

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. 3180 of 2003**

**BETWEEN**

**Jirjodhan Mahabir**

**Applicant**

**And**

**Director of Land Administration**

**Respondent**

**APPEARANCES:**

Mr. Anil Maraj for the Applicant

Mr. Neil Byam for the Respondent

**DATE OF DELIVERY:** Wednesday 22<sup>nd</sup> April, 2009

***Before the Honourable Mr. Justice Devindra Rampersad***

**JUDGMENT**

**1. The History:-**

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- 1.1. The applicant, Jirjodhan Mahabir, is the executor of the estate of Bissessar Ramlogan also called Bississar Ramlogan who died on the first day of December 1994 leaving his last will and testament dated the 15th day of March 1993. Probate of the said will was granted to the applicant on 11 September 1998 and he brought this application on behalf of the estate in his capacity as executor of the said will. In the said Will, the deceased devised the tenancy rights in the subject lands to his daughter Radica Maharaj.

- 1.2. The unchallenged evidence is that the deceased was in cultivation of lot number 60, Orange Grove Estate, Macoya (the subject lands) since 1956 upon which he planted tomatoes, peas, cucumber and other vegetables. Apparently, the lands of the Orange Grove estate were acquired by the government around 1960 and the deceased and other occupants of the Orange Grove Estate continued in occupation of the estate without payment of rent.
- 1.3. Around 21 July 1983, in an apparent effort to regularize the occupation of the subject lands, the then Director of Surveys executed a probationary tenancy agreement in favor of the deceased for the said lands from the first day of January 1983 for a period of three years at the yearly rent of \$6.00 payable quarterly in advance on the first working day of each quarter beginning on the first day of January, April, July and October in every year to the inland revenue officer in the County of St. George. The said agreement is annexed as "JM3" to the applicant's affidavit sworn to on the 14th day of November 2003 in these proceedings. Despite the expiration date of three years from the first day of January 1983, rent was paid and accepted for the said lands up to and including the year 2003 when these proceedings were begun.
- 1.4. The probationary tenancy agreement provided at:
  - 1.4.1. Clause 2(2) that the tenant would *"use the rented premises only for the following agricultural purpose, namely to follow an approved Program of Work to be fixed by the Ministry of Agriculture, Lands and Food Production and for the erection thereon [if he so desires] of a temporary building to be used exclusively as a residence for himself and his immediate family together with any temporary outhouse necessary for use in conjunction with the said temporary building."*
  - 1.4.2. Clause 2[3] a covenant that the tenant would *"plant and cultivate the rented premises in a proper and husbandlike manner and to the*

*satisfaction of the landlord in accordance with the program of development previously approved by the landlord."*

1.4.3. Clause 2 [8] a covenant that save by transmission on death, the tenant would not assign, underlet or part with possession of the demised premises or any part thereof or any building thereon.

1.4.4. Clause 5 that "*It shall be lawful for the land lord at any time upon breach or non-observance by the tenant of any of the stipulations and conditions hereinbefore contained on his part to be observed or performed or on the tenant becoming the owner or lessee or tenant of other lands elsewhere in Trinidad for agricultural purposes, by 30 days notice in writing to determine this agreement and upon such determination the landlord shall have the right of re-entry.*"

1.4.5. Clause 6 that "*Either party hereto shall be at liberty at any time to determine this agreement upon giving to the other three months notice in writing to that effect, and upon expiration of such notice this agreement shall absolutely cease and determine.*"

1.5. The applicant's contention is that one Joseph Lall entered a part of the land possessed by the deceased sometime in 1987 (after the expiry of the probationary tenancy agreement) without the deceased's consent and began cultivating crops thereon despite the deceased's protests. Apparently, Mr. Lall was extremely hostile and refused to leave and several complaints were made to various authorities, including the police, about his presence on the land and his behavior. As a result, the deceased commenced High Court action number 895 of 1993 against Mr. Lall.

1.6. The said High Court action was apparently struck off "*the list*" by the Honourable Mr. Justice Jamadar on 24 January 2001 because, according to the applicant, he was not informed of the date of hearing. The "list" was never defined and the status of this matter at present is unknown.

There is no evidence that the action itself was dismissed and it appears that it may still be pending.

- 1.7. The deceased died on the first day of December 1994. Probate of the said will was granted to the applicant on 11 September 1998.
- 1.8. Apparently, in the meantime and after the death of the deceased, the deceased's sons continued to cultivate the lands until 1997 when Mr. Lall forcibly ejected them. In September 2003, the deceased's daughter, Radica Maharaj, and her husband, apparently went back onto the lands and planted crops including coconut and pumpkin as she claims that by then Joseph Lall had abandoned the same for about a year.
- 1.9. The deceased's daughter, Radica Maharaj, and the deceased had applied (during the deceased's lifetime) for a grant of a standard agricultural lease for the said lands in both of their names on 27 May 1992 to the regional office of the Ministry of Agriculture, Land and Marine Resources at Curepe for which an acknowledgment dated 27 May 1992 was received. Despite several visits to the Curepe office, the lease was not granted as Radica Maharaj and the deceased were apparently told that "*the government was changing its policy*". No indication was given as to what that meant. By August of 2003 it was clear that the application to the Curepe office was in fact never forwarded to the Lands and Surveys Department (which is the department for application to be processed) and Radica Maharaj was apparently advised to resubmit an application which was done on 28<sup>th</sup> August 2003. There is no evidence that Mr. Joseph Lall ever made an application of his own for a lease of the said lands.
- 1.10. In the meantime, things were heating up between the applicant, Radica Maharaj and the heirs of the deceased on the one hand and Mr. Lall and his family on the other hand. Several letters were apparently sent to the Director of Land Administration by the Applicant during the period August to September 2003.

- 1.11. The Applicant's letter of the 30<sup>th</sup> September 2003 to the Director, Regional Office North, Farm Road Curepe (upon the apparent advice of the Director, Land Administration) paints a picture of misbehaviour, threats and malicious damage by Joseph Lall and his son in law and a request was made.
- 1.12. On the 10<sup>th</sup> September 2003, Jacqueline Ganteaume – Farrell, acting as Land Administrator wrote a letter to Radica Maharaj. The letter read as follows:

*"September 10, 2003*

*Ms. Radica Maharaj  
28 Joyan St.,  
Curepe.*

*Dear Mdm.,*

**Re: Application for Standard Agricultural Lease in respect of Lot # 60, Orange Grove Estate Macoya.**

*I refer to a letter with attachments dated August 28, 2003, on the subject at caption submitted by Mr. Jirjodhan Mahabir, Executor of the will of Mr. Bissessar Ramlogan.*

*The Land Administration Division has to await the decision of the High Court with respect to High Court # 895 of 93. This decision will determine the consideration off your request for a Standard Agricultural Lease in respect of the subject parcel of land.*

*As soon as the decision becomes available kindly submit it to the Land Administration Division.*

*Sincerely,*

*J. Ganteaume-Farrell  
Director Land Administration."*

- 1.13. On 13 October 2003, Radica Maharaj was informed of a meeting to be held on the morning of 14 October 2003 at the Curepe office in relation to the said lands. The applicant and Mrs. Maharaj alleged that the agenda of the meeting was not revealed to either of them. This is not disputed by

the Respondent. Several persons were present at the meeting including Mrs. Jacqueline Ganteaume – Farrell (the Director of Land Administration), one Mr. Bhagratty, one Mr. Baboolal and one Ms. Roshni Maharaj who were all officers/employees with the Ministry. One constable Suberksingh from the Tunapuna Police Station, and Mr. Lall and his son-in-law were also present. As a result of that meeting, Mrs. Farrell concluded that Mr. Lall would be granted a lease for the said parcel of land instead of Radica Maharaj. This conclusion was reduced into writing by the Ministry of Agriculture, Land and Marine Resources by letter dated 29th of October 2003 as a result of which these proceedings began to impugn the decision of the Ministry of Agriculture, Land and Marine Resources.

