

THE ASSAM ANCIENT MONUMENTS AND RECORDS ACT, 1959

(Assam Act No. XXV of 1959)



[Received the assent of the President on the 24th September, 1959]

Act to provide for the preservation and protection of ancient and historical monuments and records in Assam other than those declared by or under law made by Parliament to be of National importance

Preamble. – Whereas it is expedient to provide for the preservation and protection of ancient and historical monuments and records in Assam other than those declared by or under law made by the Parliament to be of National importance and certain other matters connected therewith ;

It is hereby enacted in the Tenth Year of the republic of India as follows :

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This Act has been enacted to provide provisions for the preservation and protection of ancient and historical monuments and records in Assam. A greater number of famous buildings in India are already in possession or under the control of the Government but there are others worthy of preservation which are in the hands of private owners. The preservation of these is the chief object of this Act and for such performance there is already a Central Act viz., the Ancient Monuments Preservation Act, 1904. The present Assam Act is on the same subject as that of the Central Act and also with the same object in view.

Preliminary

1. Short title, extent and commencement. –

- (1) This Act may be called the Assam Ancient Monuments and Records Act, 1959.
- (2) It extends to the whole of Assam.
- (3) It shall come into force on such date as the State Government may, by notification in the official Gazette appoint.

2. Definitions. –

In this Act unless there is anything repugnant in the subject or context, -

- (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 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 monument, and
 - (iv) the means of access to, and convenient inspection of any ancient monument ;
- (b) "Land" includes a revenue free estate and a permanent transferable tenure whether such an estate tenure be subject to in cumbrances or not.
- (c) "Maintain", with its grammatical variations and cognate expressions includes the 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 a protected monument or of securing convenient access thereto.
- (d) "Owner" includes –
- (i) a joint owner invested with powers of management on behalf of himself and other joint owners and successor-in-title of any such owner, and
 - (ii) any management or trustee exercising powers of management and the successor-in-office of any such manager or trustee ;
- (e) "prescribed" means prescribed by rules made under this Act ;
- (f) "Superintendent" means the Superintendent of Archaeology and includes any officer authorized by the State Government to perform the duties of the Superintendent.

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Sub-clause (a). – The definition of Ancient Monument is same as of the definition given in the Central Act and this definition is comprehensive enough to take in hand Archaeological site or remains.

Sub-clause (b). – The definition of land is also similar as the definition of land given in the Central Act.

PROTECTED MONUMENT

3. Protected Monument. –

- (1) The State Government may, by notification in the official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.
- (2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the State Government within one month from the date when it is so fixed up will be taken into consideration.

- (3) On the expiry of the said period of one month the Government after considering the objection, if any, shall confirm or withdraw the notification.
- (4) A notification published under this Act shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it is related is an ancient monument within the meaning of this Act.

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This section is also similar to section 3 of the Central Act and empowers the State Government under the Assam Act to declare an ancient monument to be a protected monument within the meaning of this Act.

4. Acquisition of Right in or Guardianship of an Ancient Monument. –

- (1) The Superintendent with the sanction of the State Government, may purchase, or take a lease of, or accept a gift or bequest of any protected monument.
- (2) When a protected monument is without an owner, the Superintendent 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 Superintendent the guardian of the monument, and the Superintendent may, with the sanction of the State Government, accept such guardianship.
- (4) When the Superintendent has accepted the guardianship of a monument under sub-section (3), the owner shall except as expressly provided in this Act have the same state, right, title and interest in and to the monument as if the superintendent had not been constituted guardian thereof.
- (5) When the Superintendent has accepted the guardianship of a monument under sub-section (3) the provisions of this Act relating to agreements executed under section 5, shall apply to the instrument executed under the said sub-section.

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This section is also similar to section 4 of the Central Act and empowers the Superintendent of Archaeology and any Officer authorized by the State Government to perform the duties of the Superintendent, to purchase or take a lease of or accept a gift or the bequest of any protected monument with the sanction of the State Government and such officer is empowered under sub-section (2) thereof to assume the guardianship of the monument when such a monument is without an owner.

5. Preservation of Ancient Monument by Agreement –

- (1) The Deputy commissioner, when so directed by the State Government shall propose to the owner of a protected monument to enter into an agreement with the State Government, within a specified period for the maintenance of the monument in his district.
- (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 rights –
 - (i) To 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 and to persons deputed by the owner or the Deputy Commissioner 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 preservation 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) Any agreement under this section shall be binding on any person claiming to be the owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

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The provisions as contained in this section are also being provided in section 5 of the Central Act. Under this section, an ancient monument can be preserved by the State Government by entering into an agreement with the owner of a protected monument and detailed procedure thereof has been provided in this section.

