

GUJARAT ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1965

25 of 1965

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GUJARAT ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1965

25 of 1965

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An Act to make better provision for the preservation of ancient and historical Monuments and records and archaeological sites and remains (other than those declared to be of national importance) in the State of Gujarat and for matters connected with the purposes aforesaid. It is hereby enacted in the Sixteenth Year of the Republic of India as follows:-

CHAPTER 1

Preliminary

1. Short title, extent and commencement :-

(1) This Act may be called the Gujarat Ancient Monuments and

Archaeological Sites and Remains Act, 1965.

(2) It extends to the whole of the State of Gujarat.

(3) It shall come into force on such dates as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(1) "ancient and historical monuments" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes-

(a) The remains of such monument.

(b) the site of such monument,

(c) such portion of land adjoining the site of such monument as may be required for fencing or covering in or otherwise preserving the monument, and

(d) the means of access to, and from, and convenient inspection of such monument;

(2) "antiquity" includes-

(a) any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship,

(b) any article, object or thing detached from a building or cave,

(c) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in by- gone ages,

(d) any article, object or thing of historical interest, and

(e) any article, object or thing which in the opinion of the State Government because of its historical or archaeological importance is fit to be preserved and is declared by the State Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act:

Provided that such antiquity has been in existence for not less then one hundred years.

(3) "Archaeological Officer" means such Officer as the State

Government may appoint to be an Archaeological Officer for the purposes of this Act;

(4) "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-

(a) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and

(b) The means of access to, and from, and convenient inspection of, the area;

(5) "Collector" includes any officer authorised by the State Government to perform all or any of the functions of Collector by or under this Act;

(6) "Director" means the officer appointed for the time being by the State Government to be the Director of Archaeology and includes any officer authorised by the State Government to perform all or any of the functions of the Director by or under this Act;

(7) "Land Acquisition Act" means the Land Acquisition Act, 1894 as in force in the State of Gujarat;

(8) "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 preserving protected monument or of securing convenient access thereto and therefrom;

(9) "owner" includes-

(a) a joint owner invested with powers of management on behalf of himself and other joint owners, and the successor in title of any such owner; and

(b) any manager or trustee exercising powers of management and the successor in office of any such manager or trustee;

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

(11) "protected area" means any archaeological site and remains which is deemed or declared to be protected monument by or under this Act.

CHAPTER 2

3. Certain ancient and historical monuments deemed to be protected monuments :-

All ancient and historical monuments in the State of Gujarat, which before the commencement of this Act have been declared by or under the Saurashtra Ancient Monuments Preservation Act, 1956 (Sau. III of 1956) to be protected monument, and have not been declared by or under any law made by Parliament to be of national importance, shall be deemed to be protected monuments for the purposes of this Act.

4. Power of State Government to declare ancient and historical monuments to be protected monuments :-

(1) Where the State Government is of opinion that any ancient and historical monument not included in section 3 and not declared by or under any law made by Parliament to be of national importance, should be protected monument, it may, by notification in the Official Gazette, give two months' notice of its intention to declare such monument to be a protected monument; and a copy of every such notification shall be affixed in a conspicuous place near the monument.

(2) If any person interested in any such monument has any objection to the monument being declared as a protected monument, he may, within two months of the publication of the notification under sub-section (1), submit his objection in writing, to the State Government.

(3) On the expiry of the said period of two months, the State Government may, after considering the objections, if any, received under sub-section (2), declare by notification in the Official Gazette the ancient and historical monument to be a protected monument.

(4) A notification published under sub-section (3) shall, unless and until withdrawn by the State Government, be conclusive evidence of the fact that the ancient and historical monument to which it relates is a protected monument for the purposes of this Act.

5. Acquisition of rights in a protected monument :-

(1) The Collector may, with the sanction of the State Government, purchase, or take a lease of, or accept a gift or bequest of, any protected monument.

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

(3) The owner of any protected monument may, by written instrument, constitute the Collector the guardian of the monument, and the Collector may, with the sanction of the State Government, accept such guardianship.

(4) When the Collector has accepted the guardianship of a protected monument under sub-section (3), the owner shall, except as expressly provided by this Act, have same estate, right, title and interest in or to the monument, as if the Collector had not been constituted a guardian thereof.

(5) When the Collector has accepted the guardianship of a protected monument under sub-section (3), the provisions of this Act relating to agreements executed under section 6 shall apply to the written instrument executed under the said sub-section.