1.14. The full text of the letter of the 29<sup>th</sup> October 2003 is as follows:

*"AGR: 27/6/26*

*MB/dg*

*29 October, 2003*

*Ricky N. Rahim  
Attorney at Law  
Alpha Chambers  
122 Edward St.,  
Port-of-Spain*

*Dear Sir,*

**Re: Tenancy of Lot #60 Orange Grove Estate, Macoya**

*I have for reply your letter of the 21 October, 2003, addressed to Ms. J. Farrel Director of the Land Administration Division.*

*Our records show that the Ministry granted a probationary tenancy over the captioned lands to Mr. Ramlogan on 21 July, 1983 for a three (3) year period. The tenancy agreement expired on 20 July, 1986. Mr. Ramlogan applied for a Standard Agricultural Lease of the said lands in 1992. The Standard Agricultural Lease was not granted to him.*

*Our investigations have revealed that Mr. Ramlogan breached the terms of Probationary Tenancy Agreement. As a consequence the Ministry could not in those circumstances issue a Standard Agricultural Lease to Mr. Ramlogan.*

*Our investigations and reports from our extension and land officers reveal that Mr. Lall was in occupation of and cultivated the subject land from about the year 1979 to the present time.*

*We are constrained by the policy of state to regularise the status of eligible persons who have been in occupation of state land and cultivating it continuously for at least the last five (5) years.*

*In those circumstances we trust that you will appreciate that it is fair and reasonable that Mr. Joseph Lall be granted a lease to the subject parcel.*

*Please be guided accordingly.*

*Trevor Murray  
Permanent Secretary (ag.)*

## **2. The proceedings:**

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- 2.1. The Applicant filed an application for leave for judicial review on the 17/11/2003 which was subsequently amended on the 20/11/2003.
- 2.2. The application was supported by the following affidavits:
  - 2.2.1. Jirjodhan Mahabir sworn to on 14/11/2003 and filed on the 17/11/03 in support of the application for leave;
  - 2.2.2. Radica Maharaj sworn to on 14/11/2003 and filed on the 17/11/03 in support of the application for leave;
  - 2.2.3. Radica Maharaj sworn to on 18/11/2003 and filed on the 18/11/03 in support of the application for leave.
  - 2.2.4. Leave was granted on the 20/11/2003 by the Honourable Dean Armorer J. **The Honourable Judge also made an order for service on Joseph Lall.**

2.2.5. Consequently, the Notice of Motion in these proceedings were filed on the 20/11/2003 and was amended by consent as per the order dated 13 February 2009 and was re-filed on 20 February 2009.

2.2.6. The reliefs sought by the applicant in this matter are as follows:-

2.2.6.1. An Order of Certiorari to move into the High Court and quash the decision of the Director Land Administration, Land Administration Division, Ministry of Agriculture, Land and Marine Resources made on the 14<sup>th</sup> October, 2003 and evidenced by letter dated 29<sup>th</sup> October, 2003 (hereinafter referred to as "the said decision") to recommend that the Commissioner of State Lands do grant onto Joseph Lall a lease of Lot number 60, Orange Grove Estate, Macoya in preference to Mrs. Radica Maharaj, the lawful beneficiary under the last Will and Testament of the deceased Bissessar Ramlogan also called Bissessar Ramlogan (hereinafter referred to as "the deceased");

2.2.6.2. A Declaration that the said decision is unreasonable, irregular or an improper exercise of discretion.

2.2.6.3. An Order that the Director Land Administration, Land Administration Division, Ministry of Agriculture, Land and Marine Resources recommend that the Commissioner of State Lands do grant a lease of lot number 60, Orange Grove Estate, Macoya to the lawful beneficiary of the Estate, Macoya to the lawful beneficiary of the Estate of the deceased Mrs. Radica Maharaj.

2.2.6.4. A Declaration that a policy of the State to regularize status of persons who have been an occupation of State land and who have been cultivating it continuously for at least five (five) years in preference to lawful tenants of the said land amounted to an exercise of power in a manner that is so unreasonable that no reasonable person could have so exercised the power.

2.2.6.5. A Declaration that the Director Land Administration, Land Administration Division, the Ministry of Agriculture, Land and Marine Resources acted in breach of the principles of natural justice when she (i) did not allow the Applicant and/or Mrs. Maharaj to make any and/or any effective representations on their behalf and/or (ii) did not make the Applicant and/or Mrs. Maharaj aware of the agenda for the meeting of 14<sup>th</sup> October, 2003.

- 2.2.6.6. An interim Order requiring the Director Land Administration, Land Administration, Land Administration Division, Ministry of Agriculture, Land and Marine Resources to postpone the execution of a lease in favour of Mister Joseph Lall of Lot number 60, Orange Grove Estate, Macoya until the determination of the application for judicial review or further order.
  - 2.2.6.7. Damages.
  - 2.2.6.8. Costs.
  - 2.2.6.9. That all other necessary and consequential directions be given.
- 2.2.7. An affidavit of service on Joseph Lall was filed on the 8/12/2003. No action has been taken by Joseph Lall to date – whether to intervene or to file an affidavit in opposition.
- 2.2.8. The only affidavit in response was that of Jacqueline Ganteaume – Farrell (Director of Land Administration) sworn to on 1/3/2004 and filed on the 2/3/2004.
- 2.2.9. The following affidavits in reply were filed:
- 2.2.9.1. Radica Maharaj sworn to and filed on 19/3/2004;
  - 2.2.9.2. Jirjodhan Mahabir sworn to and filed on 19/3/2004.
- 2.3. There was no cross examination of any of the deponents at the trial.

### **3. The Issues:**

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- 3.1. This court has identified the following issues to be dealt with:
- 3.1.1. Did the Director of Land Administration breach the principles of natural justice when she did not allow the applicant or Mrs. Maharaj to make effective representations on their behalf and / or did not make the applicant or Mrs. Maharaj aware of the agenda for the meeting on the 14th day of October 2003?

- 3.1.2. Can the decision of the Director of Land Administrator made at the meeting of the 14<sup>th</sup> October 2003 be impugned on the ground that it is unreasonable irregular or an improper exercise of discretion or otherwise?
- 3.1.3. Can the decision stated in the letter of the 29<sup>th</sup> October 2003 be impugned on the ground that it is unreasonable irregular or an improper exercise of discretion or otherwise?
- 3.1.4. What was the applicable State policy in this matter and can a declaration as to the State's policy be granted in the terms sought in the Notice of Motion?

