EXAMINATION OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF 1999 (AS AMENDED) AND THE LAND USE ACT 1978 IN THE COMPULSORY ACQUISITION, REVOCATION AND COMPENSATION OF LANDS IN NIGERIA*

Abstract

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. Various legal frameworks govern the compulsory acquisition, revocation and compensation of lands in Nigeria. In this article, we are going to look at the provisions of the Constitution of the Federal Republic of 1999 (as amended) and the Land Use Act 1978 with respect to compulsory acquisition, revocation and compensation of lands in Nigeria.

Keywords: Constitution, Land Use Act, Compulsory Acquisition, Revocation, Compensation, Land

1. 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 role of the family, Land Use Allocation Committee, Ministry of Land, Survey and Urban Development, Office of the Governor, Office of the Chairman and the Corporate Affairs Commission in the compulsory acquisition, revocation and compensation of lands in Nigeria.

2. 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 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 Act[79] 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. Omotola[5] 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, *cujus est solum ejus est usque and coelum et ad in feros ....*

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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),

[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 statute 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 Court[13] 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 Region[17] 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. 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 Act[22] 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 Acts[23]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 Megarry[24] 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

[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*.
[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.

with other factors of production such as labour and capital. As such, no man ought to be deprived of his property without adequate plan to reinstate him on an equivalent land and other incidental losses covered as well.

3. Acquisition

Acquisition of land is one of the topical issues that confront many nations including Nigeria. The power of government to acquire land for developmental projects is recognized all over the world. Acquisition is the act of acquiring or gaining possession of something. A property may be acquired voluntarily or involuntarily. It is involuntary when it is acquired under threat by the public domain or the government, and is otherwise referred to as compulsory acquisition. A property can however be acquired voluntarily where the owner gave his consent before acquisition, for instance, for a sale of interest in land. An acquisition may also be defined as an act by which a person procures the property of another. An acquisition can also be temporary or perpetual, and may be procured either for a valuable consideration (purchase), or without consideration (gift). In Nigeria, the federal government, the State and the Local Government are saddled with the responsibility of acquiring land for provision of public facilities and infrastructures that guarantees safety and security, health and welfare, social and economic enhancement and protection and restoration of natural environment. The Nigerian Land Use Act of 1978 is the law guiding the management of land and land transactions in Nigeria. The Act vests all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who would hold such land in trust for the people, and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes. Similar powers with respect to non-urban areas are conferred on Local Government. The Act further provides that all land held by the governor will be administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.[25]

Under section 28 of the Act, the Governor is empowered to revoke private properties for overriding public interest. It also made provisions for procedures for acquisition of land and compensation thereof.[26] Where land is acquired compulsorily by a government, compensation is usually made provision for to ensure that the owner of the acquired land is not bereft of any remedy and to cushion the effect of land acquisition which includes displacement of owners from their homes and their businesses as well as other means of livelihood. Acquisition of land for public purpose[27] without adequate compensation is not only unjust but a violation of the property rights guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as other international instruments. Where however land is acquired by the Government, such land must be used for a particular purpose for which it was acquired. Where this is not the case, such land is expected to automatically revert to the owner. Courts have generally frowned at situations where land acquired for a particular purpose is diverted for personal or other purposes not included under the Land Use Act.[28] In *Provost v. Edun*[29] the Court listed conditions that must be fulfilled before an acquisition for public purpose should be considered valid:

1. Notice of acquisition must be specific and precise as to the property to be acquired;
2. the particulars of the public purpose for which such property is acquired must be given;
3. the acquiring authority must give notice of intention to the owner before publishing same in the gazette.

The general interest of the public must be considered before acquisition is made by the Government. There should be a balance between protecting the interest of the public in creation of amenities, and protection of private or individual property rights.

4. Land Acquisition

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 compensation[30] and a right of access to court to determine the interest in the property and amount of compensation.[31] 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.[32] 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.[33] The Court in *Nkwocha v. Governor of Anambra State*[34] however arrived at a conclusion that the Land Use Act is not an integral part of the Constitution.

