

A CRITICAL APPRAISAL OF THE PRACTICAL IMPLICATIONS OF THE NATIONALIZATION POLICY UNDER THE LAND USE ACT*

Abstract

Land is an indispensable part of every society and constitutes a subject of controversy among persons of different strata in every society. In Nigeria, the promulgation of the Land Use Act of 1978 has generated a lot of controversies both in juristic and academic circles as it brought about many innovations in the use and enjoyment of land. One seemingly controversial aspect of the Land Use Act has to do with the nationalization policy as well as the practical implications of the said policy. It is settled that by virtue of section 1 of the Act, all land comprised in the territory of each state of the federation is vested in the Governor of that state to be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act. This provision of the Act when read in conjunction with other provisions of the Act has serious implications and land use and administration in Nigeria. In the light of the foregoing, this work undertook a critical examination of the practical and legal implications of the nationalisation policy vis-à-vis the concept of land use and administration under the current Nigerian land law regime. The work found that though the nationalization policy was intended to be for the benefit of all Nigerians, it also produced wide and negative legal and practical implication on individual land rights. In response, the study proposes an amendment to some provisions of the Land Use Act so as to ensure the security of individual land rights as enshrined under Sections 43 and 44 of the Constitution of the Federal Republic of Nigeria as well as ensure the furtherance of sustainable development in the area of Nigerian land law.

Keywords: Nationalisation Policy, Land, Land Use Act, Implications, Nigeria

1. Introduction

One of the basic problems confronting many African countries today and Nigeria in particular is how best to fashion appropriate land redistribution policies that will be equitable and as well ensure security of tenure and access to land.¹ Rights relating to land in Nigeria are increasingly becoming contentious for a number of reasons. Firstly, land is an indispensable natural resource which goes to the root of man's existence. The ability to own and control land is not only an important expression of both private and proprietary right but is also a measure of economic wealth and power. Secondly, there has been conflict between customary, received English and statutory forms of land tenure which usually leads to a lot of tension and pressure. These pressures are primarily induced by the desire of government to control land resources in the state. This is more so necessitated by the fact that the discharge of governmental responsibility and functions especially as it relates to the provision of developmental and social amenities like Hospitals, good roads, good water system, electricity and others necessarily and implicitly involves the use of land for diverse social, economic and political considerations.² Thirdly, it is estimated that 60% of the world's arable land is in Africa but vested in very few persons, especially those who have no need for it.³ In Nigeria for instance, more than 30 million hectares of land remain uncultivated or untouched by human activity⁴ and these lands were, prior to the Land Use Act, owned by private persons. It is against the background of private and public quest to own land for diverse socio-economic development that the question of Nationalization and State control of land in Nigeria⁵ have generated and will continue to generate serious debate for a long time to come for various reasons, the primary of which is that the powers conferred on the State Governor by the provisions of the Act has serious implications on the constitutional right to property.⁶ In the light of the fact that the Land Use Act entered into its 38th year of existence on the 44th March 2022 and the generous share of controversy it has generated from judges, commentators and jurists alike, it is imperative to undertake a critical appraisal of the theoretical framework upon which the State ownership and control of land and the over-reaching powers of the Governor in land use

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¹O G Amokaye, 'The Land Use Act and Governor's Power to Revoke Interest in Land: A Critique' in IO Smith (ed), *The Land Use Act – Twenty Five Years After* (Lagos: Forlan Prints, 2003) p. 163.

²Fundamental Objectives and Directive Principles of State Policy, Cap II Constitution of the Federal Republic of Nigeria 1999 Cap C 23 Laws of the Federation of Nigeria 2004 (as amended).

³N El-Rufai, 'Why Nigeria Must Revisit Land Reforms' <<http://www.nigeriavillagesquare.com/nasir-el-rufai/why-nigeria-must-revisit-land-reforms.html>> accessed on 31/03/2022.

⁴*Ibid.*

⁵Land Use Act Cap L 5 Laws of the Federation of Nigeria 2004, s. 1.

⁶Constitution of the FRN 1999 (as amended) ss. 43 & 44 which provides, *inter alia*, for the right to own immovable property and that no interest in property shall be compulsorily taken without proper and prompt compensation.

and administration in Nigeria under the Land Use Act are predicated and its practical implications on land usage.