#### **4. The Resolution of this matter:**

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##### **4.1. The empowering Legislation:**

- 4.1.1. The State Lands Act Chapter 57:01 of the Laws of Trinidad and Tobago provides at sections 4, 5, 6, 10, 20, 33 and 34 as follows:

*"4. (1) All rights of ownership vested in the State in respect of State Lands may be exercised by the President on behalf of the State.*

*(2) The President may by Order empower the Commissioner of State Lands or any Deputy Commissioner of State Lands to exercise any of the rights exercisable by him under subsection (1).*

*(3) Subject to this Act, the President may make Regulations with respect to the administration, management and protection of State Lands and the preservation of order on State Lands to which the public are for the time being allowed access, and with respect to the manner in which the Commissioner of State Lands shall exercise his functions.*

*(4) (a) The Regulations specified in paragraph (b) made by the Governor of Trinidad and Tobago as Intendant of Crown lands and all proclamations and orders made under them shall have effect as if they were made by the President under this section.*

*(b) The Regulations referred to in paragraph (a) are as follows:*

*(i) the Land Regulations published in the Gazette of 10th January 1918, as amended from time to time;*

*(ii) the Crown Lands Forest Produce Rules published in the Gazette of 14th January 1937, as amended from time to time.*

*5. There shall be in the public service a Commissioner of State Lands who shall have the functions vested in him by this or any other Act or by any Order made under section 4(2) and who shall perform his functions in accordance with this Act, any Regulations made under section 4(3) and any directions addressed to him by the President.*

*6. (1) The Commissioner shall have the management of all lands of the State, and shall be charged with the prevention of squatting and encroachment upon the same and of spoil and injury to the woods and forests on such lands, and shall superintend the settlement and allotment of State Lands and the laying out of village lots in such districts as the President from time to time directs.*

*(2) The Commissioner shall also take possession of, and shall be charged with the care and letting and the collection of the rents of, all lands which may belong or escheat to, or which by virtue of any Act may be forfeited to and become vested in, the State.*

#### **GRANTS AND LEASES**

*10. (1) Every grant of State Lands shall be issued under the Public Seal of Trinidad and Tobago, and shall be registered by the Registrar General under the provisions of the Real Property Act, on being tendered to him for that purpose.*

*\* (2) Every lease of State Lands under the Public Seal of Trinidad and Tobago shall be registered by the Registrar General in the same manner as a Deed, on being tendered to him for that purpose.*

#### **SQUATTING ON STATE LANDS**

*20. (1) Any Magistrate, on information that any person is in possession, without any probable claim or pretence of title, of any State Lands, may issue a summons calling on the person to appear and answer to the information, and if the person, after being duly summoned, does not appear or appearing fails to satisfy the Magistrate that he has or had, or those under whom he claims, have or, had, some probable claim or pretence of title to the lands, the Magistrate shall make an order for putting the person in possession of the lands out of possession, and the delivering of the possession to the Commissioner.*

*(2) Unless, on the hearing of the information, the person against whom the information is preferred proves to the satisfaction of the Magistrate that he holds the possession of the lands by inheritance, devise, or purchase from some other person, the Magistrate shall make a further order that the person so informed against be imprisoned for such term, not exceeding six months, as the Magistrate sees fit, such term to be computed from the day on which the person is delivered into the custody of the Keeper of the gaol or place of imprisonment to which he is committed.*

#### GENERAL

*33. It shall be lawful for any Magistrate to hear and determine any case wherein any person may be charged with an offence under this Act, notwithstanding that any question arises or is set up in such case as to the title to any lands alleged to be State Lands or any interest therein or accruing therefrom.*

*34. (1) All offences under this Act may be prosecuted, and all penalties and forfeitures under this Act may be recovered, in the manner provided by the Summary Courts Act.*

*(2) Every information under sections 20, 21 and 23 may be preferred by the Commissioner or by an authorised officer, and it shall not be necessary in any such information to charge, or on the hearing thereof to prove, when the possession of the land mentioned in such information by the person informed against, or those under whom he may claim title, commenced.*

*(3) Every summons to issue upon any such information shall specify a time and place at which the person informed against is to appear, and every such summons shall be served at least eight days before the day appointed for such appearance, by delivering the same to the person summoned in person or by leaving the same at his usual place of abode, or if such abode is not known then by affixing the same to some building upon, or in some open and conspicuous part of, the lands mentioned in the information.*

*(4) Informations, summonses, and orders under sections 20 and 21 may be in the forms set out in the Schedule.*

4.1.2. Further, the Land Regulations referred to at section 4 (a) of the State Lands Act is found in the 1940 Ordinances and provides as follows:

*"Part IV*

## LEASES

51. *The Governor may grant leases of any portion of Crown Land to any person for such purposes as may be approved by the Governor, provided that the lease shall be for such term not exceeding thirty years with power to renew for a further term not exceeding thirty years and subject to any right of way or other easements created in and existing upon any such land and upon such conditions as to the rent and forfeiture for non-payment of rent and otherwise as the Governor shall determine.*

52. *The Governor may also grant leases from year to year, or for any term not exceeding seven years, subject to easements and rights of way as last aforesaid, upon such conditions as to rent and forfeiture in default of payment of rent or otherwise as he may determine, of natural savannah for grazing purposes, or of lands forfeited to the Crown or otherwise belonging to the Crown, which the Governor may think fit to temporarily reserve from sale.*

53. *All land rents shall be calculated as from the first of January to the thirty-first of December, and shall be due and payable in advance to the Sub-Intendant at his Office in Port of Spain, or to the Warden, as may be specified in the lease, on or before the thirty-first March in each year. When rents remain unpaid on the thirtieth June the lease shall be absolutely forfeited, together with any improvements existing on the land and without compensation for the same, unless otherwise expressly provided in the lease. No transfer or assignment of any lease shall be valid or operative until the approval in writing of the Sub-Intendant is obtained."*

- 4.1.3. In those circumstances, the Commissioner of State Lands is the office designated and ordained with the jurisdiction to deal with state lands and the Commissioner would have had to have operated under the Act and those regulations as stated.
- 4.1.4. No explanation was forthcoming as to the role of the Land Administration Division of the Ministry of Agriculture, Land and Marine Resources and it is assumed for the purposes of this action, especially in light of the affidavit of Jacqueline Ganteaume – Farrell, that their role was to advise the Commissioner of State Lands in relation to the

Commissioner's duties under the State Land Act and, therefore, would have had to have abided and be guided by the same stipulations and regulations in order to ensure that the directives of the State Lands Act, as mentioned above, were complied with.

**4.2. The procedural issue -- did the Director of Land Administration breach the principles of natural justice when she did not allow the applicant all Mrs. Maharaj to make effective representations on their behalf and / or did not make the applicant or Mrs. Maharaj aware of the agenda for the meeting on the 14th day of October 2003?**

4.2.1. At paragraph 20 of her affidavit, Mrs. Ganteaume-Farrell deposes that she told the parties at the meeting the purpose for calling the meeting and that was that she had called the meeting "*to resolve the dispute between Ms. (sic) Joseph Lall and Ms. Radica Maharaj about the parcel and to decide which of them would be granted a lease*".

4.2.2. In light of her unequivocal statement set out in her letter of the 10 September, it is this Court's view that it was incumbent upon Mrs. Ganteaume-Farrell to have informed Mrs. Maharaj that she was contemplating a procedure which was contrary to her said written statement and that she was contemplating granting a lease to Mr. Lall instead of Mrs. Maharaj and that she was contemplating this meeting to decide to whom the lease would be granted. She also had to have informed Mrs. Maharaj that she was contemplating adopting a position of refusing the grant of any lease to her on the grounds of a perceived breach of the probationary tenancy agreement and she ought to have informed Mrs. Maharaj as to what those breaches were.

4.2.3. This would have satisfied the basic requirement of natural justice that a party must know the case to be met to allow her to meet the case adequately and properly.

