



### Note on Demise of Mr. Bipin Mullaji

With profound grief and sadness regret the passing away of Mr. Bipin Mullaji at the age of 88. Mr. Mullaji was actively involved with us and his selfless contribution to Nariman Point Association will be always remembered. Being the editor of our News Letter he would take personal interest, be it beautification of Nariman Point, Plantation, Security etc. he was always on the forefront.



Mr. Mullaji was an exceptional and gifted human being. Our condolences and sympathies to his family members and May his soul rest in peace.

### From the Editor's Desk

You must be aware of the initiative being taken by the Nariman Point Association in making 'Nariman Point' a prime business centre in Mumbai. We intend to beautify the area with necessary inputs and guidance from you friends as well as with the Brihanmumbai Municipal Corporation (BMC) apart from various other activities.

- i) We are seeking input, ideas, suggestions and constructive feedback from you in transforming NARIMAN POINT into a beautiful business district. Jamnalal Bajaj Marg is under concretization and once complete, we intend to organise the hawkers as per directives from the Supreme Court.
- ii) We are having regular meetings with various agencies to revamp and restore NARIMAN POINT worth its name and make it a world class attraction.

We would be happy to have all your inputs and compile the tips received from you and ensure a better and broad participation and involvement. Similarly, plans are afoot to deploy home guards who will work round the clock to ensure a very clean hygienic place.

We are also looking for sponsorships to make the above a grand success. We need you to lead us and hence share your ideas with us.

**B. P. Choudhury**  
**Vinod Dalmia**

### Election of New Office bearers

In the meeting held on 7th August, 2014, Mr. M. B. Vakharia stepped down from the post of Chairman and Mr. S. M. Kuvelker from the post of Vice-Chairman.

While Dr. Earnest John II took charge as Chairman and Mr. R. R. Gupta as Hon. Secretary of Nariman Point Association. Mr. M. B. Vakharia and Mr. S. M. Kuvelker will continue as Chairman Emeritus and Vice-Chairman Emeritus.

### Part 3 of series of articles on a calamity called "CAPITAL VALUE SYSTEM OF PROPERTY TAX"

#### 1. ATTITUDE OF BMC

In the Courts, instead of cooperating in dispensing justice to the Citizen, the BMC law officers employ every tactic to ruin a citizen; they neither do nor proffer any data, they are ready and wanting to withhold data, and instead of cooperating they continue to fight endlessly, in short they have become "imperial rulers".



As a consequence BMC officers are ready, willing and wanting to go to Court for anything and everything. The BMC, after the Government of India, is the single largest litigant in the fifth on technicalities and thus the citizen is harassed. The relationship of "benevolence" with "penalties" and citizens in their ignorance have no idea, when and how they broke the law. And now these penalties have been hiked to astronomical figures.

The lower cadre of BMC officers and staff entrusted with the task of implementing the law, have become experts at selective implementation.

And therefore the Citizens live in fear of the BMC's officers, both Senior and Junior.

## 2. CONCEPT OF CHANGE

It is true that "change" is the law of nature; however change in the vision of the Nariman Point Citizen, means "improvement of Nariman Point".

What does this change in the eyes of the BMC and its Officers mean? It is necessary to seek information on this and debate with them so as to enable them to have a "larger vision" to make Nariman Point a "vibrant progressive business district", and also put in place plans for Mumbai for the next 100 years by ushering in durable and beneficial change. This is a matter of "great vision" and we need plans on the planning table for the next thirty years and steps for implementation of plans for the next ten years; we need a planning commission (like the central government has, and the city of Singapore also has), and then CHANGE can and will happen; in the current scene the BMC is acting spasmodically, in fits and bouts, and every day the citizen is put to grief by jammed roads, non-existing schools, water logging, absence supply of drinking water, poor transport, non-functioning hospitals etc.

It is time the BMC and Citizens, as partners, in a spirit of togetherness get together to do "good" for Mumbai, and its peripheral area of over 100 sq. km with composite, all pervading plans. The citizen deserves this.

## 3. CONSTRUCTION

The concept of "Type of Construction" (and incidentally cost of construction) of RCC building etc., was already built into the system, there is no justification for taking it out and adding value for "inputs" and thus justify higher property tax. Whether a structure is a two storied or a twenty storied, should not make any difference to the BMC. If the first had four apartments the tax was calculated for four apartments and if the later had forty apartments the tax is computed for forty apartments; since the computation is "qua the number of apartments" there is no justification of a further classification of "Luxurious RCC Building etc.' structure; such classification is apparently for just creating an additional demand; is such a move Citizen friendly?. Should not the citizen demand to know the cost of any additional service / facility the BMC provides for said twenty storied structure as compared to the said two storied structure. Such an attitude violates the fundamental principle of equality before law for all citizens. Perhaps the BMC has not taken kindly to the new high rise buildings that are now dotting the Nariman Point, and also the city's skyline; perhaps the BMC has forgotten that it wanted Mumbai to shine like Shanghai.

