own wrong cannot be allowed to militate against the mischief which would otherwise follow, and there can be no estoppel against pleading or relying upon a statute. In my opinion these principles would clearly apply to a case like the present one and I accordingly consider that a compromise arrived at in the previous proceedings for fixation of fair rent would not bar a second application by the tenant, and the decision on the question of basic and fair rent of the premises in suit is not now in question. The revision petition must, therefore, be dismissed, but the parties may be left to bear their own costs.

H. R. KHANNA, J.—I agree.

R.S.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

VISHRAM PARSHAD,—*Petitioner*

versus

THE COLLECTOR OF CUSTOMS, CENTRAL EXCISE COLLECTORATE AND ANOTHER,—*Respondents.*

Civil Writ No. 2289 of 1965

April 28, 1966

Customs Act (LII of 1962)—Ss. 110(2) and 124(a)—Show cause notice under section 124(a) not issued within six months of the seizure of the goods—Customs Authorities—Whether bound to return the goods—S. 110(2) proviso—Whether ultra vires *Article 14, Constitution of India.*

Held, that if show-cause notice under section 124(a) of the Customs Act, 1962, is not issued within six months of the seizure of the goods, the Customs Officers are not bound to return the goods to the person from whose possession they had been seized, because under the proviso to sub-clause (2) of section 110 the period of six months, within which the said notice has to be given, can be extended by the Collector of Customs on sufficient cause being shown and if the notice was given during the extended period the Customs authorities could retain the goods with them till the final decision of the matter by them after obtaining a reply to the show-cause notice from the person concerned.

Held, **also that the power to extend time under section 110(2) Proviso depends upon the existence of sufficient cause and decision in that behalf is to rest upon the merits of each case. Besides, the power to extend time has been vested by law in an officer of the position of a Collector of Customs, which in itself is an adequate safeguard. Article 14 of the Constitution of India is not attracted merely on the ground that the legislature had left to the subjective satisfaction of the authorities to decide whether time should be extended or not or on the ground that right of personal hearing had not been granted to the person who might be affected by such a decision. The proviso is, therefore, not *ultra vires* of Article 14 of the Constitution.**

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, order or direction be issued ordaining the respondents to deliver the Fiat Car No. DLI-6468 to the petitioner.

B. S. CHAWLA, ADVOCATE, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

PANDIT, J.—This a petition under Article 226 of the Constitution filed by Shri Vishram Parshad against the Collector of Customs and the Assistant Collector of Customs, respondents 1 and 2, for a writ of mandamus to be issued to the respondents to return Fiat Car No. DLI 6468 to the petitioner.

According to the petitioner, he purchased this car on 5th of June, 1964, from Delhi. Ever since its purchase, it had been in his exclusive ownership and possession. In the last week of December, 1964, Jasbir Singh, who was a close friend of the petitioner, borrowed the said car from him on the ground that it was required in connection with the marriage of a friend of his. The car was accordingly taken by him to Amritsar for a few days. On the morning of 30th December, 1964, the Customs Officers of Amritsar, raided the house of said Jasbir Singh and thoroughly searched the car but found nothing incriminating in it. All the same the said officers took away the car with them. After the car was seized by the Customs authorities, Jasbir Singh made several requests for its return but no heed was paid to them. Ultimately the petitioner sent a registered notice to respondent No. 2 on 22nd of February, 1965, through his counsel, asking him to return the car. After the said notice, some telegraphic notices were also sent to the respondents, but without any effect and

the routine reply given was that the matter was under investigation and the petitioner would be informed shortly. When the petitioner failed to get any relief from the respondents, he filed a writ petition (Civil Writ No. 946 of 1965) in this Court. This petition was disposed of by Narula, J., on 27th of July, 1965. In his judgment, the learned Judge, *inter alia*, observed as under:—

> "It was then contended by Mr. Chawla that even if all the allegations made on behalf of the respondents are taken on their face value and even if if could be supposed that the appropriate authorities had reason to believe that the car will be liable to confiscation under Section 115(2) of the Customs Act, the seizure of the car under Section 110 (1) of the Act was subject to the mandatory provisions of sub-section (2) of that Section and that admittedly no notice under Section 124(a) having so far been served on the petitioner, the respondents were bound to return the car to the petitioner within six months of the date of the seizure. There is great force in this argument. The learned Deputy Advocate-General, however, points out that this ground was not taken up in the writ petition. The petitioner is not to blame for this as the writ petition was filed before the expiry of six months.
>
> The filing of fresh petition could not be barred by principle of constructive *res judicata*, because this ground was not available to the petitioner at the time of filing of the writ petition.
>
> According to the main argument now put up before me, it is the continued detention of the car after the period of six months which is sought to be impugned. It would be in the fitness of things if this forms the subject matter of a new writ petition, if the petitioner is advised to file a fresh one. It is a matter of regret that the Government has not been able to dispose of this matter for such a long time.

