

THE CONUNDRUM OF COMPULSORY ACQUISITION UNDER THE LAND USE ACT 1978

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Abstract

The right to acquire an interest in Land compulsorily has been recognized since very early times as inherent or attributed to the sovereign power in modern society, although prerogative powers still exist at minimal form in some traditional communities, the right is nowadays exclusively exercised, directly or indirectly under statutory powers. This article is aimed at appraising the compulsory acquisition under the Land Use Act 1978. The specific objectives include investigating the scope of compulsory acquisition in Nigeria. The doctrinal research methodology was employed. The article concluded that state government often revoke land right arbitrarily under the guise of public interest despite the disruptiveness and hardship it caused land owners among others, consequently, it recommends that both the CFRN 1999 (as amended) particularly Section 44 need to be amended to meet the expectations of all Nigerians whose land rights have been violated and the entire Land Use Act particularly, section 29(1) LUA which tends to exclude unimproved lands from the subject matter of compensation should be amended. The clause "... the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements" should be expunged from the Act. In its place, it should read "the occupier shall be entitled to compensation for the value at the date of revocation of all his Land rights so affected. The Act if revoked should be subjected to legislation to accommodate the opinions of Land owners.

1.0 Introduction

Over the years, the coming into effect of the Land Use Act, 1978 has generated a lot of debate as to the real effect of the Act on the existing tenure. This debate covers such issues as property rights, sources of power of compulsory acquisition, who have the power to compulsorily acquire land, for what purposes should such properties be acquired, what is considered to be compulsory acquisition and what right should be compensated, the process of such acquisition and the limits of power of authorities over such acquisition. The efficacy of the Act at each stage appears to leave much doubt over its object in relation with tenurial system.

The importance of land to man cannot be overemphasized as it is permanent in nature and man lives on it from generation to generation. Every citizen of Nigeria is empowered to acquire and own immovable property anywhere in Nigeria. However, the right to own immovable property just like every other right is not absolute but subject to certain qualifications subject

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to consent of the Governor of the State. There is therefore need for land to be protected and preserved for development by private individuals in particular and the public in general. The power of compulsory acquisition of land in Nigeria is rooted in the country's constitution. Basically to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement and protection and restoration of natural development.

Section 1 of the Land Use Act 1978² provides that all lands comprised in the territory of each state in Nigeria are 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, and the Governor may revoke a right of occupancy for overriding public interest.

The Supreme Court in *Onyiuke v. Esi Agency*³ defined compulsory acquisition to mean the taking of land not by voluntary agreement but by force and that compulsory acquisition is used in the widest possible sense and covers all forms of taking possession of property. With the provision of this Act it appears sad that a statute such as this which was supposedly promulgated to effect changes in our tenurial system could obliterate right of individuals to personal property. The uncertainty created by the Act obviously has attracted so much judicial views as to its correctness.

Therefore, this article focuses on finding a lasting solution between the public need for land on the one hand, the provision of land tenure security and the protection of private property right on the other hand as well as consider some of the most recent judicial views claiming that proprietary right in land is transferred to the Governor of each state by the Act became imperative. It is no doubt that compulsory acquisition is inherently disruptive as it's object is expropriation of land or interest in land. Even when compensation is generous and procedures are generally fair and efficient, the displacement of people from already established homes, businesses and communities still entails enormous human costs. . That governors acquire land for the provision of public utilities. For example the construction of flyovers in Rivers State and payment of compensation to individuals or organization whose properties are affected are viewed in the perspective of the Government as act done for public interest or public purposes geared towards the decongestion of traffic on the roads. The state now derives the power of compulsory acquisition from the statute which overrides the individual or communal interest.

Many recent policy dialogues on land have clearly shown compulsory acquisition as an area filled with tension. From the perspective of Government and other key economic actors, the continuous inefficient aspect of the process are seen as a clog in the wheel of economic growth and national development coupled with the consent requirement being criticized in *Savannah*

² Land Use Act Cap L5 Laws of the Federation of Nigeria 2004, s 1. (LUA).

³ J. A. Umeh, *Compulsory Acquisition of Land Law Compensation in Nigeria* (Sweet and Maxwell Publishers London, 1973) 15.

Bank Nig. Ltd v. Ajilo.⁴ Most times also most of those lands acquired by the Government are diverted for private needs against the spirit of the Law. This article therefore appraises compulsory acquisition in Nigeria under the Land Use Act 1978.

