

The Orissa Ancient Monuments Preservation Act, 1956

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THE-ORISSA-ANCIENT-MONUMENTS-PRESERVATION-ACT-1956 of 1956

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The Orissa Ancient Monuments Preservation Act, 1956 Published vide Notification No. Orissa Gazette Extraordinary No. 135 dated 11.6.1956 Statement of Objects and Reasons. - Archaeology was a Central subject during the British period and ancient monuments are archaeological sites used to be preserved by the Ancient Monuments Preservation Act of 1904. This Act was only introduced in the British India but in the Orissa States it was not operative. Only a few enlightened Rulers established Archaeological Departments in their areas for taking steps for preserving and exploring the ancient and archaeological sites and for the care and upkeep of the ancient monuments according to the scientific principles In 1950 only 33 monuments were put in the list of preserved Ancient Monument in Orissa by the Archaeological Department of India and this clearly establishes that only a few monuments situated at well known places of pilgrimage were included in the list by the Archaeological Department of the Government of India. It is needless to add that not even one of those ancient parts of Orissa where people of Kalmga spread the Indian civilisation to Indonesia has been discovered in the Orissa coast. In the costal area the location of ancient monuments and archaeological sites such as Tosali of Asokan period, Kaliegangara of Kharavela, period of Dantapura of the Buddhist Traditions is not fully known. Such is the condition in the old Districts of Orissa. Only a few archaeological sites and ancient monuments of the ex-State area are known and out of them very few are declared by the Government of India as protected monuments of national importance. According to Item 67 of the List I of the 7th Schedule to the Constitution of India the Ancient Monument which will be declared by the Parliament by law to be of national importance, will be protected by the Union Government. According to the Item 12 of the List 11 of Schedule to the Indian Constitution, all other ancient monuments and archaeological sites not declared by the Parliament by law to be of national importance, are to be protected by the State Government. In the absence of any law defining the measures for the preservation of the ancient monuments and archaeological sites, the State Government are not in a position to take any step by law to declare an

ancient monument or archaeological site as protected. This Bill which seeks to provide the necessary legislative measures in this connection has the following main objects, viz : (1) Ensuring the proper upkeep and repair of the ancient buildings; in State or private ownership; (2) Prevention of destruction of sites of historic interest by ignorant and unauthorised persons and regular systematic excavation of excerpts; and (3) Securing control over traffic in sculptures, carvings of the objects. For Bill see Orissa Gazette No. 62 of 1956, dated 15.3.1956. An Act for the preservation of ancient monuments and objects of archaeological, historical or artistic interest in the State of Orissa. Whereas it is expedient to provide for the preservation of ancient monuments for the exercise of control 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 in the State of Orissa; It is hereby enacted by the Legislature of the State of Orissa in the Seventh Year of the Republic of India as follows :

1. Short title, extent and commencement.

(1) This Act may be called the Orissa Ancient Monuments Preservation Act, 1956. (2) It extends to the whole of the State of Orissa. (3) It shall come into force at once.

2. Definitions.

- In this Act unless there is anything repugnant in the subject or context- (a) "ancient monuments" excludes any ancient and historical monuments declared as such by the Act of the Parliament for the time being in force, and means any structure, erection or monument or any tumulus or place of internment, or any cave, rock sculpture, rock painting, sculpture of stone, metal or terracotta, inscription or monolith, which is of historical, archaeological or artistic interest and includes- (i) the site of an ancient monument ; (ii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and (iii) the means of access to and convenient inspection of an ancient monument; (b) "Commissioner" means any officer authorised by the State Government to perform the duties of a Commissioner under this Act; (c) "maintain" and "maintenance" include the fencing, covering, 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 ; (d) "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.

3. Protected monuments.

(1) The State Government may, by notification, declare an ancient monument to be 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 intimation that any objections to the issue of the notification received by the State Government

within one month from the date when it 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 an ancient monument within the meaning of this Act.

4. Acquisition of right in or guardianship of an ancient monument.

(1)The Collector may, with the sanction of the State Government, purchase or take a lease of any protected monument.(2)The Collector 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 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 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 Commissioner had not been constituted guardian thereof.(5)When the Commissioner has accepted the guardianship of a monument under Sub-section (3) the provisions of the 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 Commissioner may assume the guardianship of the monument.