This change is a "huge subject" and a lot can be and shall be written about it in the later part of this series of articles. It is mentioned here so as to bring the subject into correlation with the present matter of property tax, since property tax has a place in BMC.'s scheme of raising "Revenue".

**Adv. Baldev Idnani,  
NPA Member**

## Service Tax on Co-op. Societies

### A) Legal Provisions:

Service Tax on Societies was notified and made applicable w.e.f 16.6.2005 under the category of 'Club or Association'.

For Residential Societies, an exemption of collection of Rs. 3,000/- pm (increased to Rs. 5,000/- pm w.e.f 1.7.2012) has been notified. Thus, for commercial or premises co-operative Societies, this exemption is not available & hence collections liable to tax (excluding reimbursements, statutory dues & pass-through items) are fully taxable. With the recent Departmental Circular dated 10th January, 2014, the gamut of coverage is being enlarged with even Electricity Charges being sought to be included as a 'service item' (and not a reimbursement item) and hence liable to tax.

The Societies are not liable to Income-tax on their collections from Members on the well established Principle of Mutuality, upheld by English Courts & applied by Indian Courts from time to time over the ages.

However, the Service Tax Law seeks to distinguish the Societies & its Members & hence seeks to levy tax on the same collections which are otherwise exempt under the Income tax. Thus, even as under the Income-tax, the Net Surplus is exempt under the Mutuality concept, the Service Tax Law seeks to tax the Gross collections ignoring Mutuality concept.

For the said purpose 'Club or Association' has been defined under the Service Tax law alongwith insertion of an explanation to negate the Principle of Mutuality. The purpose of this Explanation is to make it clear that any service provided even by an unincorporated Associations



or Body of persons, such as club or association, to its members is a taxable service. Such Clubs/Associations are to be treated as separate & different from its members for the purposes of Service Tax so as to make sure that

no one takes refuge under the Concept of Mutuality available under the Income-tax, to avoid Service Tax under any category of taxable service, wherever applicable.

Thus, the Law seeks to make it clear that Service Tax applies to Societies especially now w.e.f 1.7.2012 under the Negative List, wherein the entire gamut of services are sought to be taxed in view of the impending GST(Goods & Service Tax) legislation. Thus, all the services are now being taxed to Service Tax @ 12% EXCEPT services in the Negative List. Please note that this Negative List does not mention any services by a Society as not chargeable to tax.

## B) Judicial Pronouncements:

However, in spite of the above Service tax law as laid out in Finance Act, 1994; in general, where contested by the Assesseees, the Adjudicating Authorities at various stages of an appeal and for various categories, have upheld the Principle of Mutuality and held that there cannot be "Service To Self" & a number of case-laws are available on the subject.

However, no direct case law for the case of a Society is available as such. Closest was the recent decision of the H'ble Jharkhand High Court in the matter of a Club-RANCHI CLUB LTD., in a Writ Petition filed by them and followed by the H' ble Gujarat High Court in the case of Sports Club of Gujarat Ltd., Rajpath Club and Karnavati Club cases, wherein unconstitutionality of the levy was upheld.

All the cases, as available now, are under the old Service Tax Law and no new case-laws are yet available under the new Negative List as applicable w.e.f 1.7.2012. However, the basic Principle of Mutuality should still hold its water even under the new Negative List.

But with Department's appeals pending before the H' ble Supreme Court for the above cases, the last word on the issue is yet to be pronounced and the matter will settle only thereafter, may be, if no further amendment comes from the Parliament.

**CA Pankaj Joshi,  
NPA Auditor**

## News in Brief

1. The BMC 'A' ward has received 6295 forms from Hawkers out of issuance of 7845 forms. The BMC will initiate the scrutinization shortly.
2. Government has designated a small triangular portion to Mahanagar Gas Ltd for Compressed Natural Gas (CNG) filling station in the plot no. 153 A, earmarked for Slum Rehabilitation in Free Press Journal Road.
3. The BMC has manufactured the signage boards for traffic; BMC will initiate installation of the same after monsoon.
4. The BMC is planning to provide spaces for the Dry Waste Collectors (Rag Pickers) to segregate the wastes. While BMC has organized tempo service to pick the Wastes from all the spots of dry waste collection.
5. NPA is in meetings with the Government Bureaucrats to avail Home Guards to monitor Nariman Point area.
6. The BMC has partly completed construction of Jamnalal Bajaj Road, Ramnath Goenka Road and N. S. Road. The BMC will continue construction of the proposed roads after monsoon.
7. The BMC has arranged to install 5 new dustbins in Nariman Point, which were being placed outside Chandermukhi Bldg, Rajni Patel Road; outside Raheja Chambers, Free Press Journal Road; Outside *Zunka Bhakar* and outside Trident Hotel, on Rajni Patel Road. NPA is pursuing with BMC for installation of more dustbins.
8. NPA is in the process to plant more decorative plants in the vacant areas of Nariman Point.





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