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

6. Preservation of protected monument by agreement :-

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

(2) Any agreement under this section may provide for all or any of the following matters, that is to say,-

(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, remove, alter or deface the monument, or

(iv) to build on or near the site of the monument;

- (d) the facilities of access to be permitted to the public, or any section thereof, or to persons deputed by the owner, the Director or the Collector, to inspect or maintain the monument;
- (e) the notice to be given to the State Government in case the land on which, the monument is situated or any adjoining land is offered for sale by the owner, and the right to be reserved to the State Government to purchase such land, or any specified portion of such land, at its market value;
- (f) the payment of any expenses incurred by the owner or by the State Government in connection with the maintenance 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 maintenance 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 maintenance of the monument which is a proper subject of agreement between the owner and the State Government.

(3) The State Government or the owner may, at any time after the expiration of three 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 State Government the expenses, if any, incurred by it on the maintenance of the monument during the five years immediately preceding the termination of the agreement or, if the agreement has been in force for a shorter period, during the period the agreement was in force.

(4) An agreement under this section shall be binding on any person claiming to be the 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. Owners under disability or not in possession :-

(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 under section 6.

(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 under 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 protected monument which, or any part of which, is periodically used for religious worship or observances of that religion.

8. Application of 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, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the State Government may institute a suit in the court of the district judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the district judge, for the proper application of such endowment or part thereof.

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

9. Failure or refusal to enter into an 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 State Government may make an order providing for all or any of the matters specified in sub-section (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 State Government.

(3) No order under sub-section (1) shall be made unless the 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 under section 6 :-

(1) If the Collector apprehends that the owner or occupier of a protected monument intends to destroy, remove, alter, 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 Collector may, after giving the owner or occupier an opportunity of making a representation in writing, make an order prohibiting any such contravention of the agreement:

Provided that no such opportunity may be given in any case where the Collector, 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 State Government within such time and in such manner as may be prescribed, and the decision of the State Government shall be final.

11. Enforcement of agreements :-

(1) If the 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 Collector may fix, to do any act which in the opinion of the Collector is necessary for the maintenance of the monument, the Collector may authorise any person to do any such act, and the owner or other person shall be liable to pay the expenses of doing any such act, or such portion of the expenses as the owner 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 State Government whose decision shall be final.

12. Purchase 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 any instrument has been executed by the owner for the time being under section 5 or section 6, 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.

13. Acquisition of protected monument :-

If the State 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 provisions of the Land Acquisition Act, as if the maintenance of the projected monument were a public purpose within the meaning of that Act.

14. Maintenance of certain monuments :-

(1) The State 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 Collector has assumed the guardianship of a 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, sub-ordinates 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.

15. Voluntary contribution :-

The Director may receive voluntary contribution, 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.

16. Protection of place of worship from misuse, pollution or desecration :-

17. Preservation of amenities of protected monuments. :-

(1) If the State Government is of opinion that for the purpose of preserving the reasonable amenities of any protected monument, it is necessary so to do, the State 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, structures and other works above ground within the controlled area, or the alteration or extension of any such buildings, structures, or works in such manner as materially to effect their external appearance;

(b) prescribe the position, height, size, design, materials, colour and screening and otherwise regulate the external appearance of buildings, structures and other works above ground 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 it, that is to say, a latrine, urinal, rubbish dump and the like located close to or in the vicinity of any protected monument.

(d) prohibit or restrict the felling of trees within the controlled area;

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

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

(2) Not less than forty-five days before the issuing a notification under sub-section (1), the State Government shall cause to be published in the Official Gazette in the controlled area, and in the village and at the headquarters of the taluka or mahal of the district in which the controlled area is situated, a notification stating that it proposes to issue a notification in terms of sub-section (1), together with a notice requiring all person affected by such notification, who wish to make any objection to the issuing of such a notification, to submit their objections in writing to the State

Government or appear before any officer duly authorised in that behalf to hear objections on behalf of the State 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 allowed by sub-section (2) for the filing of objections, no objection has been made, the State Government shall proceed at once to issue the notification under sub-section (1). If any such objection has been made, the State Government may, after all the objections have 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 modifications (if any) as it thinks fit.

(4) The decision of the State 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 above ground 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 27, be entitled to obtain compensation in respect thereof from the State Government.

18. Relinquishment of Government rights in a monument :-

With the sanction of the State Government, the Collector may,-

(a) where rights have been acquired by the Collector in respect of any monument under this Act by virtue of any sale, lease, gift or bequest, relinquish by notification in the Official Gazette, 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 assumed under this Act.

19. Right of access to protected monuments :-

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

CHAPTER 3

Protected Areas

20. Power of State Government to declare archaeological sites and remains to be protected areas :-

(1) Where the State Government is of opinion that any archaeological site and remains, not declared by or under any law made by Parliament to be of national importance, should be protected area, it may by notification in the Official Gazette, give two months' notice of its intention to declare such archaeological site and remains to be a protected area, and a copy of every such notification shall be affixed in a conspicuous place near the site and remains.

(2) If any person interested in any such archaeological site and remains has any objection to the same being declared a protected area, he may within two months of the publication of the notification under sub-section (1) submit his objection in writing to the State Government.