4.2.4. In **R v Gaming Board for GB, ex p Benaim** [1970] 2 All ER 528, [1970] 2 QB 417 it was argued that as the applicants for a gaming licence were seeking a privilege there was no obligation to be fair but the court rejected that contention. Lord Denning MR in his judgment said that –

*"..... the board have a duty to act fairly. They must give the applicant an opportunity of satisfying them of the matters specified in Sch 2, para 4(5) [of the Gaming Act 1968]. They must let him know what their impressions are so that he can disabuse them. But I do not think that they need quote chapter and verse against him as if they were dismissing him from an office (Ridge v Baldwin [1963] 2 All ER 66, [1964] AC 40), or depriving him of his property, as in Cooper v Wandsworth Board of Works ((1863) 14 CBNS 180, 143 ER 414). After all, they are not charging him with doing anything wrong. They are simply enquiring as to his capability and diligence and are having regard to his character, reputation and financial standing. They are there to protect the public interest, to see that persons running the gaming clubs are fit to be trusted. Seeing the evils that have led to this legislation, the board can, and should, investigate the credentials of those who make application to them. They can, and should, receive information from the police in this country or abroad, who know something of them. They can, and should, receive information from any other reliable source. Much of it will be confidential. But that does not mean that the applicants are not to be given a chance of answering it. They must be given the chance, subject to this qualification: I do not think they need tell the applicant the source of their information, if that would put their informant in peril or otherwise be contrary to the public interest . . . If the board were bound to disclose their sources of information, no one would "tell" on those clubs, for fear of reprisals. Likewise with the details of the information. If the board were bound to disclose every detail, that might itself give the informer away and put him in peril. But, without disclosing every detail, **I should have thought that the board ought in every case to be able to give to the applicant sufficient indication of the objections raised against him such as to enable him to answer them. That is only fair. And the board must at all costs be fair. If they are not, these courts will not hesitate to interfere.**" [Emphasis mine] (See [1970] 2 All ER 528 at 534, [1970] 2 QB 417 at 430.)*

4.2.5. That decision demonstrates two matters: (1) the duty to disclose the case that is adverse to an applicant since the exercise of a discretion

does not depend upon the pre-existence of any right in the applicant;  
(2) the nature and degree of disclosure required depends upon the particular circumstances.

4.2.6. In this case, the applicant arguably had a pre-existing right – a year-to-year tenancy – and Mrs. Ganteaume-Farrell was considering the delivering over of the lands subject to the said tenancy to someone else thereby depriving the deceased's estate of that right. It was therefore incumbent upon Mrs. Ganteaume-Farrell to have adequately informed the applicant and / or Mrs. Maharaj as to the true purpose of the meeting for them to have made an informed decision as to whether they wanted to have legal representation present or even to attend the meeting at all.

4.2.7. Mrs. Ganteaume-Farrell's allegation at paragraph 44 of her affidavit lends support to the allegation that the applicant and Mrs. Maharaj were not fully prepared to deal with the issues and matters raised at the meeting of 14 October.

4.2.8. It is therefore a fair observation that the said meeting was unfair and amounted to a breach of natural justice due to the failure of the Mrs. Ganteaume-Farrell to inform the applicant and Mrs. Radica Maharaj of the agenda of the meeting so that they could have made a conscious effort to attend with or without their proper documents and/or with an attorney to respond to any questions which may have arisen e.g. the status of the pending High Court Action.

4.2.9. Having not been so informed, it is this court's view that this failure amounted to a breach of natural justice.

**4.3. The Meeting on the 14<sup>th</sup> October 2003 – the affidavit of Jaqueline Ganteaume-Farrell – Can the decision be impugned?**

4.3.1. Jacqueline Ganteaume-Farrell, in her affidavit, describes herself as the Director of Land Administration and head of the Land Administration Division of the Ministry of Agriculture. This Land Administration division, according to Mrs. Ganteaume-Farrell, was formed as a result of a policy which is mentioned hereafter. That division began to operate in 1993 in an unofficial capacity and then in 1995, cabinet approved its formation and she was officially appointed as its head. The purpose of the division is set out in paragraph 5 of affidavit which was, "*among other things, to select tenants for state agriculture lands in accordance with government policy, to monitor their performance and ensure that they are keeping to the terms of the leases, to resolve situations where leases have been wrongfully assigned, and to prepare all documentation and keep all the records necessary for those purposes.*" It is instructive to note that the purpose of the division as set out by Mrs. Ganteaume-Farrell **does not specifically include** the resolution of issues of fact between opposing occupiers of state lands although it might be argued that the selection of tenants may involve such a resolution in instances where there are opposing claims to a right to a tenancy.

4.3.2. The policy referred to was "*put into a document which was laid in and approved by Parliament, and it still forms the policy for the distribution of state agricultural land in Trinidad* " but neither Mrs. Ganteaume-Farrell nor anyone for the Respondent ever provided it for the Court's consideration. That would have been a crucial item for the Court to view to allow it to come to an understanding of the basis for the department's decision making. The part of the policy referred to in the affidavit mentions the promotion of agriculture on state agricultural lands by seeing that "*they are placed in the hands of the most reliable persons, that is, able farmers who show themselves willing to obey the*

*terms of their leases."* The full policy is not set out and so other considerations which are or may be required under the policy were not disclosed.

- 4.3.3. Mrs. Ganteaume-Farrell was the head of the Land Administration Division for the period 1993 to 1995 before its official formation and thereafter from 1995 to the date of her affidavit in 2004. The purpose of her division is set out at paragraph 5 of her affidavit.
- 4.3.4. She says that annual reports on each lot are supposed to have been prepared by Mr. Babulal. **Those reports were also not disclosed at the trial.**
- 4.3.5. She also said that she got a parcel report from the computer which confirmed that Mr. Joseph Lall was in occupation of the parcel – **this was also not disclosed.**
- 4.3.6. On the 10<sup>th</sup> September 2003, she made a definite decision to await the outcome of the court proceedings and this was indicated to Radica Maharaj by letter of the same date.
- 4.3.7. This decision was orally confirmed on 26 September 2003 in her conversation with Sonny Mahabir.
- 4.3.8. This decision was apparently reviewed by her on the 29<sup>th</sup> September or 1<sup>st</sup> October as a result of the telephone call from the Tunapuna Police Station when she was asked to convene a meeting between Ms. Maharaj and Mr. Lall to discuss the matter because of threats of violence between them arising out over the dispute over the land.
- 4.3.9. It is clear therefore that the meeting was convened **only** because of the intervention by the police and the threats of violence. It also seems apparent from paragraph 20 of affidavit that Mrs. Ganteaume-Farrell told the parties for the first time at the meeting the purpose for calling the meeting and that was that she had called the meeting "to

*resolve the dispute between Ms. (sic) Joseph Lall and Ms. Radica Maharaj about the parcel and to decide which of them would be granted a lease".*

- 4.3.10. There is no indication if and when Mr. Lall had applied for a lease.
- 4.3.11. At the meeting on 14 October 2003, it would have been clear that the matter was sub judice before the High Court of Justice. From a review of Mrs. Ganteaume-Farrell's qualifications at paragraph 2 of her affidavit, it is evident that she was not trained in any legal discipline. None of the parties who attended were lawyers. As such, there was no proper guidance on the law and the effect of the letter from Quamina, Scott and Associates attorneys at law and exhibited as "JGF1".
- 4.3.12. There is no reference whatsoever in the affidavit to the fact that lease rent had already been paid by Radica Maharaj and accepted for 2003. The fact that Mrs. Ganteaume-Farrell pointed out that the probationary lease had expired without further reference seems to suggest that she did not consider the effect (if any) of the lease rent paid on a yearly basis up to and including the year 2003.
- 4.3.13. At paragraph 41 she indicated that she did not think that the deceased had an interest in the parcel capable of being devised to her. She seems to have placed great weight on the inventory of the deceased's estate and the fact that that inventory was not produced. In fact, she seems to have disregarded the express devise made in the will to Radica Maharaj in favor of a perceived failure to produce the inventory.

