme Court used the occasion of the above appeal to condemn the lawlessness exhibited by Governments and its agencies in purported acquisition of private lands. In the words of the apex court, it is trite to state that the law empowers such acquisition when it is required for public purpose. What is public purpose is not defined in the Act but have 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 whether or not the purpose is meant to benefit the public and not just to aid the commercial transactions of a company or group of people for their own selfish or financial purposes.

1.8 Conclusion

The Supreme Court has said it all, acquisition of land from the original owner must be for overriding public purpose or in public interest. Anything short of public purpose or

²⁸ (2012) 10 N.W.L.R (PT. 1308) 291

overriding public interest is a contravention of the right to own property that accrues to the citizens by virtue of Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The courts that have stood as a bulwark between the venerable citizenry and the almighty Governments of the State and the Federation has acquitted themselves creditably to the extent that they have now and again pronounced against acquisitions done for overriding public purpose or in the public interest only for the land to end up as part of the holdings of the rich in society. Such should remain deprecated. While Nigeria is waiting for an action on the part of the Legislature to enhance the succor offered by the Judiciary to the citizens of the country being brutalised, embattled and bruised by greedy governors over the land of such citizens, the entire citizenry of the nation are encouraged to be vigilant and steadfast in resisting any unlawful incursion into their land holdings in the name of compulsory acquisition. Where such citizens are not convinced as to the payment of compensation, the value to be paid as compensation as well as the procedure for sharing the compensation to the persons affected by the compulsory acquisition, such citizens should employ every possible legal machinery to resist the purported acquisition.

In the final analysis it is recommended strongly that the Land Use Act, 1978 be amended to whittle down the excess power vested on the governors of the states over the lands comprised in their state and provide for a more equitable means of ensuring that the citizens whose lands are acquired for overriding public interest are compensated in real terms and that such compensation get to them timeously to enable them to readjust their lives.

It is recommended also, that where such land is acquired for residential purposes that at least 40% of the land should be developed by the Government and given back to the people that owned the land originally to ensure that they are not completely weeded out of their ancestral home. This will certainly diminish the tension and bickering that attend compulsory acquisition of land, particularly, in places like the States in the South Eastern part of Nigeria where land is very scarce.

There is no basis for Government to acquire land from its citizens and allocate same to others for commercial purposes of any kind. Every commercial venture is a profit yielding venture and investment should go before profit. It is more reasonable for the promoters of such commercial venture to negotiate with land owners and purchase their land from them for the purpose of the business venture. The same should apply to Housing Development Corporations owned by the Governments. Before now, they have been enjoying free lands acquired from poor citizens and allocated to them at no cost which land they turn around to sell either as undeveloped plots or built up houses. This has generated a lot of controversy. Building of houses for sale or sale of vacant lands are commercial ventures targeted at profit making. Whosoever wants to embark on it should be prepared to buy the land needed for that purpose from the land owners.

It is certain that with increasing hardship in the Nigerian society and the fast rate at which land holdings available to persons, families and communities are being depleted, the battle over land would intensify and for the government institutions that used to benefit from free allocation of land for their purposes that are commercial or quasi commercial in nature, it may no longer be business as usual.