

Tamil Nadu Heritage Commission Act, 2012

TAMILNADU

India

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Act 24 of 2012

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Tamil Nadu Heritage Commission Act, 2012(Act No. 24 of 2012)[Dated 31st May 2012]An Act to constitute a Heritage Commission in the State and for matters connected therewith and incidental thereto. Whereas Tamil Nadu is known for its rich heritage and cultural properties and it is needless to emphasise that these have to be preserved and protected at all costs and for the posterity; And Whereas, it is necessary to protect the buildings or premises not covered under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Central Act 24 of 1958) and the Tamil Nadu Ancient Monuments and Archaeological Sites and Remains Act, 1966 (Tamil Nadu Act 25 of 1966); And Whereas, it is necessary to constitute a Statutory Authority to advise in the matters relating to identification, restoration and preservation of heritage building and in the matters relating to the development and engineering operations which are likely to affect any heritage building; Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-third Year of the Republic of India as follows:-

Chapter I Preliminary

1. Short title and commencement.

(1) This Act may be called the Tamil Nadu Heritage Commission Act, 2012. (2) It shall come into force on such date as the Government may, by notification, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial, cultural or other purposes whether in actual use or not; (b) "building operations" includes rebuilding operations, structural alterations of or additions to buildings or other operations normally

undertaken in connection with the construction of buildings;(c)"Chairman" means the Chairman of the Commission;(d)"Commission" means the Tamil Nadu Heritage Commission constituted under section 3;(e)"development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in or over or under land or the making of any material change in any building or land, and includes re-development;(f)"engineering operations" includes the formation or laying out of means of access to a road or the laying out of means of water supply or drainage;(g)"Government" means the State Government;(h)"heritage building" means any building or one or more premises or any part thereof which requires preservation and conservation for historical, architectural, environmental or cultural importance and includes such portion of the land adjoining such building or any part thereof as may be required for fencing or covering or otherwise preserving such building and also includes the areas and buildings requiring preservation and conservation for the purposes as aforesaid;(i)"local authority" means any municipal corporation or municipal council or panchayat union council or village panchayat constituted or to be constituted under the relevant law for the time being in force;(j)"member" means a member of the Commission;(k)"monuments of heritage importance" means any building, structure, erection, monolith, monument, mound, tumulus, tomb, place of interment, cave, sculpture, inscription on an immovable object or any part or remains thereof, or any site, which the Government, by reason of its heritage association, considers it necessary to protect against destruction, injury, alteration, mutilation, defacement, removal, dispersion or falling in to decay;(l)"notification" means a notification published in the Tamil Nadu Government Gazette;(m)"prescribed" means prescribed by rules made under this Act;(n)"public amenity" includes road, water supply, street lighting, drainage, sewerage, public works or such other convenience as the Government may, by notification, in the Tamil Nadu Government Gazette, specify to be a public amenity for the purposes of this Act;(o)"regulation" means a regulation made by the Commission;(p)"rules" means rules made by the Government under this Act.

Chapter II

Constitution of the Tamil Nadu Heritage Commission

3. Constitution of the Commission.

(1)The Government shall, by notification, constitute a body to be known as the Tamil Nadu Heritage Commission.(2)The Commission shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall, by the said name, sue or be sued.

4. Composition of the Commission.

(1)The Commission shall be chaired by an eminent person with concern and commitment for Heritage Conservation to be nominated by the Government and shall consist of not more than sixteen members, as follows:-(a)the Secretary to Government in-charge of Tourism and Culture, ex-officio;(b)the Secretary to Government in-charge of Housing and Urban Development, ex-officio;(c)the Secretary to Government in-charge of Municipal Administration and Water supply,

ex-officio;(d)the Secretary to Government in-charge of Rural Development and Panchayat Raj, ex-officio;(e)the Secretary to Government in-charge of Law Department, ex-officio;(f)The Commissioner of Museum, Chennai, ex-officio;(g)the Superintending Archaeologist, Archaeological Survey of India, Chennai circle, ex-officio;(h)the Commissioner of Archaeology, Chennai, ex-officio;(i)the Director, School of Architecture and Planning, Anna University, ex-officio;(j)the Director of Environment, ex-officio;(k)the Chief Engineer (Buildings), Public Works Department, Chennai,(l)the Senior Architect from Public Works Department, Chennai,(m)one person nominated by the Government, who is conversant with Archaeology;(n)one representative form Indian National Trust for Art and Cultural Heritage;(o)one person nominated by the Government from any Non Government Organisation involved in Heritage Management and cultural affairs;(p)a nominee of the Institute of Town Planners (India), Tamil Nadu Region;(2)The Government shall, in consultation with the Commission, appoint a Secretary of the Commission who shall hold office for such period as may be prescribed:Provided that the first appointment of the Secretary may be made by the Government without consultation with the Commission.(3)The terms and conditions of service of the Secretary shall be such as may be prescribed.

