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# MADRAS RECORD OFFICE

## Government of Madras

*Revenue* DEPARTMENT

|                     |            |       |
|---------------------|------------|-------|
| G.O. No.            | 19         | Press |
| <del>B.P. No.</del> |            | Mis.  |
| Dated               | 5. 1. 1872 | 195   |

Not to be folded or roughly handled

No. 352. Read the following letter  
the Secretary to Government  
20th November 1871, No. 1

Government Pleader, Madras, to  
Public Works Department, dated Madras,

WITH reference to the Proceed

G. O., 9th September 1871, No. 2,202.  
" 2nd October " " 2 " A.

Hunter and the Government, and have  
connected with the subject, forwarded to  
Proceedings, and the following is my opi

Government noted in the margin, I  
the honour to state that I have  
ferred with the Collector of Salem on  
subj the disputes between Major  
efully considered the further papers  
subsequently to the date of the above  
on the questions referred to me.

2. From the information which I have obtained, I am of opinion that Major  
Hunter's claim to those portions of the Ahtoor and Nagalore Ghaut roads, which  
pass through his estates of Patchipadi and Karaduzoor on the Shevaroy Hills as  
his own property, is entirely unfounded. Major Hunter purchased those estates  
from Government in February 1864, prior to which they were Government waste  
lands. The deeds of conveyance to him, dated 12th April 1864, contain a reser-  
vation of all existing and customary rights of Government and adjoining pro-  
prietors in all existing roads and paths. The papers before me appear to show  
conclusively that the roads in question were existing at that date, and were,  
therefore, reserved out of the conveyance. To make this clear it will be necessary  
shortly to go into the history of these roads separately.

3. The Ahtoor Ghaut was commenced by Major Hunter in 1861 with Rupees  
800 granted by Government to meet a like sum supplied by the planters of the  
district. Prior to that there had been a native path taking nearly the same line,  
but not, as I understand, going through the land which afterwards became Major  
Hunter's Patchipadi estate. Subsequently, a further grant of Rupees 5,000 was  
made by Government for the completion of a road by Major Hunter, 6 feet wide  
and with a gradient of 1 in 9. In May 1863 a further sum of Rupees 5,000 was  
placed at his disposal on his undertaking to widen the road to 12 feet throughout.  
Thus, before Major Hunter purchased his estate, Government had, while the land  
was their own property, sanctioned a road 12 feet wide through it, and had actually  
paid the money for its construction to him, thereby dedicating to the public a  
road of those dimensions, and the rights of Government and the public in such a  
road were, therefore, reserved by the clause in Major Hunter's deed of conveyance  
before alluded to.

4. The foregoing remarks apply to the Nagalore Ghaut, for which  
Rupees 2,750 altogether were paid at different times by Government to Major  
Hunter, the last grant being in June 1862 made upon his undertaking, as in the  
case of the Ahtoor Ghaut, to make the road 12 feet in width throughout.

5. It is possible that Major Hunter's roads were not completed at the time of his purchase, and that therefore it cannot be  
said that they were existing roads with the meaning of the reservation clause in  
the deeds of conveyance. It does not appear from the report of Major Shaw Stewart  
and Mr. Pinson that at that date, some months subsequent to his

purchase of the lands, he had not intended the construction of the roads according to his contract, and, in fact, up to the present time he never has done so; but, I think, this can make no difference in the construction of roads of the specified dimensions for the use of the public. That he should obtain his purchase. That he should obtain his own breach of contract that which he never would have obtained under his conveyance without it is, to my mind, an idea too monstrous to be seriously entertained. It must be remembered too that the roads had been more or less open and used by the public ever since 1861, so that at the utmost the dispute can only as to the width of the existing roads at the time of his purchase.

6. I believe Major Hunter relied good deal upon the fact that the area of the roads was not deducted from the total area included in his title-deeds, but this, which was no doubt a mistake, cannot, I think, avail him in the face of the clause expressly reserving and excepting out of the conveyance the existing roads and paths. The roads are, moreover, marked in the plans attached to the deeds which were signed by Major Hunter as correct.

7. I think that the best way to settle the matter will be by a suit against Major Hunter to establish the title of Government to the roads in question, in which damages can also be claimed for the injury which he has caused to parts of the ghauts. The form of the suit would be one for a declaration of the right of Government and the public to a 12 feet road through Major Hunter's estates, for an injunction to compel him to remove the coffee plants which he has planted within the limits of the roads, and to restrain him from interfering with the officers of the Public Works Department in keeping the roads in repair and for damages for the injury done by him to the roads.

8. With regard to the second question referred to me, namely, "whether in the event of Major Hunter refusing to render an account of the expenditure incurred by him from the Government grant of Rupees 12,550, he is liable to prosecution in the Civil Courts for misappropriation of public money," my opinion is in the negative. The sums making up that amount appear to have been given to Major Hunter as the contract price, for which he undertook to construct the roads. This is expressly stated in the Proceedings of Government of 2nd August 1862, G. O., No. 1,834, to have been the intention of Government in respect to the first grant of Rupees 5,000 for the Ahtoor Ghaut, and the other grants making up the Rupees 12,550 appear to have been made on similar terms. Of course if a deliberate intention to defraud the Government by obtaining money, which he had no intention of applying to the purpose for which it was given, were brought home to Major Hunter, he would be liable to a criminal prosecution, but this I apprehend is not suggested. In my opinion, therefore, the only legal proceeding that can be taken against him in this matter is an action for breach of contract, and considering that more than seven years have elapsed since Major Shaw Stewart and Mr. Pinson were appointed against the way in which Major Hunter had executed the work, that the opinion of those gentlemen is to some extent in direct conflict with that of the officers of Government who had previ-

ously reported favourably of Major Hunter's conduct in the matter, and, as to the amount actually expended, with that of the present local officers, as I am informed, I do not advise any such being taken.

No. 353. ORDER THEREON, 20th December 1871. No. 3,205.

ESTABLISHMENT, No. 20.

In this letter the Government Pleader expresses his opinions on the questions which were referred to him for consideration in G. O., No. 2,302, dated 9th September 1871, in connection (1) with the claim put forward by Major Hunter to the Ghaut roads which pass through his estates at Shevaroy, and (2) with the expenditure from the Government grant of Rupees 12,550 to have been incurred by him.

2. Under the views expressed in paragraphs 2 to 7, His Excellency the Governor in Council resolves to authorize the Superintending Engineer of the 5th Division to institute a suit against Major Hunter with the objects indicated in paragraph 7, damages being claimed for the injury caused to parts of the ghauts.

3. For the reasons explained in paragraph 8, the intention to prosecute Major Hunter in the event of his refusing to render an account of the outlay incurred from the Government funds at his disposal must be abandoned.

(The Enact.)

*W. S. S. S.*

Colonel, R.E.,

Secretary to Government.

To the Government Pleader.

- .. Superintending Engineer, 5th Division.
- .. Collector of Salem.
- .. Revenue Department.
- .. Controller of Public Works Accounts.
- .. Financial Department.

No. 110  
Govt. of (1871) Madras

PUBLIC WORKS.

THE GOVERNMENT PLEADER.

cc. cc. cc.

Dated December 20th.

Recd. 22

Encl.

G. O., 20th December 1871, No. 3,205.

*To the Govt. Office*

DECEMBER

Nos. 352-353

*Recd. 24/1/74*

*Dec 20 1871*

Major Hunter.—Passing orders on the letter from the Government Pleader advising as to the legal proceedings to be taken against Major Hunter in the matter of the Choor and Nagalore Ghauts on the Chevaroy Hills.

*19/1/74*