

Delhi Ancient And Historical Monuments And Archaeological Sites And Remains Act, 2004

9 of 2005

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Delhi Ancient And Historical Monuments And Archaeological Sites And Remains Act, 2004

9 of 2005

(As passed by the Legislative Assembly of the National Capital Territory of Delhi on the 16th December, 2004.) Preamble An Act to provide for the preservation of Ancient and Historical Monuments and Archaeological Sites and Remains other than those declared to be of national importance and for the regulation of excavation of archaeological sites other than those declared to be of national importance in the National Capital Territory of Delhi. Be it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Fifty-fifth Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Delhi Ancient and Historical Monuments and Archaeological Sites and Remains Act, 2004.
- (2) It extends to the whole of the National Capital Territory of Delhi.
- (3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires -

- (a) "ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes -
- (i) the remains of an ancient monument;
 - (ii) the site of an ancient monument;
 - (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such ancient monument; and
 - (iv) the means of access to, and convenient inspection of, an ancient monument;
- (b) "archaeological site and remains" means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years and includes -
- (i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it; and (ii) the means of access to, and convenient inspection of, the area;
- (c) "Director" means the Director of Archaeology of the Government of National Capital Territory of Delhi and includes any other officer authorized by the Government to exercise the powers and to perform all or any of the functions of the Director prescribed by or under this Act;
- (d) "Government" means the Lieutenant Governor of the National Capital Territory of Delhi appointed by the President under article 239 and designated as such under article 239AA of the Constitution;
- (e) "local authority" means the Municipal Corporation of Delhi, the New Delhi Municipal Council, the Delhi Cantonment Board and the Delhi Development Authority and includes a Gaon Panchayat

established under section 151 of the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954);

(f) "maintain" with its grammatical variations and cognate expressions, includes fencing, covering in, repairing, restoring and cleaning 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;

(g) "non-living" used in relation to a monument or site means a monument or site which is not being used for any religious or social ceremony, rite, worship or prayer at the time of its declaration as a protected monument or site;

(h) "owner" includes -

(i) a joint owner vested with powers of management on behalf of himself and other joint owners and the successors in-title of any such owner; and

(ii) a manager or trustee, not being the owner, who has been entrusted with the custody and management of a monument or site and the successor-in-office of any such manager or trustee;

(i) "prescribed" means prescribed by the rules made under this Act;

(j) "protected area" means any archaeological site and remains which is declared to be a protected area under this Act;

(k) "protected monument" means a monument which is declared to be a protected monument under this Act;

(l) "unauthorized occupation" means the occupation by any person of the monument or archaeological site and remains without authority for such occupation, and includes the continuance in occupation by any person of the monument or archaeological site and remains after the authority under which he was allowed to occupy the premises has expired or has been terminated for any reason whatsoever.

3. Application Of The Act :-

Nothing in this Act shall apply to protected areas and protected monuments as defined in clauses (i) and (j) respectively of section 2 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Central Act 24 of 1958).

CHAPTER 2

PROTECTED MONUMENTS

4. Power Of Government To Declare Monument To Be Protected Monument And Archaeological Site And Remains To Be Protected Area :-

(1) Where the Government is of the opinion that it is necessary to protect against destruction, injury, alteration, mutilation, defacement, removal, dispersion or falling into decay and for preservation any -

(a) monument;

(b) archaeological site and remains;

It may, by notification in the official Gazette, give two months' notice of its intention to declare such monument to be a protected monument or such archaeological site and remains to be a protected area, as the case may be, and a copy of every such notification shall be affixed in a conspicuous place on or near the monument or site and remains, as the case may be.

(2) Any person interested in any such monument or archaeological site and remains may, within two months after the issue of the notification under sub-section(1), object to the declaration of the monument to be a protected monument or the archaeological site and remains to be a protected area, as the case may be.

(3) On the expiry of the said period of two months, the Government may, after considering the objections, if any, received by it, declare by notification in the official Gazette, the monument to be a protected monument or the archaeological site and remains to be a protected area, as the case may be.