1.1 Conceptual Framework

a. Land

Land is the most precious commodity of the ancient Nigerian, its value to the modern Nigerian is still very high. It is for this reason that human existence and activity was tied to Land and its ownership.⁵ Land is also described thus; an immovable and indestructible three dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed.⁶

In its legal significance, "Land" is not restricted to the earth's surface, but extends below and above the surface nor is it confined to solids but may encompass within its bounds such things as gases and liquids.

According to James⁷ originally, Land under customary law meant the soil only. A building erected by a person, even by a trespasser, on the Land of another did not become attached to the Land but remained the property of the builder. The same was true of trees and crops planted by one, man on another Land". This is what is referred to as the natural content of the Land.⁸

Statutorily, the constitution⁹ provides that land includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals. The same definition was adopted in the interpretation Act.¹⁰ This said section 318 of the interpretation Act has been incorporated by reference in S. 318(4) of the constitution. The Landlord and tenancy law of Rivers State defines land to mean the surface of the earth and all successive strata below it but does not includes minerals.¹¹

b. Revocation

Revocation is a noun form of the verb revoke, which means to take back, withdraw or cancel. Revoke or revocation are typically used in the context of officially taking back or canceling some kind of right, status, or privilege that has already been granted.¹² Revocation by the act of a party is intentional and voluntary cancellation of a power already granted and such revocation

⁴ (1989) 1 NWLR (Pt. 97) 305.

⁵ A.G. Karibi Whyte, "The Nigerian Common Law" in: J. A. Omotola CEd, (University of Lagos Faculty of Law Silver Jubilee Lectures: Ado Press Ltd. Lagos, 1989) 40.

⁶ B. A. Garner (ed), Black's Law Dictionary (6th edn, West Thomson Business Publishers, United States, 2004) 892.

⁷ R. W. James, *Modern Land Law of Nigeria* (University of Ife Publishers, 1973) 14

⁸ B. O. Nwabueze, *Nigerian Land Law* (Nwamife Publishers Enugu, 1982) 3.

⁹ (1936) 13 NLR 11.

¹⁰ CFRN 1999, s 318 (4).

¹¹ The Landlord and Tenancy Law of Rivers State Nigeria 1999, s 3(2).

¹² K. Eso, *Thought on Law and Jurisprudence* (MIJ Publishers 1990) 8.

is usually gazetted when made by the governor.¹³ According Back's Law Dictionary, revocation is an annulment, cancellation, or reversal of a contract or withdrawal of offer by the offeror.¹⁴ It refers to the canceling or withdrawing of a law or licence.¹⁵ This is the act of recall or annulment. It is the cancellation of an act the recalling of a grant or privilege or the making void of some deed previous in existence.¹⁶

There are many forms of revocation which are done as either a punishment or to prevent abuse of a privilege. Suffice to say that the revocation of legal rights, privileges or licenses is done administratively. It equally means an act by which a person having authority calls back or annuls a power, gift or benefit which had been bestowed upon another. The use of the phrase, "by a person having authority" above refers to the Governor or a chairman of a Local Government Area as the case may be in relation to the revocation of land rights under the Nigerian Jurisprudence. In the contest of this dissertation therefore, revocation means the power of the Governor of a state upon whom all lands within the territory of the state is vested to cancel the right of occupancy earlier granted to occupiers or licenses. Specifically, section 28(1) LUA give the Governor power to expropriate private lands. This means that the interest of the state is the basis of the Governor's exercise of the power of revocation. The provision enables a Governor in Nigeria to expropriate private land for public interests for benefit.¹⁷ What constitute public benefits or public interest means and alienation by the occupier by assignment, mortgage, transfer or possession, sub-lease or otherwise of any right of occupancy contrary to the provision of the law.¹⁸ Or such land is regarded by appropriate government for public purpose.¹⁹ The acceptance that Government requires land for provision of public utilities justifies the Governor's revocation of right of occupancy where the government feels it is necessary, suitable to locate such facilities for sustainable development.

c. Compensation

Compensation is an integral part of compulsory acquisition: One issue which arises for consideration after a valid revocation of right of occupancy is compensation for the possessor or holder of the right. Compensation is the remuneration and other benefits in return for services rendered.²⁰

For the purpose of this article compensation is payable under the LUA if the revocation is for public purpose or for mining of building materials²¹ and bare land. Also the constitution of Nigeria makes payment of compensation mandatory to the possessor of the right of occupancy

¹³ *Holpway v. Jimoh* (2020) 2 NWLR (Pt. 1707) 46, H Collins, Revocation Legal Definition <https://osd.dictionary> accessed 4 October 2022.

