Putaway

Scott II-27—58,004—4-11-46.

E & P H **(1947) Department.**

M & **SERIES.**

G.O. NO.	1471 Edn.
Dated	8. 7. 1947

[Despatch Abstract.]

Archaeology. Ancient Monuments Preservation Act 1904 (Act VII of 1904). Amendments to the - Views of the Govt communicated to the G.O.I - Papers Recorded

Back Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Further Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

No. F.48-7/G-46.
Government of India
Department of Education
New Delhi 3, the ~~September~~ 9th Oct., 1946.

From

Dr. D.M. Sen, O.B.E., M.A., Ph.D.,
Secretary to the Government of India.

Recd on 14/10/46

To

The Secretary to the Government of the Madras,
Education and Public Health Department,
Madras.

61334
13 OCT 1946
PUBLIC HEALTH DEPARTMENT

Subject: Amendment of the Ancient Monuments Preservation Act. 1904.

Sir,

I am directed to say that at the time when the Ancient Monuments Preservation Act, 1904, was enacted, "archaeology" was largely the concern of local Governments and it was accordingly they and not the Government of India who were invested with most powers and duties under the Act. Now that "Ancient and historical monuments, archaeological sites and remains" has become a central responsibility, the Act is in many respects unsuited to present requirements. The Government of India have had under consideration the question of amending the Act with a view to remove certain defects which its working has brought to light and I am now directed to address the Government of Madras in regard to the following proposals:-

2. The proposals fall under the following heads :-

(i) Protection of historical sites from building operations;

(ii) Transfer of powers from the Collector to the Director General of Archaeology;

(iii) Miscellaneous.

(i) Protection of historical sites.

Under Section 20 of the Act, the Central Government can declare an area to be a protected area if it is of the opinion that excavation for archaeological purposes should be restricted and regulated in the interests of archaeological research. When an area has been declared to be a protected area no person may conduct excavations in the area for archaeological purposes except under a licence. A protected area or a part of it may also be acquired under the Land Acquisition Act. But under the Act as it stands a person cannot be prevented from erecting a house or other building in a protected area. The question of prohibiting building on protected sites has arisen in an acute form at Rajgir near Patna, the noted site connected with the Buddha and known to contain remains of great archaeological importance. Certain buildings have already been erected on this site and it is probable that building development will proceed on a large scale if it is not checked. Under the present Act, Government has the power to acquire all rights in the land in a protected area under the Land Acquisition Act but in some cases the cost of acquisition would be prohibitive unless spread over a number of years. It is now proposed that when an area is declared to be protected no person shall be permitted to construct any building or make any excavation for a purpose other than

archaeological research without the permission of the Collect- The Collector will be required not to grant permission if the Director General of Archaeology certifies that the construction of the building or the excavation is likely to hinder archaeological or historical research in the area or to result in the loss of archaeological or historical material which in the national interest should be preserved. The Collector will not refuse permission, however, if he is satisfied that the construction of a building other than a dwelling house is required for purposes subservient to agriculture. An appeal to the Commissioner will be provided. A person erecting a building or making an excavation without permission will be liable to three months' imprisonment or a fine or both. The Collector will be empowered to order a building erected without permission, to be removed and, if necessary, to cause it to be removed at the owner's cost. A person who claims to suffer loss on account of the rejection of the application will be permitted to make an application to the Collector for assessment of compensation. The amount of compensation awarded will not exceed the difference between the market value of the land at the time of the claim having regard to the restrictions placed on its use and the market value immediately before the area was declared to be protected. There is no provision in the Act at present for the hearing of objections before an area is declared to be protected under section 20. Provision will be made for a notification calling for such objections.

(ii) Transfer of powers.

Upto 1937 the Ancient Monuments Preservation Act was largely administered by Provincial Governments. When it became a Central subject under the new constitution, some modifications were made in the Act but the provisions under which the Collector and the Commissioner exercised powers under the Act remained. It is now proposed to transfer some of these powers to the Director General of Archaeology who will with the re-organisation of the Archaeological Department now in progress, be in a position to carry out certain functions under the Act. The following powers will be transferred from the Collector and Commissioner to the Director General of Archaeology;

(1) power to purchase or take a lease or accept a gift or bequest of guardianship of a protected monument (Section 4);

(2) power to enter into an agreement with an owner for the preservation of a protected monument and to terminate such an agreement (Section 5);

(3) power to institute a suit for the proper application of an endowment for the preservation of a protected monument (Section 9);

(4) duty to maintain protected monuments (Section 11);

(5) power to receive voluntary contributions (Section 12);

(6) power to relinquish Government rights in a monument (Section 14).