5. Preservation of 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 protected monument in his jurisdiction.(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)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, 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 Collector to inspect or maintain the monument;(e)the notice to be given to the State Government through the Collector, in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to 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 to the State Government through the Collector.(6)An agreement under this section shall be binding on any person claiming to be the 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. Owner under disability or not in possession.

(1)If the owner is unable, by reason of insanity 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 an 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 Collector 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 Collector may make an order prohibiting any such contravention of the agreement.(2)If any 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 Collector, necessary to such preservation or maintenance or neglects to do any such act 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 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, or at a revenue sale made under any land 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 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 for 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 State Government apprehend that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, they may acquire it under the provisions of the Land Acquisition Act, 1894 (I) of 1894) 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 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 agreement.

11. Maintenance of certain protected monument.

(1) The Commissioner shall maintain every monument in respect of which the Government have acquired any of the rights mentioned in Section 4 or which the Government have acquired under Section 10. (2) When the Commissioner 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 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.

12. Voluntary contributions.

- The Commissioner 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.

- Where the Collector has, under Section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Commissioner has, under the same section, accepted the guardianship thereof, and such monument or any part thereof, is periodically used for religious worship or observances by any community, the Collector shall make due provision 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 rights in a 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 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 monument which he has accepted under this Act.

15. Right or access to certain 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 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 twenty 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 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 [imprisonment of either description for a term which may extend to seven years, or with fine which may extend to fifty thousand rupees or with both] [Substituted vide O.A. No. 16 of 2002, O.G.E. No. 2288 Dated, 13.12.02.].

17. Power of State Government to control moving of sculptures.

(1)If the State Government consider that any sculptures, carving, images, base-reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the State Government, the State Government may, by notification, direct that any such object or any class of such objects shall not be moved except with the written permission of the Collector.(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 Collector may require.(3)If the Collector refuses to grant such permission, the applicant may appeal such authority as the State Government may by order specify in this behalf and the decision of such authority 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 [ten thousand rupees] [Substituted vide O.A. No. 16 of 2002, O.G.E. No. 2288 Dated 13.12.02.],(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 it notification published under Sub-section (1) the State 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 owner of such property, if it be immovable.

18. Purchase of sculptures, carvings or like objects by the State Government.

(1)If the State Government apprehend that any object mentioned in a notification issued under Sub-section (1) of Section 17, is in danger of being destroyed, removed, injured or allowed to fall into decay, the State Government may pass orders for the compulsory purchase of such objects 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.

19. Power of State Government to notify areas as protected.

(1)If the State Government are 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 specifying the boundaries of the area, declare it to be a protected area.(2)From the date of such notification all objects of archaeological, historical or artistic interest buried in the protected area shall be the property of the Government and shall be deemed to be in the possession of the Government and shall remain the property and in the possession of the Government until ownership thereof is transferred; but in all other respects, the right of any owner or occupier of land in such areas shall not be affected.

20. Power to enter upon and make excavations in a protected area.

(1)Any officer of the Archaeological Department or any person holding a licence under Section 21 may, with the written permission of the Collector, enter upon and make excavation 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 State Government shall pay to that person compensation for the infringement.

21. Power of State Government to make rules regulating archaeological excavation in protected areas.

(1)The State 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)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 protected areas for the time being, or may be special or any particular protected area or areas.(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.

22. Power to acquire protected area.

- If the State Government are of opinion that a protected area contains an ancient monument or such other objects of archaeological, historical or artistic interest and also of national interest and value, they may acquire such area, or any part thereof under the provisions of the Land Acquisition Act, 1 of 1894, as for public purpose.

23. Assessment of market value or compensation.

- The market value of any property which Government are 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 in the Land Acquisition Act, 1 of 1894 :Provided that when making an enquiry under the said Land Acquisition Act, 1 of 1894, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector and one 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.

24. Jurisdiction.

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

25. 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 given by this section is subject to the condition of the rules being made after previous publication.

26. 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.