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Can Public Purpose under the Land Use Act Covers Compulsory Acquisition for Private Investment? Judicial Attitudes in Nigeria?

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Abstract

Compulsory acquisition of land is an opportunity given to government to acquire land from individual for public purpose or public interest. Commercialization and privatization of public enterprises necessitate the government to acquire land from individual for private investment. Section 43 and 44 of the Nigerian constitution, 1999 and section 28 and 51 of land Use Act, 1978 sanctioned the acquisition provided it's for overriding public interest. the contention is can private investment qualifies as public purpose for the purposes of compulsory acquisition bearing in mind, the land is taken from individual person and given to individual private investor/entity and not for the direct use by government for public benefit. Using doctrinal methodology and content analysis tool; this article is aimed at perusing and analyzing judicial attitudes of Nigerian courts in interpreting the phrase 'public purpose' as to whether it covers private investment or not. At the end it was found that even though some judges did not consider private investment as public purpose but the liberal interpretation of section 51 of

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land Use Act coupled with current global economic realities and the principle that public interest or utility can be achieved through private entity not necessarily public institution pave a way for wider interpretation of public purpose to include private investment provided the investment has feature of public benefit/utility.

1.1 Introduction

The Nigerian land tenure system recognizes the act of the government to compulsorily acquire land belonging to people for public purposes or public interest as prescribed by law.⁸¹⁶ Sec 43 and 44 of the Nigerian constitution encapsulates right to own property which cannot be interfered with, except after following the laid down conditions.⁸¹⁷ There are conflicting decisions of the Nigerian courts as to whether public purpose or interest as contained in Sec 51 of the Land Use Act could be limited to only matters listed under the section or can be expanded to accommodate similar related matters.⁸¹⁸ The pressure is always put on the government by investors to source more land for them, as such, the only option open to the government is to acquire the individual private person's land and, then hand it over to another individual in the guise of private investment. The nagging question is whether the meaning of public purposes or interest under Sec 51 of the Land Use Act can accommodate this act as public purposes. Is there any legal justification within our laws for this act bearing in mind the meaning of public purposes.⁸¹⁹

The Constitution of the Federal Republic of Nigeria, 1999 guarantees right to own property and stipulate conditions for its deprivation; that it has to be for public interest or purposes, adequate compensation has to be paid and the victim must be given right to access court to determine adequacy of the compensation. Looking at the nature of the acquisition, the question always asked is, whether the compensation paid is adequate bearing in mind that the investors whether local or foreign are making money

⁸¹⁶ Sec 28 of Land Use Act cap L5. Laws of Federation of Nigeria, 2004

⁸¹⁷ Sec 43 & 44 of the Constitution of the Federal Republic of Nigeria, 1999

⁸¹⁸ The clear example of this conflict manifest in the case of *Osho v. Foreign Finance Corp (1991) 4 NWLR Pt 184 P.157* and *Olatunji V. Military Governor of Oyo (1995) 5 NWLR Pt. 397 P.586* the former restricted the definition of public purpose to only matter contained in Sec 51 while the later stated it can be expanded to include any matter related to the ones mentioned in sec 51. Similarly, the position was reiterated by courts in *Laminu v. Madugu (2015) 7NWLR pt1458 p.289* and *FGN v. Akinde (2013) 7NWLR pt. 1353 p.349* respectively.

⁸¹⁹ Ibid

for themselves and on the other hand stripping the landowners from their livelihood⁸²⁰ increasing poverty, rendering them homeless.⁸²¹ Are the Nigerian laws adequate in addressing the plight of the victims on these issues?⁸²² Will the long term effect of the deprivation of the land and the long term profit made by the investors be in commensurate with the compensation paid?

With increased government policy on deregulation and the diversification of the economy, the investors need to be encouraged with incentives to attract them boost the economy. Government makes it very clear that it will diversify Nigerian economy by promoting foreign private investment particularly agriculture.⁸²³ One of the investment problems is scarcity of land to build industry or vast land to engage in mechanized farming. It has been argued that the availability of land is prerequisite to the investment and land is considered as factor to production and non-availability of it sometime poses a constraint in development process.⁸²⁴ This article examines the judicial attitudes of Nigerian courts on the interpretation given to public purpose under section 28 and 51 of Land Use Act and whether it accommodates compulsory acquisition for private investment as public purpose or not.

1.2 Public Purpose under Nigerian Law

The Nigerian laws which empowered the Governor to compulsorily acquire land from private individual attached conditions upon which such land could be acquired, that it has to be for overriding public interest or public purposes.⁸²⁵

The word or phrase public purpose, overriding public interest, public benefit, public use and public utility are used interchangeably for purposes of acquiring land

⁸²⁰ Amnesty International, 2006 Making Destitute Homeless-forced Eviction in Makoko Lagos www.amnesty.org/en/lib/info accessed on 29/1/2017

⁸²¹ The repercussions of this act are the poor will remain poor and the richer will take over the land of the poor conniving with the government in the name of investment. The small farm land upon which the poor tilt would now be taken by the government and hand it over to private investors in some instances the land will be abandoned or used for other purposes not the one stated during acquisition.

