THE PROHIBITION OF FORCIBLE OCCUPATION OF LANDED PROPERTIES LAW 2016 OF OGUN STATE IN PERSPECTIVE

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Abstract

The Ogun State 'Prohibition of Forcible Occupation of Landed Properties Law' 2016, popularly known as the 'Anti-Land Grabbing Law' was enacted to checkmate the activities of the Land grabbers in various parts of Ogun State. Before the enactment of this Law, it was a common sight for people commonly called Omo Onile's to violently enter, seize and take over or sell other people's land. These activities of the so-called land grabbers often resulted into bloody clashes, loss of limbs, loss of lives, destruction of the properties and most times causes restlessness in the community where the property is located. This work examines the pre and post enactment period of the Law and examines whether the law is in conflict with any other law in Nigeria particularly the Land Use Act of 1978 which is the major law on Land in Nigeria.

Key words: Anti-Land Grabbing Law, Ogun State, *Omo Onile*, forceful entry and takeover of land, Land Use Act

1. Introduction

Property transactions in Ogun State are greatly hindered by the activities of the *Omo Onile* and *Ajagungbales*. Land grabbers known as *Ajagungbale* in Yoruba language is not the same as *Omo Onile. Omo Onile* refers to ancestral, native owners or original owners of a particular expanse of land before the land is sold out to individuals or companies although most of the people currently who bear that title are children, descendants or relatives of the original land owners. Native land was usually owned by families who may be cited in the recitation segment of land instruments to show the ancestral lineage or root of title. Without a proper root of title, it may be difficult to prove authentic ownership after purchase of land. The problem is that even after their native lands have been sold and resold many years ago, *Omo Onile* and rabble-rousers who claim to be natives continue to make demands from purchasers and developers as if they still retain some sort of interest in the property. A*jagungbale'* on the other hand, refers to those who fight 'war' to obtain land, that is, the agents who forcefully take land from one party and give it to another.

This practice of land grabbing entails the use of force, threats or violence to take a possession or prevent a purchaser from acquiring legitimate interest and possession of property unless certain conditions are fulfilled[1].The method of operation of land grabbers is to storm land and take it over forcefully or storm lands when construction work has just begun and demand outrageous and unlawful payments from the land owners for the work to continue, refusal to do so is often met with violence and limitless brigandage. In another form, land grabbers storm lands that do not belong to them with commando-like violence and drive away their legitimate owners,

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[1] A.K. Otubu, Statute Review: Lagos State Property Protection Law 2016. Accessed online on 1st of May, 2020.

demanding that a repurchase be made from them and asking for exorbitant and illegal payments.[2] At some other times they even demand money when a land owner is undertaking major repairs on his or her home.

2. Provisions of the Ogun State Anti-Land Grabbing Law

The bill which proposed the law was titled "A bill for a law to Prohibit Forcible Entry and Occupation of Landed Properties, Violent and Fraudulent Conducts in Relation To Landed Properties, Armed Robbery, Kidnapping, Cultism and Allied matters and For other Matters Incidental thereto or Connected Therewith." This clearly shows that the law was enacted to prohibit the activities of the land grabbers as well as violent conducts in relation to landed properties in the State.

2.1 Use of force to take over land

This law prohibits the forceful take over or entry of land by violence. In the times past, several *Omo Oniles* (natives) have resorted to the use of *ajagungbale* (land grabbers) in places like Ota Awori, Mowe, Ibafo, Abeokuta and some other areas to take over or recover land. Many have lost their lives in the process, some have been maimed for life while several land owners have been traumatized after losing their land to these criminals without any compensation. This practice of use of force to forcefully take over the land of another has been prohibited by virtue of Section 3 of the Prohibition of Forcible Occupation of Landed Properties in Ogun State. Section 3 (1)[3] of the Law provides that as from the commencement of this law no person or group of persons shall use force to take over any landed property in the State. Section 3 (2)[4] of the law criminalises the forceful takeover of land in Ogun State and Section 3 (3) of the Law prescribes a 21-year prison term for a person convicted for violating the provisions of Section 3 (1) and (2) of the Law.

Similarly, section 4 (1)[5] of the Law also provides that any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any landed property for himself or for any other person is guilty of an offence and such offence is punishable with ten years imprisonment without an option of fine[6], but where the offender is armed with any fire arms or any offensive weapon or with any noxious or chemical material, or is in company of any person so armed or the said offender injures or uses violence on any person, the offender shall be sentenced to death.