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 by section 5.
- (2) In the case of village property, the headman or other village officers exercising powers of management over such property may exercise the powers conferred upon an owner by section 5.
- (3) Nothing in this section shall be deemed to empower any person not being of the same religion as the 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 observance of that religion.

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This section is similar to section 6 of the Central Act and provides : if the owner of a protected monument is unable to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon the owner by section 5. In case of village property, any headman or other village Officer exercising powers of management over such property may exercise the powers upon an owner by section 5.

7. Application of endowment to repair a protected monument. –

- (1) If any owner or other person competent to enter into an agreement under section 5, 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 on 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 the civil court.

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In cases where the owner or any other person competent to enter into an agreement under section 5 for the purpose of maintaining a protected monument refuses or fails to enter into any such agreement for such performance and if any endowment has been created for such performance, then the State Government may institute legal proceedings in the appropriate Court against such person for the proper application of such endowment of part thereof.

Failure or refusal to enter in an agreement. —

- (1) If any owner or other person competent to enter into an agreement under section 5 for 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 5 and such order shall be binding on the owner or other persons and on every person claiming title to the monument from, through or under, the owner or such other persons.
- (2) Where an order made under sub-section (1) provides that the monument shall be maintained by the owner or other persons 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 persons have been given an opportunity of making a representation in writing against the proposed order.

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On failure or refusal to enter into an agreement as provided under section 5, the State Government may make an order providing for all or any of the matters specified in sub-section (2) of section 5 and such order would be binding on the owner or other persons and also on every person claiming title to the monument from, through or under the owner or such other person. But before passing such an order under section 8, an opportunity must be given to such owner or other persons to make a representation against the proposed order.

9. Power to make order prohibiting contravention of agreement under section 5. —

- (1) If the Superintendent apprehends that the owner or occupier of a protected monument intends to destroy, remove, alter, deface, imperil or use the monument or to build on or near the site thereof in contravention of the terms of an agreement under section 5, the Superintendent 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 shall be given in case where the Superintendent, for reasons to be recorded, 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.

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This section empowers the Superintendent to make the order prohibiting the contravention of any agreement entered into under section 5 after giving the owner or occupier an opportunity of making a representation in writing and any person aggrieved by any order under this section may prefer an appeal to the State Government whose decision shall be final.

10. Enforcement of agreement.-

- (1) If any owner or other person who is bound by an agreement for the maintenance of monument under section 5, refuses or fails within such reasonable time as the Superintendent may fix, to do any act, which in the opinion of the Superintendent may authorize 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 sub-section (1) it shall be referred to the State Government whose decision shall be final.

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Any person who is entered into an agreement with the State Government under section 5 and contravenes any of the clauses of the agreement under section 8, refuses or fails within a reasonable time to do any Act which in the opinion of the Superintendent is necessary for the maintenance of the monument, then the Superintendent may authorize any person to do any such Act and in such an event the owner or any other person shall be liable to pay the expenses of doing any such Act and if any dispute arises as to the amount of expensed, then such person may prefer an appeal to the State Government, whose decision shall be final.

11. 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 any instrument has been executed by the owner for the time being under section 4 or section 5 and every person claiming any title to, a monument from, through or under, an owner who executed such an instrument shall be bound by such an instrument.

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In cases where the owner has entered into an agreement under section 4 or section 5 and in case where any such land on which a monument is situated and which is the subject-matter of such an agreement, then in case of sale of such land, for arrears of land revenue or any other public demand, every person who purchases the same and also claim any title to such a monument, he would be bound by an instrument executed under section 4 of section 5 of this Act.

12. 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, 1894 (Act I of 1894) as if the maintenance of the protected monument were a public purpose within the meaning of that Act.

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Under this section, the State Government is empowered to acquire the protected monument under the provisions of the Land Acquisition Act, 1894, if the State Government apprehends that a protected monument is in danger of being destroyed, injured, misused or being allowed to fall into decay.

13. Maintenance of certain protected monuments. –

- (1) The State Government shall maintain every monument which has been acquired under section 12 or in respect of which any of the rights mentioned in section 4 has been acquired.
- (2) When the Superintendent has assumed the guardianship of a monument under section 4 he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable time, by himself and by his agents, subordinates and workmen, for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

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Every monument so acquired under section 12 or in respect of which any of the rights mentioned in section 4 have been acquired, then the State Government shall maintain the same. Under sub-section (2), the Superintendent shall have access to the monument at all reasonable times by himself and by his agents for the purpose of

inspecting the same and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

14. Voluntary contribution. –

The Superintendent may receive voluntary contribution towards the cost of maintaining a protected monument and may give orders as to the management and applications 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.