⁸²² Funlola Famuyiwa, "Infrastructure Provision and Private Land Acquisition Grievances: Social Benefits and Private Cost" *Journal of Sustainable Development*, Vol. 4 No.6 (2011) 1 other silent issue are injurious affection, reversionary interest when the project was abandoned.

⁸²³ Onudugo Ifeanyi chris, "Diversification of the Economy: A Panacea for Nigerian Economic Development" *International Journal of Multidisciplinary Research and Development*, Vol. 2, Issue 5 (2015) 477-483

⁸²⁴ Funlola Famuyiwa, et al op cit p. 169

⁸²⁵ Section 28 Land Use Act, Cap L5, LFN 2004.

compulsorily.⁸²⁶ There is no clear definition of the term public purpose to allow for easy judicial review and interpretation.⁸²⁷ According to Webster's New Dictionary, Public Purpose is defined as a governmental action or direction that purports to benefit the populace as whole. Under the Land Use Act, overriding public interest for the purpose of compulsory acquisition of land in respect of statutory right of occupancy is referred to as

- a. Requirement of land by Government either Federal, state or local for public purposes.
- b. Requirement of land for mining Purposes or oil pipeline or for any purposes relating thereto.⁸²⁸
- c. Non compliance with the Land Use Act or Certificate of Occupancy.⁸²⁹

In case of customary right of occupancy overriding public interest is referred to as

- a. Requirement of land by Federal, State or Local Government for public purposes.
- b. Requirement of Land for mining purposes or oil pipeline or any purpose related thereto.
- c. Requirement of land for the extraction of building materials.⁸³⁰
- d. Non compliance with the Land Use Act or Certificate of Occupancy

In the aforementioned, reference has been made to public purposes while defining overriding public interest. The question now is what is public purpose for the purposes of compulsory acquisition of land?

Section 51 of Land Use Act defined 'Public purposes' to includes

- a. For exclusive Government use or for general public use;

⁸²⁶ Jonathan Mills Lindsay, "Compulsory Acquisition of Land and Compensation in Infrastructure Project" *PPP Insights An Explanatory Note*, Vol. 1 Issue 3 (2012) 2

⁸²⁷ Nicholas K. Tagliarino, "Encroaching on Land and Livelihoods how National Expropriation Laws Measure up against International Standards", World Resource institute: Working Paper (2016) 3

⁸²⁸ Op. cit Section 28 Land Use Act.

⁸²⁹ Ibid

⁸³⁰ Ibid

- b. For use by anybody corporate directly established by law or anybody corporate registered under the Companies and Allied Matter Act as respect which the government owns shares, stocks or debentures.
- c. For or in connection with sanitary improvement of any kind.
- d. For obtaining control over land contiguous to any part or over land, the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the government.
- e. For obtaining control over land for or in connection with development of telecommunication or provision of electricity.
- f. For obtaining control over land required for or in connection with mining purposes.
- g. For obtaining control over land required for or in connection with planned urban or rural development or settlement.
- h. For obtaining control over land required for or in connection with economic, industrial or agricultural development.
- i. For education and other social services.⁸³¹

The attempt made by section 51 above to define public purposes is rather listing the items that may fall within or outside the term public purposes. Several decisions were made by courts in ascertaining the true and complete meaning of public purposes and whether we can go outside the purview of the items listed under section 51 particularly with the current realities of economic development couple with the need for government to secure more land for investors, indirectly taking the land from private owners and handing it over to other set of private individual to invest for economic development or any other reason to be given.

Similarly, both section 28 and 51 of Land Use Act failed to provide criteria for determining overriding public interest or public purposes and in practice as the result of this lacuna, public purposes is what the government deem it so and this may lead to

⁸³¹ Section 51 Land Use Act, Cap L-5, LFN 2004

abuse of office and violating human rights principles for protecting right to property.⁸³²

There is an argument as to whether public purpose should have exclusive lists in order to provide degree of certainty and works to prevent the expansion of government powers into the area that is arguably beyond the proper theoretical limits of compulsory acquisition and prevent government abuses.⁸³³ While on the other hand it was argued that exclusive list may suffer from excessive inflexibility and may fail to provide for the full range of public needs as the government may eventually need to acquire land for a public purpose that was not anticipated when the law was written.⁸³⁴ The discussion on the two opponent views will be articulated later in this article while discussing the judicial attitudes.

