

The Jammu and Kashmir Heritage Conservation and Preservation Act, 2010

JAMMU & KASHMIR

India

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Act 15 of 2010

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The Jammu and Kashmir Heritage Conservation and Preservation Act, 2010 Act No. 15 of 2010 [Received the assent of Governor on 28th April, 2010 and published in the Government Gazette dated 29th April, 2010.] An Act to provide for conservation and preservation of heritage both tangible and intangible, including buildings, structures, monuments, precincts, areas/sites, artifacts, sculptures, paintings, handicrafts, manuscripts etc. and music, dance, drama, performing arts, poetry, living traditions like crafts and cuisine, traditional knowledge systems, folklores, spiritual traditions ; respectively of historic or cultural or religious or aesthetic or architectural or environmental significance and for matters connected therewith or incidental thereto. Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-first Year of the Republic of India as follows : -

Chapter I Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Jammu and Kashmir Heritage Conservation and Preservation Act, 2010. (2) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint : Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a)"authority" means the Jammu and Kashmir Heritage Conservation, and Preservation Authority constituted under section 7 ;(b)"conservation" means protection, preservation and restoration of heritage sites/areas, heritage precincts, buildings, artifacts, handicrafts, paintings, fabrics etc. and shall include only such developmental activity that will enhance the heritage significance of the heritage site within the frame work of this Act ;(c)"development" means the carrying out of construction of buildings, engineering, mining or other operations in, or over, or under, land ; or making of any material change in any building or land ; or in the use of any building or land ; or change to a heritage site including any material or structural change in, or painting of, heritage building; or in a heritage precinct; or on a listed natural feature ; and includes demolition of any existing building, structure ; or erection of part of such building, structure or erection and reclamation, redevelopment, layout and sub-division of any land ; and "to develop" shall be construed accordingly;(d)"development right" means the right to carry out development or to develop land or building or both and shall include the "transferable development right" in the form of right to utilize the floor area ratio/floor space index of land utilizable either on the remainder of the land partially reserved for public purpose or elsewhere, as may be provided in the heritage regulations or as per the Master plan for the area ;(e)"director" means an officer authorized by the Government, by notification in the Government Gazette, to exercise the powers conferred, and to discharge the duties imposed, on the Director under this Act ;(f)"documentation" means formal recording of characteristics or features or details of any tangible or intangible item of heritage value after conducting survey and research on the same ;(g)"floor area ratio/floor space index" means the ratio derived by dividing the total covered area of all floors by the area of the plot ;(h)"Government" means the Government of State of Jammu and Kashmir ;(i)"grading" means classification of heritage both tangible and intangible according to its heritage significance and the same shall determine »n the case of tangible heritage, the levels of intervention permissible in conserving, preserving, maintaining and upgrading the heritage including sites, buildings, artifacts, structures, streets, precincts etc. of historic or architectural or aesthetic or cultural or environmental significance and those natural features or sites of scenic beauty including, but not restricted to, sacred groves, mountains, hills, hillocks, lakes, rivers and other water bodies (and the areas adjoining the same), open areas, wooded areas, points, walks, rides, bridle paths etc. and in the case of intangible heritage like music, dance, drama, the level or nature of preservation or patronage or promotion required ;(j)"heritage areas" means those areas of archaeological or historical or architectural or aesthetic or scientific or environmental or cultural significance including man made and natural features and sites of scenic beauty (hereinafter referred to as "listed areas" or "heritage areas") which are included in a list(s) published by notification in the Government Gazette, by the Government, from time to time ;(k)"heritage buildings" means buildings (including artifacts), structures of historical or aesthetic or architectural or environmental significance (hereinafter referred to as "listed buildings" or "heritage buildings") which are included in a list(s) published by notification in the Government Gazette, by the Government, from time to time ;(l)"heritage inspection" means physical examination through spot visit of the heritage by the authority or Municipal Commissioner or Collector or Director concerned. as the case may be, to ensure,(i)proper maintenance and conservation of the heritage; and(ii)to ensure conformity with heritage and environmental protection standards or requirements ;(m)"heritage precincts" means streets and