(3) On the expiry of the said period of two months, the State Government may, after considering the objections, if any, received by it under sub-section (2), declare by notification in the Official Gazette the archaeological site and remains to be a protected area.

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the archaeological site and remains to which it relates is a protected area for the purposes of this Act.

21. Restrictions on enjoyment of 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 any part thereof in any other manner, without the permission of the State Government:

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

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

22. Power to acquire a protected area. :-

-If the State Government is of opinion that any protected area contains an ancient monument or interesting and valuable antiquities, it may acquire such area under the provisions of the Land Acquisition Act (1 of 1894), as if the acquisition were for a public purpose within the meaning of that Act.

CHAPTER 4

Protection of Antiquities

23. Power of State Government to control moving of antiquities :-

(1) If the State Government considers it necessary in the public interest that any antiquities or class of antiquities ought not to be moved from the place where they are, without the sanction of the State Government, the State Government may, by notification in the Official Gazette, direct that any such antiquity or any class of such antiquities shall not be moved except with the written permission of the Collector.

(2) Every application for permission under sub-section (1) shall be in such form and contain such particulars, as may be prescribed.

(3) Any person aggrieved by an order refusing permission may appeal to the State Government, whose decision shall be final.

24. Purchase of antiquities by State Government :-

(1) If the State Government apprehends that any antiquity mentioned in a notification issued under sub-section (1) of section 23 is in danger of being destroyed, removed, injured, misused or allowed to fall into decay, or is opinion that by reason of its historical or archaeological importance, it is desirable to preserve such antiquity in a public place, the State Government may make an order for the compulsory purchase of such antiquity at its market value, and the Collector shall thereupon give notice to the owner of the antiquity to be purchased.

(2) Where a notice of compulsory purchase is issued under sub-section (1) in respect of any antiquity, such antiquity shall vest in the State Government with effect from the date of the notice.

(3) The power of compulsory purchase given by this section shall not extend to any image or symbol actually used for bona fide religious observances.

CHAPTER 5

Principles of Compensation

25. 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 of any entry on such land or the exercise of any other power conferred by this Act, shall be paid compensation by the State Government for such loss, damage or diminution of profits.

26. Assessment of market value or compensation :-

(1) The market value of the property which the State Government is empowered to purchase at such value under this Act, or the compensation to be paid by the State Government in respect of anything done under this Act shall, where any dispute arises in respect of such market value or compensation, be ascertained in the manner provided in sections 3, 5, 8 to 34, 45 to 47, 51 and S.52 of the Land Acquisition Act, 1894), so far as they can be made applicable: Provided that, when making an enquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the State Government and one a person nominated by the owner, or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector.

(2) Notwithstanding anything contained in sub-section (1) or in the Land Acquisition Act (1 of 1894), in determining the market value of any antiquity in respect of which an order for compulsory purchase is made under sub-section (1) of section 24 any increase in the value of the antiquity by reason of its being of historical or archaeological importance shall not be taken into consideration.

27. Special provision as to compensation under section 17
:-

(1) No person shall be entitled to compensation under sub-section (6) of section 17 unless within three months from the date on which the notification issued under sub-section (1) of that section comes into force, or within such further time as the State Government may in special circumstances allow, he makes a claim for the purpose in such manner as may be prescribed by the State Government.

(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 the notification referred to in sub-section (1) 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 the date is prohibited on account 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 enactment no compensation shall be payable by reason of any property being injuriously affected by that provision if compensation therefor has been paid or could have been claimed, or was not payable, under the provision before its inclusion in the notification.

(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 enactment, then-

(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 provision of the 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) Any dispute as to the amount of the sum which is to be paid as compensation under sub-section (6) of section 17 shall be determined in accordance with the provisions of section 26.

CHAPTER 6

Miscellaneous

28. State Advisory Board :-

(1) For the purpose of advising the State Government in the matter of the preservation and maintenance of protected monuments and protected areas, and such other matters incidental to the administration of this Act as may be referred to it by the State Government, the State Government may constitute a State Advisory Board under such name as it may specify.

(2) The constitution of the Advisory Board, the term of office of its members, and the procedure regarding its work, shall be such as may be prescribed.

(3) The members of the Board shall be entitled to payment of such travelling allowance, as may be prescribed.

29. Delegation of powers :-

The State 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 exercisable also by the Director or such other officer not below the rank of Collector, as may be specified in the direction.

30. Power to issue directions :-

Notwithstanding anything contained in this Act, the State Government may from time to time issue directions for the guidance of its officers in matters connected with the administration of this Act, and the officers shall comply with such directions.