1.3 The need for Private Investment and its interconnectedness with Land

The Nigerian constitution emphasizes the need for the government to make policies for economic and social development.⁸³⁵ Sec 16(2) of the Constitution⁸³⁶ provides

The State shall direct its policy towards ensuring:(a) the promotion of a planned and balanced economic development;(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;(c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

It is upon this backdrop, the government introduces the commercialization and privatization policies to attract private investors to inject more capital in several sectors of Nigerian economy.⁸³⁷ The need for diversification of the economy is

⁸³² Eloamaka Carol Okomko, "A closer Look at the Management, Revocation and Compensation Principles Under the Nigerian Land Use Act", *Afe Babalola University: Journal of Sustainable Development Law and Policy*, Vol. 1 Iss 1 (2013)P. 28

⁸³³ Food and Agricultural Organization of United Nation, "Land Tenure Studies: Compulsory Acquisition of Land and Compensation(2008) www.fao.org accessed on 27/1/2022 P.12

⁸³⁴ Onuoha, R. A, "An Exposition on the Concept and Legality of Compulsory Acquisition without Compensation under Nigeria Law," *Sacha Journal of Policy and Strategic Studies*, Vol. 5 No 1 (2016)p.2 www.sachajournals.com last visited 25 march, 2018,

⁸³⁵ Sec 16(1) of the constitution of the Federal Republic of Nigeria, 1999 as amended.

⁸³⁶ Constitution of the Federal Republic of Nigeria, 1999 as amended

⁸³⁷ Full Speech of President Olusegun Obasanjo delivered deregulation of Nigerian economy, 2003 www.nairaland.com accessed on 28/1/2024

associated with low levels of productivity and potential for large scale investment in most sub-Saharan African Countries.⁸³⁸ Adequate access to vast agricultural and industrial land is one of the constraints affecting private investment.⁸³⁹ The land tenure system is a serious constraint in the investment framework in Nigeria due to misdirected land policy and under investment in land administration; it is one of the most important impediments to National Economic Empowerment and Development Strategies (NEEDS') goal of creating competitive private sector.⁸⁴⁰

Land acquisition policies have changed from acquisition mainly for government use to the usage by private sector organizations operating as successors to state owned enterprises under the economic liberalization reform.⁸⁴¹ The need for private investment is very imperative to boost socio-economic development; the investors are confronted with scarcity of land as major tool or engine growth for the investment.⁸⁴² Government opted to compulsorily acquire land from non willing individual owners and hand it over to investors as incentive.⁸⁴³ Many governments and municipalities have been using land acquisition policy as means for procuring land for commercial and industrial development.⁸⁴⁴

Paul Samuelson and Ronald Jone in their models for factors responsible for trade identified three factors labour, capital and territory or land as key to trade liberalization, and further stated thus:

Country that has abundant territory of land and labour will specialize on the production of commodities like cash crops and other types of food irrespective of the price. Also a country with abundance of labour and capital will produced

⁸³⁸ Andrew Hilton, "Private Investment in Land: Implementing Responsible Governance of Tenure", Land Tenure Working Paper, 21 (2011)

⁸³⁹ John Muganbwa, "Proposal for Compulsory Land Acquisition for Economic Investment in Uganda", *the Australasian Review of African Studies* vol 36 No 1 (2015) 98

⁸⁴⁰ United Nation Conference on Trade and Development, "Investment Policy Review: Nigeria", (United Nation Publication, 2009)45.

⁸⁴¹ Odiase-Alegimenlan, O. A, and Garuba, O. J., " Taking with Right Hand and Giving out with the Left: Government Acquisition of public Land for Private Sector Use in Nigeria," *South East Asia Journal of Contemporary Business, Economic and Law*, vol 8 issue 4 (2015)1

⁸⁴² Op cit John Muganbwa

⁸⁴³ Craigh Johnson and Arpana Chakravarty, "Rethinking the Role of Compensation in Urban Land Acquisition: Empirical Evidence from South Asia", *Land*, vol 2 (2013) 279 www.mpidi.com/journal/land accessed on 27/1/2024

⁸⁴⁴ Ibid

more manufactured commodities. Thus, labour exhibit mobility between both sectors; while territory or land and capital proved to be the specific factory.⁸⁴⁵

These models highlight the imperative nature of land in investment and the necessity on government inviting foreign investors to ease way for them to acquire sufficient land as environment for the investment.

Shivji a Tanzanian Scholar argued that liberalization has prompted high marginalization of the rural poor because a lot piece of land are being alienated from peasants and pastoralists, thus, causing conflicts over natural resources.⁸⁴⁶

The Importance of investment cannot be overemphasized in terms of economic and social development. The huge investment in the economy may help it grow and jobs are created, livelihood enhanced and many other social and economic benefits which follow the investment in other words investment has become the integral part of economic development.⁸⁴⁷ Investment in agricultural products, industries need physical location. This location is imperatively needed to enable smooth operation of the investment.⁸⁴⁸ Most communal land owners attach importance to land as means of livelihood, shelter, food and their economic strength. Most indigenous people lack the technical knowhow to utilize the land in best productive manner. The investors may bring in new technology to yield maximum output from the land. The question is how to determine the interface between need for investment and right of indigenous people to own their land?

