

CULTURAL PROPERTY ACT

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73 of 1988.

AN ACT to provide for the control of the export of Cultural Property to provide for a scheme of licensing to deal in cultural property and to provide for matters connected therewith or incidental thereto.

[Date of Commencement: *17th December, 1988*]

1. Short title.

This Act may be cited as the Cultural Property Act.

PART I

EXPORT OF CULTURAL PROPERTY

2. Prohibition of export of cultural property except upon licence.

(1) No person shall, except upon a licence in the prescribed form issued by the Controller of Exports (hereinafter referred to as the "Controller") and upon the payment of a prescribed fee export or attempt to export any cultural property from Sri Lanka.

(2) This section shall have effect as if it formed part of the Customs Ordinance and the provisions of that Ordinance shall apply accordingly.

3. Application for licence to export cultural property.

(1) Every application for a licence under section 2 shall be made to the Controller in the prescribed form and shall be accompanied by a statement from the Archeological Commissioner stating that he has no objection to the issue of such licence to the applicant.

(2) The Controller may refuse to issue a license where—

(a) the Archaeological Commissioner in the statement issued by him objects to the issue of such licence; or

(b) he is of opinion that any cultural property sought to be exported is a property which is required for museum in Sri Lanka.

4. Appeal against refusal of licence.

(1) Any person aggrieved by the refusal of the Controller to issue any licence under section 3 may appeal against such refusal to the Secretary to the Ministry in charge of the subject of Cultural Affairs (hereinafter referred to as the "Secretary") against such refusal.

(2) The Secretary may in dealing with any appeal preferred to him under subsection (1), affirm or set aside the decision of the Controller against which the appeal has been preferred.

5. Penalty for export of cultural property without permission.

If any person, himself or by another person on his behalf exports or attempts to export any cultural property in contravention of section 2, he shall, without prejudice to any forfeiture or penalty to which he may be liable under the provisions of the Customs Ordinance, be guilty of an offence and shall, upon conviction after summary trial before a Magistrate, be liable to a fine not exceeding five

thousand rupees or to imprisonment of either description for a period not exceeding three years or to both such fine and imprisonment.

6. Delegation of powers and duties of the Controller.

(1) The Controller may delegate to an officer of the Department of Archaeology the power to issue licence.

(2) Every officer appointed under subsection (1) shall exercise the power delegated to him subject to the general or special directions of the Controller.

PART II

ESTABLISHMENT OF THE CULTURAL PROPERTY BOARD

7. Establishment of the Cultural Property Board.

There shall be established a Board called the Cultural Property Board (hereinafter referred to as "the Board").

8. Constitution of the Board.

(1) The Board shall consist of—

- (a) the Secretary to the Ministry of the Minister in charge of the subject of Cultural Affairs, who shall be the Chairman;
- (b) the Director of Museums;
- (c) the Director of National Archives;
- (d) Chairman, Central Environmental Authority;
- (e) two members who shall have specialised knowledge and experience in matters relating to cultural property appointed by the Minister.

(2) A person shall be disqualified for appointment or continuing as a member of the Board under paragraph (e) of subsection (1)—

- (a) if he is or becomes a member of Parliament; or
- (b) if he is not or ceases to be a citizen of Sri Lanka.

(3) The members appointed by the Minister under paragraph (e) of subsection (1) subject to the provisions of subsections (4) and (5) shall hold office for a term of three years but shall be eligible for reappointment.

(4) The Minister may remove from office any member of the Board appointed under paragraph (e) of subsection (1) without assigning any reason therefor and such removal shall not be called in question in any court.

(5) In the event of the vacation of office of any member appointed under paragraph (e), or his removal from office under the provision of the preceding subsection, the Minister may appoint another person to hold such office during the unexpired part of the term of office of the member whom he succeeds.

(6) If any member of the Board appointed under paragraph (e) is temporarily unable to discharge the duties of his office due to ill-health or absence from Sri Lanka or for any other cause, the Minister may appoint some other person to act in his place as member,

(7) The members of the Board shall be remunerated at such rates as may be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

9. Meetings and quorum of the Board.

(1) The Board may regulate its procedure in regard to the meetings of the Board and the transaction of business at such meetings.

(2) The quorum for a meeting of the Board shall unless the Board otherwise determines be four members.

10. Power of the Board.

(1) The Board shall be an Advisory Board and shall advise the Archaeological Commissioner in the exercise of his powers or on any other matters referred to the Board for their opinion.

(2) The Board may in the exercise of their power retain the services of any person having a specialised knowledge and experience in matters relating to cultural property.

PART III

REGISTRATION OF CULTURAL PROPERTY

11. Minister to specify the categories of cultural property to be registered.

The Minister in consultation with the Board and with the approval of the Cabinet may from time to time by Notification published in the Gazette specify the categories of cultural property that shall be registered under this Act, having due regard to the following considerations:

- (a) the necessity for conserving such category of cultural property;
- (b) the need to preserve such objects within Sri Lanka for the better appreciation of her cultural heritage;
- (c) such other factors as will or are likely to contribute to the safeguarding of the cultural heritage of Sri Lanka.