(4) A notification published under this section shall, unless and until withdrawn, be conclusive evidence of the fact that the monument or the archaeological site and remains to which it relates, is a protected monument or a protected area, as the case may be.

5. Acquisition Of Right Of Protected Monument :-

(1) The Director may, with the prior approval of the Government, purchase, or take a lease of or accept a gift or bequeath of, any protected monument.

(2) Where a protected monument is without an owner, the Director may, by issuing a notification in the official Gazette assume the guardianship of the monument.

(3) The owner of any protected monument, by a written instrument, constitute the Director to guardian of the monument, and the Director may, with the approval of the Government accept such guardianship.

(4) When the Director has accepted the guardianship of a protected 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 Director had not been constituted a guardian thereof.

(5) When the Director has accepted the guardianship of a protected monument under sub-section (3), the provisions of this Act relating to agreements entered into under section 6 shall apply to the written agreement referred to in the said sub-section.

(6) Nothing in this section shall affect the use of any protected monument for customary religious observances in case the monument is under religious use.

6. Maintenance Of Protected Monument By Agreement :-

(1) The Director may, with the approval of the Government, propose to the owner of a protected monument to enter into an agreement with the Government within a specified period for the maintenance of the monument.

(2) An agreement under this section may provide for all or any of the following matters, 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 -

(i) to use the monument for any purpose;

(ii) to charge any fee for entry into, or inspection of the monument;

(iii) to destroy, damage, remove, alter or deface the monument; or

(iv) to build on or near the site of the monument within a radius upto fifty metres;

(d) the facilities of access to be permitted to the public or any section thereof and to the Director and to the person deputed by the owner or the Director to inspect or maintain the monument;

(e) the notice to be given to the Government in case the land on which the monument is located or any adjoining land is offered for sale by the owner, and the right to be reserved to the Government, to purchase such land, at its market value;

(f) the payment of any expenses incurred by the owner or by the Government in connection with the maintenance of the monument;

(g) the proprietary or other rights which are to vest in the Government in respect of the monument when any expenses are incurred by the Government in connection with the maintenance of the monument;

(h) the appointment of any authority to decide any dispute arising

out of the agreement; and

(i) any matter related to the maintenance of the monument which is a proper subject of agreement between the owner and the Government.

(3) The terms of agreement under this section may be altered, if necessary, with the approval of the Government and with the consent, in writing, of the owner provided that it serves the purpose of preserving the monument better.

(4) The Government or the owner may, at any time after the expiration of ten years from the date of execution of an agreement under this section, terminate it on giving six months' notice in writing to the other party:

Provided that where the agreement is terminated by the owner, he shall pay to the Government the expenses, if any incurred by it on its maintenance.

(5) The agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, from through or under a party by whom or on whose behalf the agreement was executed.

7. When Owners Are Under Disability Or When It Is A Village Property :-

(1) If the owner of a protected monument 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 6.

(2) In the case of protected monument which is a village property, the Panchayat for the village where such property vests in the Panchayat or where such property does not vest in a Panchayat, any village officer exercising powers of management over such property may exercise the powers conferred upon an owner by section 6.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the person on whose behalf he is acting to make or execute an agreement relating to a living, that it is to say a functional protected monument which or any part of which is regularly used every year for religious worship or observances of that religion at the time of its protection.

8. Application For Endowment To Repair A Protected Monument :-

(1) If any owner or other person, competent to enter into an agreement under section 6 for the maintenance of a protected monument, refuses, or fails to enter into such an agreement when proposed to him by the Director, and if any endowment has been created for the purpose of keeping such monument in good repair or for that purpose among others, the Government may institute a suit in the court of the District Judge, Delhi, or if the estimated cost of repairing the monument does not exceed twenty thousand rupees, may make an application to the District Judge, Delhi for the proper application of such endowment or part thereof.

(2) On the hearing of an application made under sub-section (1), the District Judge, Delhi may summon and examine the owner and any person whose evidence appears to him to be necessary, and may pass an order for the proper application of the endowment or any part thereof, and any such order shall be executed as if it were a decree of a civil court.