¹⁴ B A. Garner (ed), *Black's Law Dictionary* (9th edn, West Thomson Business Publishers, United States, 2004) 1435.

¹⁵ A Smith (ed), *The Advance Learners Dictionary* <<https://www.google.com>. accessed 4 October 2022.

¹⁶ F Paul, meaning of Revocation in law www.svdum.com accessed 4 October 2022.

¹⁷ LUA, s 28(1)(2)

¹⁸ *Ibid*, s 28(2)(b)

¹⁹ *Ibid*

²⁰ B.A. Garner (ed), *Black's Law Dictionary* (8th edn, West Thompson Business Publishers 2004) 301

²¹ LUA s. 29(1)

which has been revoked.²² It is pertinent to state that both section 44(1) of the constitution and section 29(1) of the LUA makes payment of compensation mandatory.

Compensation payable shall represent only the value of improvements added to the land which have not been exhausted at the time of expropriation.²³ However the position is different with regard to revocation of land done in pursuance of Section 28(2)(c) or (3)(b) of the Act. In such cases, affected landowner's compensation shall be as stipulated in the relevant provisions of the Nigerian Minerals and Mining Act²⁴ or any legislation substituting for the Nigerian Minerals and Mining Act or the Petroleum Act²⁵

There are provisions on compensation of a rights holder or occupier whose interest in landed property is expropriated in the interest of the State in Nigeria. A holder or occupier of right of Occupancy affected by acquisition is entitled to be compensated. Such compensation is restricted in two fundamental respects, namely: the purpose of revocation must fall under Section 28(2) (ii) and (c) as well as Section 28(3) (a) (1,) and (c) of the Land Use Act. A critical examination shows that they are instances of revocation inspired by the need to serve public benefit: Revocation under Section 28(2) (a) and (3) (d) which is on the grounds of breach of the terms and conditions of the certificate of occupancy does not entitle the right holder or occupier to any compensation. Revocation and acquisition under Section 28(2)(a) and (3)(d) are punitive acts and are not entirely propelled by the desire to utilize asset in the interest of the society. As such, the affected individual has no entitlement to be compensated for. It is submitted that the provision which empowers the Governor to compulsorily acquire land from citizens without compensation is draconian and undemocratic. This article submits further that in all cases of compulsory acquisition, compensation ought to be paid.

The compensation provision under the Act is grossly inadequate and can be described as unjust. This is because under the Land Tenure Law, compensation was paid for the value of the inconvenience caused by the disturbance and disputes were allowed to be referred to the High Court. In a similar vein, the Public Land Acquisition Act²⁶ also provided for compensation to be paid for the land and the unexhausted improvements thereon. Curiously, the Land Use Act promulgated much later provided that compensation is payable only on unexhausted improvements on land and no value and compensation is attached to land itself. The jurisdiction of court has also been ousted to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid under the Act. In other words, what the Governor decides to pay as compensation is not debatable.²⁷

²² CFRN 1999 (as amended) s. 44(1).

²³ LUA, s 19 (1)

²⁴ Nigerian Minerals and Mining Act 2007.

²⁵ *Ibid*, s 29(3)(a).

²⁶ Public Land Acquisition Act (Miscellaneous Provisions) Decree No 33 1976, s 4.

²⁷ D. E. Nelson, 'Mortgage of Land as Security Under the Land Use Act of 1978' (2013)(11) *Nigerian Juridical Review* 45.

2.0 The Legal Framework of Compulsory Acquisition in Nigeria

Compulsory acquisition of land has always been a topical and delicate issue and is increasingly so these days within the context of rapid and changes in Land Use or use of land. Increasing pressures are mounted on the government to deliver public services in the face of an already high and growing demand for land. No doubt, many recent policy dialogues on land have clearly shown compulsory acquisition is an area filled with tension. From the perspective of government and other key economic actors, the continuous inefficient aspect of the process are seen as a clog in the wheel of economic growth and natural development for instance the consent requirement in the Nigerian Land Use Act has been severely criticized in *Savannah Bank v. Ajilo*.²⁸ The Supreme Court in *Osho v. Foreign Finance Corporation* held that revocation of a persons Right of occupancy over Land by the Governor for “public purpose” must always be subject to two qualifications: the right of fair hearing for the victim; and the victim’s right to be paid adequate compensation. It further held that if the Government purports to revoke a Right of occupancy and purports to acquire land covered by that certificate for “public purpose” but it turns out that the land is subsequently not used for public purpose again, then the orders of revocation and compulsory acquisition of the government will become unlawful and invalid.