spaces including those around a heritage building or a group of such buildings of which they are part and parcel (hereinafter referred to as "listed precincts" or "heritage precincts") which are included in a list(s) published by a notification in the Government Gazette, by the Government, from time to time ;(n)"heritage sites" means those buildings, artifacts, structures, streets, areas and precincts of historic or aesthetic or architectural or cultural or environmental significance (hereinafter referred to as "listed sites" or "heritage sites") and those natural features of environmental significance and sites of scenic beauty including, but not restricted to, sacred groves, mountains, hills, hillocks, lakes, rivers and other water bodies (and the areas adjoining the same open areas, wooded areas, points, walks, rides, bridle paths etc. which are included in a list(s) published by the Government, from time to time ;(o)"tangible heritage" means any material or physical heritage like buildings, structures, artifacts, sculpture handicrafts, fabrics, paintings, etc. ;(p)"intangible heritage" means those aspects of culture tin are non-material and abstract like music, dance, drama, poetry, living heritage like traditional crafts and cuisine and knowledge systems, folklore, spiritual traditions yoga and Sufism, etc. ;(q)"land" means any area of land mass including water bodies;(r)"listing" means inclusion of any heritage, tangible; intangible, in a list to be maintained by the Government, from time to time, after the particular heritage has declared as a heritage to be conserved or preserved through a notification in the Government Gazette by Government, from time to time ;(s)"monument" means any ancient monument and site which is not declared as such, by notification, to be a protected monument under the Jammu and Kashmir Ancient Monuments and Preservation Act, 1920 and the Ancient Monuments and Archaeological Sites and Remains 1958 (Central Act 24 of 1958) ;(t)"natural feature" means those features of environmental significance and sites of scenic beauty including, but not restricted to sacred groves, mountains, hills, lakes, rivers, and other water bodies (and the adjoining the same), open areas, wooded areas, points walks rides, bridle paths, etc. (hereinafter referred "listed natural feature") which are included in a list(s) published in the newspapers by the authority or Municipal Commissioner or Collector or Director as the case may be, from time to time ;(u)"object" means any material or physical entity ;(v)"owner" includes : -(i)a joint owner invested with power of management on his own behalf and other joint owners and successors in title of any such owner ; and(ii)any manager or trustee exercising powers of management and the successor-in-office of any such manager or trustee ;(w)"place" means any geographical area or space ;(x)"prescribed" means prescribed by rules made under this Act ;(y)"preservation" means redeeming or saving any cultural heritage, tangible or intangible, from decay and fading away to protect and patronize it ;(z)"regulations" means regulations made under section 20 of this Act ;(z-i) "rules" means the rules made under section 19 of this Act ;(z-ii) "site" means areas, spaces, places, precincts, etc.;(z-iii) "survey" means preliminary investigation of any tangible or intangible item or object of apparent heritage value with a view to undertake research and documentation of the same and its subsequent listing for its protection or preservation.

Chapter II

3. Declaration of tangible heritage and heritage sites, etc.

(1)The Government may, on the recommendation of the authority or Municipal Commissioner or Collector or Director as the case may be, from time to time, by notification in Government Gazette declare buildings, artifacts, sculptures, paintings, photographs, or structures, streets, areas and

precincts of historic or architectural or aesthetic or cultural or environmental significance and sites of scenic beauty, including but not restricted to, scared groves, mountains, hills, hillocks, lakes, rivers, and other water bodies (and the areas adjoining the same), open areas, wooded areas, points, walks, rides, bridle, paths as heritage or heritage site to be protected, and grade them as prescribed by the regulations, under this Act :Provided that such declaration is made after survey, research, documentation and grading of the heritage has been undertaken by the concerned authority.(2)Where the authority is of the opinion that it is necessary so to do, it may, from time to time, by notification in Government Gazette, and also by publication in leading newspapers, give thirty days notice of its intention to declare any building, artifacts, structures, streets, areas and precincts of historic or architectural or aesthetic or cultural or environmental significance and a natural feature of environmental significance and site of scenic beauty, including but not restricted to, scared groves, mountains, hills, hillocks, lakes, rivers, and other water bodies (and the areas adjoining the same) open areas, wooded areas, points, walks, rides, bridle, paths etc. as heritage or heritage site from protection under this Act, for inviting objections or suggestions in writing from any person or the public or any organization and any such notification and newspaper publication shall be affixed in a conspicuous place near the site.(3)On expiry of the said period of thirty days, the authority may recommend to the Government for declaring any building, artifacts, structures, street, precinct, area, or natural features to heritage or heritage site, as the case may be, under sub-section (1).(4)A heritage site so declared shall be graded according to its heritage significance by the authority and the authority will also determine the scope for change in the heritage site, if so required.

4. Acquisition of heritage site.

- The Government may, by notification in the Government Gazette, from time to time, acquire or take possession of any heritage or heritage site for maintenance.