9. Failure Or Refusal To Enter Into Agreement :-

(1) If any owner or other person competent to enter into an agreement under section 6 for the maintenance of a protected monument refuses or fails to enter into such an agreement, the Government may make an order providing for all or any of the matters specified in subsection (2) of section 6, and such order shall be binding on the owner or such other person and on every person claiming title to the monument from, through or under, the owner or such other person.

(2) Where an order made under sub-section (1) provides that the monument shall be maintained by the owner or other person competent to enter into an agreement, all reasonable expenses for the maintenance of the monument shall be payable by the Government.

(3) No order under sub-section (1) shall be made unless owner or other person has been given an opportunity of making a representation, in writing, against the proposed order.

10. Power To Make Order Prohibiting Contravention Of Agreement :-

(1) If the Director apprehends that the owner or the occupier of a protected monument intends to destroy, remove, alter, mutilate, deface, imperil or misuse the monument or to build on or near the site thereof in contravention of the terms of an agreement under

section 6, the Director may, after giving the owner or the occupier an opportunity of making a representation against the proposed action in writing, make an order prohibiting any such contravention of the agreement:

Provided that no such opportunity may be given in a case where the Director, for reasons to be recorded in writing, is satisfied that it is not expedient or practicable to do so.

(2) Any person aggrieved by an order under this section may appeal to the Government within such time and in such manner as may be prescribed in this behalf and the decision of the Government in this regard shall be final.

11. Enforcement Of An Agreement :-

(1) If an owner or other person who is bound by an agreement for the maintenance of a monument under section 6 refuses or fails, within such reasonable time as the Director may decide, to do any act which in the opinion of the Director may authorize any person to do any such act, and the owner or other person shall be liable to pay the expenses as the owner or the other person may be liable to pay under the agreement.

(2) If any dispute arises regarding the amount of expenses payable by the owner or other person under sub-section (1), it shall be referred to the Government whose decision shall be final.

12. 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, any land on which is situated a monument, in respect of which an instrument has been executed by the owner for the time being under section 5 or section 6, and every person claiming any right, title or interest to or in a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

13. Compulsory Acquisition Of A Protected Monument :-

If the Government apprehends that a protected monument is in danger of being destroyed, injured, misused, or allowed to fall into decay, it may acquire the protected monument under the provision of the Land Acquisition Act, 1894 (1 of 1894), as if the maintenance of protected monument were a public purpose within

the meaning of that Act.

14. Maintenance Of Certain Protected Monuments :-

(1) The Government shall maintain every monument which has been acquired under section 13 or in respect of which any of the rights mentioned in section 5 have been acquired.

(2) When the Director has accepted the guardianship of a protected monument, under section 5, 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 material and doing such acts as he may consider necessary or desirable for the maintenance thereof.

15. Voluntary Contributions :-

The Director may receive voluntary contributions towards the cost of maintaining a protected monument and may give such general or special orders or directions as he considers necessary for the management and applications of the contributions 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 without the consent, in writing, of the donor.

16. Protection Of Places Of Worship From Misuse, Pollution Or Desecration :-

(1) A protected monument maintained by the Government under this Act which is a place of worship under active religious use, shall not be used for any purpose inconsistent with its character.

(2) Where the Government has acquired a protected monument under section 13, or has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of, a protected monument under section 5, and such monument or any part thereof is actually used every year for religious worship or observances by any community, the Director shall make due provision for the protection of such monument, or part thereof, from pollution or desecration -

(a) by prohibiting the entry therein except in accordance with the conditions prescribed with the concurrence of the persons, if any, in charge of the said monument or part thereof, and connected with any religious practice or observances in relation thereto, of any

person not entitled to enter by 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.

17. Prohibited Area And Regulated Area :-

An area up to fifty meters from the protected limits of monument shall be declared as prohibited area for any construction and mining activities near or adjoining protected monuments and further beyond it up to one hundred meters as regulated area in which construction and mining activities can be undertaken only after getting permission of the Government and further subject to any rules made under this Act.

