

WEST BENGAL HERITAGE COMMISSION ACT, 2001

9 of 2001

[March 21, 2001]

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An Act to provide for the establishment of a Heritage Commission in the State of West Bengal for the purpose of identifying heritage buildings, monuments, precincts and sites and for measures for their restoration and preservation. WHEREAS it is expedient to provide for the establishment of a Heritage Commission in the State of West Bengal for the purpose of identifying heritage buildings, monuments, precincts and sites and for measures for their restoration and preservation; It is hereby enacted in the Fifty-second Year of the Republic of India, by the Legislature of West Bengal, as follows:

CHAPTER 1

Preliminary

1. Short title, extent and commencement :-

(1) This Act may be called the West Bengal Heritage Commission Act, 2001.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date, and in such area (hereinafter referred to as the said area), as the State Government may, by notification (hereinafter referred to as the former notification), appoint, and different dates may be appointed for different areas:

Provided that the State Government may, by notification, rescind the former notification and, thereupon, this Act shall cease to be in force in the said area with effect from such date as may be specified in the notification.

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) "Commission" means the West Bengal Heritage Commission established under section 3;

(d) "development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under, land or the making of any material change in any building or land, and includes re-development;

(e) "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;

(f) "heritage building" means any building of 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 purpose as aforesaid under sub- clause (ii) of clause (a) of sub-section (4) of section 31 of the West Bengal Town and Country (Planning and Development) Act, 1979, monuments of heritage importance, as defined in clause (i) of this section, precincts or such other sites commonly considered for heritage importance;

(g) "local authority" means any Municipal Corporation established under any West Bengal Act or Municipality under the West Bengal Municipal Act, 1993 or any Panchayat constituted under the West Bengal Panchayat Act, 1973;

(h) "member" means a member of the Commission, and includes its Chairperson;

(i) "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 State Government, by reason of its heritage association, considers it necessary to protect against destruction, injury, alteration, mutilation, defacement, removal, dispersion or falling into decay;

(j) "notification" means a notification published in the Official Gazette;

(k) "prescribed" means prescribed by rules made by the State Government;

(l) "public amenity" includes road, water supply, street lighting, drainage, sewerage, public works, or such other convenience as the State Government may, by notification in Official Gazette, specify to be a public amenity for the purposes of this Act;

(m) "regulation" means a regulation made under this Act;

(n) "rule" means a rule made by the State Government under this Act.

CHAPTER 2

Establishment of Commission

3. Establishment of Commission :-

(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint, there shall be established a Commission by the name of the West Bengal 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 Commission :-

The Commission shall be chaired by an eminent person with concern and commitment for Heritage Conservation and shall consist of not more than twenty-one members, interested in all matters relating to the national and regional and regional heritage. The Commission shall consist of a Chairperson and the following members:

(a) Director of Archaeology and Museum, Department of Information and Cultural Affairs, Government of West Bengal;

- (b) a representative of the Department of Environment, Government of West Bengal (preferably an Environmentalist);
- (c) a representative of the Department of Urban Development, Government of West Bengal (preferably a Structural Engineer or an Architect);
- (d) a representative of the Municipal Affairs Department or the Department of Panchayat and Rural Development, Government of West Bengal;
- (e) six members of the Municipal Corporations and the Municipalities in West Bengal, of whom not less than two shall be the Mayor, Calcutta Municipal Corporation, and the Mayor, Howrah Municipal Corporation, or their nominees, one shall be the representative of the Municipalities of Darjeeling, Kalimpong and Kurseong in the District of Darjeeling and the other three from amongst other Municipal Corporations, Municipalities and Zilla Parishads in West Bengal, to be nominated by the State Government;
- (f) eleven members from the areas of specialisation, namely, History, Art-History, Fine Arts, Architecture, Conservation, Law (with special reference to property matters), Structural Engineering, Town and Country Planning, Industry and Commerce, of whom two shall be from Industry and Commerce.

5. Terms and conditions of service of members :-

- (1) A member shall hold office for a term of three years from the date of his appointment, unless his appointment is terminated earlier by the State Government.
- (2) A person who holds, or who has held, office as Chairperson or member shall be eligible for re-appointment to that office once only.
- (3) A member may resign his office by writing under his hand addressed to the State Government, but he shall continue in office until his resignation is accepted by the State Government.
- (4) A casual vacancy caused by the resignation of a member under sub- section (3) or for any other reason, shall be filled by fresh appointment.
- (5) A member may be appointed either as a whole-time or part-

time member as the State Government thinks fit.

(6) Subject to the foregoing provisions of this section, the terms and conditions of service of the Chairperson and other members shall be such as may be prescribed.

6. Meetings of Commission :-

The Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed by regulations.

7. Vacancies amongst members, or defect in the constitution, of Commission not to invalidate acts or proceedings of Commission :-

No act or proceedings of the Commission shall be deemed to be invalid by reason merely of any vacancy in, or any defect in the constitution of, the Commission.

8. Temporary association of persons with Commission for specific purposes :-

(1) The Commission may associate with itself, in such manner and for such purposes as may be determined by regulations, any person whose assistance or advice it may desire in carrying out any provision of this Act.

(2) A person associated with the Commission under sub-section (1) for any purpose shall have a right to take part in the discussions relevant to that purpose, but shall not have the right to vote at a meeting of the Commission and shall not be a member for any other purpose.

9. Appointment of staff of Commission :-

(1) The State 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 State Government without consultation with the Commission.

(2) The terms and conditions of service of the Secretary shall be such as may be prescribed.

(3) Subject to any rules, the Commission may appoint such other employees as it may think necessary for the efficient performance

of its functions under this Act, and the terms and conditions of service of the employees so appointed shall be such as may be determined by regulations.

