

The West Bengal Preservation Of Historical Monuments And Objects And Excavation Of Archaeological Sites Act, 1957.

WEST BENGAL

India

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Act 31 of 1957

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The West Bengal Preservation Of Historical Monuments And Objects And Excavation Of Archaeological Sites Act, 1957. West Bengal Act 31 of 1957 [7th March, 1958.] An Act to provide for the preservation in certain cases of historical monuments and objects and for the excavation of archaeological sites in West Bengal. It is hereby enacted as follows :- Preliminary

1. Short title, extent, commencement and application.

(1) This Act may be called the West Bengal Preservation of Historical Monuments and Objects and Excavation of Archaeological Sites Act, 1957. (2) It extends to the whole of West Bengal. (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint. (4) Nothing in this Act shall apply to - (a) ancient or historical monuments or archaeological sites or remains declared by or under law made by Parliament to be of national importance; or (b) any ancient monuments or antiquities to which the ancient Monuments Preservation Act, 1904, applies on the date of the commencement of this Act or is made applicable after such date.

2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context, - (1) "Collector" means the Collector of a district; (2) "Commissioner" includes any officer authorised by the State Government to perform the duties of a Commissioner under this Act; (3) "historical monument" means any building, structure, erection or monolith or monument or any mound or tumulus or any tomb or place of interment, or any cave, or any sculpture or inscription on an immovable object or any part or remains thereof, or a particular site, which the State Government by reason of its historical

association, considers it necessary to protect against destruction, injury, alteration, mutilation, defacement, removal, dispersion or falling into decay, and includes -(a)the site of such monument,(b)such portion of land adjoining the site of such monument as may be required for fencing or covering in or otherwise preserving such monument,(c)the means of access to and convenient inspection of such monument;(4)"historical object" means, -(a)any document, manuscript, printed matter, picture or painting, or any movable object or any matter containing any inscription or carving,(b)any movable object other than those specified above,which the State Government by reason of its historical association, considers it necessary to protect against destruction, injury, alteration, mutilation, defacement, removal, dispersion or falling into decay;(5)"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 the purpose of maintaining a protected monument or of securing convenient access thereto; 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 a historical 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.Historical Monuments.

3. State protected monuments.

(1)The State Government may, by notification in the Official Gazette, declare a historical monument to be a State-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 a notice that any objections to the contents of the notification received by the State Government within one month from the date when the copy is so fixed up will be taken into consideration.(3)On the expiry of the said period of one month, the State 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 a State-protected monument within the meaning of this Act.

4. Acquisition of rights in or guardianship of a State-protected monument.

(1)The Collector, with the sanction of the State Government, may purchase or take a lease of any State-protected monument.(2)The Collector, with the like sanction, may accept a gift or bequest of any State-protected monument.(3)The owner of any State-protected monument, may, by written instrument, constitute the Commissioner the guardian of the monument, and the Commissioner may, with the sanction of the State Government, accept such guardianship.(4)When the Commissioner has accepted the guardianship of a State-protected monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same right, title and interest in and to the monument as if the Commissioner had not been constituted guardian thereof.(5)When the Commissioner has accepted the guardianship of a State-protected monument under sub-section (3), the provisions of this Act relating to agreements entered into under section 5 shall apply to the written instrument referred to in the said sub-section.(6)Where a State-protected monument is

without an owner, the Commissioner may assume the guardianship of the monument.

5. Preservation of a State-protected monument by agreement.

(1)The Collector may, with the previous sanction of the State Government, propose to the owner to enter into an agreement with the State Government for the preservation of any State-protected monument in his district.(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, namely:(a)the maintenance of the monument;(b)the 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, injure, alter, mutilate, deface, remove or disperse or to allow to fall into decay the monument or to build on or near the site of the monument;(d)the facilities of access to be permitted to the public and to persons deputed by the owner or the Collector to inspect or maintain the monument;(e)the notice to be given to the State 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 State 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 State Government in connection with the preservation of the monument;(g)the proprietary or other rights which are to vest in the State Government in respect of the monument when any expenses are incurred by the State 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 State Government.(3)The terms of an agreement under this section may be altered from time to time with the sanction of the State Government and with the consent of the owner.(4)With the previous sanction of the State Government, the Collector may terminate an agreement under this section on giving six months' notice in writing to the owner.(5)The owner may terminate an agreement under this section on giving six months' notice in writing to the Collector.(6)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.(7)Any rights acquired by the State Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

6. Owners under disability or not in possession.

- 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.

7. Enforcement of agreement.

(1)If the Collector apprehends that the owner or occupier of a monument intends to destroy, injure, alter, mutilate, deface, remove or disperse or to allow to fall into decay 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 Collector 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 or neglects to do any act which is in the opinion of the Collector necessary for such preservation or maintenance, within such reasonable time as may be fixed by the Collector, the Collector 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 Commissioner, who may cancel or modify if 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 any land on 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 right, title or interest in 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 a State-protected monument.

(1) If any owner or other person, competent to enter into an agreement under section 5 for the preservation of a State-protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of keeping such monument in repair or for that purpose among others, the Collector may institute a suit in the Court of the District Judge, or if the estimated cost of repairing the monument does not exceed one thousand 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 acquisition of a State-protected monument.

