IN THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

CIVIL PETITION NO. CBV 0002 of 2023
Court of Appeal No. ABU 0099 of 2019

BETWEEN	:	**RANGANNA NAICKER**
		Petitioner
AND	:	**AMI CHAND**
		First Respondent
AND	:	**THE DIRECTOR OF LANDS**
		Second Respondent

Coram	:	**The Hon. Justice Brian Keith** **Judge of the Supreme Court**
		The Hon. Justice William Calanchini **Judge of the Supreme Court**
		The Hon. Justice Terence Arnold **Judge of the Supreme Court**
Counsel	:	**Ms V. Cava and Ms S. Ben for the Petitioner** **Mr N. R. Padarath for the First Respondent** **Mr J. Mainavolau and Mr A. Bauleka for the Second Respondent**
Date of Hearing	:	**5 April 2024**
Date of Judgment	:	**26 April 2024**

JUDGMENT

Keith, J

1. No government department, whether in Fiji or elsewhere, is immune from occasionally being criticized for the pace with which it conducts its affairs. The Lands Department is an example of that. In this case, it took a long time to decide whether to consent to the transfer of land. By the time it came to consider the matter, the transferor had changed his mind and was no longer willing to proceed with the transfer. The transferee obtained an order from the High Court for specific performance of the original agreement to transfer the land, but that order was set aside by the Court of Appeal. The transferee now applies to the Supreme Court for leave to appeal. He wants the order of the High Court restored. The facts are a little complicated, and I trust that I will be forgiven for going into them in some detail. I take the facts from the findings of the trial judge, the undisputed facts as revealed in the parties' affidavits on an application for summary judgment[1], and the documents produced at trial.

The relevant facts

2. The land to which the case relates is in Vunisamaloa in the Province of Ba. It was originally described as Lot 4 on Plan BA 2357. It was leased in 1973 under a Crown Lease to two men, one of whom was Ami Chand, the first respondent, in his capacity as the executor and trustee of his father's estate.[2]
3. In about 2010, Ranganna Naicker, the petitioner, was allowed to live on the land. He was a friend of Mr Chand, and had been living in Mr Chand's house in Namosau (which is not far from Vunisamaloa) for some time. He wanted to live somewhere where he and his wife could be together. It was for that reason that Mr Chand allowed Mr Naicker to live on the land to which this case relates. There is a dispute about whether Mr Naicker was required to pay rent or not – a dispute which the trial judge did not resolve – but there was a farm on

[1] The relevant affidavits are at pages 24-38 (Naicker), 44-60 (Chand) and 61-65 (Naicker) of the Record of the High Court.
[2] The original lease is at pages 277-280 of the Record of the High Court.

the land, and it is not disputed that Mr Chand asked Mr Naicker to act as the "full-time caretaker" of the farm. Indeed, he appointed Mr Naicker to be his lawful attorney.[3]

4. Over the next few years, Mr Naicker worked on the farm. He claimed that he was doing that for himself, not for Mr Chand. His evidence was that he had incurred considerable expenditure during those years, having spent about $60,000 on labour and machinery. In addition, he had put new foundations into the house on the land in which he was living and had installed a new kitchen. He had paid about $15,000 for that. He said that following Cyclone Winston in 2016 he had purchased, among other things, new timbers for the house which had been damaged, and had replaced those walls which had been damaged and had repainted them. Moreover, in 2013 he had been engaged by Rooster Poultry to breed chickens.[4] He had therefore applied to the local authority for permission to build a chicken shed on the land, and that required a report assessing the impact on the environment which such a construction would have.[5] His evidence was that he had paid $5,000 for that report.

5. Mr Chand claimed that it had been in Mr Naicker's capacity as caretaker that Mr Naicker had been working on the farm. Indeed, Mr Chand claimed that he "had financed the expenses involved in planting for crops and harvesting". He gave no other evidence about what Mr Naicker had been doing on the land, save for saying that he had not known about any renovations to the house made necessary by Cyclone Winston. For his part, Mr Naicker claimed that he had done all this work and had spent these sums because Mr Chand had been content, from at least June 2012, to transfer the lease to him.