5. Compulsory Acquisition

According to Wigwe,[35] 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. The Food and Agriculture Organization[36]

[25] Section 1 of the Land Use Act, 1978.
[26] *Ibid*, section 29.
[27] Section 51 of the Land Use Act defines public purpose.
[28] *Mayegun v. Governor of Lagos State* (2010) LPELR –CA/L/126/07.
[29] (24) NJAC 94.
[30] Section 44 (1) (a) of the 1999) Constitution (as amended).
[31] Section 44 (1) (b) of the 1999) Constitution (as amended).
[32] *Aderonpe v. Eleran* (2019) 4 NWLR (Pt. 1661) 141 SC.
[33] 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,
[34] (1984) 6 SC 62.
[35] C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).
[36] Food and Agriculture Organization, (2009) 'Compulsory Acquisition of Land and Compensation,' Land Tenure Studies 10, Food and Agricultural Organization of the United Nations (FAO), Rome.

defines compulsory acquisition as the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant, usually for social and economic development like building of roads, railways, airports, hospitals, schools, electricity, and for environmental protection where a particular land is required to conserve natural resources or repair damage to the surroundings.[37] Olusegun,[38] while discussing the need for a global uniform mode of assessment of compensation for compulsorily acquired land described compulsory acquisition as the implementation of the power of government to acquire private interest in land (land rights of individuals) through the exercise of the power of eminent domain for the purpose of public good. This power is usually mandatory as most often than not land owners are unwilling to part with their land even with the promise of payment of compensation. 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 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. The Constitution of the United States of America, for instance, mandates that no person...shall be deprived of …property, without due process of law; nor shall private property be taken for public use without just compensation.[39] Article 24 of Chilean Constitution which also provides for protection from expropriation says that:

> No one can, in any case, be deprived of his property, the assets affected or any of the essential faculties or powers of the domain, but by virtue of a general or special law that authorizes expropriation for public utility or national interest, qualified by the legislator. The expropriated may protest the legality of the expropriation act before the ordinary courts and shall always have the right to be compensated for the patrimonial damage effectively caused, which will be determined by agreement or by a sentence dictated in accordance with the law by the said courts.

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.[40] The topic does not generate such interest or excitement for most people except to those in academic settings, among law students or legal practitioners. Wigwe[41] 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.[42]

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) Act[43]to compulsorily acquire private land without adequate compensation. At times lands are revoked without being put to the purpose for which it was 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*[44] 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.

[37] *Ibid*.
[38] Olusegun O. O. et al, Towards Global Uniformity and Sustainable Compensation Valuation for Compulsory Land Acquisition', *Journal of Design and Built Environment* (Dec. 2017), http://www.researchgate.net/publication/322254637. Accessed 24 June, 2023.
[39] Article V of the US Constitution.
[40] C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).
[41] *Ibid*.
[42] *Ibid*.
[43] Cap A9 Laws of the Federation 2004.
[44] *Doggo v. Ashdene Association (Nig) Ltd & Ors* (2022) LPELR – 56910 CA.

There is no doubt that the procedure for compulsory acquisition requires adequate notice to be given to the owner[45]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.[46]

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.[47]

Of great importance is the ousting of court's jurisdiction under section 47(2) of the Land Use Act and its attendant implications.[48] 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 of equitable compensation. And also, need for the amendment of section 49 of the Act to ensure transparency in land revocation transactions.

6. Position of the Constitution of the Federal Republic of 1999 (as amended) and the Land Use Act 1978 in the Compulsory Acquisition and Revocation and Compensation of Land in Nigeria

There are set down rules, procedural steps established through Acts, Common Law, precedents or court's judgments or pronouncements set down or laid down for compulsory acquisition, revocation and compensation of land in Nigeria. In this article, we are going to consider the Constitution of the Federal Republic of 1999 (as amended) and the Land Use Act 1978. These principal laws would be considered hereunder.

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

The Constitution of the Federal Republic of Nigeria, 1999 (as amended)[49] guarantees every Nigerian the right to property with provisions for payment of compensation in appropriate circumstances of infraction. Section 43 of the said constitution provides that subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. Section 44 (1) of the said constitution is also to the effect 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 the purposes presented by a law that among other things: a) requires the prompt payment of compensation; b) gives to any person claiming such compensation, a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria. Under section 44 (2) of the said constitution, it provides as follows*:* Nothing in subsection (1) of this section shall be construed as affecting any general law: (m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes or other conductors or structure on any land, in order to provide, or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities. Section 44 (3) of the said constitution provides that: 'Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and Exclusive Economic zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly'. The vesting of all minerals, mineral oil and natural gas in the Federal Government invariably dispossesses private individual ownership of land as provided for in section 44(3) of the 1999 Constitution which provides that subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.. The law however provides that such ownership can only be deprived of in accordance with the provisions of the law. Therefore, while section 43 categorically guarantees every Nigerian's right to acquire and own immovable property, section 44 forbids compulsory acquisition or possession of it without the payment of compensation and access to the courts for a determination thereof. Compensation in this provision envisages compensation for the loss of use of the land, any improvement thereon and third-party rights such as economic trees, crops, *et cetera.* Earlier Constitutions[2] made provisions for payment of adequate compensation to Nigerians deprived of their proprietary rights, while the 1999 Constitution (as amended) provides for prompt payment of compensation just as was also provided for in the 1979 Constitution. Fekumo[3] while writing on this issue expressed the view thus: Though both the 1979 and the 1999 Nigerian Constitutions provide for prompt payment of compensation instead of "adequate compensation" as provided in the 1960 and 1963 Constitutions...the use of the word "compensation" connotes something equivalent in value to the property acquired. The term prompt compensation anticipates immediate recovery of lost property, however it is used though, whether adequate or prompt payment of compensation, compensation ought to be paid as quickly as possible within a reasonable time or in due time to enable the claimant