2. Historical Antecedents to the 'Nationalization' Policy

Customary land tenure is frequently considered to be an impediment to agricultural development.⁷ The lack of secure and clearly defined rights is often held to lead to a disincentive or an inability to invest in agriculture, housing development and other productive ventures in land; while the inflexibility of the traditional system is said to prevent the transfer of rights between groups and individuals and this inhibits the mobility of factors of production.⁸ This inflexibility is vividly pronounced in the principle of inalienability of family or communal lands which trailed the traditional system of land holding. The hardship and consequent suffering that crystallized from this inflexibility cannot be over-emphasized. At these earliest times, land was held sacred and thus inalienable.⁹ Even where there are transactions involving land, they are usually not complex and therefore posed very little or no problem. However with the advent of colonization and English system of land tenure and the consequent urbanization, the churches, the State and commercialists began to acquire interests in land; this led to fragmentation and individualization of land, freely leading to conflicts. During this period, the issue of land tenure became a major concern of both the government and private persons. This was even made worse by the fact that it was almost impossible for the government to control land transactions as ownership rights were vested in families and they may do what they like with their properties, subject to the provisions of the law which in most cases contain little or no restrictions at all. With political independence and opening of global debate on economic development, economist arguments came to dominate the debate about land tenure in Nigeria and indeed all parts of Africa.¹⁰ The arguments were mainly as to the defective nature of customary land tenure with regards to fostering developments from the late 1960s and that customary forms of land tenure suffered from defects and inconsistencies that militated against the most rational economic use of land. In succinct and illuminating exposition of this position Oluwasanmi, unequivocally asserted thus; 'Social institutions may be so rigid as to constitute formidable barriers to agricultural production.... The traditional system of tenure may sometimes constitute a formidable obstacle to the enterprising farmer desirous of increasing the size of his farm business'.¹¹

The problems generally cited by jurists and commentators on the shortcomings of customary forms of tenure relates to communal tenure, fragmentation, customary tenancy, speculation in land dealings, overreaching powers of communal heads and family heads, the use of land as collateral and tussle in getting land for public use in Nigeria. Thus, Adegboye submitted that 'the present structure of land tenure makes it impossible for enterprising young farmers to mobilize their labour and capital as freely as they could like to'.¹² This problem also extended to the government. Prior to the promulgation of the Land Use Act, laws relating to land rights were criticized on three main grounds. First, they did not guarantee security of title. Secondly, they made it difficult and cumbersome to acquire land for private and public use; and thirdly, the cost of obtaining land for public purpose was prohibitive.¹³ These assumptions became part of the conventional wisdom of development planning. Thus, the Second National Development Plan states: 'The prevailing land tenure system in the country sometimes hinders agricultural development.... If Nigeria's agriculture is then to develop very rapidly and have the desired impact on the standard of living, there must be reform in the system of land tenure'.¹⁴ According to the third plan:

The under-utilization of agricultural land is itself a function of some institutional constraints, in particular, the land tenure system and seasonal labour shortages. The land tenure system is

⁷L Cotula *et al*, 'Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues' (2004) *International Institute for Environment and Development, London*, 2. <https://www.google.com/url?q=http://onlinelibrary.wiley.com/doi/10.1111/j.1467-7660.2009.01504.x/pdf&sa=U&ved=0ahUKEwjOr7jw4YLMaUiaxQKHcFJCgAQFggNMAE&sig2=hjWyiGIWodOfveRYPoSwaA&usq=AFQjCNFHud7trs67sD_77O2GYuSU3EPw2Q> accessed on 31/03/2022

⁸P Francis, 'Land Naturalization and Rural Land Tenure in South-West Nigeria' <<http://www.ilri.org/infoserv/webpub/fulldocs/bulletin24/land.htm>> accessed on 31/03/2022 by 11:46am.

⁹ T O Elias, *The Nature of African Customary Law* (England: Manchester University Press, 1956) p. 147.

¹⁰ See generally, L Cotula *et al*, *op cit*.

¹¹ H A Oluwasanmi, *Agriculture in Nigerian Economic Development* (Ibadan: Oxford University Press, 1966) pp. 22 – 25.

¹²R O Adegboye, 'The Need for Land Reform in Nigeria' (1967) *Nigerian Journal of Economic and Social Studies*, Vol. 9 No. 4, pp. 340.