6. The trial judge made no findings about any of this, but there was no doubt that Mr Chand had indeed been willing for the lease to be transferred to Mr Naicker. The transfer required the consent of the second respondent, the Director of Lands, because the lease provided that it was a Protected Lease under the provisions of the State Lands Act. Any lease containing such a provision could not be transferred without the Director of Lands' consent: see section 13 of the State Lands Act. Accordingly, the consent of the Director of Lands was sought by

[3] See paragraph 10 of Mr Chand's affidavit of 27 November 2017 and paragraph 10 of Mr Naicker's affidavit of 12 January 2018 (pages 45 and 62 of the Record of the High Court).
[4] The letter of engagement is at page 349 of the Record of the High Court.
[5] The application for permission is at pages 347-348 of the Record of the High Court.

Mr Chand using the prescribed form[6]. The form was in two parts. The first part of the form was headed "Application for Consent to a Transfer". It constituted the actual application for consent. It was signed by both Mr Chand as the transferor and by Mr Naicker as the transferee, and was stamped as having been received by the Lands Department in Lautoka on 6 June 2012. An additional stamp on this part of the form recorded that the fee of $5,000 for the Director of Lands' consent had been paid on 31 May 2012.

7. The second part of the form was headed "Transfer of Crown Lease". In it, Mr Chand agreed to transfer the land to Mr Naicker for the sum of $5,000. It was dated 30 May 2012 and signed by Mr Chand. It constituted a sufficient memorandum in writing within the meaning of section 59 of the Indemnity, Guarantee and Bailment Act 1881 to found a claim for specific performance. Mr Naicker's evidence on the topic (which the trial judge accepted in preference to that of Mr Chand) was that the premium to be paid by Mr Naicker for the transfer had been $20,000, but since he had lent Mr Chand $15,000, it had been agreed that repayment of the loan would be waived, and that Mr Naicker would only have to pay Mr Chand $5,000 for the transfer. Mr Naicker paid the sum of $5,000 to Mr Chand on 30 May 2012, the day on which the agreement to transfer the lease was signed. Mr Chand denied having signed either part of the form, but the trial judge disbelieved him.

8. The Director of Lands did not get round to consenting to the transfer. There was no evidence at the trial why that was, but it was accepted that it had not been a case of consent having been refused. It may simply have been overlooked.

9. The lease was due to expire on 1 May 2015. It was thought appropriate to address what should happen then. It was decided that any new lease should name Mr Naicker as the lessee. The unchallenged evidence was that the Lands Department wanted a letter confirming that, and a suitable letter was drafted.[7] It was dated 22 July 2013, and was addressed to the appropriate official at the Lands Department. It stated that Mr Chand wanted to renew the lease. It recorded that Mr Naicker was cultivating and managing the farm on the land, and it requested that the new lease should name Mr Naicker as the lessee. It added that Mr

[6] The completed form is at pages 282-283 of the Record of the High Court.
[7] The letter of 22 July 2013 is at page 284 of the Record of the High Court.

Naicker would be responsible for any disbursements incurred in the preparation of the new lease. The letter was signed by Mr Chand and countersigned by Mr Naicker.

10. On 20 December 2013, the Ministry of Lands and Mineral Resources ("the Ministry"), being the ministry responsible for the Lands Department, wrote to Mr Naicker in response to that request.[8] It informed Mr Naicker that on the expiry of the current lease a new lease would be issued subject to a number of conditions. It did not say in so many words to whom the new lease would be issued, but since the letter was addressed only to Mr Naicker, the Ministry must be presumed to have decided to issue the new lease to Mr Naicker.

11. A new lease was not issued to Mr Naicker on the expiry of Mr Chand's lease, despite the Ministry's letter of 20 December 2013. There was no evidence why that had not happened. Maybe it was just overlooked. We just do not know. Accordingly, on 7 March 2015 Mr Chand wrote to the Minister who he thought – wrongly – was responsible for the Lands Department, The Minister for Local Government, Housing and Environment.[9] Mr Chand set out which of his family members were living in other houses on the land, and ended by requesting the minister in effect to use the authority of his office to cause the lease to be transferred to Mr Naicker. He must have forgotten (or deliberately ignored) that by then the original lease had expired, and that the issue for the Lands Department (who Mr Chand did not realize had already written to Mr Naicker) was whether a new lease should be issued to Mr Naicker. It looks as if Mr Chand did not get a response to that letter because on 10 August 2015 he wrote to the Director of Lands asking for the transfer of the lease to proceed quickly.[10] In the meantime, the Ministry had on 17 April 2015 sent to Mr Naicker an identical letter to the one which had been sent to him on 20 December 2013.[11]

12. Nothing happened for two years. Again, there was no evidence about why that was. Maybe the matter had been overlooked. Maybe something else had happened. Eventually, though, the Ministry wrote to Mr Chand. That was on 26 April 2017.[12] The letter referred to the original application in 2012 for consent for the transfer of the original lease to Mr Naicker –