5. Disqualification for members.

- A person shall be disqualified for being appointed as Chairman or as a member of the Commission, if-(a)he is of unsound mind;(b)he is an applicant to be adjudicated as an insolvent or is an undischarged insolvent;(c)he has been sentenced for any offence involving moral turpitude, punishable under any law with imprisonment, such sentence not having been annulled and a period of five years has not elapsed from the date of expiration of the sentence;(d)he is a paid officer or employee of the Commission; or(e)he incurs such other disqualifications as may be prescribed by the Government.

6. Term of office and conditions of service of the Chairman and members.

(1)The Chairman and every member of the Commission shall hold office for a term of three years and shall be eligible for re-appointment for a further period of three years.(2)The Chairman or the member may, at any time, by writing under his hand addressed to the Government, resign from the office of Chairman or member, as the case may be, but shall continue in office until his resignation is accepted by the Government.(3)The honorarium and allowances payable to, and the other terms and conditions of service of, the Chairman and members shall be such as may be prescribed.(4)Notwithstanding anything contained in sub-section (1), the Government shall remove a person from the office of Chairman or any member, if that person-(a)becomes an undischarged insolvent;(b)is convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude;(c)becomes of unsound mind and stands so declared by a competent court;(d)refuses to act or becomes incapable of acting;(e)is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission;(f)in the opinion of the Government, has so abused the position of Chairman or member, as the case may be, as to render that person's continuance in office detrimental to the public interest:Provided that no member shall be removed from office under this sub-section until that member has been given a reasonable opportunity of being heard in the matter.(5)A vacancy caused under sub-section (2) or

sub-section (5) or otherwise shall be filled by fresh nomination by the Government and the person so nominated shall hold office for the remainder of the term of office of the person in whose vacancy such person has been nominated would have held office, if the vacancy had not occurred: Provided that if a vacancy of a member, other than that of the Chairman, occurs within six months preceding the date on which the term of office of the member expired, such vacancy shall not be filled in. Explanation. - For the purpose of this section, "member" does not include the ex-officio member and the "Secretary".

7. Meetings of the Commission.

- The Commission shall meet, as often as may be necessary, at such time and place and observe such rules of procedure as may be provided in the regulations: Provided that the Commission shall meet at least once in three months.

8. Vacancies etc. not to Invalidate proceedings of the Commission.

- No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Commission, or any defect in the nomination of a person acting as the Chairman or a member or any irregularity in the procedure of the Commission, including in issuing of notice for holding of a meeting, not affecting merits of the matter.

9. Temporary Association of persons with the Commission for particular purpose.

(1) The Commission may associate with itself in such manner and for such purposes as may be determined by regulations, any person whose assistance for advice it may desire. (2) A person associated with for any purpose shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Commission.

10. Officers and other employees of the Commission.

(1) The Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act. (2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission shall be such as may be prescribed. (3) The officers and employees referred to in sub-section (1) shall be under the administrative control of the Chairman. (4) All orders and decisions and other instruments of the Commission shall be authenticated by the signature of the Secretary or any other officer of the Commission duly authorized by it in this behalf.