¹³T Otubu, 'Land Use Act and Housing in Nigeria: Problems and Prospects' in IO Smith (ed), *The Land Use Act—Twenty Five Years After*, (Lagos: Forlan Printers, 2003) p. 353.

¹⁴Federal Ministry of Economic Development, *Second National Development Plan*, (Lagos: Ministry of Economic Development, 1970).

mainly responsibility for fragmentation of holdings and difficulties in mechanization and modernization of Agricultural production¹⁵

However, it must be observed that neither plan made any concrete proposal for reform. But the government of Nigeria, in response to the hardship that was being experienced, was desirous of overturning the problem of land tenure as an inhibition to national integration and development. It was against this background that the Anti-inflation Task Force in its interim or first report made a radical recommendation for the promulgation of a Decree that will have the effect of vesting all lands in principle on the state governments;¹⁶ hence the coming into force of the Land Use Act on 29th March 1978.

3. Objectives and Justifications for the Nationalization Policy

For a better understanding of the justification for State control policy, it is pertinent to first glance through the general objectives of the Act. General Olusegun Obasanjo, the then Nigeria Head of State, in a broadcast which introduced the Act, stated thus: 'The main purpose of this Decree is to make land for development available for all including individuals, corporate bodies, institution and governments... fast economic and social development at all levels and in all parts of the country is our main consideration'.¹⁷ There is no doubt that the Act, going by the statements of its founding father, its preamble and some of its provision is designed to achieve a radical re-engineering designed to make land accessible for both economic and social development. The general intentment of the Act are, *inter alia*, the provision of a uniform land tenure system in the country; making land easily accessible to all Nigerians and government, etc.¹⁸

With the above fact in mind, the issue therefore, is the purpose of the Nationalization and State control of land policy. The policy is geared towards creating a platform through which the Governor may conveniently discharge the duties and exercise the powers which have been conferred on him under the Act so as to achieve its social, economic and political objectives.¹⁹ The justification for this proposition could be found in the recommendation of the Anti-Inflation Task Force in its first or interim report stated hereinabove. Some innovations of the Act which evidence the powers bestowed on the Governor include power to grant right of occupancy,²⁰ power of management and control,²¹ power to designate any part of the state as urban land,²² power to issue certificate of occupancy,²³ power to grant consent,²⁴ power to revoke a right of occupancy,²⁵ etc. Other functions include demanding rent for land granted to any person, to revise such rent at intervals, to impose penal rent for breach of any covenant in the certificate of occupancy, etc.²⁶ When the provisions relating to these functions are read in conjunction with other provisions of the Act, it becomes obvious that since onerous functions and powers have been vested in the Governor, it is pertinent that he be given the right and power of control over the land which he is to manage. The principle of concurrent possession as introduced under the Act is instructive on this point.²⁷ The whole idea of vesting the land in the territory of each state in the Governor of that state is utilized in such a way as to give effect to the duality of interest that is retained in land by virtue of the provisions of the Act. It is not meant to totally divest private persons of the interest they have in the land, rather, it is made with the view of replacing the family heads or communal chiefs with the Governor as the highest authority in land use and administration matters in Nigeria. This proposition is not, in any way, meant to derogate from the expropriatory effect of the Act. However, it means that though the interest have been curtailed, it is with relation to the corporate act since even before the Act, individuals do not usually have fee simple interest in land. Such fee simple interest resides in the family or community as a unit while the individual

¹⁵Federal Ministry of Economic Development, *Third National Development Plan*, (Lagos: Federal Ministry of Economic Development, 1975-80), Vol. 1.

¹⁶ A B Mamman, 'Land management in Nigeria: Land Use Policies Since 1960' <<http://www.onlinenigeria.com/links/landadv.asp?blurb=529>> accessed 24/07/2022

¹⁷Address by the then Head of State, Gen. Olusegun Obasanjo in the Daily Times Newspaper of 30th March 1978 cited in T Otubu, *op cit*. See also the Preamble to the Act.

¹⁸A O O Ekpu, 'The Role of Local Government in the Implementation of the Land Use Act: The Bendel State Experience' in O Adigun (ed), *The Land Use Act Administration and Policy Implementation, being Proceedings of the Third National Workshop on the Land Use Act*, (Lagos: Unilag Press, 1991) p. 42 – 44.

¹⁹ *Ibid*.

²⁰Land Use Act ss. 5&6.

²¹Land Use Act s. 2.

²² Land Use Act s. 3.