(iii) Miscellaneous.

(a) It is proposed to provide that the Director General or any officer authorised by him may enter and inspect a protected monument or any place which he may have reason to believe to be an ancient monument or an area which in his opinion may contain buried antiquities. In the case of buildings or sites in religious use inspection will be restricted to officers belonging to

the appropriate community. In the case of buildings in private occupation or in religious use inspection will be preceded by a request for permission and if permission is refused the district magistrate will be empowered to authorise the visit on such conditions as he may consider necessary. Where a building is locked and the whereabouts of the owner are not known the district magistrate will be empowered to authorise the archaeological officer to enter for inspection on such conditions as he may consider necessary. Subject to the conditions of entry specified above the Director General or an officer authorised by him will be empowered to enter a monument for the purpose of causing any part of the monument or antiquity therein to be photographed or copied.

(b) It has been found that some protected monuments under the management of trustees and other bodies are not maintained in a clean and sanitary condition. Provision will be made requiring the owner of a protected monument to keep it in a tidy and sanitary condition.

3. The Government of India would be glad to be furnished at an early date with the views of the Provincial Government

(4)

views on the proposals mentioned in paragraph 2 above.

I have the honour to be,
Sir,
Your most obedient servant,

Rhal
for Secretary.

'RN'
30-24.9.46-D.

E.H.H. 5
C2

25/21/X

4

C. 7. C. No. 61334 C2. from the Govt. of India, Dept. of Education, No. F. 48-7/G-46, d., 9-10-46.

Endt. No. 61334-1-C2. Edn., d., 19-10-46

Amendment of the Ancient Monuments Preservation Act, 1904

Referred to the Supdt., Archaeological Survey of India, Southern circle, ~~Fort St. George~~ for early remarks.

18/10/46.

18.10.46.

P.10.46.

The Supdt., Archaeological Survey of India, Southern circle, Fort St. George. (with enclosure for the Pt. below noted in reply)

1

Telegraphic Address :
Archæological Superintendent,
Mylapore (MADRAS).
Fort St.George.

No. 60(26)/2379

Office of the Superintendent,
Archæological Survey of India,
Southern Circle,
Fort St. George,
Mylapore, the 15th November 1946.

F 1 3/

DEPUTY SECRETARY TO GOVERNMENT
15 NOV 1946
EDUCATION AND PUBLIC HEALTH DEPTT.

5

FROM

T.N.Ramachandran, Esq., M.A.,
Superintendent,
Archæological Survey of India,
Southern Circle,
Fort St. George, Madras.9.

Enc:-
(1) Amendments etc in 6 sheets
(2) Original enclosure.

69964

To

The Deputy Secretary to Government,
Education and Public Health Department,
Fort St. George, Madras.

Subject :—

Amendment of the Ancient Monuments Preservation Act, 1904.

SIR,

Please refer to your Endorsement No. 61334-1-C2 Education, dated the 19th October 1946. While I am in agreement with the amendments to the Ancient Monuments Preservation Act proposed by the Government of India in their reference No. F.48-7G-46, dated the 9th October 1946 I hasten to propose for your consideration some more amendments, changes and suggestions which have arisen out of my experience in this circle as well as in the Eastern Circle (Bengal and Assam) while working out the various provisions of the Ancient Monuments Preservation Act in their practical (workable) relationship to the monuments. They are summed up in the enclosure attached herewith and it is requested that Government may be pleased to consider them now itself as such an opportunity may not occur again.

As the Ancient Monuments Preservation Act 1904, and the Treasure Trove Acts 1878, had to be gone into carefully in the light of my experiences, problems and difficulties in

this circle, my reply to your letter is a bit belated.

The letter from the Government of India is herewith returned.