12. Registration of cultural property in private possession.

No person shall own or have in his custody or possession any cultural property specified in the Notification referred to in section 11 unless such cultural property is registered by the registering officer and such officer has issued a certificate of registration in respect of such property.

13. Government Agent to be the registering officer.

The Minister may, by Notification published in the Gazette appoint for the purpose of section 12 the Government Agent to be the registering officer for the administrative district for which he has been appointed Government Agent.

14. Applications for certificate of registration.

The Minister may, by order published in the Gazette, prescribe the period within which an application for a certificate of registration may be made under section 15.

15. Grant of certificate of registration.

(1) Every person required to obtain a certificate of registration under, section 12 shall make an application for such certificate, to the registering officer of the administrative district within which he resides on an application form prescribed for the purpose.

(2) On receipt of an application under subsection (1) the registering officer may, after holding such inquiry as he deems fit, grant a certificate of registration containing such particulars as may be prescribed.

(3) Where an application received under subsection (1) has been rejected, the registering officer shall inform the applicant in writing stating his reasons for such rejection.

(4) Where an application for a certificate of registration has been rejected, the applicant may, within fourteen days from the date of such rejection, appeal to the Archaeological Commissioner against such rejection.

(5) Any applicant who is aggrieved by a decision of the Archaeological Commissioner rejecting an application for registration may appeal against such decision to the Court of Appeal.

16. Transfer of ownership of any registered cultural property to be intimated to the registering.

Where any person transfers the ownership or custody or possession of any cultural property registered under section 12 such person shall intimate within fourteen days from the date of such transfer, the fact of such transfer to the registering officer of the administrative district within which such person resides.

17. Penalty.

Any person who—

- (a) owns or has the custody or possession of any cultural property, fails to make an application under section 15, or
- (b) transfers the ownership or custody or possession of any cultural property and fails to notify such transfer to the registering officer, under section 16, shall be guilty of an offence and shall, upon conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.

PART IV

LICENCE TO DEAL IN CULTURAL PROPERTY

18. Licence to deal in cultural property.

No person shall, by himself or by any other person on his behalf, carry on the business of selling or offering to sell any cultural property, except under the authority of a licence issued under section 19.

19.—

(1) The Archaeological Commissioner may issue a licence to any person to carry on the business of selling or offering to sell any cultural property after taking into consideration—

- (a) the experience of the applicant with respect to trade in cultural property;
- (b) the town, village or area where the business is to be carried on; and
- (c) such other matters as may be prescribed.

(2) —

- (a) Every application for a licence to carry on any business as specified in subsection (1) shall be in the prescribed form and shall be accompanied by the prescribed fee,
- (b) The Archaeological Commissioner may, after holding such inquiry as he deems fit, issue or refuse to issue a licence to an applicant therefor.
- (c) Where the Archaeological Commissioner refuses to issue a licence to an applicant, he shall inform the applicant of the refusal to issue a licence,
- (d) Every licence authorising the carrying on of any such business as specified in subsection (1) shall be in the prescribed form, for a prescribed period and shall be subject to such terms and conditions, as may be necessary to ensure that the business authorised by such licence is carried on in compliance with the provisions of the Act.
- (e) The Archaeological Commissioner may cancel a licence issued under subsection (1), if the licensee contravenes or fails to comply with any condition attached to the licence.

- (f) Where the Archaeological Commissioner cancels the licence under paragraph (e), he shall cause notice of such cancellation to be given to the licensee.
- (g) An applicant for a licence who is aggrieved by the decision of the Archaeological Commissioner refusing to issue a licence, or the licensee who is aggrieved by the decision of the Archaeological Commissioner cancelling his licence may, within thirty days from the date of such decision, appeal in writing to the Secretary from such decision.

20. Person whose licences have been cancelled may sell cultural property to other licences.

Notwithstanding anything contained in section 18, any person whose licence has been cancelled under paragraph (e) of subsection (2) of section 19, may, after making a declaration in writing to the Archaeological Commissioner within such period and in such form and manner as may be prescribed, of all the cultural property in his ownership, custody and possession immediately before the date of such cancellation, sell such cultural property to any other person holding a valid licence issued under section 19:

Provided that no such cultural property shall be sold after a period of six months from the date of cancellation of the licence.

21. Liability of person contravening Sections 18, 19 and 20 of this Act.

Any person who—

- (a) by himself or by other person on his behalf, sells or attempts to sell any cultural property to a person outside Sri Lanka in contravention of section 18; or
- (b) contravenes the provisions of section 19 or section 20, shall be liable on conviction after summary trial before a Magistrate, to a fine not exceeding five thousand rupees or to imprisonment of either description for a period not less than three years or to both such fine and imprisonment.