[8] The letter of 20 December 2013 is at page 292 of the Record of the High Court.
[9] The letter of 7 March 2015 is at page 285 of the Record of the High Court.
[10] The letter of 10 August 2015 is at page 291 of the Record of the High Court.
[11] The letter of 17 April 2015 is at page 290 of the Record of the High Court.
[12] The letter of 26 April 2017 is at page 287 of the Record of the High Court.

without referring to the fact that the Ministry had twice written to Mr Naicker in the meantime informing him that he would be issued with a new lease of the land. The Ministry said that since the description of the land had changed, it was necessary for Mr Chand to submit "the correct application for consent to transfer with the transfer documents". So after five years, the parties were back to square one.

13. We do not know what documents, if any, were submitted by Mr Chand following that letter, but within a week a new lease was issued for a term of 99 years from 1 January 2015, the date on which the original lease had expired.[13] It was not dated, but it was stamped as having been approved on 2 May 2017. The lot was no longer described as Lot 4 on Plan BA 2357, but Lot 1 – BDSW 1443 Balance Lot 4 on Plan BA 2357.[14] However, the lessee was named as Mr Chand, not Mr Naicker. We do not know why that was. It may be that the Lands Department assumed that the transfer was not now going ahead, and so it issued the new lease to Mr Chand. Alternatively, it may be that new transfer documents were not sent to the Lands Department as had been sought in the letter of 26 April 2017, and in their absence the Lands Department issued the new lease to Mr Chand as he had been the original lessee. Or it may be that Mr Chand told the Lands Department that he no longer wanted the transfer of the lease to Mr Naicker to go ahead, which was why it issued the new lease to Mr Chand. Having said all that, nothing turns on which of those possibilities was the correct one. The fact is that the new lease was not issued to Mr Naicker. He was left with little alternative but to issue proceedings, which he did on 19 September 2017.

The proceedings

14. In those proceedings, Mr Naicker sought specific performance of the agreement under which Mr Chand had agreed that Mr Naicker would be the lessee of the land. His difficulty was how to allege that the Director of Lands had given his consent to the transfer. What his solicitors decided to do was to allege that the Director of Lands' letter of 26 April 2017 amounted to such consent.[15] The Director of Lands disputed that. In my view, the argument

[13] The new lease is at pages 294-298 of the Record of the High Court.
[14] It was never suggested that this was anything other than merely a change of description of the land. In other words, it was not disputed that both the original lease and the new lease related to the same land.
[15] See para 7 of the Statement of Claim.

that the Director of Lands had given his consent to the transfer of the lease to Mr Naicker was completely untenable. The letter of 26 April 2017 merely asked for the documents which were needed to enable the Director of Lands to give his consent. Indeed, the judge specifically referred to the evidence of the one witness called on behalf of the Director of Lands, an assistant estate officer in the Lands Department, who had said that consent to the transfer had not been refused, but that the parties had been requested to submit "the correct application for consent to transfer with the transfer documents for further processing".[16]

15. It might, I suppose, have been possible to argue that the Director of Lands' consent to the transfer of the lease could have been inferred from the two letters which the Ministry wrote to Mr Naicker – the ones dated 20 December 2013 and 17 April 2015 – in which the Ministry had informed him that on the expiry of the original lease a new lease would be issued to him subject to a number of conditions. Such an argument would not have succeeded. The letters had nothing to do with the transfer of the original lease. They were concerned with the issue of a new lease.

16. So on what basis did the trial judge, Ajmeer J, order specific performance of the agreement to transfer the land to Mr Naicker? The core passage in his judgment was in paragraph 13, which read:

> "Section 13 issue does not arise here. [Mr Chand] is not entitled to raise that issue after signing the transfer document with consent to transfer."

So the judge did not base his judgment on the footing that the Director of Lands' consent to the transfer had been obtained. What he was saying was that it was by then too late for Mr Chand to contend that the Director of Lands' consent had not been sought. That was because Mr Chand had already signed documents in which the Director of Lands had been requested to give his consent to the transfer. It was on that basis that the judge ordered specific performance of what he described as "the agreement to contract between the parties in relation to property land in dispute", by which he meant the agreement between Mr Chand and Mr Naicker that Mr Chand would transfer the lease to Mr Naicker. The flaw in the judge's reasoning is obvious. Even if Mr Chand could no longer contend that the Director

[16] See para 36 of the trial judge's judgment of 4 October 2019.

of Lands' consent should not be sought, the Director of Lands' consent to the transfer would still have had to be obtained.