[45] *Santos Estate v. Associated Properties & Trust PLC* (2022) LPELR -56937 (CA).
[46] *Provost v. Edu* (2004) MJSC.
[47] *G..C M Ltd v. Travellers Palace Hotel* (2019) 6 NWLR (Pt. 1669) 507 SC.
[48] Benue *State Urban Development Board & Ors v. Asuakor* (2019) LPELR - 47233 (CA).
[49] Cap IV sections 43 and 44.

be reinstated in his former position if possible. It also ought to be inserted in the Act that interest should accrue up to the date of payment in case of deferred payment by the government. Adequate compensation is preferable as it portends that compensation must correspond to the value of the property taken. Reciprocal transfer of other property instead might also be sufficient. It is therefore advocated herein that private property could not be lawfully taken by the government except upon payment of compensation in advance in a prompt, adequate and effective manner. After all, what would the government stand to lose compared with a negative effect on a poor citizen deprived of his property without reinstating him in his earlier position?

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

The deliberate effort made by the military for unification of land tenure across the country led to setting up of Land Use Panel in 1977 of which their report gave birth to the Land Use Decree, 1978. The Act made the Governor of a State the trustee of all land in his State. The Act however failed to extinguish rights in land before the commencement of the Act. The Act was later inserted into both the 1979 and the 1999 Constitutions of the Federal Republic of Nigeria and the Decree asserted that all land which was already developed remained the position of the person in whom it was vested before the Decree became effective. The short-comings in the Act were discovered as soon as the Act became operative. For instance, the insecurity of the title to land which characterized land holding before the Act was not cured as there was no means of protecting the existing land rights in case one secures a statutory certificate or customary right of occupancy as the case may be. The Land Use Act therefore was not all encompassing and comprehensive in dealing with security of title to land in Nigeria, the Laws on ground for registration of titles and instruments of land 1924 and 1935, respectively notwithstanding. In the case of *Ogunleye v. Oni*[50] the Commissioner for Lands and Housing in Oyo State granted to the plaintiff a Certificate of Occupancy. The defendant in this case claimed that he inherited the property from his father who died in 1947 and that the land had been granted to his father under the native land and customs in 1936 for valuable consideration. The Court declared that a holder or an occupier of land whether developed or undeveloped in any area whether in an urban or rural area under a recognized customary tenure before the commencement of the Land Use Act, 1978 will continue to have the land vested in him with full employment of rights of occupancy as if it had been granted to him by the Local Government of that area. One of the rationales behind the promulgation of the Act was to curb the difficulty faced by the Government in acquiring land for development purposes from original owners of land, which acquisition was seen as an impediment to economic development. With hope that vesting ownership and allocation of land on Government will ease the problem and enable the Government to have easy access to acquisition of any piece of land.

