

The Ancient Monuments Preservation Act, 1977 (1920 A. D.)

Act No. 5 of 1977

JK254

[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 read with State Council Resolution No. 1, dated 8th April, 1925, (Notification No. 14-L/81)].

An Act to provide for preservation of Ancient Monuments and of objects of archaeological, historical or artistic interest.

Whereas it is expedient to provide for the preservation of ancient monuments, for the exercise, of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archaeological, historical or artistic interest; it is hereby enacted as follows :-

1. Short title, extent and commencement. - (1) This Act may be called the Jammu and Kashmir Ancient Monuments Preservation Act, 1977.

(2) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st day of Baisakh 1978.

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context-

(1) "Ancient monument" means any structure erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or [artistic interest and has been in existence for not less than one hundred years], or any remains thereof and includes-

(a) the site of an ancient monument;

(b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or other wise preserving such monument; and

(c) the means of access to and convenient inspection of an ancient monument;

(2) "Antiquities" include any movable objects which the Government, by reason of their historical or archaeological associations, may think it necessary to protect against injury, removal or dispersion;

[(3) "Archaeological Officer" means any Officer of the Archaeology Department, not below the rank of Deputy Director;

(3A) "construction" means any erection of a structure or a building, including any addition or extension thereto, either vertically or horizontally but does not include any reconstruction, repair or renovation of an existing structure or building or, construction, maintenance and cleansing of drains or drainage works or public

latrines, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or the construction and maintenance of works meant for providing supply of water for public, or the construction, maintenance, extension and management for supply and distribution of electricity to the public, or provision for similar facilities for public;]

- (4) "Maintain" and "maintenance," include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for die purpose of maintaining a protected monument or of securing convenient access thereto;
- (5) "Land" includes a revenue-free estate, a revenue paying estate, and a permanent transferable tenure whether such estate or tenure be subject to encumbrance, or not;
- (5A) "Minister" means the Minister-in-charge of the Archaeological Department; and
- (6) "Owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee :

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

[(7) "prescribed" means prescribed by rules framed under this Act; and

(8) "State Protected Monument" means any monument declared to be protected under this Act.]

3. Protected monuments. - (1) The [Government] may, by notification in the Government Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

(2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimating that any objections to the issue of the notification received by the [Government] within two months from the date when it is so. Fixed up will be taken into consideration.

(3) On the expiry of the said period of two months, the [Government] after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.

4. Acquisition of rights in or guardianship of an ancient monument. - (1) The Superintendent of Archaeology, with the sanction of [the Government], may purchase or take a lease of any protected monument.

(2) The Superintendent of Archaeology, with the like sanction, may accept a gift or bequest of any protected monument.

(3) The owner of any protected monument may, by written instrument, constitute the [Director Archaeology] the guardian of the monument, and the [Director Archaeology] may, with the sanction of [the Government], accept such guardianship.

(4) When the [Director Archaeology] has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the [Director Archaeology] had not been constituted guardian thereof.

(5) When the [Director Archaeology] has accepted the guardianship of a monument under sub-section (3), the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the [Director Archaeology] [may, with prior sanction of the Government, assume] the guardianship of the monument.

5. Preservation of ancient monument by agreement. - (1) The Superintendent of Archaeology may, with the previous sanction of [the Government] propose to the owner to enter into an agreement with [the] [Government, within a specified period, for the preservation] of any protected monument.

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement :-

(a) the maintenance of the monument;

(b) custody of the monument, and the duties of any person who may be employed to watch it :

(c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument;

(d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Superintendent of Archaeology to inspect or maintain the monument;

(e) the notice to be given to the Government in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the Government to purchase such land, or any specified portion of such land, at its market value;

(f) the payment of any expenses incurred by the owner or by the Government in connection with the preservation of the monument;

(g) the proprietary or other rights which are to vest in [the Government] in respect of the monument when any expenses are incurred by the Government in connection with the preservation of the monument;

(h) the appointment of an authority to decide any dispute arising out of the agreement; and

(i) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the Government.