#### **4.4. The factors which influenced Mrs. Ganteaume-Farrell's decision – the court's findings on these factors:**

- 4.4.1. Paragraph 42 to of the affidavit gives the factors that Mrs. Ganteaume-Farrell took into consideration in reaching her decision. These are

addressed by the following sub-paragraphs in the same order in which they appear in the Mrs. Ganteaume-Farrell's affidavit:

- 4.4.1.1. She said that deceased did not have an interest in the land capable of being devised. As a result, Mrs. Radica Maharaj did not have any interest in the parcel. Even if she did have such an interest, it did not entitle her to a standard agricultural lease. The Court finds that the deceased **did** have an interest which may have been capable of being devised i.e the benefit of a yearly tenancy which was not determined by any notice to quit. See **Croft v William F. Blay Limited** [1919] 2 Ch 343; **Mayor and Burgesses of the London Borough of Hammersmith and Fulham v Jastrzebski and another** Ch 20 OCTOBER 2000 and **Ladies' Hosiery and Underwear Ltd v Parker** (1930) 1 Ch 304. The case of **Javad v Aqil** [1991] 1 All ER 243, [1991] 1 WLR 1007, 61 P & CR 164, [1990] 41 EG 61 referred to by the attorney at law for the respondent is distinguishable on the facts since that matter involved a party going into possession pending discussions which is different from this case of someone holding over after a tenancy for years/term has expired.

The continued acceptance of rental over the period of 1987 [which is the year after the expiration of the probationary tenancy agreement] until 2003 at the District Revenue Office of St. George, in the manner provided for in the probationary tenancy agreement, along with the visits to the lands by officers of the Land Administration Division seems to suggest that there was an intention between the parties to have and to continue to have legal relations by way of contract on a year-to-year basis which was in keeping with the State's attempt to ensure a certain amount of legal control and regularity in occupational status of its lands and this may have supported a claim for a continuance of the tenancy on a year-to-year basis. As such, it seems that this tenancy was still alive since it was never lawfully determined and Mrs. Ganteaume-Farrell ought to have considered the effect of that very real possibility. As such, the approach which she took was erroneously conceived and contrary to the applicable law.

4.4.1.2. At subparagraph 2, she said that, though it was not possible to determine beyond a reasonable doubt exactly what had happened between the deceased and Mr. Joseph Lall 20 years before, it was more likely than not that the deceased had broken the terms of his probationary tenancy agreement. She went on to say that the purpose of these agreements is to see whether the persons to whom they have granted can be trusted to obey the terms of the standard agricultural leases which are similar. If they show they cannot be trusted, they are not granted the latter kind of lease. So the deceased would not have qualified for such a lease and was very unlikely to have court in one.

This tends to suggest that she seems to have preferred the account given by Mr. Lall as to the reason why he was on the land in preference to the account of the applicant and Radica Maharaj and as such, she surmised or seems to have accepted that it was more likely than not that the deceased had sublet the land to Mr. Lall. By making such a finding, she seemed unwittingly to have accepted that there was still a lease in existence in 1987 when the deceased said Mr. Lall went unto the lands therefore lending credibility to the applicant's attorney's submission that there was an existing year-to-year tenancy continuing under the same terms of the probationary tenancy agreement.

In any event, the issue of what transpired between the deceased and Mr. Joseph Lall was an issue that was before the High Court in the pending High Court proceedings. In those proceedings, the deceased had, on the pleadings, not accepted that there was the grant of any sub tenancy in favor of Mr. Lall and the said proceedings provided at least a primary (and unresolved view) from the deceased himself as to Mr. Lall's status on the land and that was as a trespasser. The evidence before Mrs. Ganteaume-Farrell was that, as was evident from the pending High Court action and the court papers which she admitted to having seen, the deceased had clearly not accepted that there was any tenancy arrangement with Mr. Lall and the deceased had fact even disputed Mr. Lall's presence on the land. The burden would then have shifted to Mr. Lall to prove the alleged sub-tenancy and the terms thereof. In such circumstances, Mrs. Ganteaume-Farrell ought not to have concluded that there was a breach by the deceased or an unwillingness to obey the terms of his lease in relation to

any alleged under-letting under clause 2 (8) of the probationary tenancy agreement without proper and more cogent evidence. In any event, the High Court is a superior arbiter of fact better suited to deal with the issues arising with respect to matters of possession of land such as in this matter as it employs the use of evidence which is confirmed and delivered under oath and which is tested under strenuous cross examination with stringent examination and consideration of evidence and contemporaneous documents in a tried and tested fact finding exercise based on legal principles.

In those circumstances, the Director of Land Administration was not better placed to resolve the question of trespass or possession than the High Court and she ought to have deferred to the High Court in light of the pending High Court action. That is especially so in light of her letter of the 10th day of September. By embarking on the fact finding exercise which she undertook on 14<sup>th</sup> October, Mrs. Ganteaume-Farrell purported to usurp the function and jurisdiction of the High Court unto herself which seems quite unreasonable and unjustified in the circumstances.

The Court has also borne in mind sections 20, 33 and 34 of the State Lands Act which empowers a Magistrate and not the Commissioner of State Lands to resolve and deal with issues of squatting on state lands with the jurisdiction to deal with issues of title claims made in relation thereto. In such circumstances, the Director of Land Administration was ill advised to take on the resolution of this issue in all of the circumstances.

- 4.4.1.3. At subparagraph 3, she mentions that at present, the policy of the government is to regularize persons in Mr. Lall's position, that is **squatters on government agricultural lots** who have demonstrated that, notwithstanding the fact that they have been trespassing, they are good farmers who tend the lots in the way demanded by the standard agricultural leases.[Emphasis mine]

The policy referred to by her at subparagraph (3) is a policy which seems different from the policy referred to at paragraph 3 of her affidavit and the purpose of the Land Administration Division as defined by Mrs. Ganteaume Farrell at paragraph 5 of her affidavit. According to Mrs. Ganteaume Farrell at paragraph 5, the purpose of the division was to select "tenants" for state agriculture lands in

accordance with government policy. That policy is, presumably, the policy referred to at paragraph 3 of her affidavit which was to promote agriculture on state lands by seeing to it that they are "*placed in the hands of the most reliable persons, that is, able farmers who show themselves willing to obey the terms of the leases*". Her considerations, therefore, ought to have been:

*4.4.1.3.1. Whether the person was a reliable farmer i.e. an able farmer;*

*4.4.1.3.2. Whether the farmer shows himself / herself willing to obey the terms of a lease.*

To make this determination, Mrs. Ganteaume Farrell would have had to have received information as to whether the applicant was a reliable farmer - that information was not disclosed as stated before - and whether she was willing to obey the terms of a lease. This all must be placed into the context of Radica Maharaj already having a pending application for a lease since 1992 (which was misplaced by the Curepe office) and having renewed her application for a lease less than 2 months before the meeting and that application was still pending. In the meantime, there was strong evidence of an existing year-to-year lease. At the meeting, there was no empirical, tested or accepted evidence that there were any breaches of the lease – the only evidence being that raised at the meeting which was obviously tainted and unreliable in the circumstances - and I am sure that Radica Maharaj would have done her best, if given the chance, to show that she was willing to obey the terms of a lease. The policy Mrs. Ganteaume Farrell refers to at paragraph 42 [3] seems to be a different policy to the one she mentions at paragraph 3 and appears to be a hybrid mixture of the considerations as set out in the **State Land (Regularization of Squatters) Act** Chapter 57:05<sup>1</sup> and the **State Lands Act** Chapter 57:01. The Director of Land Administration ought to have restricted her considerations to the jurisdiction afforded to her through the **Land Administration Division** which would have had to have considered the matters to be derived from sections 4, 5 and 6 of the State Lands Act and the accompanying Regulations

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<sup>1</sup> The title of this Act states as follows:

*“An Act to protect certain squatters from ejection from State Land; to facilitate the acquisition of leasehold titles by both squatters and tenants in designated areas and to provide for the establishment of land settlement areas.”*

mentioned above and the policies emanating in relation thereto since those are the considerations which regulate and govern the Commissioner of State Land's discretion to grant a lease. Rather, she purportedly sought to act as if operating and considering matters reserved to the Land Settlement Agency, a body corporate constituted under section 5 of the State Land (Regularization of Squatters) Act and charged with the responsibility for administering and carrying out the provisions of that Act with respect to State Land in the Island of Trinidad. By designating Mr. Lall as a squatter, and instead of following the procedure prescribed under section 20 of the State Lands Act or awaiting the outcome of the High Court action, her attempts to regularize Mr. Lall's purported occupation of the lands on that ground clearly placed her as if operating under the State Land (Regularization of Squatters) Act.