2.2 Illegal Occupation of Property

Here an adverse possessor[7] who after having entered is guilty of an offence if he fails to leave the property on being required to do so by or on behalf of the owner of the property commits an

[2] The Lagos Law on Land Grabbers, The Nigeria Lawyer 26 August 2016. Accessed on 21st, May, 2019.
[3] Prohibition of Forcible Occupation of Landed Properties, Armed Robbery, Kidnapping, Cultism and Other Anti Violence and Related Offences Law 2016.
[4] OPCIT. The Law pavilion Blog. Accessed on 22nd May, 2020.
[5] Prohibition of forcible occupation of landed properties.
[6] Section 4 (4) (a) of Prohibition of Forcible Occupation of Landed Properties.
[7] Section 5 (1).

offence and on conviction shall be liable to a fine not exceeding five million naira or five years imprisonment or both[8]. The law also by Section 5 (4) precludes an adverse possessor from continuing to be a trespasser by virtue of being allowed time to leave the property[9]. Also, anyone who enters or is in occupation of any property by virtue of any title derived from an encroacher, or license or right given by an encroacher shall himself be treated as an encroacher[10].

2.3 Sale of Property without Authority

Purported Sale of land by persons not having legal title to it is one of the commonest and most dreaded evils associated with land acquisition. This is because a lot of people sell land without good title and it takes due diligence on the part of the purchaser not to fall into the wrong hands. It was common for purported family agents to unlawfully sell family property without the consent of the head of the family, some even issue fake receipts. However, by virtue of this law, anyone who offers for sale any property knowing that he has no lawful title to the property or authority of the owner to offer for sale commits an offence and is liable on conviction to a fine of five million naira or ten years imprisonment or both.[11]Also, anybody who sells or cause to be sold family land, property or any part of it without the consent or authority of the family head and other accredited members of the family is liable to three years imprisonment or two hundred thousand naira fine.[12]

2.4 Professional Misconduct

Professionals like lawyers, surveyors and estate agents participate actively in the real estate business.[13] The law prohibits any person from facilitating or preparing a contractual[14]agreement between a land-owning family or any other person knowing that such contractual agreement will contravene the provisions of this law. The law also provides that any professional who is guilty of aiding and abetting the commission of any offence under this law shall, in addition to his conviction be reported to the necessary disciplinary body of the person's professional body for necessary disciplinary measures.[15]

2.5 Frivolous Petition

In order to avoid abuse and frivolous petitions, the law provides that anyone who writes any frivolous and unwarranted petition to any law enforcement agency in respect of a land dispute, knowing such claims to be false or intended to implicate the owner or a person in lawful possession of land commits a crime and on conviction will be liable to a term of five years imprisonment without an option of fine[16].

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[8] Section 5 (5).
[9] Section 5 (4).
[10] Section 5 (3) (a) (b).
[11] Section 8 (1).
[12] Section 8 (3).
[13] The Law Pavilion Blog. Accessed on 22nd May, 2020.
[14] Section 9 (1).
[15] Section 9 (2).
[16] Section 10 (1) & 2.

2.6 Prohibition of Demand for fee

Hitherto, the practice has been that the *Omo Onile's* appears on land with hoodlum when a construction work or repairs are ongoing, demanding payment of gratification or money at various stages of development.[17] This section prohibits any person from making any such demands in respect of any work or construction on land. Any person that contravenes the law shall on conviction to be liable to a fine of five hundred thousand naira and seven years imprisonment or both.[18]

3. Validity of the Ogun State Land Anti-Grabbing Law vis-à-vis the Land Use Act

The major law regulating land use in Nigeria is the Land Use Act of 1978.[19] It is a revolutionary legislation in the area of land holding in Nigeria. Its enactment was necessitated by a number of socio-economic factors militating against conferment of title to Land, the realisation of use and enjoyment of Land in Nigeria for the sustenance of Nigerians and the effective utilization of Land by private entrepreneurs and the Government for purposes of development. The Land Use Act was promulgated on the 29th of March, 1978 by the Federal Military Government to exercise control over all land in the country. Four objectives were adduced for the enactment of the Land Use Act[20].

They are[21]:

a. To remove the bitter controversies, resulting at times in loss of lives and limbs, which land is known to be generating.

b. To streamline and simplify the management and ownership of land in the country.

c. To assist the citizenry, irrespective of his status, to realise his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life.

d. To enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular uses.