17. This leads to an unfortunate lacuna at the heart of Ajmeer J's judgment. It is not possible to tell whether he was saying that the Director of Lands' consent to the transfer of the lease to Mr Naicker was still required. Of course it was, and on one view of his judgment, that was what Ajmeer J thought. I say that because, in addition to making an order for specific performance, he ordered Mr Chand to "do everything necessary for the transfer of the lease … to [Mr Naicker] within 2 months from the date of this judgment", ie by 4 December 2019. The judge did not spell out what Mr Chand had to do, but he could have had in mind requiring Mr Chand to complete the prescribed form requesting the Director of Lands to give his consent to the transfer of the lease to Mr Naicker – leaving it to the Director of Lands to decide whether to give his consent. On the other hand, the relief sought in the Statement of Claim had made no reference whatever to the order of specific performance of the agreement for the transfer of the lease having to be subject to the Director of Lands' consent to its transfer. It had sought an order requiring Mr Chand to execute the transfer of the lease to Mr Chand. That rather suggested that when Ajmeer J ordered Mr Chand to do everything necessary for the transfer of the lease, that was all he had in mind.

The appeal to the Court of Appeal

18. Mr Chand appealed to the Court of Appeal. The leading judgment (with which the other members of the Court agreed) was given by Guneratne P. He thought that the High Court had been wrong to order specific performance. Specific performance of an agreement can only be ordered when the agreement is enforceable. Since the Director of Lands' consent to the transfer of the lease had not been obtained, the parties' agreement for the transfer of the lease could not be enforced. The order for specific performance had to be set aside for that reason.

19. Guneratne P was alive to the unfairness which would result. Mr Naicker would have nothing to show for all the improvements he had made to the land, for the repayment of the debt of $15,000 which he had waived, and for the additional $5,000 he had paid to Mr Chand. Accordingly, he held that Mr Naicker was entitled to remain on the land "as a *bona fide* occupier" until Mr Chand had paid to him the sum of $20,000, and upon such a payment

being made, Mr Naicker was required to vacate the land. There was no discussion in Guneratne P's judgment about the legal basis on which such an order could be made, though the order which the Court of Appeal made referred to "considerations of equity".

The petition to the Supreme Court

20. *Two preliminary points*. Mr Naicker now petitions the Supreme Court for special leave to appeal against the judgment of the Court of Appeal. He wants the orders of the High Court restored. Two preliminary points were taken by Mr Chand's solicitors. They argued that both points require the petition to be dismissed without a consideration of its merits. The first related to the petition itself. Although the draft petition was exhibited to an affidavit which was sworn in support of an application by Mr Naicker's solicitors to file the petition out of time – an application which was granted – the petition itself was never filed. Without a petition, there can be no appeal. We were told that the reason for the failure to file it was that Mr Naicker's solicitors had instructed agents to file the petition, and they had not been informed that the agents had not done so. However, Mr Chand's solicitors were not prejudiced in any way. They would have known from the draft petition which had been exhibited to the affidavit sworn in support of the application to enlarge the time for filing the petition what Mr Naicker's case on the appeal to the Supreme Court was to be. In the circumstances, at the hearing of the petition, we extended Mr Naicker's solicitors' time for filing the petition, and the affidavit verifying the facts in it, to the following Wednesday. We can report that they were indeed filed by then.

21. The second preliminary point was that the written submissions filed on behalf of Mr Naicker were not served on Mr Chand's solicitors until 2 April 2024, three days before the petition was due to be heard. That was a breach of rule 22(1) of the Supreme Court Rules which requires the petitioner's written submissions to be filed with 42 days before the date fixed for the hearing of the petition, and for them to be served on the respondent within 7 days of it being filed. This time that requirement was just overlooked. Again, though, Mr Chand's solicitors were not prejudiced. They had already prepared their written submissions, and were able to file them on the day on which Mr Naicker's written submissions were served on them. I do not wish to minimize this failure to comply with the Rules, but this was a long way off from justifying dismissing the petition without considering its merits.