²³Land Use Act s. 9.

²⁴Land Use Act s. 22.

²⁵ Land Use Act s. 28.

²⁶ U Abugu, *Principles of the Land Use Act* (Kaduna: Joyce Graphic Printers & Publishers Ltd, 2008) p. 26.

²⁷Land Use Act ss. 11&14.

is only entitled to a right of occupancy.²⁸ The Governor under the Act performs those functions which the family head performs under customary law.²⁹ It is trite that under customary land tenure system, the family head has the right to allocate family land to members and non-members of the family³⁰ which may be likened to the power of the Governor to grant a right of occupancy indigenes of the state and non-indigenes.³¹ The family head under customary land tenure system also has the power of revocation and eviction³² which may be likened to the power of revocation under the Act by the Governor.³³ Also, the requirement of consent of the family head under customary land tenure system for a valid alienation³⁴ may have informed the wisdom behind the requirement of Governor's consent under Section 22 of the Act.³⁵

As highlighted above originally, there was no problem with regard to land relationship but the advent of colonialism brought with it commercialization which led to complexities that hindered agricultural and industrial developments. It was not surprising, therefore, that faced with these challenges, especially the considerable tussle in getting land for public purposes, the government sought to unify the different systems of land tenure that existed before the Land Use Act. In a bid to achieve this and ensure easier access to land for government and ostensibly, for individuals, the government understanding the pivotal role that the Land Use Act was to play in solving Nigeria's housing, agricultural and industrial problems, appointed the Governor as the 'manager of all land comprised in the territory of the state. Laudable as this objective may seem, many Governors have converted these powers to avenues for converting public property into personal use. Thus, they have become land speculators; using the instrumentality of the State to rob people; forgetting that they merely hold the land for their benefit.³⁶

4. Practical Implications of the Nationalization Policy vis-à-vis Current Trends in Land Acquisition and Usage

In the light of the foregoing exposition, we shall now proceed to consider whether the Act has fulfilled or is fulfilling the objectives of assuring, protecting and preserving the use and enjoyment of land by all Nigerians as beneficial owners. The need to ensure a proper and adequate economic use of land is of special importance in economic development. Indeed, the study of land law should concern itself, more with the aspect of this function, than with the analysis of the rules defining the rights of the landowner.³⁷ The implications of the Act would be readily appreciated if considered from the point of view of the ordinary landowner. Consequently, this work will proceed to deal with the implications of the innovations of the Act on private property rights. The major problem created by the implementation of the Act arose largely because some of the provisions were based on the assumption that the interest of the people, in relation to land in the country, was the same and that the State Governors as trustees would always act in the best interest of the people, in consonance with the provisions of the preamble and Section 1 of the Act.³⁸ However, as lofty as these goals appear, it is yet to be actualized. Section 1 of the Act, when read in conjunction with other provisions of the Act, has succeeded in creating an anomalous situation where the Governor/trustee acts as absolute owner and the beneficiaries are completely left at the mercy of the trustee. Having taken away the absolute ownership rights of individuals and vested same in the Governor/trustee, it appears that the Act prescribes that the land would be held in trust for the citizens to whom the Governor necessarily ought to account for his stewardship. The duties of a trustee are clear and must be geared towards the best interest of the *cestui que trust*. It is glaringly ironical that the operation of the Act conflicts with the duties of the trustee.³⁹

Implementation of the Trust Created under the Act

One question that comes to mind in the consideration of Section 1 of the Land Use Act is as to who has the right to probe the performance of the trust seemingly created by the Act. On this important question and many other questions that may be raised in this regard, the Act is silent. Can Nigerians, as the beneficiaries, impeach all

²⁸ *Tijani v Secretary of Southern Nigeria* (1921)2 AC 399.

²⁹ Except that land is vested in the Governor, unlike the case of family head where land is vested in the family.

³⁰ *Ibid.*

³¹ Land Use Act ss. 5&6.

³² *Inasa v Oshodi* (1934) AC 39; *Uwani v Akom & Ors* (1926)7 NLR 101

³³ Land Use Act s. 28.

³⁴ *Likan v Ogunsisi* (1972) SC 40.

³⁵ O R Akujobi, 'Governor's Consent under s. 22 of the Land Use Act: the Position since *Savannah Bank v Ajilo*' in I O Smith (ed), *Land Use Act-25 Years After, op cit*, pp. 201-202.