PART V

POWERS AND DUTIES OF ARCHAEOLOGICAL COMMISSIONER

22. Powers of Archaeological Commissioner.

The Archaeological Commissioner is hereby empowered—

- (a) to prepare a list of the categories of cultural property required to be registered under section 12;
- (b) to conserve, maintain, repair and restore cultural property that requires registration;
- (c) to control and administer the registration, sale and protection of cultural property that require registration;
- (d) to purchase valuable cultural property with such funds as may be granted for the purpose by Parliament,

23. Duties of the Archaeology Commissioner.

The Archaeological Commissioner shall perform and him by this Act or by any regulation made thereunder, discharge all such duties and functions as are assigned to him by this Act or by any regulation made thereunder.

24. Power of inspection of cultural property.

(1) The Archaeological Commissioner or any officer authorised by him in writing for the purpose may, at all reasonable times, inspect any cultural property in the possession of any person and it shall be the duty of every such person to permit such inspection and to give to the Archaeological Commissioner or such officer all reasonable facilities to study such cultural property and to make drawings, photographs or reproductions thereof by the making of casts or by any other means:

Provided that no such drawings, photographs or reproductions shall be sold without the consent of the person in possession of the cultural property:

Provided further that, in the making of casts the prior consent of the person in possession of the cultural property shall be obtained.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

25. Direction by the Archaeological Commissioner.

(1) Where the Archaeological Commissioner is of the opinion that any cultural property of national importance owned by or in the custody or possession of any person, is in danger of being destroyed, defaced, misused, allowed to fall into decay or where the character of such property is about to be, or is being, or has been, changed, he shall with the concurrence of the Board give directions to the owner or the persons who have custody or possession of such cultural property to safeguard such property.

(2) Where the Archaeological Commissioner is of opinion that the owner or person in possession is unable to comply with his directions within a reasonable time or where he is of opinion that such directions will not be complied with or that such cultural property will be removed from Sri Lanka without a licence he shall with the concurrence of the Board take such property into his custody.

(3) Any person who willfully obstructs the Archaeological Commissioner in performing the duties made under subsection (2) shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

(4) Where the Archaeological Commissioner subsequent to the taking of into his custody any cultural property under subsection (2) is satisfied that the owner or the person who had custody or possession of such property is now in a position to comply with his directions or has complied with such directions and that such property will not be in any danger of being destroyed, defaced, misused or allowed to fall into decay he may with the concurrence of the Board return such property to such owner or person,

(5) Any property taken into custody under subsection (2) may be handed over to the Director of Museums by the Archaeological Commissioner for exhibition at a Museum for public display.

26. Authorisation of Government Agents and other officers to exercise powers of Archaeological Commissioner.

The Archaeological Commissioner may generally or specially authorise the exercise, performance or discharge of any of his powers, duties or functions under this Act—

- (a) by the Government Agent of any district, within that district; or
- (b) by any officer of the Department of Archaeology in any part of Sri Lanka.

PART VI

GENERAL

27. —

No suit or proceeding shall be instituted against any officer appointed under this Act, for any act which is done officers, in good faith or is purported to be done by him in the performance of his duties or the discharge of his functions under this Act.

28. Regulation.

(1) The Minister may make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorised by this Act to be made.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation, on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of its disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be rescinded shall be published in the Gazette.

29. Interpretation.

In this Act, unless the context otherwise requires—

"antiquity" includes any of the following objects lying or being found in Sri Lanka, and has been in existence for more than one hundred years—

Statues sculptured or dressed stone and marbles of all descriptions, engravings, carvings, inscriptions, paintings, writings, and the material where on the fame appear all specimen of ceramic, glytic metallurgic and textile art, coins, gems, seals, jewels, jewellery, arms, tools, ornaments, furniture, household utensils, and all other objects of art which are movable property;

"Archaeological Commissioner" means the person appointed to be or to act as Archaeological Commissioner and includes any person authorised in respect of any power, duty or function of the Archaeological Commissioner under this Act;

"cultural property" includes cultural property which on religious or secular grounds is specifically designated by the Minister with the approval of the Cabinet, as being of importance for archaeology, prehistory history, literature, art or science, and which belongs to one of the following categories—

- (i) rare collections and specimens of fauna, flora, minerals and anatomy;
- (ii) property relating—
 - (a) to history, including the history of science and technology, military and social history: or
 - (b) to the life of national leaders, thinkers, scientists and artists; or
 - (c) to events of national importance;
- (iii) products of archaeological excavations or of archaeological discoveries;
- (iv) elements of artistic or historic monuments or archaeological sites which have been dismembered;
- (v) antiquities more than one hundred years old, such as inscription, coins, currency notes and engraved seals;
- (vi) objects of ethnological interest;
- (vii) pictures, paintings and drawings produced entirely by hand;
- (viii) original marks of statutory art and sculpture;
- (ix) original engravings, prints and lithographs;

- (x) rare manuscripts, old books, documents, drawings, maps, plans and publications of special interest;
- (xi) postage revenue and similar stamps;
- (xii) archives;
- (xiii) articles of furniture more than one hundred years old; and
- (xiv) old musical instruments.