18. Preservation Amenities Of Protected Monuments :-

(1) If the Government is of opinion that for the purpose of preserving the reasonable amenities of any protected monument, it is necessary so to do, the Government may, subject to the provisions of this section, by notification in the official Gazette, in respect of any area comprising or adjacent to the site of such monument, specified in such notification (hereinafter referred to as "the controlled area") -

(a) prohibit or restrict the construction, erection or execution of building, structure and other work within the controlled area, or the alteration or extension of any such building, structure, or work in such manner as to materially affect their external appearance;

(b) prescribe the position, height, site, materials, colour and screening and otherwise regulate the external appearance of buildings, structures and other work within the controlled area;

(c) require any local authority -

(i) to construct any approach road to any protected monument; or

(ii) to demolish any public convenience vesting in it, that is to say, a latrine, urinal, dustbin, rubbish dump and the like, located close to or in the vicinity of any protected monument;

(d) otherwise restrict the use of the land within the controlled area;

(e) otherwise restrict the use of the land within the controlled area to such extent as is necessary for the purpose of preserving the reasonable amenities of the protected monument; and

(f) provide for such matters as appear to the Government to be incidental to or consequential on the foregoing provisions of this section, or to be necessary for giving effect to those provisions.

(2) Not less than forty five days before issuing a notification under subsection (1), the Government shall cause to be published in the official Gazette, in the controlled area, and in the village and at the headquarters of the Tehsil in which the controlled area is situated, a notification to the effect that those who wish to make any objection to the issue of such a notification under sub-section (1), may submit their objections in writing to the Government or appear before any officer duly authorized in that behalf, to hear objections on behalf of the Government, within one month of the publication of the notification in the official Gazette or within fifteen days from the date of the publication of the notification in the controlled area, whichever period expires later.

(3) If on the expiration of the time-limits allowed by sub-section (2) for the filing of objections, no objection has been made, the Government shall proceed at once to issue the notification under sub-section (1) but if any objection has been made, the Government may, after such objection has been considered or heard, as the case may be, either-

(a) abandon the proposal to issue the notification under sub-section (1); or

(b) issue the notification under sub-section (1) with such modification, if any, as it thinks fit.

(4) The decision of the Government on the question of issuing the notification under sub-section (1) shall be final and conclusive.

(5) Nothing contained in any notification under sub-section (1) shall affect any building, structure or other work or any alteration or extension thereof, if it was constructed, erected or executed before the date when notice of intention to issue such a notification was given under sub-section (2), and for the purpose of this provision, a building, structure, or other work and any alteration or extension thereof shall be deemed to have been constructed, erected or executed before that date -

(a) if its construction, erection or execution was begun before that date; or

(b) if, and so far as, its construction, erection, or execution was necessary for the purpose of performing a contract made before that date.

(6) Any person whose property is injuriously affected by the coming into force of a notification under sub-section (1) shall, subject to the provisions of section 31, be entitled to obtain compensation in respect thereof from the Government.

19. Power To Prevent Destruction Of Monument :-

Notwithstanding anything contained in this Act, where the Director is of the opinion that a particular monument which has not been declared a protected monument under this Act is being destroyed either deliberately or otherwise and the same needs to be preserved in the public interest, he shall take such steps as may be necessary to prevent destruction of the monument.

20. Issue Of Notice To Show Cause For An Order Of Eviction :-

(1) If the Government is of the opinion that any persons are in unauthorized occupation of any monument whose ownership rests with the Government and that they should be evicted, the Director shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim any interest in, the monument -

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the Director on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also personal hearing, if such hearing is desired.

(3) The Director shall cause the notice to be served by having it affixed on the outer or some other conspicuous part of the monument and in such other manner as may be prescribed where upon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the Director knows or has reason to believe that any persons are in occupation of the monument, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by registered post or by delivering or tendering it to that person or in such other manner as may be prescribed.

21. Eviction Of Unauthorized Occupants :-

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 20 and any evidence produced by him in support of the same and after a personal hearing, if any, given under clause (b) of sub-section (2) of section 20, the Director is satisfied that the monuments are in unauthorized occupation, the Director may make an order of eviction, for reasons to be recorded therein, directing that the monuments shall be vacated on such date as may be specified in the order, by all persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the monuments.