15. Protection of place of worship from misuse ; pollution or desecration.

- (1) A protected monument maintained by the State Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character.
- (2) Where the State Government has acquired a protected monument under section 12; or where the Superintendent has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of a protected monument under section 4 and such monument or any other part thereof is used for religious worship or observance by any community, the Deputy Commissioner shall make the due provision for the protection of such monument or such 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 religious charge of the said monument or part thereof, and any person not entitled so to enter by the religious usage 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.

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This section is also similar to section 13 of the Central Act. The expression "place" of worship or shrine in sub-section (1) of section 13 of the Central Act was substituted for the word 'monument' by the Select Committee and sub-section (2) of section 13 which is similar to sub-section (2) of section 15 of the Assam Act was added on the recommendation of the Committee which is intended to safeguard against the desecration of any building periodically used for religious worship.

16. Relinquishment of Government rights in a monument –

With the sanction of the State Government the Superintendent may –

- (a) Where rights have been acquired by the State Government in respect of any monument under this Act by virtue of any sale, lease, gift or will relinquish, by notification in the official Gazette the right to acquire to the persons who would for the time being the owner of the monument if such rights have not been acquired; or

(b) Relinquish any guardianship of a monument which he has assumed under this Act.

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With the sanction of the State Government, the Superintendent may relinquish the rights in a monument created under the provisions of this Act under the circumstances referred to in this section. This section is similar to section 14 of the Central Act.

17. Rights of access to certain protected monument. –

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

Principles of Compensations

18. Compensation for loss or damage. –

An owner or occupier of land who has sustained any loss or damage by reason of an 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 or damage.

19. Assessment of market value for compensation. –

The market value of any 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 the Land Acquisition Act, 1894 (Act 1 of 1894) so as the provision thereof can be made applicable : Provided that when making an enquiry under the Land Acquisition Act, the Deputy Commissioner shall be assisted by two assessors one of whom shall be competent person nominated by the State Government and one person nominated by the owner, or in case the owner fails to nominate any assessor within such reasonable time as may be fixed by the Deputy Commissioner in this behalf, by the Deputy Commissioner.

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Sections 18 and 19. -

These Sections provide for principles of compensation to which an owner or occupier of land may be entitled, having sustained any loss or damage by reason of an entry on such land or the exercise of any other power conferred by this Act and where any dispute arises in respect of the assessment of market value or the compensation, it be ascertained in the manner provided in the Land Acquisition Act, 1894.

The provisions of the Ancient Monuments Preservation Act, 1904 has been repealed or ceased to apply in many of the States on the commencement of the States' Acts except for the things done before commencement of the latter Acts. The Assam Act is thereto ful the objects as enunciated and detailed in the respective provisions of the Central Act. Many States in India have enacted State Acts with similar objects for application in the respective States and in those States the provisions of Central Act shall not apply.

Miscellaneous**20. Penalties.- Whoever -**

- (i) Destroys, removes, injures, alters, defaces, imperils or misuses a protected monument; or
- (ii) Being the owner or occupier of protected monument, contravenes an order made under sub-section (1) of section 8 or under sub section (1) or section 10;

Shall be punishable with imprisonment, which may extend to three months, or with fine, which may extend to five thousand rupees, or with both.

21. Jurisdiction to try of offences.-

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

22. Certain offences to be cognizable –

Notwithstanding anything contained in the Code of Criminal Procedure, 1894 (Act No.5 of 1898) an offence under clause (i) of section 20 shall be deemed to be cognizable offence within the meaning of that Code.

23. Power to correct mistakes, etc.

Any clerical mistake, patent error or error arising from accidental slip or omission in the description of any ancient monument declared to be a protected monument by or under this Act may, at any time, be corrected by the State Government by Notification in the official Gazette.

24. 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 in good faith or intended to be done in the exercise of any power conferred by this Act.

25. Power to make rules. –

- (1) The State Government may, by Notification in the official Gazette and subject to the provisions of previous publication, make rules for carrying out the purposes of this Act.
 - (2) All rules made under this section shall be laid for not less than fourteen days before the Assam Legislative Assembly as soon as possible after they are made, and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the sessions immediately following.
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