Chapter III

Powers and Functions of Commission

11. Powers and functions of the commission.

(1)Notwithstanding anything contained in any other law for the time being in force, all local authorities shall refer anything related to identification, restoration and preservation of any heritage building or any other development or any engineering operation which is likely to affect preservation of any heritage building for advice.(2)Subject to the provisions of sub-section (1), the functions of the Commission shall be,-(a)to advise the Government on preparing a classification of buildings in certain grades of heritage buildings after scrutinising applications and proposals received, including supplementing the existing list of buildings as well as all other matters relating to heritage conservation;(b)to advise the Government on any alteration, modification or relaxation of any law for the time being in force for development, control and conservation of any heritage building;(c)to advise Government whether to allow commercial or other use of heritage buildings and if so, when to prohibit such use;(d)to advise the Government on framing of special regulations for such heritage buildings as may be listed by the Government;(e)to advise the Government on guidelines to be adopted by private parties who sponsor beautification schemes in this State;(f)to advise the Government on the penal measures for defacing or destroying a heritage building;(g)to advise the Government and the local authorities on the making of provision for restoration of heritage buildings;(h)to advise the Government and the local authorities on documentation of records of heritage buildings;(i)to advise the Government on the steps to involve public opinion in mobilisation of efforts for creating awareness, preserving or maintaining heritage, and the consciousness of its visible architectural and natural evidences, so as to foster the creation of a popular mandate for heritage preservation;(j)to advise the local authorities, where necessary, on the policy of the grant of any certificate of right of development of any heritage building;(k)to advise the local authorities to regulate the installation of advertisement and display structure in respect of heritage buildings;(l)to advise the local authorities on the cost of repair of heritage buildings and the policy to be adopted for raising repair-funds from private sources;(m)to advise the local authorities to prepare special designs and guidelines for heritage buildings controlling the height and essential characteristics and to suggest other aspects of conservation and restoration;(n)to advise the local authorities on the provision of incentive by exemption from payment of rates or taxes or fees for supply of water or any other charge in respect of heritage buildings;(o)to advise the Government on any other matter relating to restoration or preservation of building of heritage importance as may be entrusted by the Government to the Commission.(3)Notwithstanding anything contained in any other law for the time being in force, no local authority shall take any step for identification, preservation, conservation or restoration of any heritage building, not consistent with the determination or advice of Commission.

12. Appeal to Government.

- If any local authority is aggrieved by any advice of the Commission in respect of any building operation, engineering operation or development proposal referred to the Commission under

sub-section (1) of section 11, such local authority may, within sixty days from the date of advice by the Commission, prefer an appeal to the State Government, and the State Government may pass such order thereon as it deems fit.

13. Revision.

(1) Nothing contained in this Act shall preclude the Government from calling for and examining, on its own motion, if the Government consider it necessary to do so in the public interest, any case of advice by the Commission under sub-section (1) of section 11 and passing such order thereon as it think fit: Provided that no such order shall be made prejudicially affecting any local authority, except after giving it an opportunity of making a representation in the matter. (2) The decision of the Government in an appeal under section 12 or revision under this section shall be final and binding and shall not be questioned in any court of law.

14. Powers relating to inquiries.

- The Commission while inquiring into any matter under this Act shall have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters:-(a) summoning and enforcing the attendance of any person and examining him; (b) requiring discovery and production of any documents; (c) receiving evidence on affidavits; (d) requisitioning any public record or copies thereof from any office; (e) any other matter which may be prescribed.

15. State Government and local authority to accept, and to take action in accordance with the advise of the Commission.

(1) Subject to the other provisions of this Act, the Government and every local authority shall accept every advice of the Commission to the Government or the local authority, as the case may be and shall take action for prompt and effective implementation of such advise. (2) The Government may for the purposes of sub-section (1) give such directions to a local authority as it may deem fit and thereupon such local authority shall act according to the directions as aforesaid.

Chapter IV

Fund, Accounts and Audit.

16. Grants by the Government.

(1) The Government shall pay to the Commission by way of grants such sums of money as the Government may think fit for being utilized for the purposes of this Act. (2) The Commission may spend such sums as it thinks fit for performing the functions under this Act. (3) The honorarium and allowances payable to the Chairman and members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary and to the officers and other employees

referred to in section 10 shall be paid out of the grants referred to in sub-section (1).

17. Fund of the Commission.

(1)The Commission shall have its own fund, and all sums which may, from time to time, be paid to it by the Government and all the receipts of the Commission including any sum which the Central Government or any other authority or person may handover to the Commission shall be credited to such fund.(2)All expenditure incurred by the Commission under, or for the purposes of this Act shall be defrayed from out of the said fund and any surplus remaining, after such expenditure has been met, shall be invested in such manner as may be prescribed.(3)All moneys in the fund shall be deposited in such bank, or invested in such manner, as may subject to the approval of the State Government, be decided by the Commission.(4)The Commission may spend such sums as it thinks fit for performing its functions under this Act, and such sums shall be treated as expenditure payable out of the fund of the Commission.