5. Temporary Protection Order.

- If the authority considers that a property has, or may have, heritage value or environmental significance, or scenic beauty and is likely to be altered for any reason, whatsoever, it may by order prohibit the owner or lessee, from making any alteration of the property for a period of one hundred and twenty days subject to such conditions or requirement as the authority may consider appropriate :Provided that within the said period, the Government may declare such property as a heritage or heritage site, as the case may be, in accordance with the provisions of this Act.

6. Declaration of intangible heritage like music, dance, drama etc.

(1)The Government may on the recommendations of the authority or Municipal Commissioner or Collector or Director, as the case may be, from time to time, by notification in the Government Gazette declare cultural items like music, dance, drama, living traditions like local crafts and cuisines, knowledge systems, folklores, spiritual traditions like Yoga, Sufism etc. as heritage to be protected under this Act after conducting survey, research and documentation and grading them.(2)Where the Government is of the opinion that it is necessary to do so, it may, from time to

time, by notification in the Government Gazette and also by publication in leading newspapers give thirty days notice of its intention to declare a particular cultural feature/ item such as music, lyrics, dance, drama as heritage to be preserved, promoted and patronized under this Act for inviting objections/ suggestions from general public.(3)On the expiry of the said period of 30 days, the Government may after considering the objections and suggestions, if any, received by it, declare by notification in the Government Gazette the particular cultural feature/item like music, dance, drama etc. to be heritage.(4)A heritage item so declared shall be preserved, promoted and patronized by the Government.(5)A heritage or heritage site so declared shall be graded accordingly to its heritage significance by the authority and the authority shall also determine the scope for change in the heritage site, if so required.

Chapter III

7. Constitution of Authority.

- The Government may, by notification in the Government Gazette, constitute an Authority known as the "Jammu and Kashmir Heritage Conservation and Preservation Authority" for the purposes of exercising powers and performing the functions assigned to it under this Act.

8. Constitution of Executive Committee.

- There shall be an Executive Committee which shall co-ordinate and implement the decisions of the Heritage Conservation and Preservation Authority. The said Executive Committee shall consist of such persons, not exceeding ten including the Member-Secretary as may be prescribed.

9. Appointment of Officers and staff.

- In addition to the Member Secretary of the authority, the Government may appoint such officers and staff to assist the authority in preparation and implementation of Heritage Conservation Plans as it deem fit. The Directors concerned shall prepare proposals on the subjects concerning them for listing, grading, conservation and preservation of heritage etc. for the consideration and approval of the authority. For this purpose, the authority may constitute one or more committees as provided for in this Act and the Director concerned shall be the Convener of the said Committee. The Director concerned shall invariably submit all papers/proposals so prepared by him or the Committee to the Heritage Conservation and Preservation Authority through the Executive Committee.

Chapter IV

10. Preparation, approval and sanction of Heritage Conservation and Preservation Plans.

(1)The authority shall within such time as may be prescribed have the Heritage Conservation/

Preservation Plans in respect of both tangible and intangible heritage prepared by the concerned Commissioners or Collectors or Directors or Committees.(2)Such Plans may propose or provide for all or any of the following matters, namely : -(a)regulations for preservation, conservation and administration of heritage (objects, buildings, sites etc.)(b)listing and grading of heritage ;(c)prescription for development control for conservation of heritage ;(d)specific urban/rural design proposals in the case of heritage sites in order to preserve and protect the character of the area ;(e)proposals for incentives such as tax exemption, transfer of development rights or acquisition of property, if found necessary for the protection of heritage or heritage sites ;(f)proposals on a case to case basis, for any relaxation to development control regulations necessary for the protection and enhancement of the heritage value of the heritage/sites :Provided that all such provisions of the Heritage Conservation Plans shall as far as possible, be in conformity with the existing laws on the relevant subject/ building by-laws applicable to local bodies and Master Plan for the respective localities ;(3)After submission of the Heritage Conservation Plans but not later than such date as may be prescribed, the Government may, after consulting the authority, either approve such plans or approve them with such modifications as the Government may consider necessary or return them to the authority to modify the plans or prepare fresh plans in accordance with such directions as the Government may issue in this behalf and the modified plans as prepared by the authority shall be resubmitted to the Government for its approval.(4)The Heritage Conservation Plans approved by the Government shall be published by the Government by notification in the Government Gazette and leading newspapers published in the State for inviting suggestions or objections from the public. If objections and suggestions are received from the public within the stipulated period, the Government shall consider the same and after getting opinion of the authority, modify the Heritage Conservation Plan accordingly, if necessary and grant sanction to the same :Provided that once the said plans are prepared by the authority, all permissions for development that might affect the heritage/heritage sites shall be in conformity with the said plans.(5)If any heritage/heritage site has not been listed/incorporated in the Heritage Conservation Plan, the authority may, from time to time, issue a notice in leading newspapers published in the State to give the same, the status of heritage/heritage site inviting objections and suggestions within thirty days from the publication of the notice.(6)After the expiry of the period specified in sub-section (5) and after considering the objections and suggestions, if any, the authority shall, if it finds fit, recommend to the Government that the object/property be declared as a heritage/heritage site and the Government may declare the same accordingly.