It is clear to me that the Land Administration Division has a different function from the Land Settlement Agency and so the confusion as to the policy to be implemented points to a misunderstanding by Mrs. Ganteaume Farrell of her role and jurisdiction and the matters which she had to consider. In any event, Mr. Lall's own allegations referred to at paragraph 21 of Mrs. Ganteaume-Farrell's affidavit was that he, Mr. Lall, was not a squatter but a tenant. Therefore, he was claiming title contrary to the definition of "squatter" in the State Land (Regularization of Squatters) Act aforesaid. In that Act, "squatter" is defined in as "*a person who is in actual occupation of State Land without probable claim or pretense of title thereto.*" As such, Mr. Lall could not reasonably have been viewed by Mrs. Ganteaume Farrell as a squatter since he was a purported subtenant of the deceased who was, arguably, a tenant from year-to-year of the lands and therefore the consideration referred to at paragraph 42 [3] is fundamentally flawed.

- 4.4.1.4. At subparagraph 4, she adds a new dimension to the policy referred to earlier which was to be followed by the authorities. She mentions for the first time that there is a policy of the Land Administration Division to favor those farmers **who do not have other sources of income**. [Emphasis mine]

The policy of the division as stated in the affidavit was to see that the lots are placed in the hands of able farmers and

this required the consideration of whether the deceased and, subsequent to him, Mrs. Maharaj were in fact able farmers. Mrs. Ganteaume –Farrell added to that this new “rider” to the policy as to the person having no other sources of income. No mention is made that she disclosed this “rider” to the applicant. Obviously Mrs. Ganteaume –Farrell would have had to have received and evaluated evidence as to the opposing parties’ sources of income. No such opportunity for the provision of evidence as required in this policy seems to have been afforded to the parties and it amounts therefore to a denial of their right to be heard in respect of this issue which, in any event, does not seem to have been brought to the attention of the parties.

- 4.4.1.5. She said at subparagraph 5 that it was agreed that Mr. Lall had been on the land for at least 20 years during which time he has been a model farmer. She also said that no one had done anything about the court case between Mr. Lall and the deceased between the granting of probate and the year 2003. The issue of the length of time and the circumstances in which Mr. Lall got into possession of the land was a live one and was very much in contention. Nothing was produced to this court to substantiate Mrs. Ganteaume-Farrell’s contention that Mr. Lall had in fact been a model farmer and that fact was clearly not agreed upon by the parties at the meeting. Further, the parcel reports and the annual reports referred to in the affidavit of Mrs. Ganteaume-Farrell were never produced or disclosed and this aspect of her decision making and the considerations which she may have borne in mind were not full and frankly disclosed.

Lord Walker of Gestingthorpe said in **Belize Alliance of Conservation Non-Governmental Organisations v Department of the Environment of Belize and Another (Practice Note)** [2003] UKPC 63, [2003] 1 WLR 2839, that

*“a Respondent authority owes a duty to the court to cooperate and make candid disclosure of the relevant facts and (so far as they are not apparent from contemporaneous documents which have been disclosed) the reasoning behind the decision challenged in the judicial review proceedings”.*

In light of the failure to be full and frank in its disclosure, the court is entitled to make certain inferences in respect of the Respondent's decision-making process:- see **R (on the application of GG and others) v Secretary of State for the Home Department** [2006] EWHC 1111 (Admin), CO/4987/2005 at paragraph 53. See also **R (on the application of Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs** [2002] EWCA Civ 1409, [2002] All ER (D) per Laws LJ at paragraph 53 where he said:

*"However there is - of course - a very high duty on public authority respondents, not least central government, to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide. The real question here is whether in the evidence put forward on his behalf the Secretary of State has given a true and comprehensive account of the way the relevant decisions in the case were arrived at. If the court has not been given a true and comprehensive account, but has had to tease the truth out of late discovery, it may be appropriate to draw inferences against the Secretary of State upon points which remain obscure: see Padfield [1968] AC 997, per Lord Upjohn at 1061G - 1062A."*

and at paragraph 55 where he said:-

*"On this matter of disclosure we have, in my judgment, to bear in mind that what matters is the effect of any failure on our appreciation of the overall merits of the case; we are not concerned to discipline or penalise the Secretary of State."*

In these circumstances, the Court does not view favourably the decision not to disclose the relevant reports since it seems to have been available and was alluded to by Mrs. Ganteaume – Farrell. The Court cannot go so far, however, as to place any overtly adverse inference to the failure to disclose but, acting as the Director of Land Administration in these particular circumstances where she purported to make a decision between two opposing parties and so exercised a quasi-judicial function, she ought to have at least produced to this court the building blocks for her thought process and decision-making and to have laid bare the factors she bore in mind including those matters which were not disclosed. In those circumstances, this aspect of a decision-making seems unsubstantiated and without foundation since this court is unable to review vital aspects of the reports and the facts due to nondisclosure. With respect to the allegation that no one had done anything with respect of the court case, it has

to be remembered that, in the event of the death of a plaintiff in a pending court action, order 15 rule 9 of the Rules of the Supreme Court provides for the procedure to be taken by a defendant in the event of the death of a plaintiff. No such step is referred to as having been taken by Mr. Lall.

**4.5. Mrs. Ganteaume - Farrell's conclusions at paragraph 43:**

- 4.5.1. At paragraph 43, she stated that the issue was not exactly the same as the issue she had to decide although the findings of fact might have been helpful. She went on to say that the situation was urgent and she had no indication at the time as to when the court case would be heard. She apparently changed her mind about what she had told Mrs. Maharaj about waiting for the court action when she found out from the police about the threats and was asked to convene the meeting. She went on to say that when she announced the purpose of the meeting, neither Mrs. Maharaj nor the applicant objected and neither of them raised the issue of the court action either at that point or at any point after that.
- 4.5.2. This is a puzzling assertion. Allegations of threats refer to criminal or quasi-criminal activity which must be investigated and dealt with by the police. This is not a matter to be dealt with by the Director of Land Administration. Once again, the Director of Land Administration took it upon herself to usurp the functions of an authority designated by the laws of Trinidad and Tobago to handle allegations of threats or any criminal activity – the police. This is also notwithstanding the provisions of sections 20 and 33 of the State Lands Act mentioned above.
- 4.5.3. In any event, the presence of a policeman at the meeting provided, unfairly in my estimation, an air of authority which could arguably have caused an intimidation of the unrepresented applicant and Mrs.

Maharaj and have prevented or at least impaired full and frank discussions between the parties. It could even have given a false impression as to the authority of the meeting which, in the presence of a police officer, seemed quasi-judicial rather than an informal meeting for the airing of grievances.

4.5.4. The allegations of Mrs. Maharaj and the applicant not objecting seems a difficult proposition to deal with as it is obvious to me that Mrs. Maharaj and the applicant were not properly prepared to deal with the matters raised at the meeting.

4.6. In all of the above circumstances, I find that the findings and decisions made at the meeting were unreasonable and were an improper exercise of Mrs. Ganteaume –Farrell’s discretion and, on occasion as mentioned above, went beyond her jurisdiction.

#### **4.7. The Wednesbury principle:**

4.7.1. What the court has borne in mind in this matter is the principle as set out in the celebrated case of **Associated Picture Houses Ltd. vs Wednesbury Corporation** [1948] 1 KB 223.