22. *The enforceability of the agreement*. The grounds of appeal are difficult to follow. For the most part, Mr Naicker's solicitors rely on the unfairness of the outcome without stating where things went wrong. However, the one argument which they clearly advance for restoring the order for specific performance is that the Director of Lands' consent was not a precondition for the enforceability of an agreement for the transfer of a lease. I do not agree. The absence of consent meant that the agreement could not take effect. It could only take effect when consent to the transfer of the lease had been obtained. Putting it in another way, its enforceability was subject to a condition subsequent, namely the grant of consent for the transfer. The agreement could not be enforced until then. How could you enforce an agreement which required consent when that consent had not been obtained? Suppose the Director of Lands would not have given his consent to the transfer of the lease to Mr Naicker, could Mr Naicker really have avoided that outcome by arguing that the agreement for the transfer of the lease to him could be enforced nevertheless? So I entirely agree with the Court of Appeal that the order for specific performance sought by Mr Naicker – which ignored the need for the Director of Lands' consent to the transfer – could not be made.

23. However, that does not mean that a suitably worded order for specific performance could not have been made. If the order for the transfer of the lease had been made subject to the prior consent of the Director of Lands to its transfer having been obtained, there could have been no objection to it. As I have said, it may be that that was what Ajmeer J had in mind. It is unfortunate that he did not spell out his thinking on the topic in both his judgment and the order he made. The lesson to be learned is that when a court makes an order for specific performance, it must spell out in clear and precise language what it is that the defendant is being required to do. The failure to do that in this case has resulted in an appeal which might otherwise have been avoided. For these reasons, I would make an order which has the effect of resurrecting the order for specific performance made by Ajmeer J, but making it clear that it can only take effect once the Director of Lands has given his consent to the transfer of the new lease to Mr Naicker, and I would order Mr Chand to take all steps necessary to enable the Director of Lands to give that consent.

24. I have not overlooked the argument that the absence of consent made the agreement to transfer the lease not merely unenforceable, but null and void. Had it been null and void,

the subsequent consent of the Director of Lands to the transfer of the lease could not have saved the agreement. This argument tracks the actual language of section 13 which is that

> "any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void."

The mere fact that the consent of the Director of Lands to the transfer had not been obtained could not *on its own* have rendered the transfer null and void. As the Privy Council said in *Chalmers v Pardoe* [1963] 1 WLR 677, a decision of the Privy Council on appeal from the Court of Appeal of Fiji concerning section 12 of the iTaukei Land Trust Act 1940 (which was the equivalent provision for iTaukei land as section 13 of the State Lands Act is for State land)

> " ... it would be an absurdity to say that a mere agreement to deal with land would contravene Section 12, for there must necessarily be some prior agreement in all such cases. Otherwise there would be nothing for which to seek the Board's consent."

25. Moreover, in *Kulamma v Manadan* [1968] AC 1062, the Privy Council said that the parties "should be presumed to contemplate a legal course of proceeding rather than an illegal [one]". Neither Mr Chand nor Mr Naicker ever contemplated that the transfer of the lease would take effect without the Director of Lands' consent as the agreement for the transfer of the lease was in the very document in which the Director of Lands' consent to the transfer was being sought. There was, therefore, no question of the proposed transfer being null and void simply because the Director of Lands' consent to the transfer had not been obtained earlier. That is the effect of a series of cases including the decision of the Court of Appeal in *Jai Kissun Singh v Sumintra* (1970) 16 FLR 165, the decision of the Court of Appeal in *D B Waite (Overseas) Ltd v Wallath* (1972) 18 FLR 141, and the decision of the Supreme Court in *Reggiero v Kashiwa* [1998] FJSC 8.

26. Could it be said that there had been some other "dealing" with the land which had had the effect of rendering the agreement for the transfer of the lease null and void because consent to the transfer had not been obtained – for example, the various things which Mr Naicker had done to improve the land? In my view, such an argument cannot succeed. The judge made no findings, one way or the other, whether the improvements which Mr Naicker had

made to the land had been made *for himself* in anticipation of the lease being transferred to him, or *for Mr Chand* pursuant to the power of attorney and in his capacity as the caretaker of the farm. In any event, what constitutes "dealing" with land within the meaning of section 13 is not spelled out in the State Lands Act, but however wide it is, I do not believe that what Mr Naicker did can be regarded as the sort of dealing with the land which required the prior consent of the Director of Lands.