(2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later, the Director or any other officer duly authorized by him in this behalf may after the date as specified or after the expiry of the period aforesaid, whichever is later, evict that person from, and take possession of, the monument according to such procedure as may be prescribed and may, for that purpose, use such force as may be necessary.

22. Relinquishment Of Government'S Rights In A Monument :-

(1) Where rights have been acquired by the Government in respect of any monument in the official gazette under this Act by virtue of any sale, lease, gift or will, the Government may by notification, relinquish rights so acquired, to the person who would, for the time being be the owner of the monument, as if such rights had not been acquired.

(2) The Director may, with the prior sanction of the Government relinquish the guardianship of a monument which he has assumed under this Act.

23. Rights Of Access To A Protected Monument :-

Subject to any rules made under this Act, the public shall have a right of access to any protected monument or part thereof.

CHAPTER 3

PROTECTED AREAS

24. Restrictions On Enjoyment Of Property Rights In

Protected Areas :-

(1) No person including the owner or occupier of a protected area shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilize such area or any part thereof in any other manner without the permission of the Government:

Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purpose of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface.

(2) The Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Director may cause the building to be removed and the person shall be liable to pay the cost of removal.

25. Power To Acquire A Protected Area :-

If the Government is of opinion that any protected area contains an antiquarian remains, monument or site which is of historical or archaeological value, it may acquire such area under the provisions of the Land Acquisition Act, 1894 (1 of 1894), as if the acquisition were for a public purpose within the meaning of that Act.

CHAPTER 4

ARCHAEOLOGICAL EXCAVATIONS

26. Excavations In Protected Areas :-

Subject to the provisions of section 24 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Director or an officer authorized by him in this behalf or any person holding a licence granted in this behalf (hereinafter referred to as "the licensee") may, after giving notice, in writing to the Deputy Commissioner of the area concerned and the owner enter upon and make excavations in any protected area.

27. Excavations In An Area Other Than A Protected Area :-

(1) Subject to the provisions of section 24 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), where the Director has reasons to believe that any area, not

being a protected area, contains ruins or relics so historical or archaeological importance, he or an officer authorized by him in this behalf may, after giving notice in writing to the Deputy Commissioner of the area concerned and the owner enter upon and make excavations in this area.

(2) At the conclusion of the excavation operations, the Director or an officer authorized by him shall give in writing to the owner of the land from where such antiquities have been discovered as to the nature and number of such antiquities.

28. Compulsory Acquisition Of Antiquities Etc. Discovered During Excavation Operations And Casual Digging :-

(1) The antiquity or any other archaeological material discovered at a site, whether located in a protected area or not, will be acquired by the Government.

(2) Where, as a result of any chance discovery or as a result of any unauthorized digging in any area, any antiquities or remains are discovered, the Director, shall as soon as practicable, examine such antiquities and submit a report to the Government in such manner and containing such particulars as may be prescribed.

(3) Until an order for the compulsory purchase of any such antiquities is made under sub-section (4), the Director shall keep them in such safe custody as he may deem fit after proper documentation.

(4) On receipt of a report under sub-section (2), the Government may make an order for the compulsory purchase of any such antiquities.

(5) When an order for the compulsory purchase of any antiquity or art object is made under sub-section (4), the ownership of such antiquity or art object shall vest in the Government with effect from the date of the order.

CHAPTER 5

PRINCIPLES OF COMPENSATION

29. Compensation For Loss Or Damage :-

Any owner or occupier of land who has sustained any loss or damage or any diminution of profits from the land by reason or any entry on, or excavation in, such land or the exercise of any other power conferred by or under this Act shall be paid compensation by the Government for such loss, damage or diminution of profits.