The globalization of economy and investment indicates connection between economic prosperity on one hand and claims over land and natural resources on the other hand. The intensified pressure on the valuable lands and increasing recourse to international investment flow is one of the forces for redesigning land claims at national and local level.⁸⁴⁹ Foreign investors need for land grow immensely in the areas of mining,

⁸⁴⁵ Sunanda, S., "International Trade Theory and Policy: A Review of the Literature" Levy Economics Institute of Bard College working Paper, No. 635 available at <http://www.levyinstitute.org> last visited on 28th February, 2024

⁸⁴⁶ Shivji, I., The Concept of Human Right in Africa(Codesria, 1989)20-22

⁸⁴⁷ Abubakar Balarabe Kura, "Analyzing International and Regional Guidelines on the Protection of Land Tenure Rights vis-à-vis Land Based Investment in Africa: Implementation in Nigeria", *International Journal of Law*, Vol 10 Issue 1 (2024)114

⁸⁴⁸ Sushash C. Ray, "On the Question of Land Acquisition for Private Development: Reason from United State, India and China," *Emerging Economy Studies* 1 (1) (2015) 71.

⁸⁴⁹ Lorenzo Cotula, Land Rights and Investment Treaties: Exploring the Interface, International Institute for Environment and Development: Land, Investment and Right series (2015) 1.

petroleum projects, agribusiness investment, tourism development and infrastructure projects.⁸⁵⁰

Land scarcity is considered as major impediment to foreign investment; especially land based investment i.e. agricultural or manufacturing and this is identified as impediment to National Economic Empowerment Development Strategy's goals for creating a competitive private sector.⁸⁵¹ Acquiring land by foreign investors is problematic and cumbersome in Nigeria due to rigorous procedure, land speculation and fraudulent dealings involved in land transactions.⁸⁵² Many governments (Nigeria Inclusive) in a bid to find an attractive way to induce investors, acquires land in favour of investors as another incentive option.⁸⁵³

A municipality that can compel land transfer for a private project may well be able to capture for itself in the form of reduced tax abatements, much of the private enterprises' cost saving over voluntary land purchase..... Fostering economic development is undoubtedly a legitimate public purpose.⁸⁵⁴

The above assertion could be true particularly with reluctant attitude of the land owner to surrender his land holding willingly no matter what benefit the investment will bring to the country and even if such investment require vast land.⁸⁵⁵ The intervention by government to acquire land in favour of the investor can be in several modes; the modes are; the investor country can enter into agreement with the host country and once the deal is sealed for the investment the land could be given to the investor country which can execute the investment either directly by the government or private company owned by the citizen of that country.⁸⁵⁶ Secondly, the investor can approach the host country and explain the nature of the investment and land needed to acquire, once the government is satisfied with the investment and the need to source land for the investor, the host country will compulsorily acquire specific land to cover such investment. The investor here could be domestic or foreign investor.⁸⁵⁷

⁸⁵⁰ Ibid.

⁸⁵¹ Op. cit UNCTAD, Investment Policy Review, Nigeria P.45

⁸⁵² Ibid P.45

⁸⁵³ James J. Kelly, "We shall not be Moved: Urban Communities Eminent Domain and the Socio-Economic of Just Compensation 80 St. John's L. Rev 923 (2006) 947.

⁸⁵⁴ Ibid 948.

⁸⁵⁵ Thomas Kalbro, "Private Compulsory Acquisition and the Public Interest Requirement," *Social Strategies* Vol. 38 (2004) 2.

⁸⁵⁶ Op. cit Lorenzo Catula, Land Grab or Development. P.65

⁸⁵⁷ The mode of acquisition happens between government of Jigawa State and Chinese firm, when the firm submitted a request of 12,000 hectares to build sugarcane firm. The agreement was between the

1.4 Judicial Attitudes in Nigeria toward Compulsory Acquisition for Private Investment

There are two different approaches given by Nigerian courts toward compulsory acquisition of land for private investment. The argument is centered always on the issue as to whether public purpose can be extended to include items outside the ones enumerated under section 51 of the Land Use Act where the purpose could be synonymous to public purpose, public interest or public use, even though private individual will benefit from the acquisition. The first sets of cases decided on the perception that private investment does not form part of public purpose or public use under section 51 of the land Use Act.

*In Chief Ereku v. Military Governor, Mid-Western State of Nigeria*⁸⁵⁸. Even though the case pre-exist Land Use Act but the determination of the meaning and purport of ‘public purpose’ was considered. The government of Mid-western State acquired land from Igbodu Warri vides Notice No. 294. The Notice stated that “Land required for the service of the Government of Midwestern Nigeria” the Notice further states the land is required by government for public purpose absolutely. The Government by way of lease of 99 years handed over the land acquired to a company Mc Darmott Overseas Inc a Panamanian company which was incorporated in Nigeria with the object of fabrication of structures for oil industries, related to mining industry and economic and industrial development of Midwestern State. At the trial, it was contended to the effect that the company employed large number of Nigerians. The trial court held that since the acquisition was for public purpose on the notice, it was immaterial that the land acquired was later lease to private individual. On appeal while reversing the decision of lower court, the Supreme Court held that;

We also find (sic) ourselves in agreement with the submission of counsel for the appellant that an acquisition by the government of the Mid-Western State for the private need or a private corporation or person is unlawful since by no stretch of the imagination can one say that the enterprises of the McDermott Overseas Inc., beneficial though it maybe, can be regarded as being for public purpose of the State. Section 2 of the Public Lands Acquisition Law; clearly contemplate acquisition for the public purpose of the state and not any private

host government and the investor without involving the investor country. Aliyu M., DailyTrust Newspaper, May, 16, 2017 www.dailytrust.com.ng

⁸⁵⁸ (1974) 10 SC 42

enterprise that might incidentally be of benefit to the community or section of it.