27. *The effect of the expiry of the original lease*. In the interests of completeness, I should add that I have not ignored the fact that the original lease had expired on 1 January 2015. That was why Mr Chand's solicitors argued that any agreement for the transfer of the lease could no longer be enforced because there was no longer any lease in existence which was capable of being enforced. But that is to overlook the actual language of Mr Chand's application for consent way back in 2012. The application was for the Director of Lands' consent to transfer "Lot 4 on Plan BA 2357" to Mr Naicker, not to transfer the lease for the lot. And although the second part of the prescribed form was headed "Transfer of Crown Lease", and the body of this part referred to the original lease, what was actually being transferred to Mr Naicker was "all the rights, powers, titles and interest in the said land". That interest included, not just Mr Chand's current interest in the land under the original lease, but any future interest he may have in the land – for example, his interest in the land under the new lease which was issued to Mr Chand in 2017 and which was treated as having commenced on 1 January 2015.

28. *The Court of Appeal's other order*. I turn to the Court of Appeal's order requiring Mr Naicker to leave the land once he had been paid the $20,000. That order was made to compensate Mr Naicker for not being issued with a lease in respect of the land. Of course, by today's order, he will eventually have the new lease transferred to him – unless the Director of Lands declines to give his consent. I have so many concerns about the Court of Appeal's order that it is difficult to know where to begin. I mention just three of them. First, it ordered Mr Naicker to vacate the land when no such order had been sought by Mr Chand. Secondly, it purported to compensate Mr Naicker for being deprived of a lease in respect of the land whereas his loss was not just the premium of $20,000 which he was treated as having paid for the lease, but the use he would have made of the land during the currency of the

lease, as well as the improvements he had made to the land in the past and their cost. Thirdly, the judgment did not identify the particular principle of equity which was being applied. In order to protect Mr Naicker's position properly in the highly unlikely event of the Director of Lands declining to consent to the transfer of the new lease to Mr Naicker, the more appropriate course to take would be to give Mr Naicker liberty to apply to the High Court for further relief in that event.

Conclusion

29. This case cannot be said to have raised a far-reaching question of law or a matter of great general or public importance. But I have reminded judges and practitioners of the importance of spelling out in clear and precise language what a defendant is being required to do when an order for specific performance is made. It was the trial judge's failure to do that which has contributed to the problems which bedeviled this case, and has resulted in Mr Naicker being deprived of the remedy to which in my opinion he was entitled. Not without hesitation, I would therefore give Mr Naicker leave to appeal on the basis that the case raises a matter which is of substantial general interest to the administration of civil justice. In accordance with the Supreme Court's usual practice, I would treat the hearing of the application for leave to appeal as the hearing of the appeal, I would allow the appeal, I would set aside the orders of the High Court and the Court of Appeal (with the exception of the order for costs made by Ajmeer J), I would make an order for specific performance in the terms of the order set at the end of our judgments, I would order Mr Chand to take the steps set out in the order at the end of our judgments, and I would order Mr Chand to pay to Mr Naicker Mr Naicker's legal costs incurred in the Court of Appeal and in the Supreme Court summarily assessed at $10,000.

Calanchini, J

30. I have had the advantage of reading in draft form the judgment of Keith J, and agree with his reasoning, conclusions and orders.

Arnold, J

31. I have read the judgment of Keith J in draft and agree with the reasoning and with the orders he proposes.

Order:

(i) Leave to appeal granted.

(ii) The order of the High Court dated 19 October 2019 and the order of the Court of Appeal dated 25 November 2022 are set aside, save for paragraph 3 of the order of the High Court dated 19 October 2019.

(iii) Within 28 days of the date of this order, the petitioner, Ranganna Naicker ("Naicker"), and the first respondent, Ami Chand ("Chand"), shall apply on the prescribed form to the second respondent, the Director of Lands, for the Director of Lands' consent to the transfer to Naicker of the State lease for the land originally known as Lot 4 on Plan BA 2357, and later known as Lot 1 – BDSW 1443 Balance Lot 4 on Plan BA 2357, ("the said lease") issued to Chand on 2 May 2017 for a term of 99 years from 1 January 2015.

(iv) Within 2 months of the Director of Lands giving his consent to the transfer of the said lease to Naicker by Chand, Chand shall execute all such documents as may be necessary to effect the transfer of the said lease to Naicker.

(v) In the event of the Director of Lands refusing to consent to the transfer of the said lease to Naicker, Naicker shall have liberty to apply to the High Court for such further or additional relief as the High Court thinks just.

(vi) Chand shall pay to Naicker Naicker's legal costs in the Court of Appeal and in the Supreme Court summarily assessed at $10,000.

The Hon. Justice Brian Keith
Judge of the Supreme Court

The Hon. Justice William Calanchini
Judge of the Supreme Court

The Hon. Justice Terence Arnold
Judge of the Supreme Court