30. Assessment Of Market Value Or Compensation :-

The market value of any property which the Government is empowered to purchase at such value under this Act or the compensation to be paid by the Government in respect of anything done under this Act, shall, where any dispute arise in respect of such market value or compensation, be ascertained in the manner provided for in section 3, 5, 8 to 34, 45 to 47, 51 to 52 of the Land Acquisition Act, 1894 (1 of 1894), so far as they can be made applicable;

Provided that when making an inquiry under the said Land Acquisition Act, the Deputy Commissioner of the area concerned shall be assisted by two assessors, one of whom shall be person nominated by the Government and the other, a person nominated by the owner or the occupier, or, in case the owner or the occupier fails to nominate an assessor within such time as may be fixed by the Deputy Commissioner of the area concerned in this behalf.

31. Special Provision As To Compensation Under Section 18 :-

(1) No person shall be entitled to compensation in respect of any order issued sub-section (1) of section 18 unless, within three months from the date on which such notification comes into force, or within such further time as the Government may in special circumstances allow, he makes a claim in the prescribed manner.

(2) A person shall not be entitled to compensation by reason of the fact that any act or thing done or caused to be done by him has been rendered abortive by such notification if, or so far as, the act or thing was done after the date on which the notification was issued, or by reason of the fact that the performance of any contract made by him after that date is prohibited as a result of the notification.

(3) Where any provision of such notification was, immediately before the notification came into force, already in force by virtue of any other Act, no compensation shall be payable by reason of any property being injuriously affected by that provision of the notification if compensation has been paid or could have been claimed, or was not payable, by reason of that property having been injuriously affected by the provision already in force.

(4) Where any provision of such notification could, immediately before it came into force have been validly included in a scheme,

order, regulation or bye-law, by virtue of any other Act -

(a) if no compensation would have been payable by reason of the inclusion of that provision in that scheme, order, regulation or bye-law, no compensation shall be payable in respect of that notification; and

(b) if compensation would have been so payable, the compensation payable in respect of that provision of the notification shall not be greater than the compensation which would have been so payable.

(5) The amount of the sum which is to be paid as compensation in respect of such a notification, in case of any dispute, shall be determined in accordance with the provisions of section 31.

CHAPTER 6

MISCELLANEOUS

32. Delhi Archaeological Council :-

(1) There shall be constituted an Advisory Council for ancient and historical monuments and archaeological sites and remains of State importance to be called in Delhi Archaeological Advisory Council (hereinafter referred to as the Advisory Council) for the purpose of advising the Government on matters of policy relating to the field of archaeology in the National Capital Territory of Delhi.

(2) The Advisory Council shall be constituted by the Government and shall consist of a Chairman who will be Minister of Education, Government of National Capital Territory of Delhi and Director of the Department of Archaeology of the Government of National Capital Territory of Delhi will be Member Secretary and 16 members to be nominated by the Government for a period of two years and further subject to any rules made under this Act.

33. Delegation Of Power :-

The Government may, by notification in the official gazette, direct that any powers conferred on it by or under this Act shall, subject to such conditions as may be specified in the direction, be also exercisable by such officer or authority subordinate to the Government as may be specified in the direction.

34. Penalties :-

(1) Whoever -

(i) destroys, removes, injures, alters, adds, deface, imperils or misuse a protected monument, or site and remains; or

(ii) being the owner, or the occupier of a protected monument, contravenes an order made under sub-section (1) of section 9 or under sub-section (1) of section 10; or

(iii) removes from a protected monument, any sculpture, carving, image, bas-relief, inscription, pillar, brackets, stones, artifacts or other like material or objects; or

(iv) does any act in contravention of sub-section (1) of section 24; shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees, or with both.

(2) Any person who contravenes any of the provisions of a notification issued under sub-section (1) of section 18 shall be punishable with fine which may extend to fifty thousand rupees, and if the contravention is continued after conviction, with a further fine which may extend to two hundred and fifty rupees for each day of continued contravention, any if such contravention is continued after the expiry of such period as the Court may determine, the Government shall, in addition, have power to do all such acts as its opinion are necessary for removing so much of the building, structure or work as is not in conformity with such provisions, and any expense incurred by the Government shall be recoverable from the person convicted, as an arrear of land revenue.