I have the honour to be,

Sir,

Your most obedient servant,

J. N. Ramachandran
Superintendent. 15.11.46

SVR/

1/2/w 9/12 7/6 Ex Proof C2

Pf. 1-4 of CM 61334. From the Govt. of India, Cottn. No. F.4-8-7/C.A.-6-6 7.10.46
Pf 7-21 of & Copy to From the Supdt, Archaeological Survey of India, Circle, letter No. Ba(26)/2379 d. 15.9.46

V.F

Subject

Proposed Amendment of the Ancient Monuments Preservation Act, 1904.

Memo No. 61334-2-C2. Edn., dated, 6-12-46.

Pf 6/12

Referred to the S.A.M., for very early

Remarks

3/12/46

The S.A.M. (Pf. 1-4 and 7-21 of Cogl. to be returned with reply) Rd. on 15/1/47.

Note:- The remarks of the S.A.M. on the proposals of the Govt. Archaeological Survey appear to be necessary before noting on the case.

3/12/46

C.F. 32.

From (Name) Sri A.Aiyappan, M.A., Ph.D., — Department
Designation Superintendent, Government Museum,
Station Egmore, Madras, 8.

Received — Registered

To
The Secretary to Government,
Education and Public Health Department,
Madras.

Enclosure to GOVERNMENT LETTER — Sir,
ASSISTANT SECRETARY
28 JAN 1947
EDUCATION AND PUBLIC HEALTH DEPT.

No. 202-1/46 AR dated 21st January 1947.

Sub: Amendment of the Ancient Monuments Preservation Act, 1904.

***

4711

1. Reference Memorandum No.61334-2-C.2 Edn., dated 6th Decr.1946.

2. From the Government of India, letter No.F.48-7/G-46 dated 9th October 1946

From the Superintendent, Archaeological Survey of India, Southern Circle, letter No.60(26)/2379 dated 15th November 1946.

There is no objection, so far as this institution is concerned, to the Government of Madras accepting the proposals of the Government of India in the reference cited above. But with regard to the Amendments and additions proposed by the Superintendent Archaeological Survey of India, Southern Circle, to Section 16 of the Ancient Monuments Preservation Act and Section 16 of the Indian Treasure Trove Act, 1878 I beg to state that they go far beyond the amendments proposed by the Government of India. The net result, if his proposals are accepted, will be tantamount to the abrogation of the rules under the Treasure Trove Act in so far as they relate to antiquities, according to which this Museum is in a position to acquire, every year, a fair number of coins and metal images which form the main part of our annual acquisitions. The addition, 16A(1) proposed by Mr.Ramachandran to Section 16 of the Ancient Monuments Preservation Act seeks to make the Central Government the custodian of all antiquities, "buried in the soil prior to 1858".

His suggestion envisages the scrapping of all the existing rules framed by the Local Government for the working of the Treasure Trove Act by the Revenue Department and this Museum. (Please see Annexure to G.O.No.604(Public)Department dated 26th July 1907, and G.O. No.Ms.157 Revenue dated 21st January 1939) and the framing, in their place, of new rules. What these new rules may be like, he does not indicate. In the absence of statutory protection embodied in the Act itself the interests of Provincial Museums in the matter of these antiquities is likely to be adversely affected, for the Government of India have their own Museums in which they will be more interested. Therefore, until the question how the antiquities proposed to be acquired by the Central Government according to the amendments suggested by - - Mr. Ramachandran are to be distributed is satisfactorily answered, I submit the Governments of Madras may not accept the additions to the Acts, referred to.

2 Even if the proposed amendments and additions were accepted, Treasure Troves other than antiquities will have to be dealt with by the Revenue authorities, as they do at present, and the practical difficulties in deciding whether a treasure is to be dealt with under the Ancient Monuments Preservation Act or the Treasure Trove Act will still remain and this Museum or some other agency will have to continue the work of advising the Collectors in this respect. The situation is not likely to be improved by the proposals he has made. At present, as a result of long practice, the distinction is quite clear as to whether an antiquity is to be dealt with under the Treasure Trove Act or under the Ancient Monuments Preservation Act. Those coming under the former are as a rule sporadic finds almost invariably discovered casually or accidentally and can for administrative purposes be distinguished from the "antiquities" as defined in the Ancient Monuments Preservation Act, Section 2(2). This definition emphasies the necessity for protection against "injury, removal or