It was further held that section 2 of the Public Land Acquisition Law does not include acquisition for the purpose of making grant to third party and the court is not ready to read any purpose outside the purpose defined in the law. The argument that the object of the company was in consonance with the objectives of government to advance industrial and economic development of the state is untenable. The fact that the company has the same objective with government and serve the whole Nigerian public does not bring the act of the government in granting the lease within the definition of public purpose under the law.

In Goldmark (Nig) Ltd v. Ibafon,⁸⁵⁹ Ibafon Company limited & Kolawole Abayomi Balogun were sued as 1st and 2nd Defendant in trial court and counter claimed the ownership of land situated at Apapa Oshodi measuring 2.835 hectares and 1.383 hectares respectively and are in possession of the said land until when Federal Government by Notice No. 601 of 22 June, 1976 acquired the place for public purpose in favour of Nigeria Port Authority (NPA). Rather than the NPA to use the land it leases it out to different Private companies and individual for their own personal businesses against the purpose acquired. The land is used for selling sand; leasing and fishing were carried out on the land by third parties. In delivering its judgment the Supreme Court considered that for the acquisition to be for public purpose, the purpose must be for the benefit of public at large and not just to aid the commercial transaction of a company or group of people for their own selfish or financial purposes and the acquisition and subsequent grant to private companies were declared null and void.

*In Wuyah v. Jama'ah Local Govt. Kafanchan*⁸⁶⁰ The plaintiff was the owner of a piece of land acquired by the defendant, even though the Defendant alleged that they paid the compensation to the plaintiff's son who is late, but the plaintiff denied the fact that he (the Plaintiff) was paid any compensation. The sole witness of the Defendant testified to the facts that "the defendant has started assigning plots at the disputed land to individuals and it is for private residential and development purposes. The court while delivering the judgment on appeal considering Sec. 51 of the Land Use Act held that a careful perusal of the above, clearly demonstrate that private residential development purposes for which the respondent assigned or alienated the land, do not come within the four walls of the Act that constitutes public purposes. The law does not give license to anybody, an individual, constituted authority or government, such

⁸⁵⁹ (2013) All FWLR 663 P. 1830 SC

⁸⁶⁰ (2013) All FWLR Pt. 659, p 1171

as the respondent, to acquire compulsorily or otherwise, any land that belongs to a person and alienate or transfer it to another private individual for his/its private use. To do so will run against sacrosanct provisions of the Land Use Act.

The decisions in these cases highlighted that plain interpretation is given to the provision of the statute where the wordings are clear without introducing some extraneous matters to it. The decisions were predicated upon the principle decided in *Alhaji Bello v. Diocesan Synod of Lagos*.⁸⁶¹

The principle on which the courts have acted upon from time immemorial is to construe *fortissime contra proferentes* any provision of the law which gives them extraordinary powers of compulsory acquisition of the properties of citizens. In *Re Bowman, South Shields (Thames Street) Clearance Order, 1931 (1932) 2 KB 621 at 633* Swift J described the position thus, when an owner of property against whom an order has been made under the Act comes into this court and complain that there has been some irregularity in the proceedings and that he is not liable to have his property taken away, it is right, I think, his case should be entertained sympathetically and that a statute under which he is deprived of his right to property should be construed strictly against the local authority and favourably towards the interest of the applicant, in as much as he for the benefit of community is undoubtedly suffering a substantial loss, which in my view must not be inflicted upon him unless it is quite clear that parliament intended that it shall. In such cases the provisions of the statute are read dispassionately and effects is given to the spirit and intent of the legislation. What is required is in reality a fair and reasonable but strict construction of the statute so that what is necessarily incidental is not excluded and what is extraneous, whether manifestly or subtly, is not included.