The right to own property by an individual is well entrenched in the 1979 constitution. That right to own carries with it the right to dispose of the said property. By virtue of the provisions of Fundamental Rights enshrined in chapter IV of the 1979 constitutions, the government with all its might cannot acquire the Land of an individual without paying adequate compensation. Therefore, the Land Use Act cannot override, curtail, or whittle down any provision of the constitution *Lemboye v Ogunsiji*²⁹ Section 44(1) of the 1999 constitution of the Federal Republic of Nigeria, 1999 as amended provides thus:

“No movable property or any interest in an immovable property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that among other things:

- (a) Requires prompt payment of compensation therefore, and
- (b) Gives to any person claiming such compensation a right to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

A cardinal principle in our law, guaranteed by section 44(1) of the constitution and section 28 of the Land Use Act 1978, is that a vested interest in Land, legal or equitable, cannot be extinguished whimsically or capriciously without the due process of the law. Our courts have a duty to protect vested right to avert a regime of lawlessness and to ensure that rights or interest in land that have been vested will not be affected by subsequent change in Law or

²⁸ (1989) 1 NWLR (Pt. 97) 305.

²⁹ (1990) 6 NWLR (Pt. 155) 210 pp.645 – 646 Paras 11-17

policy. Hence the right of an individual can only be extinguished by due process of law for the revocation of same, which must be for public purpose and not for the benefit of another private, individual. Section 28 of the Land Use Act read together with section 44(1) of the constitution further reinforces these principles of our land law: That the revocation of vested title or interest in or over a piece of land must be preceded by, or follow, a due process of law and it must be for public purpose. These principles were laid down in *Foreign Finance Corp v LSPDC*³⁰, *Osho v Foreign Finance Corp*.³¹ It has been asserted that a certificate of statutory or customary right of occupancy issued under the Land Use Act, 1978, cannot be said to be conclusive evidence of any right, interest or valid title to land in favour of guarantee. It is at best a *prima facie* evidence of such right, interest or title without more, and may in appropriate cases be effectively challenged and rendered invalid, null and void as was done in *Kababedi v Lagos Mental Industries (Nig.) Ltd*³², *Kyari v Alkali and others*. Therefore for a certificate of occupancy under the Land Use Act to be valid, there must not be in existence at the time the certificate was issued, a statutory or customary owner of the Land who was not divested of his legal interest to the land prior to the grant.

The Land Use Allocation Committee is a statutory body established by section 2(2) of the Land Use Act and the appointment of members of the committee is made by the Governor. The beneficiary of the allocation of Land by this body is a holder of statutory right of occupancy under section 5 of the Land Use Act. It follows therefore that no other person can be granted a right of occupation in respect of the same Land under the guise of compulsory acquisition unless section 28 of the Land Use Act is fully complied with. Any other right of occupancy purportedly granted under the guise of compulsory acquisition by the Governor is null and void.

Everybody, (including private individual, public, government or police) is forbidden to take possession or repossession of a premises by self-help, force, strong hand or with multitude of people. Everyone entitled to possession or repossession of Land or premises can only do so by due process of the law. They must not take the law into their hands. They must apply to the court for possession and act on the authority of the court. It follows that if anyone is wrongfully dispossessed, the law must apply by turning out the wrong doer and restoring the dispossessed to possession by an interim order before the formal rights of the parties are determined *Chief Emeka Odemegun Ojuku v Military Governor of Lagos State and 2 others*³³, *Agbor v Metropolitan Police Commissioner*.³⁴

Furthermore the right to property in Nigeria is entrenched under section 40 of the 1979 constitution. The right is inviolate and such property or any right attendant thereto can only be

³⁰ (1991) 5 SC NJ 52.

³¹ (1991) 4 NWLR (Pt. 184) 157 pp. 73-74.

³² (1973) AI SCCI at 6.