dispersion". According to the existing practice when an accidentally discovered antiquity (Treasure Trove) requires protection, in the opinion of the Archaeological Survey, against any "injury, removal or dispersion", it is open to the Archaeological Survey to step in at any stage and protect the antiquity or the sites under the Ancient Monuments Preservation Act. According to the information I have, the Archaeological Survey had occasion to interfere in the working of the Treasure Trove Act only once in the course of several decades that both these acts have been in force, which shows very clearly that little can be said against the working of the Treasure Trove Act by the Local Government. In this connection the attention of Government is invited to para 4 of letter from the Government of India, Department of Education, Health and Lands, No.154 -Archy., dated the 26th April 1930, communicated to me in G.O. No.Ms.1086 Education Department dated 9th June 1930, where the Government of India expressed themselves in favour of the continuance of the existing rules; and also to G.O.No.3243 Law (General) Department dated 28th September 1928. Nothing has happened between 1930 and now to call for the radical changes now proposed.

Regarding Mr. Ramachandran's note of explanation on page 3 of the enclosure to this letter, I have to state that the procedure which the Collectors and the Superintendent, Government Museum have to follow is very clearly laid down in the rules framed by the Madras Government under Section 19 of the Treasure Trove Act (Annexure to G.O. No.604(Public) Department dated 26th July 1907). The practice of consulting the Superintendent of the Archaeological Survey, Southern Circle, was never given up when there was an Officer who could be usefully consulted. At present a copy of the Notification about treasures troves and other information relating to every item of treasure troves are being sent to the Superintendent, Archaeological Survey, Southern Circle.

The practice of dealing with treasure troves varies in the different Provinces. In some Provinces even

non-official bodies are entrusted with portions of treasure trove work. If the procedure in this Province is considered "anomalous" it is equally so in several provinces. Sir Leonard Woolley's suggestion is that the "allotment of objects (Treasure Trove) to the various Museums should be at the discretion of of the Director General of Archaeology acting in consultation with the Director of the Museum". To this suggestion there can be no objection provided the distribution is, as at present, made after first meeting the needs of this Museum. Even Sir Leonard Woolley does not seem to have been of the view that radical changes should be made in the administration of the Treasure Trove Act in this Province.

I beg to submit further that this is not an opportune time for the consideration of the drastic changes proposed by Mr. Ramachandran, as important constitutional changes are impending which will affect the scope and field of several Central Government Departments, including, most likely, of the Archaeological Survey of India.

The enclosures to the Government Memorandum are returned herewith.

I have the honour to be,
Sir,
Your most obedient servant,
A. Aiyappan
21.1.47
Superintendent.

ASSISTANT SECRETARY TO GOVERNMENT
8 MAR 1947
EDUCATION AND FIELD HEALTH DEPARTMENT

No. F.48-7/46-G.
Government of India.
Department of Education.

New Delhi 3, the 27th February 1947.

From

Ram Lal Esquire, M.A.,
Assistant Secretary to the Government of India.

To :

The Secretary to the Government of Madras,
Education Department, MADRAS.

12484

Amendment of the Ancient Monuments Preservation Act, 1904.

Sir,

I am directed to refer to this Department letter No. F.48-7/G-46, dated the 9th October, 1946, on the subject mentioned above and to request that the views of the Provincial Government on the proposals contained therein may kindly be communicated to this Department at an early date.

I have the honour to be,
Sir,
Your most obedient servant,

Assistant Secretary.

Re 3/3
BHARDWAJ

No. F.4-19/47-Arch.
Government of India.
Department of Education.
New Delhi 3, the 3rd May, 1947.

From

Ram Lal, Esquire., M.A.,
Assistant Secretary to the Government
of India.

To

The Secretary to the Government
of Madras, Education and Public Health
Department, Madras.

Subject:- AMENDMENT OF THE ANCIENT MONUMENTS PRESERVATION ACT, 1904.

.....

Sir,

I am directed to refer to your letter No. 61334 C2/46-3 Edn. dated 19-3-47, on the subject mentioned above and to request that the views of the Provincial Government on the proposals contained in this Department letter No. F.48-7/G-46, dated the 9th October, 1946 may kindly be communicated to this Department at an early date.