(3) An agreement under this section may be executed by the Superintendent of Archaeology on behalf of [the Government] but shall not be so executed until it has been approved by [the Government.]

[(3A) If any owner or other person competent to enter into an agreement under subsection (2) for the maintenance of protected monument refuses or fails to enter into any such agreement within the specified time, the Government on the motion of Director, Archaeology, may make an order providing for all or any of the matters specified in subsection (2) and such order shall be binding on the owner or such other person and on every person claiming title to the monument from, through or under the owner or such other person.]

(4) The terms of an agreement under this section may be altered from time to time with the sanction of [the Government] and with the consent of the owner.

(5) With the previous sanction of [the Government] the Superintendent of Archaeology may terminate an agreement under this section on giving six month's notice in writing to the owner.

(6) The owner may terminate an agreement under this section on giving six month's notice to the Superintendent of Archaeology.

[Provided that where the agreement is terminated by the owner, he shall pay to the Government, the expenses, if any, incurred by the Government on the maintenance of the monument during the five years immediately preceding the termination of the agreement or, if the agreement has been in force for a shorter period, during the period the agreement was in force.]

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be effected by the termination of an agreement under this section.

6. Owner under disability or not in possession. - (1) If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

(2) In the case of village property, the headman or other village officer exercising powers of management over such property may exercise the powers conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

7. Enforcement of agreement. - (1) If the Superintendent of Archaeology apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the [Deputy Commissioner] on the motion of the Superintendent of Archaeology may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5, refuses to do any act which is in the opinion of the Superintendent of Archaeology necessary to such preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed the Superintendent of Archaeology, the Superintendent of Archaeology, may authorise any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land revenue.

(3) A person aggrieved by an order made under this section may appeal to the Minister, who may cancel or modify it and whose decision shall be final.

8. Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner. - Every person who purchases, at a sale for arrears of land revenue or any other public demand, an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5, and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

9. Application of endowment to repair of an ancient monument. - (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into him by the Superintendent of Archaeology, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Superintendent of Archaeology may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed [one lakh rupees], may make an application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

10. Compulsory purchase of ancient monument. - (1) If [the Government] apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, [the Government] may proceed to acquire it under the provisions of the Land Acquisition Act, as if the preservation of a protected monument were a "public purpose" within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of-

(a) any monument which or any part of which is periodically used for religious observances; or

(b) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such

reasonable period as the Superintendent of Archaeology may fix in this behalf, to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

[10A. Power of Government to control mining etc., near ancient monuments. - (1)

If the Government is of opinion that mining, quarrying, excavating, blasting and other operations of a like nature should be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Government may, by notification in the Government Gazette, make rules

- (a) fixing, the boundaries of the area to which the rules are to apply,
- (b) forbidding the carrying on of mining, quarrying, excavating, blasting or any operation of a like nature except in accordance with the rules and with the terms of a licence, and
- [(bb) prohibiting any person including the owner or occupiers of the monument from constructing any building within the protected area or utilizing such area or any part of thereof in any manner without the permission of the Government.]
- (c) prescribing the authority by which and the terms on which licences may be granted to carry on any of the said operations.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to [twenty thousand rupees].

(4) If any person or occupier of land included in a notification under sub-section (1) proves to the satisfaction of the Government that he has sustained loss by reason of such land being so included, the Government shall pay compensation in respect of such loss.]

[(5) The Government may, by order, direct that any building constructed by any person within a protected area in contravention of provisions of sub-section (1) shall be removed within a specified period and if the person refuses or fails to comply with the order, the Deputy Commissioner, on the motion of Director, Archaeology may cause the building to be removed and the person shall be liable to pay cost of such removal to be recovered as arrears of land revenue.]

[10B. Prohibited and regulated areas. - Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of 100 meters in all directions shall be the prohibited area in respect of such protected area or protected monument, both in respect of protected monuments, declared as such or which are proposed to be declared as such protected monument under section 3:

Provided that the Government may on the recommendation of the Director, Archaeology by notification in the Official Gazette, specify an area exceeding the distance of hundred meters to be the prohibited area.

