

An Act to save built heritage

• *Madras Musings* which from its inception over 20 years ago has been clamouring for an Act to save the State's built heritage, particularly structures not covered by a Central Act of 1958 and a State Act of 1966, is happy to publish key extracts from the Act to protect built heritage which the Tamil Nadu Government passed over a year ago but which it has kept under wraps.

The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 31st May 2012 and was published for general information in a *Tamil Nadu Government Gazette Extraordinary*.

ACT No. 24 of 2012

THE TAMIL NADU HERITAGE COMMISSION ACT, 2012

An Act to constitute a Heritage Commission in the State and for matters connected therewith and incidental thereto.

WHEREAS Tamil Nadu is known for its rich heritage and cultural properties and it is needless to emphasise that these have to be preserved and protected at all costs and for the posterity;

AND WHEREAS, it is necessary to protect the buildings or premises not covered under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Central Act 24 of 1958) and the Tamil Nadu Ancient Monuments and Archaeological Sites and Remains Act, 1966 (Tamil Nadu Act 25 of 1966);

AND WHEREAS, it is necessary to constitute a Statutory Authority to advise in the matters relating to identification, restoration and preservation of heritage building and in the matters relating to the development and engineering operations which are likely to affect any heritage building;

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-third Year of the Republic of India as follows:—

CHAPTER-I

PRELIMINARY

1. (1). This Act may be called the Tamil Nadu Heritage Commission Act, 2012.
- (2). It shall come into force on such date as the Government may, by notification, appoint.
2. In this Act, unless the context otherwise requires,—
 - (a) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial, cultural or other purposes whether in actual use or not;
 - (b) "building operations" includes rebuilding operations, structural alterations of or additions to buildings or other operations normally undertaken in connection with the construction of buildings;
 - (c) "Chairman" means the Chairman of the Commission;
 - (d) "Commission" means the Tamil Nadu Heritage Commission constituted under section 3;
 - (e) "development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in or over or under land or the making of any material change in any building or land, and includes re-development;
 - (f) "engineering operations" includes the formation or laying out of means of access to a road or the laying out of means of water supply or drainage;
 - (g) "Government" means the State Government;
 - (h) "heritage building" means any building or one or more premises or any part thereof which requires preservation and conservation for historical, architectural, environmental or cultural importance and includes such portion of the land adjoining such building or any part thereof as may be required for fencing or covering or otherwise preserving such building and also includes the areas and buildings requiring preservation and conservation for the purposes as aforesaid;
 - (i) "local authority" means any municipal corporation or municipal council or panchayat union council or village panchayat constituted or to be constituted under the relevant law for the time being in force;
 - (j) "member" means a member of the Commission;
 - (k) "monuments of heritage importance" means any building, structure,

erection, monolith, monument, mound, tumulus, tomb, place of interment, cave, sculpture, inscription on an immovable object or any part or remains thereof, or any site, which the Government, by reason of its heritage association, considers it necessary to protect against destruction, injury, alteration, mutilation, defacement, removal, dispersion or falling in to decay;

- (l) "notification" means a notification published in the Tamil Nadu Government Gazette;
- (m) "prescribed" means prescribed by rules made under this Act;
- (n) "public amenity" includes road, water supply, street lighting, drainage, sewerage, public works or such other convenience as the Government may, by notification, in the Tamil Nadu Government Gazette, specify to be a public amenity for the purposes of this Act;
- (o) "regulation" means a regulation made by the Commission;
- (p) "rules" means rules made by the Government under this Act.

CHAPTER-II

CONSTITUTION OF THE TAMIL NADU HERITAGE COMMISSION

3. (1) The Government shall, by notification, constitute a body to be known as the Tamil Nadu Heritage Commission.
- (2) The Commission shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall, by the said name, sue or be sued.
4. (1) The Commission shall be chaired by an eminent person with concern and commitment for Heritage Conservation to be nominated by the Government and shall consist of not more than sixteen members, as follows:—
 - (a) the Secretary to Government in-charge of Tourism and Culture, ex-officio;
 - (b) the Secretary to Government in-charge of Housing and Urban Development, ex-officio;
 - (c) the Secretary to Government in-charge of Municipal Administration and Water supply, ex-officio;
 - (d) the Secretary to Government in-charge of Rural Development and Panchayat Raj, ex-officio;
 - (e) the Secretary to Government in-charge of Law Department, ex-officio;
 - (f) The Commissioner of Museum, Chennai, ex-officio;
 - (g) the Superintending Archaeologist, Archaeological Survey of India, Chennai circle, ex-officio;
 - (h) the Commissioner of Archaeology, Chennai, ex-officio;
 - (i) the Director, School of Architecture and Planning, Anna University, ex-officio;
 - (j) the Director of Environment, ex-officio;
 - (k) the Chief Engineer (Buildings), Public Works Department, Chennai, ex-officio;
 - (l) the Senior Architect from Public Works Department, Chennai, ex-officio;
 - (m) one person nominated by the Government, who is conversant with Archaeology;
 - (n) one representative from Indian National Trust for Art and Cultural Heritage;
 - (o) one person nominated by the Government from any Non Government Organisation involved in Heritage Management and cultural affairs;
 - (p) a nominee of the Institute of Town Planners (India), Tamil Nadu Region;
- (2) The Government shall, in consultation with the Commission, appoint a Secretary of the Commission who shall hold office for such period as may be prescribed:
6. (1) The Chairman and every member of the Commission shall hold office for a term of three years and shall be eligible for re-appointment for a further period of three years.
7. The Commission shall meet, as often as may be necessary, at such time and place and observe such rules of procedure as may be provided in the regulations:

Provided that the Commission shall meet at least once in three months.