10. Authentication of orders and other instruments of Commission :-

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 authorised by it in this behalf.

CHAPTER 3

Powers and functions of Commission

11. Powers and functions of 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 (i) to advise the State 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;

(ii) to advise the State 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;

(iii) to advise the local authorities, where necessary, on the policy of the grant of any certificate of right of development of any heritage building;

(iv) to advise whether to allow commercial or other use of heritage buildings and, if so, when to prohibit such use;

(v) to advise the State Government on framing of special regulations for such heritage buildings as may be listed by the State Government;

(vi) to advise the local authorities to regulate the installation of advertisement and display structure in respect of heritage buildings;

(vii) to advise the State Government on guidelines to be adopted by private parties who sponsor beautification schemes in West Bengal;

(viii) 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;

(ix) 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;

(x) 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;

(xi) to advise the State Government on the penal measures for defacing or destroying a heritage building;

(xii) to advise the State Government and the local authorities on the making of provision for restoration of heritage buildings;

(xiii) to advise the State Government and the local authorities on documentation of records of heritage buildings;

(xiv) to advise the State 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;

(xv) to advise the State Government on any other matter relating to restoration or preservation of buildings of heritage importance as may be entrusted by the State 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 the Commission.

12. Appeal to State Government in certain cases :-

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. Power of State Government to revise decision in certain cases :-

Nothing contained in this Act shall preclude the State Government from calling for, and examining, on its own motion, if that Government considers it necessary so to do 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 thinks 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.

14. Decision of State Government not to be questioned :-

The decision of the State Government in an appeal under section 12 or revision under section 13, shall be final and binding and shall not be questioned in any court of law.

15. Powers of Commission :-

For the purpose of performing its functions under this Act, the Commission 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.

16. State Government and local authority to accept, and to take action in accordance with the advice of the Commission :-

(1) Subject to the other provisions of this Act, the State Government and every local authority shall accept every advice of the Commission to that Government or the local authority, as the

case may be, and shall take action for prompt and effective implementation of such advice.

(2) The State 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 4

Fund, Accounts and Audit

17. Payment to Commission :-

The State Government may, after due appropriation made by the State Legislature by law in this behalf, pay to the Commission in each financial year such sums as the State Government may consider necessary for the performance of the functions of the Commission under this Act.

18. Fund of Commission :-

(1) The Commission shall have its own fund, and all sums which may, from time to time, be paid to it by the State Government shall be carried to the fund of the Commission and all payments by the Commission shall be made therefrom.

(2) 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.

(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 receive in its fund, and make expenditure out of it, any donation or grant from the Central Government or the State Government, or any statutory body or undertaking under the Central Government or the State Government, or local authority, or Trust or from any voluntary organisation, or any individual, as may be prescribed.

(5) The receipt and the expenditure from the fund of the Commission shall be done in the manner prescribed.

19. Budget :-

The Commission shall, in each year, prepare, in such form, and within such time, as may be prescribed, a budget in respect of the financial year next ensuing, showing the estimated receipts and

expenditure, and copies thereof shall be forwarded to the State Government.

20. Annual report :-

The Commission shall prepare once every year, in such form, and within such time, as may be prescribed, an annual report giving a true and full account of its activities during the previous year, and copies thereof shall be forwarded to the State Government, and the State Government shall cause every such report to be laid before the State Legislature.

21. Accounts and audit :-

(1) The Commission shall cause to be maintained such books of accounts and other books in relation to its accounts in such form, and in such manner, as may, in consultation with the Principal Accountant General, West Bengal, be prescribed.

(2) The Commission shall, as soon as may be after closing its annual accounts, prepare a statement of accounts in such form as may be prescribed and forward the same to the Principal Accountant General, West Bengal, by such date as the State Government may, in consultation with the Principal Accountant General, West Bengal, determine.

(3) The accounts of the Commission shall be audited by the Principal Accountant General, West Bengal, at such times, and in such manner, as he thinks fit.

(4) The annual accounts of the Commission together with the audit report thereon shall be forwarded to the State Government, and the State Government shall cause the same to be laid before the State Legislature and shall also forward a copy of the audit report to the Commission for taking appropriate action on the matters arising out of the audit report.

CHAPTER 5

Miscellaneous

22. Returns and information :-

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

23. Delegation of powers :-

The Commission may, by general or special order in writing,

delegate to the Chairperson, or any other member, or any officer, of the' Commission, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary for the efficient running of the day- to-day administration of the Commission.

24. Members and officers of Commission to be public servants :-

The members and officers of the Commission shall, when acting, or purporting to act. in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

25. Protection of action taken in good faith :-

No suit or other legal proceeding shall lie against any member or officer of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of any provision of this Act.

26. Power to make rules :-

(1) The State Government may, by notification, make rules for carrying out 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:

(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 State Government under clause (i) 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 State Government;

(e) the form and 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 State 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.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the State Legislature agrees in making any modification in the rule, or the State Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

27. Power to make regulations :-

The Commission may, with the previous approval of the State Government, by notification, make regulations consistent with this Act and the rules made thereunder for

(a) regulating the meetings of the Commission and the procedure for conducting business thereat;

(b) regulating the manner in which, and the purposes for which, persons may be associated with the Commission under section 8;

(c) determining the terms and conditions of service of persons appointed by the Commission under sub-section (3) of section 9;

(d) any other matter which has to be, or may be, prescribed by regulations.

28. Power to make order for removing difficulty :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may make such order, or do such thing, not inconsistent with the provisions of this Act, as appears to the State Government to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of publication of this Act in the Official Gazette.

29. Act to have overriding effect :-

The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, providing for heritage buildings.