³⁶ C Okparaocha, 'Land Use Act: Instrument for Governors' Self-enrichment - Experts' <tribune.com.ng/index.php/property-a-environment/36604-land-use-act-instrument-for-governors-self-enrichment-experts> accessed on 02/04/2022.

³⁷ B O Nwabueze, *Nigerian Land Law* (Enugu: Nwamife Publishers, 1972) p. 601

³⁸ A Babalola, 'Why Land Law should Cut Governors' Powers'.< <http://www.propertygateplc.com/news/why-land-law-should-cut-governors-powers.html>> accessed on 02/04/2022.

³⁹ *Ibid.*

persons who are involved in the performance of this trust just like the beneficiary under a normal trust has right to do? This question has led Balogun J., to remark, albeit *obiter*, as follows:

The concept of trusteeship is used in Section 1 of the Land Use Act, as enacted, in a loose sense. It is not intended to confer upon every citizen of Nigeria the benefit which the beneficiary has against a trustee under that section...to claim against the Military Governor an account for any benefit accruing from the land held by him under the Act in trust and administered by him for the common benefit of all Nigerians.⁴⁰

By virtue of the Land Use Act, the people whom the Governor was supposed to hold the land for their benefit are now subjected to paying him consent fees, registration fees, perennial rent and other obnoxious fees; despite having been deprived of their holdings or having reduced it to a right of occupancy without any form of compensation.

Erosion of Land Value as Security for Loan

The provision of Section 1 of the Land Use Act has drastically curtailed the proprietary rights of private persons contrary to Section 43 of the 1999 Constitution which guarantees the individual's right to acquire and own immovable property anywhere in Nigeria. It is generally believed that land is the most valued security for bank lending,⁴¹ because of its reliability and marketability; and the constant appreciation in its value.⁴² However, under the present scheme of the right of occupancy systems, undeveloped (or bare) land has no commercial value. In this respect, the intrinsic value of the system is open to question, for land has become relatively unacceptable as security for the much needed loan for developmental purposes.⁴³ It is therefore not advisable for any financial institution to take, as security, a certificate of occupancy or other title deed for undeveloped piece of land irrespective of its location. This is because a vacant Land in Maitama, Abuja or Victoria Island, Lagos covered by a certificate of occupancy and valued at ₦100 million is worthless as it cannot safely secure a loan of ₦500, 000. The reason for the forgoing assertion being that upon its revocation there would not be any compensation for the land *per se*.

Unrestricted and Unguarded Discretion of the Governor

One major problem incidental to the state control of land in Nigeria is the unrestricted and unguarded discretion given to the Governor in exercise of the statutory functions under the Act.⁴⁴ Cooker JSC in *Are v Adise*⁴⁵ has stated that the court should not inquire into the reasonableness, the polity, the sense or any other aspect of the exercise of a Governor's power so long as there is no proof of *mala fide*. This work posits however that the above position is against the fundamental principle of administrative law which postulates that all executive powers must be exercised judiciously and for the purpose for which they are given.⁴⁶ It is further submitted that all exercise of governmental powers is subject to the fundamental equitable limitation that it should not be for improper purpose no matter how absolute the grant of power may be in terms, and however correct the technical exercise of it may have been.⁴⁷ The powers conferred on the Governor have become a clog in the wheel of land tenure development. Noteworthy in this regard is the issue of Governor's consent before alienation of interest in land.⁴⁸ Failure to comply with this requirement has the effect of rendering any such transaction void.⁴⁹ This problem is worsened by the fact that the power of the Governor to consent to any proposed disposition of a right of occupancy is discretionary and thus, cannot be enforced as a right.⁵⁰ Many State Governors have therefore, converted the consent provision to 'cash cows' by imposing several levies on consent application.⁵¹ Some

⁴⁰ Unreported Suit No. ID/115/81, ruling delivered on 28/5/82 by Balogun, J. at High Court of Ikeja.

⁴¹ T Otubu, 'Security other than Land: Whither Nigeria', a paper presented at a workshop on "Securities in a Global Economy" held by Department of Private and Property Law faculty of Law, University of Lagos on 13 -15 February, 2003.

⁴² M Adesanya, 'The Land as Security after the Land Use Act: The Bankers View' in O Adigun (ed), Land Use Act Administration and Policy Implication, *op cit*, p. 120.