³³ (2001) 31 WRN 88.

³⁴ (1985) 2 NWLR 808-809.

taking possession of or compulsorily acquired by or under the provisions of the law. In fact such a law must provide for payment of adequate compensation to the owner and must give him the right of access to a High Court for the determination of his interest in the property and the amount of compensation due him. It follows therefore that any purported acquisition which is not according to a law containing the above provision cannot qualify as proper acquisition. Acquisition of a person's property compulsorily is *prima facie* a breach of his entrenched fundamental right to his property by virtue of section 31 of the 1963 constitution and section 40 of the 1979 constitution. As his right to property is therefore his fundamental right, he is entitled to make representation against such compulsory acquisition, or claim compensation therefrom, or appeal or petition against it. So he is entitled to a protection of that right to his property by exercising his right to fair hearing. It is only by exercising it that justice can be assured. This in succinct means that he can correct or controvert any ground put forward for the acquisition or raise any irregularities in the acquisition procedure. *Obikoya & Sons Ltd. v Governor of Lagos State*.³⁵

Hence, for government to achieve this, government takes the step to acquire the appropriate land suitable for such purpose. In some cases, several locations could be suitable for a facility such as a new government office or public utility so government may be able to purchase land at one of the locations through the land market. In other cases, specific land parcels are required for example to build health centers, secretariat, route of a new road, the protection of areas from flooding, that land may not be for sale at the time it is required.

In order to obtain land when and where it is needed, governments have the power of compulsory acquisition of land. In this regard, government can compel owners to sell their land or order for it to be used for specific purposes. The power, discussed in this guise is the compulsory acquisition of land, is also referred to as expropriation, eminent domain, compulsory purchase, land acquisition and resumption. It is no doubt that many recent policy dialogues on land have highlighted compulsory acquisition as an area filled with tension. This is because in as much as it is the good intention of the government to acquire land for public good, the process also brings hardship for people who are threatened with dispossession as it displaces families from their homes, farms, and businessmen from their neighbourhood, deprive communities of important religious or cultural sites, render people homeless and landless, cause unprecedented hardship particularly if the power of compulsory acquisition is abused through unfair procedures and payment of inadequate compensation.

The constitution of the Federal Republic of Nigeria as earlier mentioned prohibits the compulsory acquisition of property whether moveable or immovable. Section 44 of the 1999 constitution provides by section 44 (1)³⁶ that "no moveable property or any interest in

³⁵ (1969) 1 NWLR 703.

³⁶ CFRN 1999, s. 44(1).

immovable property shall be taken possession of compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by law, viz:

- a. Prompt payment of compensation
- b. Giving to any person claiming such compensation;

A right of access for defamation of his interest in the property and the amount of compensation to court of law or tribunal or body having jurisdiction in that part of Nigeria. It therefore behooves on the government to comply with the procedure for acquisition of land. This duty was emphasized by the Supreme Court of Nigeria in *Goldmark (Nig) Ltd. v Ibafon Co. Ltd.*³⁷ to wit: that Government has the right to compulsorily acquire property on payment of compensation. Where government disobeys its own statute by not complying with the laid down procedure for acquisition of property. It is the duty of the courts to intervene between the Government and the private citizen.

Therefore compensation, whether in financial form or as replacement land or structures, is at the heart of compulsory acquisition especially as a direct government action, people lose their homes, their land and at times their means of livelihood. Compensation is to cushion these effects or rather a repay for these losses and should be based on principles of equity and fairness.

Granted in principle that the purpose of compulsory acquisition is to both obtain land for public purpose, the justification for compulsory action is therefore determined by the result of becoming the interest of the general public who benefit from such compulsorily acquired land against that of individual who retains it for his private benefit.

From the foregoing compulsory acquisition have justification in both social and economic factors. The reason for compulsory acquisition in Nigeria has therefore been generally attributed. "The inherent incompetence or inadequacy of the land market to make available the land needed for public purposes in adequate quantities at the required location and at the appropriate time".³⁸

3.0 Who have the Power to Compulsorily Acquire Land?

The need/necessity to compulsorily acquire land was recognized even in the pre-colonial era when the chiefs or community head had power to acquire vacant land compulsorily for public purposes for instance in Ikwerre land in Rivers State of Nigeria, till date there still exist playgrounds generally used by the entire village for wrestling, dances and other public functions. These lands acquired are solely devoted for such purpose for which it was acquired and if the purposes fails, immediately there will be a jostle for the owners to recover ownership.