18. Budget of the Commission.

- The Commission shall prepare in such form and at such time as may be prescribed, a budget in respect of the next financial year showing the estimated receipt and expenditure and a copy of the budget shall be forwarded to the Government.

19. Annual accounts and audit.

(1)The accounts of the Commission shall be maintained in such manner and in such form as may be prescribed. The Commission shall prepare an annual statement of accounts in such form as may be prescribed.(2)The accounts of the Commission shall be audited annually by such auditor as the Government may appoint in this behalf.(3)The auditor appointed under sub-section (2) shall, for the purposes of audit, have such rights, privileges and authority as may be prescribed.(4)The Secretary to the Commission shall cause the audit report to be printed and forward a printed copy thereof, to each member and shall place such report before the Commission for consideration at its next meeting.(5)The Commission shall take appropriate action forthwith to remedy any defect or irregularity that may be pointed out in the audit report.(6)The accounts of the Commission as certified by the auditor together with the audit report along with the remarks of the Commission thereon shall be forwarded to the Government within such time as may be prescribed.(7)The Government may, by order in writing, direct the Commission to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defect, if any, disclosed in the Audit report, and the Commission shall comply with such direction.

20. Annual report.

- The Commission shall, as soon as may be, after the end of each financial year, prepare and submit to the Government, before such date and in such form as may be prescribed, an annual report giving an account of its activities, during the previous year and the report shall also give an account of the

activities, if any, which are likely to be undertaken by the Commission in the next financial year and the Government shall cause every such report to be laid before the Legislative Assembly as soon as may be after its receipt.

21. Returns and information.

- The Commission shall furnish to the Government such returns or other information with respect to its fund or activities as the Government, may, from time to time require.

Chapter V Miscellaneous

22. Delegations.

- The Commission may, by general or special order, delegate to Chairman, any member or officer of the Commission, subject to such conditions, as may be specified in the order, any of its powers and functions as it may deem necessary.

23. Members and employees of the Commission to be public servants.

- The Chairman, members, the Secretary and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, or any rule or regulation or order or direction made or issued under this Act, to be public servant within the meaning of section 21 of the Indian Penal Code.

24. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against any member of the Commission or officer or other employee of the Commission or any person acting under the direction of the Government or of the Commission, in respect of anything which is done in good faith or intended to be done in pursuance of this Act or any rule, regulation, order or direction made or issued under this Act.

25. Act to override other laws.

- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

26. Power to make rules.

(1)The Government may make rules for carrying out all or any of the purposes of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide

for all or any of the following matters, namely:-(a)the salaries, if any, allowances and other terms and conditions of service of members of the Commission;(b)the terms and conditions of service of the Secretary of the Commission;(c)the matters in respect of which the Commission may tender advice to the Government under clause (a) of sub-section (2) of section 11;(d)the form in which, and the time within which, the budget and annual report of the Commission may be prepared and forwarded to the Government;(e)the form and the manner in which the accounts of the Commission may be maintained, and the time at which, and the manner in which, such accounts may be audited;(f)the returns and information which the Commission may be required to furnish to the Government.(g)the conditions subject to which any building, building operation or engineering operation designed as a result of an architectural competition may be exempted;(h)any other matter which may be or is required to be, prescribed under this Act.(3)(a)All rules made under this Act shall be published in the Tamil Nadu Government Gazette and, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.(b)All notification issued under this Act shall, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.(4)Every rule made or notification or direction given or order issued under this Act shall, as soon as possible, after it is made or given or issued, be placed on the table of the Legislative Assembly and if, before the expiry of the session in which it is so placed or the next session the Legislative Assembly makes any modification in any such rule, notification, or order or direction or the Legislative Assembly decides that the rule, notification, or order should not be made on issued, the rule, notification, direction or order shall, thereafter, have effect only in such modified form or be of no effect, as the case maybe, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, notification or order.

27. Power to make regulations.

- The Commission may, subject to any rules made by the Government and with the previous approval of the Government may make regulations for carrying out the powers and function of the Commission under this Act.

28. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, make such provision not inconsistent with the provisions of this Act, as appears to them to be necessary or expedient for 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.