I have the honour to be,
Sir,
Your most obedient servant,

Assistant Secretary.

ASST. SECRETARY TO GOVERNMENT
7 MAY 1947
EDUCATION AND PUBLIC HEALTH DEPT.

.....

E & P.H (C2)

The main file on the subject was sent to Rev Dept on 22.4.47 and its return may be awaited till 22.5.47

Re 13.5.47 13/5/47

ARS.

Ed & PH Deptt

C2

Letters Regd.

To, The Secy to the Govt, Deptt of Edn, New Delhi.

Sir,

Subject:- Amendment of the Ancient Monuments Preservation Act, 1904.- Letter No. F.48-7/G-46 d. 9.10.46

With ref to your letter No. F.48-7/46. G. d. 27.2.47 on the above subject I am directed to state that the matter is under the consideration of the Govt and that a reply will be sent at an early date.

Yours etc

18/3/47

Education & P.H.
No. 61334 C2/46-3
dated 19.3.47.

The case will be submitted to Govt
19/3

Education and public Health (C.2.) Department.

Letter /Ref. No. 61334-5/C2 Edn. dated 25-6-1947.

To

The Secretary to the Government of India,
Department of Education,
New Delhi, 3. (with pp 9-21 c.f. in original)

Sir,

Sub: Archaeology - Ancient Monuments Preservation Act 1904 (Act No. VII of 1904) - Amendments to the

--

With reference to your letter No.F. 48-7/G-46 dated 9-10-46 on the ~~above~~ subject, I am directed to state that this Government agree to all the proposals of the Government of India.

2. In respect of 'Protection of Historical Sites' the Government of India propose to permit a person who claims to suffer loss on account of the rejection of his application ~~to construct~~ any building to make an application to the Collector for assessment of compensation. Section 20 A(2) of the Act provides for the payment of compensation by the Central Government for the infringement of the rights of any person by the occupation or disturbance of the surface of any land by excavations in any protected area. Since there is already provision for payment of compensation for infringement of rights of any person by excavations in any protected area, the present proposal of the Government of India apparently relates to applications for construction of buildings other than those intended for purposes subservient to Agriculture. It is presumed that the Central Government will pay this compensation though the Collector is required to assess the compensation.

3. I am directed to invite attention to section 7 of the Act. The Government of India have not made any proposal in respect of this section. Since the powers of the Collector and Commissioner under sections 4 & 5 are proposed to be transferred to the D.G. of Archaeology, the powers under this section should also be transferred to the D.G. of Archaeology.

Again under section 7(2) of the Act, the Collector can authorise any person to do any act that is

y simply be forwarded to the Govt. of India with no comment. Revenue may see before circulation.

22.4.47

Rev. Dept.

To A.S.

~~The notes from pp 1 to 3 may be perused and~~ ~~the file returned to E&PH Dept.~~

The notes on pp.1-2 above may be read.

2. At the instance of the Govt. of India, it is proposed to transfer certain powers of the Collectors of districts exercised under the Ancient Monuments Preservation Act, 1904 (administered by the Govt. of India themselves from 1937) to the Director General of Archaeology, who will with the reorganization now in progress be in a position to carry out certain functions under the Act. Both the Supt., Archaeological Survey of India, Southern Circle, Madras and the Supt., Govt. Museum, Madras have agreed to those proposals and E. & P.H. propose to accept them and also to suggest to the Govt. of India some other consequential amendments to the Act. This Dept. need not perhaps object, as the Act in question is now administered by the Govt. of India themselves and as it would minimise the responsibilities of the Collectors to the extent proposed, which should in the normal course have been done even in 1937 when the administration of the Act passed from this Govt. to the Govt. of India. It does not also appear that the Bd. of Rev. need be consulted in the matter as the proposal would only abridge the duties and responsibilities of the Collectors in respect of an Act not now administered by this Govt.

3. No remarks seem called for in respect of the proposals for the further amendment of the Ancient Monuments Preservation Act, 1904 put forth by the Supdt, Archaeological Survey of India, Southern

E & P.H. 00 No. 6133 H C2/46-4 Edn 22.4.47

ASSISTANT SECRETARY TO GOVERNMENT 4 APR 1947 REVENUE DEPARTMENT

Circle, (some of which are opposed by the Supt., Govt. Museum Madras) as the E. & P.H.Dept. merely propose to forward them to the Govt. of India pointing out definitely that this Govt. have not considered them so that it may not be presumed that this Govt. have accepted them.