⁴³ R W James, *Nigerian Land Use Act :Policy and Principle* (Ife: University of Ife Press Ltd, 1987) p. 177.

⁴⁴ O O Sholanke, 'Is the grant of Governor's Consent under the Nigerian Land Use Act Automatic?', *op cit*, 13; O R Akujobi, *op cit*, p. 212; E Essien, *Law of Credit and security in Nigeria* (2010), *op cit*, pp. 175-177, M G Yakubu, *Land Law in Nigeria* (Lagos: Macmillan Publishers, 1985) p. 206.

⁴⁵ (1967) NMLR 304 at 309.

⁴⁶ *Galloway v Mayor & Commonalty of London* (1866) LR 1 HL 34 at 43; G E Trevies 'Administrative Discretion and Judicial Control' (1947) *10 Modern Law Review*, 276.

⁴⁷ *Ibid*.

⁴⁸ Land Use Act ss. 21 & 22.

⁴⁹ Land Use Act s. 26.

⁵⁰ *Queen v Minister of Land and Survey* (1963) NRNLR 58; MG Yakubu, *Land Law in Nigeria* (Lagos: Macmillan Publishers, 1985) p. 206.

⁵¹ A Babalola, *op cit*.

Governors go as far as charging 30% of the property's worth before such consent is granted;⁵² and most times it takes a long time to process. The lengthy and costly process involved in the transfer of land which is occasioned by the consent requirement, do not only inhibit speedy access to title documents, but also raises land acquisition and housing costs to a level where the average Nigerian cannot afford it. Thus, Obaseki JSC stated thus:

In my view and I agree with Chief William's expression of anxiety over the implementation or the consequences of implementation of the consent provision or clauses in the Act. It is bound to have suffocating effect on the commercial life of the land and house owning class of the society who use their properties to raise loans and advances from banks.... These areas of the Land Use Act need urgent review to promote their problem nature.⁵³

Consent Requirement prior to Alienation

The problems relating to the issue of consent is fundamental as it has adversely impacted on one of the objectives of the Act to wit, making land available for development; especially in the private sector.⁵⁴ Commenting on this issue, Olayide Adigun observed thus:

The operation of the consent provision of the Act have (sic) made land transaction more difficult and less economic. In fact, it can be said that the delay in seeking compliance with the consent provision of the Act has tended to reduce considerably the number of land transactions; consequently, capital formation has not been satisfactory, so also is the general development process in the country.⁵⁵

Unrestricted Power to Determine Term of a Grant of Right of Occupancy

Another problem created by the Act with respect to the wide discretion given to the Governor is fact that the Governor, while granting a right of occupancy decides, *suo motu*, the term of the grant. This is also applicable where he issues a certificate of occupancy in respect of a right that already exists, as in the case of a deemed grantee. In most cases, this has far reaching implications on the right of a deemed grantee; as the Governor assumes that the applicant is applying for a right of occupancy. Acting under this misapprehension, the Governor proceeds to issue a certificate of occupancy that limits an applicant's erstwhile fee simple estate to a term usually for maximum of 99 years⁵⁶ and sometimes less. This work submits that there is no jurisprudential justification for this practice; for the obvious reason that in such circumstance, the certificate is not a grant but mere evidence of a right that already enures in the occupier/applicant. So that any certificate issued to him ought to evidence the right which he already retained on the land i.e. fee simple. It is therefore, submitted that there is no statutory justification for such circumscription of the term of a deemed holder by the issuance of a certificate of occupancy.⁵⁷ More so, this view finds support in the well settled principle of interpretation of statutes, which presumes that the law maker does not intend to make any change in the existing law beyond that which it expressly states or which follows by necessary implications from the language of the statute in question.⁵⁸ This principle of statute has been engraved in our jurisprudence, per Bello CJN (as he then was) in *Abioye v Yakubu*.⁵⁹ It is also argued that it would be *ultra vires* the powers of the Governor to include the payment of rent in the tenure of certificate of occupancy issued to a deemed grantee under the Act;⁶⁰ for the reason that a holder of a deemed right of occupancy is not bound by new terms and conditions even if he accept the certificate of occupancy; such terms and conditions being made subsequent to the crystallization of the holder's right.⁶¹

⁵² C Okparaocha, *op cit*.

⁵³ *Savannah bank td v Ajilo*[1987]2 NWLR(pt 116) 387.