10C. Construction in and around protected monument. - No new construction shall be allowed in or around the prohibited area, as specified or declared under this Act: Provided that Government may, on the recommendation of the Director Archaeology and in the public interest, create public amenities in the area.]

11. Maintenance of certain protected monuments. - (1) The [Director Archaeology] shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 or which the Government has acquired under section 10.

(2) When the [Director Archaeology] has accepted the guardianship of a monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself or by his agents, subordinates and workmen, for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

12. Voluntary contributions. - The [Director Archaeology] may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him : Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

13. Protection of place of worship from misuse, pollution or desecration. - (1) A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character.

(2) Where the Superintendent of Archaeology has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, [or has accepted] the guardianship thereof, and such monument, or any part thereof is periodically used for religious worship or observances by any community, the Superintendent of Archaeology in consultation with the Deputy Commissioner shall make due provision for the protection of such monument, or such part thereof from pollution or desecration-

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

14. Relinquishment of Government right in a monument. - [The Government] may-

(a) where rights have been acquired by Government in respect of any emolument under this Act by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired; or

(b) relinquish any guardianship of a monument which it has accepted under this Act.

15. Right of access to certain protected monuments. - (1) Subject to such rules as may after previous publication be made by [the Government], the public shall have a right of access to any monument maintained by the Government under this Act.

(2) In making any rule under sub-section (1) [the Government] may provide that a breach of it shall be punishable with fine which may extend to [one thousand rupees].

16. Penalties. - Any person other than the owner who destroys, removes, injures, alters, defaces or imperils, a protected monument, and any owner who destroys, removes, injures, alters, defaces or imperils a monument maintained by Government under this Act or in respect of which an agreement has been executed under section 5, and any owner or occupier who contravenes an order made under section 7, subsection (1), shall be punishable with fine which may extend to [twenty thousand] rupees, or with imprisonment which may extend to three months, or with both.

Traffic in Antiquities

17. Power of Government to control traffic in antiquities. - (1) If [the Government] apprehends that antiquities are being sold or removed to the detriment of the State or of any neighbouring country, it may, by notification in the Government Gazette, prohibit or restrict the bringing or taking of any antiquities or class of antiquities described in the notification into or out of the State or any specified part of the State.

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of the State or any part of the State in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to [twenty thousand rupees or with imprisonment which may extend to three months or with both].

(3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation.

(4) A Revenue Officer not lower in rank than a Naib-Tehsildar an Officer of Customs, or [an Officer of Police not below the rank of Deputy Superintendent of Police or an Officer of Archaeology Department not below the rank of Assistant Director], duly empowered by [the Government] in this behalf, may search any vessel, cart or other means of conveyance, and may open any baggage or package of goods, if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein.

(5) A person who complains that the power of search mentioned in sub section (4) has been vexatiously or improperly exercised may address his complaint to the [Government] and the [Government] shall pass such order and may award such compensation, if any, as appears to it to be just.

Protection of Sculptures, Carvings, Images, Bas-Reliefs, Inscriptions or Like Objects

18. Power of Government to control moving of sculptures, carvings or like objects. - (1) If [the Government] consider that any sculptures, carvings, images, bas-reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the Government, [the Government] may, by notification in the Government Gazette, direct that any such object or any class of such objects shall not be moved unless with the written permission of the Superintendent of Archaeology.

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish, in regard to such object or objects, any information which the Superintendent of Archaeology may require.

(3) If the Superintendent of Archaeology refuses to grant such permission, the applicant may appeal to the Minister, whose decision shall be final.

(4) Any person who moves any object in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to [twenty thousand rupees or with imprisonment which may extend to three months or with both].

(5) If the owner of any property proves to the satisfaction of [the Government] that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (1), [the Government] shall either-

- (a) exempt such property from the said notification;
- (b) purchase such property, if it be movable at its market-value; or
- (c) pay compensation for any loss or damage sustained by the owner of such property, if it be immovable.