4.7.2. In that case, Lord Greene MR said as follows:

4.7.2.1. At page 228;

*“What, then, is the power of the courts? They can only interfere with an act of executive authority if it be shown that the authority has contravened the law. It is for those who assert that the local authority has contravened the law to establish that proposition..... It is not to be assumed prima facie that responsible bodies like the local authority in this case will exceed their powers; but the court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for that authority. It is only concerned with seeing whether or not the proposition is made good. When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a strictly limited class of case. As I have said, it must always be remembered that the court is not a court of appeal. When discretion of this kind is granted the law recognizes certain principles upon which that*

*discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law. What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters"*

4.7.2.2. At page 229;

*"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably."*

4.7.2.3. And at page 233;

*"I do not wish to repeat myself but I will summarize once again the principle applicable. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them."*

- 4.7.3. Therefore, the court is entitled to investigate the action of the local authority with the view to see whether they have taken into account matters which they ought not to take into account or conversely have refused to take into account or neglected to take into account matters which they ought to taken into account.
- 4.7.4. It is clear that the Director of Land Administration neglected to take into account the effect of the tenancy or at the very least, the effect of the payment of rent in relation to the subject lands. There was an obvious holding over after the expiry of the probationary tenancy and the effect of the acceptance of rent had to be considered by mature deliberation. Was their creation of a tenancy at will all a year-to-year tenancy -- was this a tenancy at sufferance? By refusing or neglecting to consider this very important issue, the Director of Land Administration would have failed to take into account the effect of a possible tenancy and the consequent right of the Director of Land Administration to deal with trespassers or squatters on this subject lands. In this case, the State would not necessarily be entitled to immediate possession and so would not have been able to treat with an alleged squatter such as Mr. Lall [see case of **Wirral Borough Council v Smith & or UDC** 43 P&CR 312, 80 LGR 628, 262 EG 1298, 4 HLR 81, [1982] EGD 522]
- 4.7.5. The power to lease land and to receive rent is referred to at section 4 [4] of the State Lands Act as set out above and is set out in the regulations referred to in section 4 [4] [b] of the said Act. Those regulations deal with the power to grant leases and receive rent at Part IV of the regulations at sections 51 to 53.
- 4.7.6. The receipt of the rental subsequent to the expiry of the probationary tenancy was in keeping with the powers delegated to the office of the

Director of Land Administration and therefore was within the district revenue office's authority and jurisdiction to act for the state as provided for in the **State Lands Act** and as expressly provided for in the probationary tenancy agreement. As such, the case of the **Atty. Gen. for Ceylon –v- A.D. Silva** referred to by the Respondent is differentiable as the public officer in that matter sort to perform an unauthorized function by entering into a contract which was not binding on the crown by reason of an express term in the relevant Ordinance.

4.7.7. Further, the Director of Land Administration has sought to give effect to a policy in relation to a squatter which is more related to the policy under the **State Land (Regularization of Squatters) Act** rather than the **State Lands Act** as can be seen from the letter dated the 29th day of October 2003.

4.7.8. Further, the Director of Land Administration did not seem to consider the manner in which the deceased practiced his agricultural husbandry which was a consideration germane to the entire process and the exercise of the discretion to grant the standard agricultural lease. Without the benefit of the field reports, there seemed to be no consideration of the type of farmer that the deceased was, and subsequent to him, his sons who went into possession and then his daughter and her husband.

#### **4.8. The failure to cross examine:**

4.8.1. The Court finds that there was no actual dispute which would have necessitated cross examination to sort out factual matters upon which the Court would have had to have considered as a matter of relevancy.

4.8.2. In any event, cross-examination in judicial review is extremely rare as stated in the respondent's authority of "Judicial Remedies in Public Law" at paragraph 9 – 094 and were not, in this Court's respectful

view, required in this matter (see the case of **The Honourable Patrick Manning v The Honourable Satnarine Sharma** – CA 2007-21 – a decision of our Court of Appeal on cross examination in judicial review matters).

#### **4.9. The letters and the concept of Legitimate Expectation:**

4.9.1. This expectation would have arisen as a result of the letter dated the 10<sup>th</sup> September 2003.

4.9.2. In considering the law in this area, regard must be had to the decision of the local Court of Appeal in Civil Appeal No. 113 of 2008 between the **Attorney General Trinidad and Tobago –v- Francis Paponnette and others** - a decision delivered by the Hon. Margot Warner JA delivered on 23 January 2009 - where, after considering the relevant case law on point, the learned judge crystallized the principle of legitimate expectation at pages 18 and 19 as follows:-

*“.... a claimant must demonstrate*

- (i) A “clear, precise and unambiguous representation, devoid of relevant qualifications” and*
- (ii) The court must be persuaded that there has been “conspicuous unfairness” amounting to an abuse of power in order to file a claim of “substantive legitimate expectation”. Inherent in this criterion would be a state of affairs, “so plain and obvious” that it would demand that it be set right.”*

4.9.3. As was stated in the case of **R v Department for Education and Employment, ex parte Begbie** CO/4561/98:

*“He relies on the Privy Council case of Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629, [1983] 2 All ER 346. Lord Fraser of Tullybelton said of legitimate expectations (page 637 of the former report): “The expectations may be based upon some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry.”*

*His Lordship referred to R v Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators Association [1972] 2 QB 299, [1972] 2 All ER 589. Turning to the question of policy, he stated (page 638): "The justification for it is primarily that, when a public authority has promised to follow a certain procedure, it is in the interests of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty." ..... In R v Devon County Council, ex parte Baker [1995] 1 All ER 73, 11 BMLR 141, at page 88 of the former report, Simon Brown LJ considered some of the distinct senses in which the phrase 'legitimate expectation' is nowadays used. He said: "Sometimes the phrase is used to denote a substantive right: an entitlement that the claimant asserts cannot be denied him . . . various authorities show that the claimant's right will only be found established when there is a clear and unambiguous representation upon which it was reasonable for him to rely. Then the administrator or other public body will be held bound in fairness by the representation made unless only its promise or undertaking as to how its power would be exercised is inconsistent with the statutory duties imposed upon it. The doctrine employed in this sense is akin to an estoppel. In so far as the public body's representation is communicated by way of a stated policy, this type of legitimate expectation falls into two distinct sub categories: cases in which the authority are held entitled to change their policy even so as to effect the claimant, and those in which they are not."*

- 4.9.4. It is clear to this court that the letter of the 10<sup>th</sup> September 2003 created a legitimate expectation which the applicant and Mrs. Maharaj obviously relied upon especially when the circumstances of the 14<sup>th</sup> October 2003 meeting are considered. It can be said that, without that unequivocal assurance in writing, the applicant and Mrs. Maharaj would have been expected to have been more vigilant in their approach to that meeting and even to whether they ought to have participated in it in the manner in which they did. They were armed with an assurance in writing and so could rightly have expected to have been treated with some deference and regard. That did not materialize and the 14<sup>th</sup> October meeting was conducted as if that letter of the 10<sup>th</sup> September did not exist. But it did. It is also reasonable to assume that having relied upon the letter, and faced with the decision of the 14<sup>th</sup> October after the meeting, the applicant would have wanted to get an early determination of this issue as to

the validity of the decision as it would have impacted upon the pending High Court proceedings and the merit of pursuing the same. All of these are possible consequences arising from the 10<sup>th</sup> September letter and as such this Court views that letter as pivotal in the manner in which this matter was handled.

- 4.9.5. As such, this Court finds that there was a legitimate expectation arising out of the 10<sup>th</sup> September 2003 correspondence in relation to the applicant, as executor of the will of the deceased and the beneficiary under the estate – Mrs. Maharaj.