10.5.47

Rev. 2.0 1548 B/47-1

19.5.47

ASST. SECRETARY TO GOVERNMENT 43083 20 MAY 1947 EDUCATION AND PUBLIC HEALTH DEPT.

[Notes pp 1-3]

The note of the Rev Deptt on p. 2-3 above may be perused. A draft letter to the Govt of India is enclosed. The case may now be circulated to H.M (Edn) and H.M (Rev)

27.5.47

Issued as Letter No. 61334-5 C2 Edn dated 25.6.47.

GOVT. SECY. TO GOVT. REVENUE DEPT. 25 JUN 1947 GOVERNMENT OF MADRAS

The papers may now be recorded as a long time for the Govt to amend the Ancient Monuments Preservation Act 1904

7.7.47

Archaeology - Ancient Monuments Preservation Act 1904 - Act No. VII of 1904 - Decision of the Govt communicated & the Govt of India - Amendments to the Act - Papers Recorded

G.O. Ms 1471 Edn dt 8-7-47

Recorded

7.7.47

Sectional Note

5

Extracts of Section 4 of the Ancient Monuments Preservation Act --

14

Acquisition of rights in or guardianship of an ancient monument

4(1) The Collector, with the sanction of the ~~S~~(Central Government) may purchase or take a lease of any protected monument.

(2) The Collector with the like sanction may accept a gift or bequest of any protected monument.

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

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

(5) when the Commissioner 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 written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner the Commissioner may assume the guardianship of the monument.

~~PROPOSALS OF THE GOVERNMENT OF INDIA.~~
Proposals of the Govt of India

The following powers will be transferred from the Collector and Commissioner to the Director General of Archaeology;

(1) power to purchase of take a lease or accept a gift or bequest of guardianship of a protected monument (Section 4);

Education and P.H.(C.2) Deptt.

Both the Supdt. Archaeological Survey of

of India and the S.G.M. have no objection to the proposal of the Government of India. The proposal of the Govt. of India may be accepted.

11/4/47

Extracts of sections 5(1),5(2)(d), 5(5) and5(6) of the Ancient Monuments Preservation Act.

5 (1) The Collector may, with the previous sanction of (the Central Government) propose to the owner to enter into an agreement with (the Central Government) for the preservation of any protected monument in his district.

5(2)(d):- An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement :-

(d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Collector to inspect or maintain the monument ;

5(5):- With the previous sanction of (the Central Government), the Collector may terminate an agreement under this section on giving six months' notice in writing to the owner.

5(6):- The owner may terminate an agreement under this section on giving six months' notice to the Collector.

Proposal of the Government of India.

The following powers will be transferred from the Collector and Commissioner to the Director General of Archaeology:—

(2) Power to enter into an agreement with an owner for the preservation of a protected monument and to terminate such an agreement(Section 5);

Education andP.H.(C.2)Deptt.

Both the Supdt. Archaeological Survey of India and the S.G.M. have no objection to the proposal of the Govt. of India. The proposal of the Govt. of India may be accepted.

11/4/47

Enforcement of agreement

7(1) If the Collector apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the Collector may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Collector necessary to such preservation or maintenance or neglects to do any such act within such reasonable time as may be fixed by the Collector, the Collector may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue.

(3) A person aggrieved by an order made under this section may appeal to the Commissioner, who may cancel or modify it and whose decision shall be final.

Education and P.H.(C.2.)Deptt.

The Govt. of India have not made any proposal in respect of this section. Since the powers of the Collector and Commr. under sections 4 & 5 are proposed to be transferred to the D.G. of Archaeology, the powers under this section should also be transferred to the D.G. of Archaeology. ~~as the former officers will not be in the know of things to act under this section.~~ This may be pointed out to the Govt of India

2. Please see section 7(2) ~~(p620)~~ under which the Collector can authorise any person to do any act that is necessary for the preservation and maintenance of a monument left undone by the owner and recovered the expenses from the owner as if it were an arrear of land revenue. Since the Director-General of Archaeology will take the place of the Collector, either the Collector should be authorised to recover the amount from the owner as

land revenue at the instance of the D.G., or the D.G. should address the Local Govt. in the matter who in turn will authorise the Collector in this behalf. The former course appears preferable.