19. Purchase of sculptures, carvings or like object by the Government. - (1) If [the Government] apprehend that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, [the Government] may pass orders for the compulsory purchase of such object at its market value, and the Superintendent of Archaeology shall there upon give notice to the owner of the object to be purchased.

(2) The power of compulsory purchase given by this section shall not extend to-

- (a) any image or symbol actually used for the purpose of any religious observance;
or
- (b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

Archaeological Excavation

[20. Power of Government to notify areas as protected. - (1) If the Government is of opinion that excavation for archaeological purposes in any area should be restricted, or regulated in the interest of archaeological research, the Government may, by notification in the Government Gazette specifying the boundaries of the area, declare it to be a protected area.

(2) From the date of such notification all antiquities buried in the protected area shall be the property of Government and shall be deemed to be in the possession of Government, and shall remain the property and in the possession of the Government until ownership thereof is transferred; but in all other respects the rights of any owner or occupier of and in such area shall not be affected.

20A. Power to enter upon and make excavation in a protected area. - (1) Any officer of the Archaeological Department or any person holding a licence under section 20-B may, with the written permission of the [Deputy commissioner] or in the case of Ladakh District, the [Deputy Commissioner] of that District, enter upon and make excavations in any protected area.

(2) Where in the exercise of the power conferred by sub-section (1) the rights of any person are infringed by the occupation or disturbance of the surface of any land, the Government shall pay to that person compensation for the infringement.

20B. Power of Government to make rules regulating archaeological excavation in protected areas. - (1) The Government may make rules, -

- (a) prescribing the authorities by whom licences to excavate for archaeological purposes in a protected area may be granted;
- (b) regulating the conditions on which such licences may be granted, the form of such licences and the taking of security from licensees;
- (c) prescribing the manner in which antiquities found by a licensee shall be divided between Government and the licensee; and
- (d) generally to carry out the purposes of section 20.

(2) The power to make rules given by this sections subject to the condition of rules being, made after previous publication.

(3) Such rules may be general for all protected areas for the time being, or may be special for any particular protected area or areas.

(4) Such rules shall provide that any person committing a breach of any such rule or any condition of a licence issued under this section shall be punishable with fine which may extend to [twenty thousand rupees], and may further provide that where the breach has been by the agent or servant of a licensee, the licensee himself shall be punishable.

20C. Power to acquire a protected area. - If the Government is of opinion that a protected area contains an ancient monument or antiquities of national interest, it may acquire such area, or any part thereof, under the State Land Acquisition Act No. 10 of 1990 as for a public purpose.]

General

21. Assessment of market-value or compensation. - The market-value of any property which Government is empowered to purchase at such value under this Act, or the [* *] compensation to be paid by Government in respect of anything done under this Act, shall, where any dispute arises [in respect] of such market value or compensation; be ascertained in the manner provided by the Land Acquisition Act, so far as it can be made applicable :

Provided that when making an enquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector and one a person nominated by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Superintendent of Archaeology.

[22. Jurisdiction. - Every offence under this Act, shall be triable by a Judicial Magistrate.]

[22A. Certain offences to be cognizable. - Notwithstanding anything contained contrary in the Code of Criminal Procedure, Samvat 1989, an offence under section 16 or sub-section (2) of section 17 or sub-section (4) of section 18 of this Act shall be deemed to be cognizable offences within the meaning of that Code.

22B. Delegation of powers. - The Government may, by notification in the Government Gazette, direct that any power conferred on it by or under this Act, shall, subject to such conditions as may be specified in the notification, be also exercisable by such officer or authority as may be notified.]

23. [The Government] may make rules for carrying out any of the purposes of this Act.

24. Protection to public servants acting under Act. - No suit for compensation and no criminal proceeding shall lie against any public servant in respect of any act done, or in good faith intended to be done, in the; exercise of any power conferred by this Act.