³⁷ (1987) 1 NWLR (Pt. 50) 385 at 403 – 404 p.674 paras B-D.

³⁸ *Great Western Railway Company v Helps* (1978).

This article states that the contrast between this modal system and the Land Use Act is that in the pre-colonial era the owners can still retain ownership if the purpose fails while under the Act the title of the original owner is extinguished if the state compulsorily acquires land. Nevertheless the necessity for compulsory acquisition for public interest is recognized by both systems.

The offer of compensation to holders of right of occupancy has always been an important aspect of the government policy. Nigeria has not been alone in this approach; many other countries both developed and developing have adopted the same policy in Britain for example during the World War II, successive government made use of compulsory acquisition of land and payment of compensation to influence investment for public purpose.

Government has a duty to comply with the procedure for acquisition of land. This duty was emphasized by the Supreme Court in *Goldmark (Nig.) Ltd. v Ibafon Co. Ltd.*³⁹ The court has always emphasized that Government has the right to compulsorily acquire property on payment of compensation. There is no argument about such constitutional power but Government is expected to comply with those statutes which provide for the procedure of acquiring property privately owned. Where Government is in disobedience of its own statute by not complying with the laid down procedure for acquisition of property, it is the duty of the court to intervene between the Government and the private citizen.

The constitution provides⁴⁰ “subject to the provisions of section 251 and other provisions of the constitutions, the High Court of a state shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any “criminal, proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of any offence committed by any person.”

It is a settled law that expropriatory statutes which encroach on a person’s proprietary rights must be construed strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived. Consequently, against the acquiring authority, there must be a strict adherence to the formalities prescribed for the acquisition. *Peenock investments Ltd v Hotel Presidential*⁴¹ the above cases illustrate that the power to compulsorily acquire land must be for the purpose stipulated by law. The purposes stipulated in section 2 of the Public Land Acquisition Act are the only purpose for which land can be compulsorily acquired.

³⁹(n 55).

⁴⁰CFRN 1999, s 272

⁴¹(1983) 4 NWLR (Pt.122) 657-676, paras. 11-13.

The acquiring authority or the government in exercising its power of revocation, under the Land Use Act, must notify the holder of the certificate of occupancy. The 1999 constitution which complements the provisions of the Land Use Act⁴² provides that the holder of a right of occupancy must be heard before his right is revoked. Therefore to publish a blanket notice of revocation and therefore stultify the exercise of his constitutional right to make representation would be tantamount to grave injustice.

Government authorities have the power to acquire property pursuant to the Public Land Acquisition Act. Acquisition by Government Authorities extinguishes all the titles, rights and proprietary interests therein.⁴³ In *Mandilas Ltd. v Amodu*⁴⁴ the land was unknown to be previously acquired by the Government. It was held that the testimony of acquisition was unassailable as it extinguishes all proprietary rights belonging to the individual.

The power of compulsory acquisition may be granted to agencies such as the following;

- (1) Government department ministries and agencies at the national and regional levels.
- (2) Local government
- (3) Public bodies with statutory obligations, e.g. companies responsible for energy and water services.
- (4) Private bodies regulated by government, e.g. airport authorities, forest enterprises energy companies, railways, and telecommunications companies.
- (5) Other miscellaneous bodies

Each agency authorized to compulsorily acquire land may have its regulatory guidelines on what acquisitions are permitted and how to carry out the processes defined in national legislation. Each country has its own set of agencies ministries and officials who have the power to compulsorily acquire land. The national level of government is usually granted authority for compulsory acquisition by the constitution, and relevant laws often specify authorities or persons empowered to authorize the functions associated with compulsory acquisition. In some countries, power is assigned only to the national government while in other countries it may be vested also at the regional level. It may also be possible for local governments and parastatal, organisations to compulsorily acquire land for public works.

Generally compulsory acquisition occurs when there is an expropriation of land or interest in the Land without the consent of the owner. The compulsory acquisition is always made in exercise of a power which may authorize the taking of the whole interest in land, or an interest less than the fee simple interest in land.

⁴² CFRN 1999 (as amended) ss 43 & 44.

⁴³ Rent Edict No 3 1999 of Rivers State, s 39 (2)(3).

⁴⁴ (1973) CCHCJ 183 at 184-6.