The rationale of the above holding is to guide the Government that public purpose in whatever way does not mean taking land from set of individuals and handing over the same land to another set of individuals for private need. According to Umezurike, the provision of section 51 of Land Use Act does not give power to government to acquire individual land and give it to another individual person or company except if the Government has shares or stocks in that company.⁸⁶² This position was supported in the case of *Olateju v. Commissioner L&H Kwara State* where it was held:

Time without number State Governments are fond of using LUA to deprive legitimate owners their land vide Land Use Act, however, it is very sad after

⁸⁶¹ (1973) 3SC103 at 130

⁸⁶² Umezurike, I. A., A.B.C of contemporary Land Law (Sneap Press Nig. Ltd, 2013) P. 200

the acquisition, this same acquired land for public will now be turned into jamboree and it would be shared among some set of individuals. This is just like robbing Peter to pay Paul. The Land Use Act was not enacted for this purpose of selfishness and greediness but for the public use or purpose.⁸⁶³

From the other side of coin, there are courts judgments favoring the expansion of meaning of the phrase ‘public purpose’ to include items not listed under section 51 of Land Use Act to accommodate acquisition for other purposes that are not clearly stated but may have the same features of public purpose or public utility like acquisition for private investment. This does matter, even though the recipient of the land is a private individual or corporation, in so far the investment will benefit the public more than the benefit to be accrued to the individual. The idea for expanding the meaning of public purpose to include those items not listed gets its prominence in *In Olatunji v. Military Governor, Oyo State*, (supra) the court held that: “Although the section opens with the word public purposes includes’ which imply that the definition of public purposes not stated under section 51 have to be inferred from the reference of public purposes stated therein, such public purpose must to be similar to those stated in the section.”

This is in line with government policy of commercialization and privatization of the sectors of Nigerian economy. Some of cases are;

*In Oviawe v. Integrated Rubber Products Nigeria Ltd*⁸⁶⁴ The Appellant as plaintiff before the trial court filed a suit challenging the compulsory acquisition of his land by Bendel State Government in favour of the first Respondent/ Cross Appellant (Integrated Rubber Products Nig Ltd) which is a private company. He challenged granting the said land to the company being a company and for it is private use and not public purpose. It was contended by the Appellant that the 1st Respondent is viable private liability company carrying on profitable business of rubber processing into tyres, tubes and other finished products for industrial, household and personal uses and that granting the land to it after acquired by Bendel State Government is against public purpose contemplated by the law. In response to this contention the 1st Respondent counsel argued that public purpose includes for or in connection with housing estate, economic, industrial, or agricultural development and it is therefore plain that compulsory acquisition of land for industrial purpose falls within the definition of acquisition for public purpose. The Supreme Court finally upheld the compulsory acquisition as valid and in compliance with law because under Public Lands

⁸⁶³ *Olateju v. Commissioner L&H Kwara State* (2010) 14 NWLR Pt. 1213 P297. Also *Wahabi v. Military Governor of Oyo State* (1995) 5 NWLR Pt. 397 P. 586, *BM Nig Ltd v. M/Sol Ltd* (2007) 14 NWLR Pt 1053 P. 109.

⁸⁶⁴ (1997) LPELR 2837 SC

Acquisition (Miscellaneous Provisions) Decree no 33 of 1976 upon which the case was decided; public purpose includes for or in connection with housing estate, economic, industrial, or agricultural development and it's therefore plain that compulsory acquisition of land for industrial purpose falls within the definition of acquisition for public purpose.

*In Maiyegun V. The Governor of Lagos State*⁸⁶⁵ The Appellants were owners of land part of the land acquired by Lagos State Govt., which the Lagos State Government acquired and re-allocated to corporate bodies for various tourism project and Private Estate Development Scheme. The Lagos State Government acquired 147 hectares of Maiyegun family for tourism project. The state government after considering the petition of the family excised 15.60 hectares out of the acquired land and granted it to the Maiyegun family and the remaining 132 hectares were reserved for the tourism project. The said 132 hectares were allocated to corporate bodies and individuals for various tourism projects in line with Lagos State Government policy of Private Estate Developers Scheme. The Appellants filed a suit alleging that acquisition of their land without compensation and allocating same to private companies is null and void without payment of compensation.

In determining the appeal, the court held that the Respondents have stated in their counter affidavit that the land in dispute is to be used by Lagos State Government for the Maiyegun Tourism Scheme in line with the Private Estate Developers Scheme of the Government. The fact that the land was slated for tourism was acknowledged by appellants in their letters to respondents. The acquisition of land was very much in order as it was done for public purpose. The court further held that

Where though, acquired land is allocated to private individuals and companies for development pursuant to a layout for an industrial, residential or other economic scheme of government, such as quite rightly pointed out by the learned trial judge qualifies as public use and comes under paragraph (g) and (h) of section 51. In the instant case, the land acquired by Lagos State Government is for the purpose of tourism and therefore qualifies as public purpose

The import of this decision is that, the court looks at overall benefit of the tourism scheme in the development of economy to sanction the acquisition not minding that private individual may tend to benefit from the acquisition. As from the fact of the case, the tourism scheme was executed by Private Estate developers not by the government itself.

⁸⁶⁵ (2010) All FWLR Pt. 542 P. 1704 C.A

*In Federal Government of Nigeria V. Akinde*⁸⁶⁶ The Plaintiff filed a suit alleging that a large parcel of land belonging to their forefathers which they use for farming, building dwelling houses and depend on the products produced from the land for their livelihoods was acquired by Federal Government for the Federal Government Housing scheme. The plaintiffs claimed that they were not paid compensation and the Defendant divided the land into plots and sold them. The defendants alleged that they acquired the land for construction of low cost housing scheme and due to financial constraint, they abandoned that purpose and introduced sites and services scheme in which land were allocated to private individual and companies for development.