35. Compounding Of Offences :-

(1) The Director or any person authorized by him by general or special orders in this behalf, may either before or after institution of the proceedings compound any offences made punishable under this Act for such amount as the Government may by notification in the official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

36. Jurisdiction To Try Offences :-

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

37. Certain Offences To Be Cognizable :-

Notwithstanding anything contained in section 29 of the Code of

Criminal Procedure, 1973 (II of 1974), any offence under clause (i) or clause (iii) of sub-section (1) of section 34, shall be deemed to be a cognizable offence within the meaning of that Code.

38. Special Provision Regarding Fine :-

Notwithstanding anything contained in section 31 of the Code of Criminal Procedure, 1973 (II of 1974), it shall be lawful for any Metropolitan Magistrate to pass a sentence of fine exceeding two thousand rupees on any person convicted of an offence, which under this Act is punishable with fine exceeding two thousand rupees.

39. Recovery Of Amount Due To Government :-

Any amount due to the Government from any person under this Act may, on a certificate issued by the Director, be recovered in the same manner as an arrear of land revenue.

40. Power To Declare Protected Monument, And Protected Area To Be No Longer Such Monument Or Area :-

If the Government is of the opinion it is no longer necessary to protect any protected monument or protected area, it may, by notification in the official Gazette make a declaration to that effect and thereupon such monument or area shall cease to be a protected monument or protected area, as the case may be.

41. Power To Correct Mistakes, Etc :-

Any clerical or typographical mistake, patent error or error arising from an accidental slip or omission in the description of any monument or archaeological site and remains declared to be protected monuments or protected areas, as the case may be, under this Act may, at any time, be corrected by the Director by notification in the official gazette.

42. Protection Of Action Taken Under Act :-

No suit for compensation and criminal proceeding shall lie against any public servant for any action which is in good faith done or intended to be done in good faith under this Act.

43. Power To Make Rules :-

(1) The Government may, by notification in the official gazette and subject to the condition of previous publication, 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, namely -

(a) the prohibition or regulation by licensing or otherwise of mining, quarrying, excavating, digging, blasting or any operation of a like nature which, in the opinion of the Government, has jeopardized or is likely to jeopardize the safety of the monument, or the area, as the case may be, near a protected monument or area or the construction of buildings on land adjoining such monument or area and the removal or unauthorized occupation, or construction activity;

(b) the right of access of the public to a protected monument and fee, if any, to be charged therefore;

(c) the form and contents of the report of the Director under sub-section (2) of section 28;

(d) the form in which applications for permission under section 24 may be made and the particulars which they should contain;

(e) the manner in which a claim shall be made under this Act and the time within which it may be preferred;

(f) the form and manner of preferring an appeal under this Act and the time within which it may be preferred;

(g) the manner of service of any order or notice under this Act;

(h) the manner in which excavations and other like operations for archaeological purposes may be carried on;

(i) the form of any notice required or authorized to be given under section 20 of this Act and the manner in which it may be served;

(j) the procedure to be followed in taking possession of a monument, under sub-section (2) of section 21 of this Act.

(k) the term of the office, traveling and other allowances payable to the member of the Advisory Council; and

(l) any other matter which is or may be prescribed.

(3) Any rule made under this section may provide that breach thereof shall be punishable -

(i) in the case of a rule made with reference to clause (a) of subsection (2), with imprisonment which may extend to three months, or with fine which may extend to twenty thousand rupees, or with both;

(ii) in the case of a rule made with reference to clause (b) of subsection (2), with fine which may extend to five thousand

rupees.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before the House of the Legislative Assembly of the National Capital Territory of Delhi, 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 sessions immediately following the session or the successive sessions aforesaid, the House agrees in making any modification in the rule, or the House 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.

44. Power To Remove Difficulties :-

The Ancient Monuments Preservation Act, 1904 (VII of 1904), in its application to the National Capital Territory of Delhi shall cease to have effect in relation to ancient and historical monuments, archaeological sites and remains and all other matters pertaining thereto, to which this Act applies, except in respect of things done or omitted to be done before the commencement of this Act.

45. Repeal :-

If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order not inconsistent with the provisions of the Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.