This point may also be points out by the Govt of India

20.4.47

3. Please see section 7(3). The appeal provided for from the order of the Collector to the Commr. should presumably be from the D.G. of Archaeology to the Central Government.

11/4/47

20.4.47 S 24/4/47

Extract from ~~the~~ Section 9(1) of the Ancient Monuments Preservation, Act

p621-1147

17

9 (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Collector 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 applications to the District Judge for the proper application of such endowment or part thereof.

Proposal of the Government of India.

p29

The following powers will be transferred from the Collector and Commissioner to the Director-General of Archaeology;

(3) Power to institute a suit for the proper application of an endowmentfor the preservation of a protected monument (section 9);

Education and P.H.(C.2.)Deptt.

p7025-cf

Both the Supdt. ~~of~~ Archaeological Survey of India and the S.G.M. have no objection to the proposal of the Govt of India. The proposal of the Govt. of India may be accepted.

11/4/47

20.4.47 S 24/4/47

Extract from the Section II of the Ancient Monuments Preservation Act:-

18

Maintenance of certain protected monuments

11 (1) The Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 of which the Government has acquired under section 10.

(2) When the Commissioner has accepted 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 times, 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.

Proposal of the Government of India.

The following powers will be transferred from the Collector and Commissioner to the Director-General of Archaeology;

(4) duty to maintain protected monuments (Section 11);

Education and P.H.(C.2)Deptt.

Both the Supdt. of Archaeological Survey of India and the S.G.M. have no objection to the proopsals of the Govt. of India. The proposal of the Govt. of India may be accepted.

11/9/47

Extracts from ~~the~~ Section 12 of the Ancient Monuments Preservation Act:-

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Voluntary contributions.

12. The Commissioner may receive voluntary contributions 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.

Proposal of the Govt. of India.

The following powers will be transferred from the Collector and Commissioner to the Director-General of Archaeology;

(5) Power to receive voluntary contributions (Section 12)

Education and P.H.(C.2.) Department

Both the Supdt. Archaeological Survey of India, Southern ~~India~~ Circle and the S.G.M. have no objection to the proposal of the Govt. of India. The proposal of the Govt of India may be accepted.

Extract from the Section 20(1), 20(1)A and 20(c) of the Ancient Monuments Preservation Act:-

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20(1) If the (Central Government) is of opinion that excavation for archaeological purposes in any area should be restricted and regulated in the interests of archaeological research the (Central Government) may by notification in the (official Gazette) specifying the boundaries of the area, declare it to be a protected area.

20A(1): Any officer of the Archaeological Department or any person holding a licence under section 20B may with the written permission of the Collector enter upon and make excavations in any protected area.

20(c): If the (Central Government) is of opinion that a protected area contains an ancient monument or antiquities of national interest and value (it) may direct the (Provincial Government) to acquire such area, or any part thereof, and the (Provincial Government) may thereupon acquire such area or part under the Land Acquisition Act, 1894, (as for a public purpose)

PROPOSAL OF THE GOVERNMENT OF INDIA:

Protection of historical sites:-

Under section 20 of the Act, the Central Govt. can declare an area to be a protected area if it is of the opinion that excavation for archaeological purposes should be restricted and regulated in the interests of archaeological research. When an area has been declared to be a protected area no person may conduct excavations in the area for archaeological purposes except under a licence. A protected area or a part of it may also be acquired under the Land Acquisition Act. But under the Act as it stands a person cannot be prevented from erecting a house or other building on a protected area. The question of prohibiting building on protected sites has arisen in an acute form at Rajgir near Patna, the noted site connected with the Buddha and known to contain remains of great archaeological importance. Certain buildings have been erected on this site and it is probable that