The Plaintiff contended on appeal that changing the purpose from low cost housing unit to laying out the land under the guise of sites and services, sold to members of public cannot qualify as public purpose. The court held that even though the housing scheme was abandoned, but at the end, the plots will reach the individuals to develop the land themselves, the same way if the houses were built by government it will be sold to individuals. It further held that the purpose which is for benefit of an individual could still qualify as public purposes where the individual benefits not as an individual but in furtherance of a scheme of public utility. The definition of public purposes include instances where land is acquired from private individuals or communities, laid out into plots and subsequently re-allocated to corporate organization, or individuals under an industrial or housing scheme.

*In Vinylon Foot Wear IND LTD v. SAIDU MUHAMMAD Dabi*⁸⁶⁷ The defendant is a company which is part of the companies under the Lee Group of Companies which carries on business activities in Jigawa State and other parts of Nigeria.

The Jigawa State government acquired land measuring 21,988 hectares and handed it over to the Vinylon Footwear Limited by way of grant for industrial purposes and letter of grant was issued JGLM/IND/2010/4. The claimant on the other hand alleged the said land acquisition by Jigawa state government is inclusive of his land measuring 1,403 hectares which he purchased some portion in 1982 and other portion in 2001. The claimant in 2010 surveyed the land with purpose of converting it to local industry. Before 2017 when the claimant confronted the company for act of trespass into his land, the company has been carrying out industrial activity generating employment and equally generating development to the area since 2011 when Jigawa State Government granted the land to them. The claimant contended that he was not compensated as such the acquisition of his land and granting it to private company is illegal & null and void. The defendant contended that considering their pleadings

⁸⁶⁶ (2013) 7 NWLR Pt. 1353 P. 349 C.A

⁸⁶⁷ (2021)LPELR 56142

showing various act of its corporate social responsibility, the land in dispute has fallen under the meaning of Public Use, contemplated by the Land Use Act under Section 51, the trial judge held that even though certificate of occupancy granted to the Defendant (company) was for industrial purpose but the Defendant failed to establish that prior interest on the land was validly revoked by the Governor before granting same on the Defendant. He further stated that power of governor to revoke land for public purpose is not in doubt and such public purpose include industrial or agricultural development as defined under section 51 of the Land Use Act. He finally held the acquisition is invalid and that portion of land belongs to the claimant. However, the Appellate court reversed the decision⁸⁶⁸ of the lower court and held that the land in question which is an industrial area belong to the appellant as contained in the certificate of occupancy and there is nothing wrong in government granting him the area and the Respondent was unable to fault the process of the acquisition and granting same to the Appellant. Some of the reasons for the judgment are that the Respondent was unable to trace his root of title and the documents he relied upon to prove his title are insufficient.

It can be gleaned from the decision in the above cases; the current trend of courts is gradually moving away from giving narrow meaning to the phrase public purpose to mean only use by government or its parastatals for the benefit of public, to wider interpretation that equated public purpose or use to public benefit or advantage. Courts are more concerned with the overall benefit of the use of land to the community and this is attuned to social needs of an increasingly industrialized society.

In the American case of *Berman v. Parker*,⁸⁶⁹ the Government of Columbia under its law Columbia Redevelopment Act of 1945 decided to acquire vast land including the land of the Appellant under the power of eminent domain for comprehensive redeployment of the large area of the district to eliminate and prevent slum and substandard houses from collapsing. The Appellant who has a departmental store in the area filed a suit challenging the redevelopment plan on the ground that the land taken is given to private company to redevelop and sell to the individual people including the initial owners. He argued that this is against the provision of eminent domain under the Fifth Amendment of the American Constitution. He states that this makes the project of taking from one business man for the benefit of another business man. The Supreme Court of America while delivering its judgment it held that

Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue

⁸⁶⁸ (2021)LPELR 56142

⁸⁶⁹ *Berman v. Parker* (1954) *United State Report*, 348 p26

that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. The public end may be as well or better served through an agency of private enterprise than through a department of government-or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects. What we have said also disposes of any contention concerning the fact that certain property owners in the area may be permitted to repurchase their properties for redevelopment in harmony with the over-all plan. That, too, is a legitimate means which Congress and its agencies may adopt, if they choose. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch. The rights of these property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking.