**4.10. The Director of Land Administration’s recommendation and the letter of the 29<sup>th</sup> October 2003:**

- 4.10.1. The respondent's contention in his submissions is that the Director of Land Administration made a decision as to whom to recommend for the grant of an agricultural tenancy, not that she purported to decide to whom the lease would be granted.
- 4.10.2. Yet it is without doubt that the recommendation was one which the Commissioner of State Lands would have relied upon in deciding to whom the lease should be granted. The Director of Land Administration’s decision is reflected in the letter of the 29<sup>th</sup> day of October 2003 which, amongst other things, refers to a breach of the terms of the probationary tenancy agreement without referring to the nature of the breaches and the dates of these breaches. This information, which to date has not yet been provided, is salient to the issues before this court. If the alleged breaches occurred after the 20<sup>th</sup> July 1986, the existence of a yearly tenancy in favour of the estate of the deceased would be confirmed. Further, the said letter referred to “investigations and reports from our extension and land Officers” revealing that Mr. Lall was in occupation of and cultivated the subject lands from about the year 1979 obviously referring to matters raised at

the 14<sup>th</sup> October meeting and stated in the affidavit of Mrs. Ganteaume-Farrell. None of these were produced to the applicant of Mrs. Maharaj and were merely raised at the meeting in the manner mentioned above.

- 4.10.3. The well known House of Lords case of **Surinder Singh Kanda v Government of the Federation of Malaya** (1962) AC 322 is of great assistance and relevance in which Lord Denning said:-

*"In the opinion of their Lordships, however, the proper approach is somewhat different. The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: Nemo iudex in causa sua: and Audi alteram partem. They have recently been put in the two words, Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. In the present case inspector Kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.*

*If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.*

- 4.10.4. This letter of the 29<sup>th</sup> October 2003 is signed by the Permanent Secretary of the Ministry of Agriculture, Land and Marine Resources and is not intituled as coming from the Land Administration Division (as in the case of the 10<sup>th</sup> September 2003 letter from Mrs. Ganteaume-Farrell) and refers therein to a different policy as enunciated by Mrs. Ganteaume –Farrell in her affidavit. This letter speaks of being "*constrained by the policy of state to regularize the status of eligible persons who have been in occupation of state land and cultivating it continuously for at least five (5) years.*" What then is the true policy which guides the Commissioner of State Lands? How does the Ministry fit into this policy making/implementation

framework? What role does the Permanent Secretary play in relation to the functions of the Director of Land Administration and the jurisdiction and responsibilities of the Commissioner of State Lands? All of this is within the knowledge and purview of the Respondent in this matter and yet these matters were never clarified in the evidence or at the trial. This Court therefore is not able to ascertain the limits of these various players in relation to the Act and to say exactly who was acting in what capacity and under what jurisdiction. What can be said, however, is that it seems to this Court that the recommendation of the Director of Land Administration is likely to be relied upon and followed by the Commissioner of State Lands in the grant of leases as I accept the purpose of the Land Administration Division is as set out in paragraph 5 of the affidavit of Mrs. Ganteaume –Farrell which was, *"among other things, to select tenants for state agriculture lands in accordance with government policy, to monitor their performance and ensure that they are keeping to the terms of the leases, to resolve situations where leases have been wrongfully assigned, and to prepare all documentation and keep all the records necessary for those purposes."* If the Land Administration Division's function is to select tenants and those tenants are then given leases by the Commissioner of State Lands, it follows that the selection of the tenants by the Land Administration Division is then followed by the Commissioner of State Lands to grant leases as a consequence of the selection process.

- 4.10.5. It is further not clear to this Court by what means, if at all, the Commissioner of State Lands sought to delegate any part of her duties and responsibilities to this Land Administration Division or to the Ministry of Agriculture, Land and Marine Resources but this court can find no such power to delegate her responsibilities and so can safely say that the recommendations are the basis on which the

Commissioner of State Lands acts in exercise of her duties and responsibilities.

4.10.6. The letter of the 29<sup>th</sup> October 2003 therefore seems therefore to represent the basis upon which Commissioner of State Lands would grant a lease and is therefore a significant link in the decision making process. To ignore it and its significance would in this Court's view be folly as it was the culmination of a purported fact finding and determination process adopted by these various arms of the Ministry all of which seems to this Court to be instrumental in the final decision.

4.10.7. For the reasons given above, this letter of the Permanent Secretary would, in this Court's view, have carried sufficient weight to have influenced the Commissioner of State Lands in the exercise of her responsibilities and its effect has to be considered. In the circumstances, and in light of the previous findings in relation to the efficacy of the 14<sup>th</sup> October meeting and the validity of findings consequent thereon, it is this Court's view that the findings and matters expressed in this letter are unreasonable and cannot stand in the face of the state of the facts which existed at that time.

#### **4.11. The declaration as to the policy of the State :**

4.11.1. This Court agrees with the submissions of and the legal authority cited by the Respondent in this regard and note that for the policy to be challenged, if it can be challenged in this way, all of the relevant parties are required to be before this Court. In this case, the relevant parties in respect of this policy are not parties to this matter so that the discretionary relief of a declaration in this regard is not possible.

#### **5. Conclusion:**

5.1. In the circumstances, the court is of the view that the decisions made at the said meeting and set out in the 29<sup>th</sup> October letter are bad. However,

the court cannot go so far as to recommend or cause the recommendation as to whom the lease of the lot number 60 ought to be granted since that would be beyond this court's jurisdiction since it is not charged with the responsibility of making decisions and determinations in respect of the lease of State lands. That is a jurisdiction and responsibility delegated to the Commissioner of State Lands by Parliament and of that decision ought to be exercised in terms of whatever policy is now applicable to these lands. As such, the court makes the following order:

- 5.1.1. An Order of Certiorari is hereby granted quashing the decision of the Director Land Administration, Land Administration Division, Ministry of Agriculture, Land and Marine Resources made on the 14<sup>th</sup> October, 2003 and evidenced by letter dated 29<sup>th</sup> October, 2003 (hereinafter referred to as "the said decision") to recommend that the Commissioner of State Lands do grant onto Joseph Lall a lease of Lot Number 60, Orange Grove Estate, Macoya in preference to Mrs. Radica Maharaj, the lawful beneficiary under the last Will and Testament of the deceased Bissessar Ramlogan also called Bissessar Ramlogan (hereinafter referred to as "the deceased");
- 5.1.2. A Declaration is hereby granted that the said decision is unreasonable, irregular or an improper exercise of discretion.
- 5.1.3. A Declaration is hereby granted that the Director Land Administration, Land Administration Division, the Ministry of Agriculture, Land and Marine Resources acted in breach of the principles of natural justice when she (i) did not allow the Applicant and/or Mrs. Maharaj to make any and/or any effective representations on their behalf and/or (ii) did not make the Applicant and/or Mrs. Maharaj aware of the agenda for the meeting of 14<sup>th</sup> October, 2003.
- 5.1.4. The issue as to whom the lease of lot number 60, Orange Grove Estate, Macoya is to be granted is referred to the Commissioner of

State lands pending the determination of High Court action number 895 of 1993 providing that if the applicant fails to make an application in that said High Court action number 895 of 1993 to be substituted for the deceased plaintiff therein within 30 days of the date of this judgment, the Commissioner of State lands shall be at liberty to proceed to determine the issue as to whom the lease of lot number 60, Orange Grove Estate, Macoya is to be granted without reference to the said High Court action.

5.1.5. The issue of damages if any sustained by the applicant in this matter is referred to a Master in Chambers for assessment.

5.1.6. The Respondent shall pay the Applicant's costs of this action.

Devindra Rampersad

Judge (ag.)