IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6396 of 2018

Mannan Baasha Basle Petitioner

Versus

The Inspector of State Excise Department & ors. Respondents

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Mr. P.V. Mandlik, Sr. Advocate I/by Mr. P.P. Mandlik, Advocate,

Advocate for the petitioner

Mr. S.B. Pulkundwar, AGP for the respondent Nos.1 & 2

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Coram : N.M. Jamdar, J.
Date : 19 November 2018

Per Court :

1 Heard learned counsel for the parties.

2 The preliminary objection is taken on behalf of the State that the petitioner has remedy of statutory appeal under Section 137 of the Maharashtra Prohibition Act, 1949.

3 The Senior Advocate for the petitioner submitted that an appeal under Section 137 of the Maharashtra Prohibition Act is not available, because the impugned order has not been passed by the Collector and which is also an illegality.

4 The reply affidavit has been filed by the Inspector, State Excise Department, Osmanabad Santosh Babruwan Jagdale. He has stated on oath in paragraph No.5 as under :

> "5. With reference to para No.8 of the writ petition, I say and submit that, the contents of this para is about the Government Resolution, dated 25.03.2008 and 12.02.2009 and the same is admitted, but the rest of the contents are totally denied. I say and submit that, the Collector Osmanabad on 24.04.2018 confirmed the action done by the Respondent No.01, dated 17.04.2018 confirmed the action done by the Respondent No.01, dated 17.04.2018 and thereby ordered to close the shop till the disposal of proceeding."

5 Therefore, based on the statement in paragraph 5 of the affidavit in reply, it is the contention of the State that the impugned orders have been confirmed by the Collector, Osmanabad. That being the position and the order being passed by the Collector, the remedy of appeal is available to the petitioner under Section 137 of the Act. It is open to the petitioner to pursue his remedy as provided under the Act, as above. Without going into the merits of the rival contentions, this writ petition is disposed of, as above.

N.M. Jamdar, J.

agd