4.0 For What Purpose may the Power of Compulsory Acquisition be Used

Many constitutions and laws refer to compulsory acquisition being used for public purposes, for public uses and/or in the public interest. The reason for this very action may include;

- (a) Public utilities for water, sewage, electricity, gas, communication, irrigation, and drainages, dams and reservoirs.
- (b) Transportation uses including roads, land, highways, railways, bridges, wharves and airports.
- (c) Public parks, playgrounds, gardens, sports facilities.
- (d) Public buildings including schools, libraries, hospitals, factories, religious, institutions and public housing.

Section 28 of the Act provides for the revocation with the intention to compulsorily acquire the land to execute developmental projects for the benefit of its citizenry.⁴⁵ Section 29 of the Act provides for compensation following revocation.

It is worthy of mention that the Land Acquisition Act is the first Law empowering Government to compulsorily acquire land in Nigeria. After which several public lands acquisition laws of various states have emerged including the 1976 Public Lands Requisition Decree.

5.0 Conclusion

In the body of work due consideration has been given to the nature of land holding in Nigeria before and after the enactment in 1978 of the Land Use act. Due attention has also been given to compulsory acquisition and compensation before the Land Use Act. The aim of this work as has been seen is to expose the position of the law so as to effectively compare the provisions of the Land Use Act with respect to compulsory acquisition and compensation with provisions of the previous expropriatory statutes in the country so as to determine the adequacy or otherwise of the Land Use Act as it relates to the topic under consideration.

It has also been demonstrated that the nationalization of land introduced by the Land Use Act notwithstanding, land is still basically regarded in Nigeria as subject of private holding and this more than anything else highlights the necessity of amending the Act to accord with the traditional belief of the populace.

It is therefore strongly suggested that a high-powered national workshop be organized with the view to highlighting the problems inherent in the provisions of the Act relating to compulsory acquisition and compensation and offer solutions which will redress these pitfalls thus rendering the Act more equitable. It is only such a bold step that can bring the provisions of the Act nearer the people thereby commanding respect and obedience from them.

C.C ⁴⁵Wigwe, *Valuation, Taking Possession and Acquisition of Land for Oil and Gas Fields* (Lismore Publication Company, 2006) 1-2.

6.0 Recommendations

It is pertinent arising from the various discussions and findings of this article that cogent, veritable and purposeful recommendations aimed at proffering solution to the contentious provisions of the Act be made to enhance the protection and promotion of property rights during compulsory acquisition. These problems are highlighted below:

1. The CFRN 1999 (as amended), particularly, Section 44 need to be amended to meet the yearnings of all Nigerians whose land rights have been violated. Specifically, the said section should be amended to adequately and effectively provide for the protection of Nigerians to compensation commensurate with their actual losses during the revocation for compulsory acquisition of their land.
2. Section 29 (1) LUA, which tends to exclude unimproved lands from the subject matter of compensation should be amended. The clause, "... the occupier shall be entitled to compensation for the value at the date of revocation of the unexhausted improvements" should be expunged from the Act. In its place, it should read, "... the occupier shall be entitled to compensation for the value at the date of revocation of all his land rights so affected.
3. Revocation under Section 28 of the Act, No right on the holder to challenge same: it is copiously provided for under Section 28 of the Land Use Act, the reasons for and procedure through which a right of occupancy may be revoked. Apart from requiring the affected land for public purpose; the Governor may also revoke the right of occupancy as a punishment for breach of any of the provisions of the Act or contained in the certificate of occupancy⁴⁶. There is nothing in section 28 empowering a holder of a right of occupancy to challenge the revocation in Court where he feels aggrieved. Who determines, for instance what qualifies as public purpose? It is proposed that Section 28 should be amended so as to expressly empower a holder who is dissatisfied with any revocation to challenge same in the Court.
4. Section 47(2) LUA provides to the effect that "no court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act" should be expunged from the Act as it runs contrary to the principle of natural justice.
5. Revocation under Sections 28(2)(a) and (3)(d) of the LUA which is on the grounds of breach of the terms and conditions of the certificate of occupancy does not entitle the right holder or occupier to any compensation. It is recommended that this provision which empowers the Governor to compulsorily acquire land of citizens without compensation be amended to allow the individual pay the prescribed fees because such provisions seems draconian and undemocratic.

⁴⁶LUA s 28 (5)