

**(1867) 02 CAL CK 0006**

**Calcutta High Court**

**Case No:** Special Appeal No. 3354 of 1864 and Regular Appeal No. 71 of 1865

Bebée Golebunnessa and  
Another

APPELLANT

Vs

The Magistrate of Maldah on  
behalf of Government <BR>  
Romanath Tagore and Another  
Vs The Collector of Pubna on  
behalf of Government

RESPONDENT

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**Date of Decision:** Feb. 25, 1867

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**Judgement**

Sir Barnes Peacock, Kt., C.J.

The question in this case is, whether, when a ferry, previously held under private management, has been declared to be a public ferry by the Government, under the provisions of Regulation VI of 1819, s. 3, an individual claiming compensation for the loss alleged to have been sustained by him, in consequence of the extension of the authority of the Government, can maintain any action in the Civil Courts to enforce his claim. In considering this question, it is necessary to remember that the Government of this country has, in various Regulations, and otherwise, always asserted its paramount right to deal with ferries, and claims to take tolls at ferries, for providing passage over rivers; see Regulation XVIII of 1806, s. 2, cls. 4, 5, 6; Regulation XIX of 1816; and Circular Order, Sudder and Nizamut Adawlut, 25th July 1845, No. 208. By Regulation XIX of 1816, s. 9, it was expressly provided that the Courts of Judicature should not take cognizance of any claims to deduction or compensation on account of the tolls levied at any ferry, &c. These words are not found in Regulation VI of 1819. It is argued that the Civil Courts must therefore have jurisdiction.

2. S. 1 of Act VIII of 1859 has been referred to in argument as giving such right. It says that "the Civil Courts shall take cognizance of all suits of a civil nature." That is, the Civil Court is competent to investigate the complaint of the suitor, and determine whether he has a legal right or not. Although the Court has cognizance of

the suit, it cannot decree for the plaintiff unless he has a cause of action. The question then arises whether there is a cause of action vested in the claimant. Regulation VI of 1819, s. 3, describes what ferries are to be considered public ferries. Cl. 2 of that section reserves to the Government the power of determining what ferries shall be deemed public ferries, subject to the immediate control of the Magistrates. It prohibits Magistrates from assuming the management of ferries which have not been let in farm or held khas, or otherwise subjected to assessment by the Collector, &c., without the previous authority of Government. S. 5 requires lists of all public ferries to be stuck up in the cutcherries and thannas. S. 6 enacts that "such ferries shall exclusively belong to Government, and no person shall be allowed to employ a ferry boat, plying for hire at or in their immediate vicinity, without the previous sanction of the Magistrate or Joint Magistrate." If the Regulation stopped there, it is clear that the plaintiff would have no legal claim under this Regulation for compensation. But it was considered not right to deprive the party altogether of compensation for the loss of privileges which had been de facto enjoyed; and the section goes on to provide, "that due attention shall be paid to all claims for compensation which may be preferred by individuals for any loss which may be sustained by them in consequence of the extension of the authority of Government to ferries hitherto under their private management, and which may not have been heretofore let in farm or held khas, or otherwise deemed subject to assessment on account of Government." An Act, or Regulation, does not usually give a right to claim compensation by saying that due attention shall be paid to a claim. But the Regulation goes further, and shows how such claims are to be enquired into: cl. 2 says:--"Claims of that nature shall be enquired into by the Magistrates and Joint Magistrates, and their opinion on the merits of each case shall be reported, through the channel of the Superintendent of Police, for the consideration and orders of Government." It appears to us, therefore, that when the Legislature said that these claims should receive due attention, it meant no more than that they should be enquired into in the manner provided by the Regulation, and that it did not intend to give any right enforceable by suits in Court. The case is analogous to that of *Stevens v. Jeacocke* 11 Q.B., 731 and *Doe dem. The Bishop of Rochester v. Bridges* 1 B. & Ad., 847, where the Court of Queen's Bench in England laid it down that if the Legislature creates an obligation to be enforced in a specific manner as a general rule, performance cannot be enforced in any other way.

3. We think that the rule laid down in the decision of the Sudder Court in *The Government v. Brijosoondree Dasee* S.D.A., 1848, 456 was right, though we do not adopt the reasons there assigned for the rule. The decision of the lower Courts will be reversed, and a decree given for the defendants with costs. This decision, it is admitted by all parties, will govern Regular Appeal No. 71 of 1865.

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(1) By s. 4, Beng. Act I of 1866, "All claims for compensation which may be preferred by any person or persona for any loss which may be sustained by them in

consequence of any ferry having been declared public as aforesaid, shall be enquired into by such Magistrate, who shall award compensation to any person or persons who may appear justly entitled thereto.