CHAPTER-III

POWERS AND FUNCTIONS OF COMMISSION

11. (1) Notwithstanding anything contained in any other law for the time being in force, all local authorities shall refer anything related to identification, restoration and preservation of any heritage building or any other development or any engineering operation which is likely to affect preservation of any heritage building for advice.
- (2) Subject to the provisions of sub-section (1), the functions of the Commission shall be, —
- to advise the Government on preparing a classification of buildings in certain grades of heritage buildings after scrutinising applications and proposals received, including supplementing the existing list of buildings as well as all other matters relating to heritage conservation;
 - to advise the Government on any alteration, modification or relaxation of any law for the time being in force for development, control and conservation of any heritage building;
 - to advise Government whether to allow commercial or other use of heritage buildings and if so, when to prohibit such use;
 - to advise the Government on framing of special regulations for such heritage buildings as may be listed by the Government;
 - to advise the Government on guidelines to be adopted by private parties who sponsor beautification schemes in this State;
 - to advise the Government on the penal measures for defacing or destroying a heritage building;
 - to advise the Government and the local authorities on the making of provision for restoration of heritage buildings;
 - to advise the Government and the local authorities on documentation of records of heritage buildings;
 - to advise the Government on the steps to involve public opinion in mobilisation of efforts for creating awareness, preserving or maintaining heritage, and the consciousness of its visible architectural and natural evidences, so as to foster the creation of a popular mandate for heritage preservation;
 - to advise the local authorities, where necessary, on the policy of the grant of any certificate of right of development of any heritage building;
 - to advise the local authorities to regulate the installation of advertisement and display structure in respect of heritage buildings;
 - to advise the local authorities on the cost of repair of heritage buildings and the policy to be adopted for raising repair-funds from private sources;
 - to advise the local authorities to prepare special designs and guidelines for heritage buildings controlling the height and essential characteristics and to suggest other aspects of conservation and restoration;
 - to advise the local authorities on the provision of incentive by exemption from payment of rates or taxes or fees for supply of water or any other charge in respect of heritage buildings;
 - to advise the Government on any other matter relating to restoration or preservation of building of heritage importance as may be entrusted by the Government to the Commission.
- (3) Notwithstanding anything contained in any other law for the time being in force, no local authority shall take any step for identification, preservation, conservation or restoration of any heritage building, not consistent with the determination or advice of Commission.
12. If any local authority is aggrieved by any advice of the Commission in respect of any building operation, engineering operation or development proposal referred to the Commission under sub-section (1) of section 11, such local authority may, within sixty days from the date of advice by the Commission, prefer an appeal to the State Government, and the State Government may pass such order thereon as it deems fit.
13. (1) Nothing contained in this Act shall preclude the Government from calling for and examining, on its own motion, if the Government consider it necessary to do so in the public interest, any case of advice by the Commission under sub-section (1) of section 11 and passing such order thereon as it thinks fit:

14. The Commission while inquiring into any matter under this Act shall have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters:—
- summoning and enforcing the attendance of any person and examining him;
 - requiring discovery and production of any documents;
 - receiving evidence on affidavits;
 - requisitioning any public record or copies thereof from any office;
 - any other matter which may be prescribed.
15. (1) Subject to the other provisions of this Act, the Government and every local authority shall accept every advice of the Commission to the Government or the local authority, as the case may be and shall take action for prompt and effective implementation of such advice.
- (2) The Government may for the purposes of sub-section (1) give such directions to a local authority as it may deem fit and thereupon such local authority shall act according to the directions as aforesaid.

CHAPTER-IV

FUND, ACCOUNTS AND AUDIT.

16. (1) The Government shall pay to the Commission by way of grants such sums of money as the Government may think fit for being utilized for the purposes of this Act.
- (2) The Commission may spend such sums as it thinks fit for performing the functions under this Act.
- (3) The honorarium and allowances payable to the Chairman and members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary and to the officers and other employees referred to in section 10 shall be paid out of the grants referred to in sub-section (1).
17. (1) The Commission shall have its own fund, and all sums which may, from time to time, be paid to it by the Government and all the receipts of the Commission including any sum which the Central Government or any other authority or person may handover to the Commission shall be credited to such fund.

CHAPTER-V

MISCELLANEOUS

23. The Chairman, members, the Secretary and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, or any rule or regulation or order or direction made or issued under this Act, to be public servant within the meaning of section 21 of the Indian Penal Code.
24. No suit, prosecution or other legal proceedings shall lie against any member of the Commission or officer or other employee of the Commission or any person acting under the direction of the Government or of the Commission, in respect of anything which is done in good faith or intended to be done in pursuance of this Act or any rule, regulation, order or direction made or issued under this Act.
25. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.
26. (1) The Government may make rules for carrying out all or any of the purposes of this Act.
- All rules made under this Act shall be published in the *Tamil Nadu Government Gazette* and, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.
 - All notification issued under this Act shall, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.
27. The Commission may, subject to any rules made by the Government and with the previous approval of the Government may make regulations for carrying out the powers and function of the Commission under this Act.

(By order of the Governor)

G. JAYACHANDRAN,
Secretary to Government,
Law Department.