⁵⁴ J A Omotola, 'Law and Land Rights: Whither Nigeria', *op cit*, p. 12; FO Adeoye & HD Ogunniran, 'The Socio-Economic Implications of the Consent Provision of the Land Use Act' in O Adigun (ed), *op cit*, 80. or (1991) 4 *GRBPL No. 15*, 78; K Olowajana, 'The Land Use Act and the Banking Industry' in O. Adigun (ed), *op cit*, p.111, L Taiwo, 'Practical implications of the Land Use Act on Mortgages' in O Adigun (ed), *op cit*, 134.

⁵⁵ O Adigun & A A Utuama, 'A Decade of Land Reform in Nigeria: The Land Use Act 1978 in Perspective' in *Proceedings of the 26th Annual Conference of the National Association of Law Teachers* (1988) held in Port Harcourt, Rivers State, p.31 at 48. See also A B Kasunmu 'The Question of Consent to Alienation – Effect on Development' in JA Omotola (ed), *The Land Use Act – A Report of National Workshop*, *op cit*, p. 100.

⁵⁶ This is purely based on practice as the Governor has an unfettered right to grant a right of occupancy for a term of any number of years.

⁵⁷ E Chianu, *Law of Securities for Bank Advances (Mortgage of land)* (Benin City: Ambik press, 2000) pp. 20 – 22; G Ezejiofor 'Interpreting Section 5 of the Land Use Act' (1993 -94) 19 – 21 *JPPL*, 30-33.

⁵⁸ P st J H Landan, *Maxwell on Interpretation of Statutes* (12th edn, London: Sweet and Maxwell; 1969) p. 116

⁵⁹ *Supra* at 205.

⁶⁰ JA Omotola, 'Essays on the Land Use Act, 1978, *op cit*, (1984) p. 45.

⁶¹ F R A Williams, addressing the attendants of the second National Workshop on the Land Use Act held, 5th – 7th July, 1982.

Power of the Governor to Enter any Land

Another major negative implication of the state control of land is predicated on the common law rule that one joint owner cannot oust another from possession; because unity of possession which is a feature of all joint ownership survives the Land Use act.⁶² The concept of co-ownership of land suggests multiple interest in land co-existing at any given time either jointly, so that, as Bracton puts it, 'each holds everything yet holds nothing'⁶³; or in common, so that each tenant hold separate and identifiable Land.⁶⁴ In view of the copious provisions of the Act, though the relationship between the Governor and individual land owner in respect of land is in common, there are rights which they hold jointly. An unjustifiable invasion of the possession of the occupier will ordinarily amount to actionable trespass. It is however trite that one without exclusive possession, which is as of right, cannot exclude another.⁶⁵ The occupier, even where he is in exclusive possession, does not remain so as of right. As manifest from the express provision of Section 14, no action in trespass is maintainable against the Governor or his duly authorized officer for entry for the purpose of inspection because the occupier's possession is not exclusive of the Governor's right. Thus, the provision of Section 14 constitutes a bar to actionable trespass. It is an established principle in law that an action in trespass is not maintainable against a person by another with whom he shares concurrent possession e.g., tenant in- common or joint tenants.⁶⁶ Thus a holder of right of occupancy cannot exclude the Governor or anybody appointed by him to inspect land pursuant to Section 14 of the Act.⁶⁷

Power or Revocation

Another provision of the Act that has serious implication in land usage relates to the power revocation by the Governor. Revocation of right of occupancy carries with it a lot of injustice. Irrespective of the fact that the Act describes what constitutes 'overriding public interest', many State Governors substitute their personal interest for public interest.⁶⁸ The Constitution recognizes the right of the State to compulsorily acquire land where necessary, provided that compensation is paid.⁶⁹ This ensures an impartial and even-handed balance between the constitutional rights of the individual and public interest represented by the government regarding land acquisition and re-possession.⁷⁰ However, under the Act, there is no compensation for revoked right of occupancy unless there is an unexpired improvement on the land.⁷¹ Even in circumstances where compensation is payable, it is always inadequate and inordinately delayed. The beneficiaries of the web of confusions created by these statutory loopholes are usually the 'high and mighty'.