(1) If the State Government apprehends that a State-protected monument is in danger of being destroyed, injured, altered, mutilated, defaced, removed or dispersed or of falling into decay, the State Government may acquire it under the provisions of the Land Acquisition Act, 1894, as if the preservation of the State-protected monument were a "public purpose" within the meaning of the Act. (2) The powers of compulsory acquisition 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: Provided that in case of repeated infringement of the agreement by the owner as stated in section 7 the State Government may exercise its powers of compulsory acquisition. (3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory acquisition 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 Collector 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.(4)In cases of urgency whenever the State Government so directs, the Collector, though no award has been made, may, on the expiration of 15 days from the date of publication of the notice mentioned in section 9, sub-section (1) of the Land Acquisition Act, 1894, take possession of the State-protected monument. Such monument shall thereupon vest absolutely in the State Government free from all encumbrances.

11. Power of State Government to control mining, etc., near State-protected monument.

(1)If the State Government is of opinion that mining, quarrying, excavating, blasting and other operations of a like nature should be prohibited, restricted or regulated for the purpose of protecting or preserving any State-protected monument, the State Government may, by notification in the Official 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(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 under this section may provide that any person committing a breach thereof shall be punishable with a fine which may extend to two hundred rupees.(4)If any owner or occupier of land included in a notification under sub-section (1) proves to the satisfaction of the State Government that he has sustained loss by reason of such land being so included, the State Government shall pay him due compensation in respect of such loss.

12. Maintenance of of certain State-protected monuments.

(1)The Commissioner shall maintain every State-protected monument in respect of which the State Government has acquired any of the rights mentioned in section 4 or which the State Government has acquired under section 10.(2)When the Commissioner has accepted the guardianship of a State-protected monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself and 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.

13. Voluntary contributions.

- The Commissioner may receive voluntary contributions towards the cost of maintaining a State-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.

14. Relinquishment of Government rights in a State-protected monument.

- With the sanction of the State Government, the Commissioner may -(a)where rights have been acquired by the State Government in respect of any State-protected monument 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 State-protected monument which he has accepted under this Act.

15. Right of access of certain State-protected monuments.

(1)Subject to such rules as may after previous publication be made by the State Government, the public shall have a right of access to any State-protected monument maintained by the State Government under this Act.(2)In making any rule under sub-section (1) the State Government may provide that a breach of it shall be punishable with fine which may extend to fifty rupees.

16. Penalties.

- Any person other than the owner who destroys, injures, alters, mutilates, defaces, removes or disperses or allows to fall into decay of State-protected monument maintained by the State 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, sub-section (1), shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to three months, or with both.Historical Objects.

17. Power to State Government to control moving of historical objects.

(1)If the State Government considers it necessary in the public interest that any historical object should not be moved from the place where it is without the sanction of the State Government, the State Government may, by notification in the Official Gazette, direct that such historical object shall not be moved unless with the written permission of the Collector.(2)A person applying for the permission mentioned in sub-section (1) shall specify the historical object which he proposes to move, and shall furnish, in regard to such object, any information which the Collector may require.(3)If the Collector refuses to grant such permission, the applicant may appeal to the Commissioner, 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 a fine which may extend to five hundred rupees.(5)If the owner of any property proves to the satisfaction of the State 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 State Government shall either -(a)exempt such property from the said notification;(b)acquire 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.

18. Purchase of historical object.

(1) If the State Government apprehends that any historical object is in danger of being destroyed, injured, altered, mutilated, defaced, removed or dispersed or falling into decay, the State Government may pass orders for the compulsory purchase of such object at its market-value, and the Collector shall thereupon 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. Excavation of Archaeological Sites

19. Power of State Government to notify areas as State-protected archaeological sites.

(1) If the State Government is of opinion that excavation for archaeological purposes in any area should be restricted and regulated in the interests of archaeological research, the State Government may, by notification in the Official Gazette specifying the boundaries of the area, declare it to be a State-protected archaeological site. (2) From the date of such notification all antiquities buried in such site shall be in the possession of, and vest in, the State Government subject to the payment of due compensation to the owner; but in all other respects the rights of any owner or occupier of land in such site shall not be affected except that he shall not be allowed to change the character of the State-protected archaeological site.

20. Power to enter upon and make excavations in a State-protected archaeological site.

(1) Any officer of the State Government, empowered in this behalf or any person holding a licence under section 21 may, with the written permission of the Collector, enter upon and make excavations in any State-protected archaeological site. (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 State Government shall pay to that person compensation for the infringement.

21. Power of State Government to make rules regulating archaeological excavations in State-protected archaeological sites.

-(1) The State Government may make rules - (a) prescribing the authorities by whom licenses to excavate for archaeological purposes in a State-protected archaeological site 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 the State Government and the licensee; and (d) generally to carry out the purposes of section 19. (2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication. (3) Such rules may be general for all

State-protected archaeological sites for the time being, or may be special for any particular protected site or sites.(4)Such rules may provide that any person committing a breach of any rule or of any condition of a licence shall be punishable with fine which may extend to five 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.Supplemental and Miscellaneous.

22. Assessment of market-value of compensation.

(1)The market-value of any property which the State Government is empowered, to acquire at such value under this Act, or the compensation to be paid by the State 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, 1894, sections 3, 8 to 34, 45 to 47, 51 and 52 so far as they can be made applicable:Provided that when making an inquiry under the said Land Acquisition Act, 1894, 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 Collector.

23. Jurisdiction.

- A Magistrate of the third class shall not have jurisdiction to try any person charged with an offence against this Act.

24. Power to make rules.

(1)The State Government may make rules for carrying out any of the purposes of this Act.(2)The power to make rules under this section shall be in addition to and not in derogation of any of the provisions of this Act and shall be subject to the condition of the rules being made after previous publication.

25. Protection to public servants acting under the 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.