Similarly, in the American case of *Kelo v. City of New London* a private developer applied for approval to redevelop certain land into offices, restaurants and parking facilities. The scheme was believed to create more than 1000 new jobs. Nine out of the people living in the area refused to sell their land to the developer and he applied to compulsory acquired the land in exchange for just compensation. The petitioners challenge the acquisition arguing that acquisition for private development did not qualify as public use, the court rejecting the petitioners argument held that the scheme unquestionably served a public purpose even though it was a private enterprises and rejected the argument that acquisition of land for economic development did not qualify as a public use because it impermissibly blur the boundary between public and private taking and the fact that some private individuals stood to benefit from compulsory purchase did not necessarily means that the acquisition was not for public use or purpose.⁸⁷⁰

To narrow the situation down to Nigerian context, the Nigerian courts follow similar position to widen the scope of public purpose and use the test of public utility as a guide⁸⁷¹ in so far the acquisition is measure up to be for the greater benefit to the

⁸⁷⁰ *Kelo v. City of New London* (2005) *United State Reports*, 545 p.469

⁸⁷¹ *Goldmark Nig. Ltd v. Ibafon Co. Ltd* (2013) *All FWLR Pt. 663 P. 1830* wherein the criteria was set out for determining public purpose thus: The law empowers acquisition of land by Government when it is required for public purpose. What is public purposes is not defined in the Public Land Acquisition Act, but has been identified by the court in numerous cases. The acquisition

public at large and the benefit the public will derive out of the acquisition and the investment outweigh the benefit to be derived by individual or private person. For example if a private company acquired land through government compulsory acquisition to build refinery, it could be argued that the benefit to be derived by the public in terms of availability of the product in the country, job opportunities and enhancing economic development, will outweigh the benefit to be derived by the private company in line with utilitarian theory. The decision of American case of *Berman v. Parker*⁸⁷² even though of persuasive effect clearly shows that public purpose could be achieved not necessarily through the agency of government but even through private enterprises. What is required is that does the public have greater benefits and public purpose achieved; the means through which it was achieved is immaterial. Also, the reasoning of court in *Federal Government Nigeria v. Akinde*⁸⁷³ is attuned to this proposition. The judge highlighted that the Federal Government acquired the land for construction of federal housing scheme to be sold to public at low cost but this could not be carried out because of financial constraints. The Federal Government granted the said land to other companies and individuals to pursue the scheme, develop houses and sold to the public. The judge reiterated that the goal of government is to make the houses available to public which is no doubt a public purpose and interest and he saw nothing wrong in pursuing the said goal through a private company or private individual.

The purpose which is for benefit of an individual could still qualify as public purposes where the individual benefits not as an individual but in furtherance of a scheme of public utility.

The basic principle of utilitarian theory which encapsulated social utility permit some segment members of the society to have more than others, even if their claim can be

must be for bonafide public purpose or public interest, it must not be vague and the way it benefits public at large must be capable of proof. The test is whether or not the purpose is meant to benefit the public and not just to aid the commercial transaction of company or Group of people for their own selfish or financial purpose. The same position was held by the court in *FGN V. Akinde* (Supra) that the purpose which is for benefit of an individual could still qualify as public purposes where the individual benefits not as an individual but in furtherance of a scheme of public utility

⁸⁷² Supra

⁸⁷³ Supra

equal, in order to create incentive so that the more goods can be produced⁸⁷⁴ and admits that there are inequalities in distribution of wealth but it should be resolved for the good of the greatest members in the society.⁸⁷⁵ In other words, an individual can lose his share of equal distribution where his share is given to other it will be an incentive to the other to maximize production for the betterment of whole. It is clear from this assertion that purpose can be given wider interpretation to cover areas not included under section 51 of the Land Use Act where there is sufficient proof that the benefit to be derived by the greater members of the society outweighed the benefit derived by the private investor. In other words, utilitarian theory can be used in justifying acquisition by government for private investment provided the condition for benefit to greatest members of society is achieved.

1.5 Conclusion

The provision of section 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 and section 28 and 51 of the Land Use Act read together indicate that federal, state and local government can acquire land for public purpose which includes purposes for industrial, economic, agricultural development, mining, and extraction of building materials, oil extraction, rural and urban development. It is no doubt that these purposes can be carried out or undertaken by government itself, now with the decision in *FRN v. Akinde* and persuasive American case of *Berman v. Parker* which provides that carrying out or achieving public purpose could not necessarily be through the government agency, but could be achieved through private individual or company. It is my opinion that when an investment by private entity met the criteria as set out in *Goldmark Nig. Ltd v. Ibafon's* and principles of utilitarian theory, the compulsory acquisition could be in its favour, even though private entity but in furtherance and achieving public purpose through private entity. But in doing so, safeguard mechanism should be developed by government to minimize the effects of the acquisition in line with contractarianism theory which postulate unequal distribution of wealth in society can happen provided the interest of least advantage is protected. How to protect the interest of least advantage is by developing safeguard mechanism to protect the livelihood and standard of living of the landowners bearing in mind the beneficiaries of the acquisition will further their commercial interest despite public benefit.

⁸⁷⁴ Lebacqz, K, Six Theories of Justice : Perspective from Philosophical and Theological Ethics (Minneapolis, 1986)25

⁸⁷⁵ Demetrius S. Latridis, Social justice and the Welfare State in Central and Eastern Europe: the Impact of Privatization (Preager Publishers, 2000) 8.