Chapter V

11. Development Control.

(1)After the date of preparation of the Heritage Conservation Plans by the authority under section 12, all licenses, building licenses, Planning permissions affecting Heritage objects/sites including the views and lines of sight of or from them shall be issued by the local planning authority, municipal body, local body or Collector/Director concerned only in conformity with the provisions of the heritage regulations made and the Heritage Conservation Plans approved, and on the advice of the authority or of the Heritage Conservation Committees constituted by the authority under this Act.(2)Any relaxation of the existing laws/building bye-laws or incentives provided under a Heritage

Conservation Plan or otherwise shall require the owner, lessee or power of attorney holder, as the case may be, to execute an undertaking agreeing to maintain the listed heritage object/building in good condition/ state of good repair and to preserve its heritage value with due maintenance and such owner, lessee or power of attorney holder, as the case may be, shall permit heritage inspections after due notice by the authority and shall duly implement the suggestions made in this regard.(3)The owners, lessees and power of attorney holders of listed heritage objects/sites shall not carry out development on heritage objects/sites nor shall they demolish, alter, or add to them or undertake repairs thereof, without the prior permission of the authority or of the Heritage Conservation Committee constituted by the authority. Such permissions may be refused or granted, as the case may be, based on the findings of the inspections carried out by the authority or Municipal Commissioner or Collector or Director, as the case may be, or the Heritage Conservation Committee or any officer authorized by the authority.(4)In case demolitions or major changes of a heritage object or building or a building in heritage precinct, or a major development on a listed natural feature is recommended under extraordinary circumstances or major repairs are to be undertaken as a result of the heritage inspections report, the authority or the Heritage Conservation Committee shall give thirty days notice in the newspapers calling for objections and suggestions from the public and take a decision after considering the objections and suggestions received, if any.(5)If the authority or the Heritage Conservation Committee comes to the conclusion that a listed heritage object/site is not being maintained properly or that such site needs repair, the authority shall serve a notice on the owner, lessee or power of attorney holder, as the case may be, to maintain the heritage object/site properly or to repair the object/site within thirty days of the service of the notice and in the event of non-compliance, the authority or the Heritage Conservation Committee shall take such steps as to carry out the necessary repairs and recover the cost from such owner, lessee or power of attorney holder, as the case may be. and if the latter fails to make the payment, the amount shall be recoverable by the Government as arrears of land revenue.(6)Conservation cells shall be created by the authority for the maintenance and restoration of all listed heritage object, buildings, heritage sites and heritage areas which shall be headed by a Chief Architect/Chief Conservationist with such specialization in architecture and conservation of artifacts as may be prescribed.(7)Such Chief Architect/Chief Conservationist shall be supported by technical staff with prescribed qualifications and shall follow the prescribed and established guidelines for the conservation of such heritage objects/buildings and sites.

12. Control of Changes/Distortions/Tampering in/of Intangible Cultural Heritage.

- The Government or authority shall control changes/distortions/tampering etc. in/of intangible Cultural Heritage like, music, poetry, traditional knowledge systems, living traditions like crafts and cuisines etc. by devising such Scientific Documentation Methods/Heritage Patent Regimes/Intellectual Property Rights/Community Rights over such Intangible Cultural Heritage, as may be prescribed.