development will proceed on a large scale if it is not checked. Under the present Act, Government has the power to acquire all rights in the land in a protected area under the Land Acquisition Act but in some cases the cost of acquisition would be prohibitive unless spread over a number of years. It is now proposed that when an area is declared to be protected no person shall be permitted to construct any building or make any excavation for a purpose other than archaeological research without the permission of the Collector. The Collector will be required not to grant permission if the Director General of Archaeology certifies that the construction of the building or the excavation is likely to hinder archaeological or historical research in the area or to result in the loss of archaeological or historical material which in the national interest should be preserved. The Collector will not refuse permission, however, if he is satisfied that the construction of a building other than a dwelling house is required for purposes subservient to agriculture. An appeal to the Commissioner will be provided. A person erecting a building or making an excavation without permission will be liable to three months' imprisonment or a fine or both. The Collector will be empowered to order a building erected without permission, to be removed and, if necessary, to cause it to be removed at the owner's cost. A person who claims to suffer loss on account of the rejection of the application will be permitted to make an application to the Collector for assessment of compensation. The amount of compensation awarded will not exceed the difference between the market value of the land at the time of the claim having regard to the restrictions placed on its use and the market value immediately before the area was declared to be protected. There is no provision in the Act at present for the hearing of objections before an area is declared to be protected under section 20. Provision will be made for a notification calling for such objections.

Education and P.H.(C.2.) Deptt.

Both the Superintendent Archaeological Survey of India and the have no objection to the proposals of the Govt. of India. The ls of the Government of India may be accepted.

As regards the award of compensation, it is proposed that the application is rejected and who thereby claims to suffer ke an application to the Collector for assessment of compensation. Please see section 20A(2) in this connection regarding the payment of compensation by the Central Govt. for the infringement of the rights of any person by the occupation or disturbance of the surface of any land by excavations in any protected area. Since there is already provision for payment of compensation for infringement of rights of any person by excavations in any protected area, the present ~~payment~~ proposal for compensation ~~presumably~~ relates to applications for construction of buildings other than those intended for purposes subservient to Agriculture. It is ~~also~~ presumed that the Central Govt. will pay the compensation, ~~though unlike section 20(2)~~ though the collector is required to assess the compensation.

3. The Supdt. Archaeological Survey of India, Southern Circle, has proposed amendments and additions to section 20 -vide pp 19-21 c.f. The Govt. of India will suitably redraft section 20 in view of their proposals above and the work may be left to them. The Supdt. Archaeological Survey proposes a punishment of imprisonment upto six months in addition to ~~xx~~ the existing punishment of fine which may extend upto Rs 5000/- provided for in Section 20B (4). This may be approved.

11/4/47

20-4-47

Proposal of the Government of India:-

(iii) Miscellaneous:-

(a) It is proposed to provide that the Director-General or any officer authorised by him may enter and inspect a protected monument or any place which he may have reason to believe to be an ancient monument or an area which in his opinion may contain buried antiquities. In the case of buildings or sites in religious use inspection will be restricted to officers belonging to the appropriate community. In the case of buildings in private occupation or in religious use inspection will be preceded by a request for permission and if permission is refused the District Magistrate will be empowered to authorise the visit on such conditions as he may consider necessary. Where a building is locked and the whereabouts of the owner are not known the District Magistrate will be empowered to authorise the archaeological officer to enter for inspection on such conditions as he may consider necessary. Subject to the conditions of entry specified above, the Director-General or an officer authorised by him will be empowered to enter a monument for the purpose of causing any part of the monument or antiquity therein to be photographed or copied.

(b) It has been found that some protected monuments under the management of trustees and other bodies are not maintained in a clean and sanitary condition. Provision will be made requiring the owner of a protected monument to keep it in a tidy and sanitary conditi

3. The Government of India would be glad to be furnished at an early date with the views of the provincial Govt. on the proposalsmentioned in paragraph 2 above.

Education and P.H.(C.2.) Deptt.

The proposal of the Government of India may be accepted.

11/4/47

Miscellaneous matters.

There is reference either to the 'Collector' or 'Commissioner' or both in the following sections of the Act:—

1 Section 10(3) —— p621
2. " 13(2) —— p622-623
3 " 18(1) to (3) — p624-25
4 " 19(1) —— p625
5 " 20(A)(1) — p626

The D.G. of Archaeology may be substituted for the Collector or Commissioner in respect of the first four items mentioned above. But in respect of item (5) above it appears that the Collector may be retained as he is the person on the spot. These consequential amendments the Govt of India will carry out.

11/4/47