Designation of Urban Areas

Another implication of the 'nationalization' policy is the unfettered power of the Governor to designate any part of the state as urban land. By this discretionary power, it is suggested that the Governor reserves the right to designate without restriction.⁷² This may lead to a Governor designating the entire land in his state as urban land, thus leaving the local governments in such state without any land to control pursuant to the power conferred on them by Section 2(1)(b) of the Act. Regrettably, the failure of the Act to set the standard by which particular parts of the state may be declared as urban land has led to indiscriminate designation and has succeeded in defeating the objectives of the Act. This unquestionable power of the Governor to designate certain areas as urban land and in fact, the silence of the Act⁷³ on any criterion for determining the basis of any such designation as urban land and protecting such places referred to as 'other land' in our opinion is a serious erosion of the power of control and management conferred on the Local Government by the Act. This, it is submitted, is largely responsible for the failure of the Act, for example, in meeting agricultural needs in the country especially in rural areas since the Local Government which is closer to the people could be ousted from the performance of its duties. This is quite an unfortunate and a confusing situation in that, the Act, having

⁶²*Obasohan v Omorodion* [2001] 13 NWLR (Pt. 729) 206; E Chianu, *Law of Trespass to Land and Nuisance* (Benin City: Ambik Press, 2001) Chapter 6; S Bright & G Gilbert, *Landlord and Tenant Law: the Nature of Tenancies* (Oxford: Clarendon Press, 1995) p.127.

⁶³G E Woodbine (ed), '*Bracton De Legibus et Consuetudinibus Angliae (Bracton on the Laws and Customs of England)*' (SE Thom Trans.' Vol. 4, Cambridge, Massachusetts: The Belknap Press, 1977) p. 336.

⁶⁴*Atinuke v Oshodi* (1966) NMLR 195; I O Smith, *Alienation of Interest in Land By a Joint Tenant: Conceptual Difficulties and Legal Implication* (2003) Vol. 23 *JPPL*, 43.

⁶⁵S Bright & G Gilbert, *op cit*.

⁶⁶*Adua v Essien* [2010] 8 ALL FWLR (Pt. 535) 361

⁶⁷IO Smith, 'Alienation of Interest in Land By a Joint Tenant: Conceptual Difficulties and Legal Implication', *loc cit*.

⁶⁸A Babalola, *op cit*.

⁶⁹1999 Constitution (as amended), s. 43.

⁷⁰N El-Rufai, *op cit*.

⁷¹Land Use Act ss. 28 & 29.

⁷²Thus Former Gov. Lateef Jakande of Lagos State by the Designation of Urban Area Order 1982 designated all Lagos Land as urban area.

⁷³I.e, vide Section 3 of the Act.

vested the control and management powers over land in two independent authorities namely the State and Local Governments,⁷⁴ went further to create an anomalous situation in which the power one of the authorities can be swallowed up, undermined and seriously eroded at will by the other without any platform for redress.

5. Conclusions and Recommendations

There is no doubt that the Act, going by the statements of its founding father, its preamble and some of its provision is designed to achieve a radical re-engineering designed to make land accessible for both economic and social development. The general intendment of the Act are, *inter alia*, the provision of a uniform land tenure system in the country; making land easily accessible to all Nigerians and government, etc. It is however not in doubt that the Act, by the nationalization policy, has failed to fulfil these objectives of assuring, protecting and preserving the use and enjoyment of land by all Nigerians as beneficial owners. It has to be presumed that the framers of the Act, while making the Act, had the benefit of Nigerians at heart. However, the nationalization policy seems to cause more harm to the people than it has helped them. The benefits arising from the policy, if any, have only been for the benefit of the government who now arbitrarily, compulsorily acquire people's properties without paying adequate and prompt compensation as required by the Constitution. Notwithstanding the hardships brought about by the 'nationalization' policy and its incidents, the legislature has remained reluctant to amend, review or repeal the Act. Indeed, marginal judicial action by the courts in this regard has also not helped matters. In view of the foregoing, it is recommended that the Act be amended to repeal the nationalization policy introduced by section 1 of the Act; as well as other incidents of the said nationalisation policy as contained in other sections of the Act including the power of revocation and the compensation regime that that does not guarantee any compensation value for land *per se* or the right of occupancy in respect of the land. It is also recommended that the Act should also be amended to promote individual's private property right predicated on a freehold interest where land owners should be compensated not only for the loss of their lands, but for other socio-economic losses occasioned by the acquisition.

⁷⁴ Section 2(1) of the Act.