Chapter VI

13. Finance.

(1)The Government may constitute a fund known as the "Jammu and Kashmir Heritage Conservation and Preservation Fund" for the purpose of, -(a)maintenance and improvement of heritage objects, areas, buildings, heritage precincts and heritage sites and environmentally sensitive areas ; and(b)preservation and promotion of intangible cultural heritage.(2)The Heritage Conservation and Preservation Fund would have a "Corpus Money" to the tune of Rupees 50 crores which shall be earmarked by the Government.(3)The Government may, from time to time, allocate to the Fund moneys from the Consolidated Fund of the State and contribution to the fund may also be received by way of donations, grants, etc. from individuals, trust, local bodies companies and other agencies towards heritage conservation.(4)Moneys may be advanced by the Government to the authority, as grants or loans, on such terms and conditions as the Government may determine, for the performance of its functions under this Act.(5)The said fund shall be administered by the Government and audited by the Accountant General every year.(6)Every local body/concerned departments in the State shall contribute such moneys to the fund account of the authority as the Government may specify from time to time.(7)The authority shall utilize the fund for meeting : -(a)the cost of acquisition of heritage objects, building, artifacts, handicrafts or heritage precincts or heritage area for the purpose of conservation.(b)the expenditure for any development or works on any tangible heritage and preservation and promotion of any intangible cultural heritage as contemplated in the Heritage Conservation and Preservation Plan.(8)The authority may disburse funds to the owners, lessees or power of attorney holders of listed heritage objects/buildings, artifacts, handicrafts, paintings etc. even if they are private, for maintenance of the buildings, artifacts/handicrafts/paintings in good condition, if such maintenance are found necessary. Besides, funds/ incentives may be given to individuals/groups/communities for preserving intangible cultural heritage.(9)The authority shall approve every year, a budget in respect of the next financial year with its estimated receipts and expenditures under the fund.

Chapter VII

14. Dissolution of the authority.

(1)Where the Government is satisfied that the purposes for which the authority was established under this Act have been substantially achieved so as to render the continued existence of the authority in the opinion of the Government, unnecessary, the Government may, by notification in the Government Gazette, declare that the authority shall be dissolved with effect from such date as may be specified in the notification and the authority shall be deemed to have been dissolved accordingly.(2)From the said date, -(a)all properties, funds and dues which are vested in, or realizable by the authority shall vest in, or be realizable by the Government ;(b)all liabilities which are enforceable against the authority shall be enforceable against the Government ; and(c)for the purpose of carrying out any development or promotion/preservation activity which has not been fully carried out by the authority and for the purpose of realizing properties, funds and dues referred

to in clause (a), the functions of the authority shall be discharged by the Government.

15. Penalties.

(1)Whoever contravenes any provisions of this Act or the rules and regulations made thereunder or fails to comply with any direction or order lawfully given to him or any requisition lawfully made upon him, shall on conviction, be punished with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees, or with both and for any subsequent offence, with fine which may extend to five thousand rupees for every day of continuance of offence thereafter.(2)In case of wilfull damage, neglect, demolition or major change to the whole or portion of a heritage/heritage site, the offender shall forfeit his right to construct any further structure on the site or to carry out any further development on the heritage and the undoing of the development/removal of the structure already constructed in contravention of the provisions of this Act or the rules, regulations or orders made or issued thereunder, shall be at the cost of the owner, lessee or power of attorney holder, as the case may be, or even the agent/builder making the construction/ development.

16. Composition of offences.

(1)The authority by general or special order in this behalf, may in special circumstances and for reasons to be recorded in writing, either before or after the institution of the proceedings, compound any offence made punishable by or under this Act ;Provided that no offence shall be compoundable which is committed by failure to comply with a notice, order or requisition issued by or on behalf of the authority unless and until the same has been complied with so far as the compliance is possible.(2)Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

17. Court competent to try offences under this Act.

- No Court inferior to that of a Sessions Court shall try any offence punishable under this Act.

18. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against any person for any thing which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

19. Power to make rules.

- The Government may, by notification in the Government Gazette, make rules to carry out all or any of the purposes of this Act including constitution of an authority under section 7 and prescription of the date for approval of conservation plans by the Government.

20. Power to make regulations.

(1)The authority may make regulations concerning any matter which is to be, or may be, prescribed under this Act.(2)Without prejudice to the generality of its powers, under subsection (1), the authority may make regulations to provide for all or any of the following matters : -(a)gradation of heritage both tangible and intangible declared as such for protection and preservation under the Act;(b)prescription of the specialization in architecture/conservation as required for the Chief Architect/Chief Conservationist respectively to head the conservation cells ;(c)prescription of the qualifications of the technical staff of the Chief Architect/Chief Conservationist ;(d)prescription of the guidelines to be followed by the Chief Architect/Chief Conservationist for conservation of heritage building, artifacts and sites ;(e)prescriptions of guidelines to be followed by Directors concerned for preservation and promotion of intangible heritage ;(f)any other matter which is to be, or may be prescribed under this Act.

21. Powers to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, do anything which appears to it to be necessary for the purpose of removing the difficulty :Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.