As good as the intention of the Federal Government was, most of these objectives have not been realised till today. The one that is relevant to this work is the leg one of the objectives. It is this failure that compelled some of the States like Lagos, Ekiti and Ogun States to enact the State Law to protect Land and lives as they could not afford to sit back and watch helplessly loss of lives and limbs as a result of land tussle or activities of hoodlums and land grabbers in their States.

The question for consideration is whether a State House of Assembly can legally legislate on land matters given that the Land Use Act is imbibed as part of the Nigerian Constitution?[22]Moreover, the Land Use Act takes effect as if its subject matter is contained in the Exclusive Legislative List of the Constitution and as such, only the National Assembly is

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[17] Lagos Protection Law 2016. The law pavilion Blog. Accessed on 22nd May, 2020.
[18] Section 11 (1).
[19] Cap 203 LFN 1990.
[20] Niki Tobi, Cases and Materials on Nigerian Land Law, Mabrochi Books, 1992, 170.
[21] R.W. James, Nigerian Land Use Act. Policy and Principles, University of Ife Press Ltd. Ile-Ife, Nigeria, 1987, 2.
[22] CFRN 1999.

competent to legislate on any matter on that list. Apart from the Exclusive list there are also the Concurrent[23] and the Residual lists in the Constitution. The position of the law on this was aptly re-echoed as held by Galadima, JSC in *Minister of Justice and Attorney General of the Federation V. Attorney General Lagos State*[24]

> The power of the State Government to legislate on a given matter must be traceable to the body of the Constitution, either in the Exclusive, Legislative list or Concurrent List or Residual List and any matter outside the ambit of the said Constitutional Provision is null and void".

Going by the above authority one can safely conclude that when there is a conflict between a Statute and the Constitution, the Constitution shall prevail and that other Law shall to the extent of the inconsistency be void.[25]However, it is criminal trespass, the fraudulent and forcible acquisition of land as well as commission of violence which form the subject matter of the Anti-Land Grabbing Law recently passed by the Ogun State House of Assembly rather than land ownership or transfer of title which is the main focus of the Land Use Act.

Again, it is true that the Land Use Act[26] in Section 43 made provision for the prohibition of and penalties for unauthorised use of land and prescribes one-year imprisonment or a fine of five thousand Naira for the contravention of the law. The activities of hoodlums, *Omo Onile's* and land grabbers on land could be said to constitute unauthorised use of land. Nevertheless, a closer look at the above provision shows that it fails to address the criminal activities and violence perpetuated by land grabbers, hoodlums and *Omo Onile's* on innocent Land owners. The Prohibition of Forcible Occupation of Landed Properties Law 2016 of Ogun State was made to protect the innocent land owners in the State and to curb the activities of the troublemakers that foment violence on land owners on their Land. Thus, the enactment was predicated on good intention but this may not be enough to save it if the validity of the Law is challenged. It is therefore recommended that Ogun State government with other States should make a proposal or a bill through the Senators representing Ogun State in the Senate for the removal of the Land Use Act from the Constitution by an amendment of the Constitution.

4. Conclusion

Since the Ogun State Anti-Land Grabbing Law was enacted in 2016, there has not been much success in the enforcement of the Law. The activities of *Omo Onile's*, hoodlums, criminals and land grabbers fomenting violence on land owners are still on the high side. They operate with impunity and sometimes operate with the support and connivance of the law enforcement agents. So, the government must be serious in its fight or war against these land criminals to justify the enactment of the law. It can achieve this by setting up a Joint Task Force whose duty is to enforce the Law without bias. Also, citizens are advised to be vigilant by reporting any illegal acts of land grabbing or any other criminal activities to the appropriate authorities because the

[23] Second Schedule legislative powers part 1 & Part II of the Constitution 1999.
[24] 2013 ALL F WLR pt. 704 at 1 at 4 ID.
[25] Section 1 (3) of the CFRN 1999.
[26] 1978.

government cannot do it alone.

The Courts should be swift on cases brought before it and should try as much as possible to reduce the legal technicalities created by legal practitioners to slow down the operation of justice and give decisions as fast as possible because justice delayed is justice denied. The above will reduce these illegal acts drastically. On the validity of the Law, the State government should approach the National Assembly for the amendment of the Constitution removing the Land Use Act 1978 from the Constitution.