31. Penalties :-

(1) Whoever-

(i) destroys, removes, injures, alters, defaces, imperils or misuses a protected monument, or

(ii) being the owner or 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, or other like object, or

(iv) does any act in contravention of sub-section (1) of section 21, shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

(2) Any person who contravenes any of the provisions of a notification issued under sub-section (1) of section 17 shall, on conviction, be punished with fine which may extend, to two thousand rupees, and if the contravention is continued after conviction, with a further fine which may extend to twenty five rupees for each day on which the contravention is so continued, and if such contravention is continued after the expiry of such period as the Court may determine, the State Government shall in its opinion are necessary for removing so much of the building, structure or work as is not in conformity with the provisions of the notification for making it in conformity with such provisions, and any expense incurred by the State Government shall be recoverable from the person convicted as an arrear of land revenue.

(3) Any person who moves any antiquity in contravention of a notification issued under sub-section (1) of section shall, on conviction, be punished with fine which may extend to five thousand rupees; and the Court convicting a person of any such contravention may by order direct such person to restore the antiquity to the place from which it was moved.

32. Jurisdiction to try offences :-

No court inferior to that of a magistrate of the first class shall try any offence under this Act.

33. Certain offences to be cognizable :-

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), an offence under clause (i) or clause (iii) of sub-section (1) of section 31 shall be deemed to be a cognizable offence within the meaning of that Code.

34. Special provisions regarding fine :-

Notwithstanding anything contained in S.32 of the Code of Criminal Procedure, 1898 (V of 1898) it shall be lawful for any magistrate of

the first class specially empowered by the State Government in this behalf, and for any magistrate exercising the powers of a Presidency 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.

35. Recovery of amounts due to Government :-

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

36. Monuments and sites which have ceased to be protected monuments and protected areas :-

If the State Government is of opinion that any ancient and historical monuments or archaeological site and remains declared to be a protected monument or protected area should cease to be such monuments or area it may, by notification in the Official Gazette, declare that the ancient and historical monument or archaeological site and remains has ceased to be a protected monument or a protected area, and thereupon such monument or area shall cease to be a protected monument or protected area for the purposes of this Act.

37. Powers to correct mistakes etc :-

Any clerical mistake, patent, error, or error arising from accidental slip or omission in the description of any ancient and historical monument or archaeological site and remains declared to be a protected monument or a protected area by or under this Act may, at any time, be corrected by the State Government by notification in the Official Gazette.

38. Protection of action taken under this 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.

39. Power to make rules :-

(I) The State 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, blasting or any operation of a like nature near a protected monument, or the construction of buildings on land adjoining such monument and the removal of unauthorised buildings;

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

(c) the form in which applications for permission under section 21 or section 23 may be made and the particulars which they should contain;

(d) the form and manner of preferring appeals under this Act, and the time within which they may be preferred;

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

(f) the constitution, the term of office of the members and the procedure of the State Advisory Board and the travelling allowance payable to its members;

(g) any other matter which is required or allowed by this Act to be prescribed.

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

(i) in the case of a rule made with reference to clause (a) of sub-section (2), with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both;

(ii) in the case of a rule made with reference to clause (b) of sub-section (2), with fine which may extend to five hundred rupees.

(4) All rules made under this Section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modifications so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

40. Application of certain other laws not barred :-

Save as expressly provided, the provisions of this Act shall be in addition to, and not in derogation of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, (24 of 1958), in so far as it relates to entry 40 in List III in the Seventh Schedule to the Constitution of India, or any other law relating to that entry for the time being in force.

41. Repeal and saving :-

On the date of commencement of this Act, the following Acts shall be repealed, namely:-

(1) the Ancient Monuments Preservation Act, 1904 (VII of 1904), in its application to the State of Gujarat and in so far as it relates to entry 12 in List II and entry 40 in List III in the Seventh Schedule to the Constitution; and

(2) The Saurashtra Ancient Monuments Preservation Act, 1956, (Sau. III of 1956)

Provided that such repeal shall not affect,-

(a) the previous operation of any Act so repealed;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any Act so repealed;

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any Act so repealed, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not come into force:

Provided further that, subject to the preceding proviso and section 3, anything done or any action taken (including any appointment or delegation made, notification, declaration, direction or order issued, rule or form framed, sanction, permission or licence granted or agreement executed) under any Act so repealed shall, in so far as it

is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act, and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act.

42. Act not applicable to ancient monuments etc. of national importance :-

(1) Nothing in this Act shall apply to ancient and historical monuments, or archaeological sites or remains, declared by or under any law made by Parliament to be of national importance, or to any antiquities to which the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), applies.

(2) Where any ancient and historical monument or any archaeological sites and remains which is a protected monument, or protected area, by or under the provisions of this Act is declared at any time by or under any law made by Parliament to be national importance, the provisions of this Act shall cease to apply to such monument or area; and accordingly, it shall cease to be a protected monument or area for the purpose of this Act.