Despite the fact that the Act vests the radical title to land on the Governor of a State, the converse is the case practically as the radical title to land still resides in the community, family or individual to alienate.[51] The Governor can only meddle with the land of an individual by way of revocation of the statutory right of occupancy and the land to be revoked must be for public purpose and in accordance with the provisions of the Act, otherwise the land revocation will be declared invalid.[52] The Land Use Act was enacted mainly to give Government compulsory powers over land acquisition with the hope that the Act will be a solution to the problems that government was facing in acquiring land, as there would be no problem in making use of whatever piece of land it deemed fit for public purposes.[53] Section 28 (I) of the Land Use Act provides that it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest. The Act by this section vested in the Governor the power to compulsorily acquire land and accordingly the Governor must act within the confines of the law (giving the requisite notices and meeting the requirement for overriding public interest) must be duly observed failure of which the dispossessed owner can challenge such revocation in a court of law. Section 29 (1) of the Land Use Act provides that if a right of occupancy is revoked ... the holder and occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements. The governor of a State reserves the power of compulsory acquisition. Compulsory acquisition occurs when government acquires private property without the consent of the owner. In some jurisdictions, land may be compulsorily acquired by government to be used for the construction of a road, for building of schools, markets, hospitals or some other projects. For government exercise of this power of revocation to be fair, legitimate and efficient, procedures of the law must be strictly adhered to. The Act in accordance with the 1999 Constitution stipulates the lawful steps to be taken in the compulsory acquisition and revocation of interest in land of an individual. The Land Use Act, for instance, provides for service of proper notices. In *Provost Lagos State College of Education v. Edun*[54] the apex Court per Tobi JSC held that: In the *Attorney -General Bendel State v. Aideyan (*1989) 4 NWLR (Pt. 118) 646, this court held that by the provisions of Sections 5 and 9 of the Bendel State Public Land Acquisition Law, before someone's property could be acquired compulsorily for public purpose: (a) notice of intention so to do must have been served upon him or the occupier or a person interested or upon such persons as were entitled to sell or convey the land; failing both, affixed conspicuously on the property; (b) the notice must be by personal service or by being left at his last known place of abode or business; (c) the notice served on him must be published once in the Bendel State Gazette and at least two national daily newspapers circulating in Bendel State.... What is the effect of non-compliance with the law?

The learned Justice continued by stating that: It is settled law that expropriatory statutes which encroach on a person's proprietary rights must be construed *fortissimo contra preferences*, that is, strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived. Consequently, as against the acquiring authority, there must be a strict adherence to the formalities prescribed for the acquisition. See *Obikoya v. Governor of Lagos State* (1987) 1 NWLR (Pt. 50) 385; *LSDP* v. *Foreign Finance Corporation* (1987) 1 NWLR (Pt. 50) 413 *Attorney-General Bendel State v. P.L.A. Aideyan* (1989) 4 NWLR (Pt. 118) 646. Government has the constitutional right to compulsorily acquire property on payment of compensation. That was the provision of Section 40 of the 1979 Constitution, the Constitution that was in force when this matter went to court. It is now Section 44 of the 1999 Constitution. There are statutes which provide for the procedure of acquiring property by the Government. Government is expected to comply and it must as a matter of law comply with those statutes which Government has enacted. Therefore where government disobeys its own statutes by not complying with the laid down procedure for the acquisition of private property, it is the duty of the courts to intervene against the government and in favour of the private citizen. The Act also provides that the revocation of private property must be for public purposes.

[50] (1990) 2 NWLR (Pt. 135) 745.
[51] O. Aluko, *The Law of Real Property and Procedure*, (Brighter Star Publishers, 2001), 124.
[52] *Bello v. The Diocesan Synod of Lagos* (1971) All NLR 249; *Obikoya Vissions Ltd v. Government of Lagos State* (1987) NWLR 382.
[53] F. Olugbemi, *Fundamentals of Nigerian Real Property Law*, (Afribic Press, 2012), 169.
[54] (2004) 6 NWLR (Pt. 870) 476.

Although this is sometimes not the case as the courts have held land compulsorily acquired for the purpose of granting a lease for instance to a trading company invalid and not within the range of definition of public purposes, and many other cases that follows suit.[55] Although this decision was made under the Public Lands Acquisition Ordinance, the provisions are still on all fours with the provisions of the Land Use Act. The specific purpose for the revocation must therefore be stated. Waddington, J., in the above case made the following observation: By no stretch of the imagination can I see how the grant of a lease to a commercial company could be brought within the range of this definition of 'public purposes' and no argument was attempted to show that this purpose is within the definition. All due publicity was given to the notice of acquisition required by the Ordinance, but the notice merely states 'for public purposes' and 1 find it difficult to understand why the particular public purpose is not stated. When the matter comes into Court it has to be admitted that there is no public purpose involved at all, and the impression is liable to be conveyed, no doubt quite erroneously, that there was something ulterior in the failure to make the purpose public. The owner of the revoked property in most cases face lots of challenges occasioned by the loss of his property. Permanent displacement from homes, loss of ancestral lands which are of great significance to their owners in their culture, and lose of businesses as well as immediate emotional destabilization are to mention but a few challenges. The law however makes provision for payment of compensation for such losses which I consider inadequate.

7. Conclusion

The provisions of Land Use Act are main law dealing with land use in the Nigeria. The Land Use Act was not all encompassing and comprehensive in dealing with security of title to land in Nigeria. The issue of compensation as contained in the Act should be revisited. I strongly suggest amendments of relevant sections of the Land Use Act to conform to the modern trends as highlighted in the body of this work.

[55] *Chief Commissioner, Eastern Province v. S. N. Ononye & Ors* (1944) 17 NLR 142.