The Customs Authorities cannot be congratulated on the callous manner, in which they are leisurely dealing with property rights of the public. Respectable citizens of the country have been deprived of the use of their valuable car for more than six months though

nothing, at all, has so far been found against him. In spite of my very strong feelings about this matter, I am unable to give any relief to the petitioner in the present writ petition." According to the petitioner, the present writ petition was filed on 17th of August, 1965, in obedience to the observations of Narula, J., referred to above.

Learned counsel for the petitioner has raised the following two contentions before me:—

(1) That no notice under the provisions of clause (a) of Section 124 of the Customs Act, 1962 (hereinafter called the Act) was given to the Petitioner within six months of the seizure of the car; and consequently the respondents were bound to return the car to the person from whose possession it had been seized under section 110(2) of the Act; and

(2) that the proviso to sub-section (2) of section 110 of the Act was hit by the provisions of Article 14 of the Constitution as it was left to the subjective satisfaction of the Collector of Customs to consider any cause to be sufficient without hearing the interested party.

Sections 110 and 124 of the Act are as under: —

"110. Seizure of goods, documents and things,—

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. (2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be

returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months.

(3) * * * * *;

(4) * * * * * * * *;

124. Issue of show-cause-notice before confiscation of goods, etc. No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral."

It is common ground that the car was seized in the instant case on the 30th of December, 1964, and the show-cause-notice contemplated by the provisions of clause (a) of section 124 was issued on the 29th of July, 1965, and served on the petitioner on the 30th July, 1965.

With regard to the first contention, counsel for the petitioner submitted that under section 110(2) of the Act, if no notice under clause (a) of section 124 was given within six months of the seizure of the goods, the goods had to be returned to the person from whose possession they had been seized. If the customs authorities wanted

to keep the goods with them beyond a period of six months but not more than one year, that could be done only if a notice under clause (a) of section 124 had been, in the first instance, given within six months of the seizure of the goods. In the instant case, notice under section 124 clause (a) should have been given by 30th of June, 1965. Since that was not done the customs authorities were bound to deliver the car back to the person from whose possession it had been seized. The said notice having been served on the petitioner on 30th of July, 1965, was of no avail.

After hearing the counsel for the parties, I am of the view that there is no merit in this contention. A combined reading of sections 110 and 124 would show that if the officer concerned has reason to believe that any goods are liable to confiscation, he may seize such goods under section 110(1) of the Act. The said Officer is then given time to make necessary investigation and enquiry and if he then finds that a *prima facie* case has been made out to confiscate those goods, he would give a notice in writing to the person concerned of the grounds on which it is proposed to confiscate the goods under clause (a) of section 124. This notice must be given to him within six months of the seizure of the goods under section 110(2). If no such notice is given within six months the goods have to be returned to the person from whose possession they were seized. There is, however, a proviso added to section 110(2) which says that if the officer concerned has not been able to complete his enquiry and investigation within six months, he may get the period of six months, during which the notice under clause (a) of section 124 had to be issued, extended by the Collector of Customs on sufficient cause being shown to him. This period, however, could not be extended for more than another six months. In the instant case the officers who were conducting the investigation brought to the notice of the Collector of Customs the reasons and the circumstances why they could not complete their investigation and got the period of six months extended by him on 8th of April, 1965. The said notice was then served on the petitioner on 30th of July, 1965, i.e., within one year from the date of the seizure of the car. Since the notice had been issued within limitation, the car was not rightly delivered to the petitioner. It is not possible to accept the interpretation put on section 110(2) by the learned counsel for the petitioner that if the notice under clause (a) of section 124 was not issued within six months of the seizure of the goods, then the customs officers were bound to return the goods to the person from whose possession they had been

seized. Under the proviso to sub-clause (2) of section 110 the period of six months, within which the said notice has to be given, can be extended by the Collector of Customs on sufficient cause being shown and if the notice was given during the extended period, the Customs authorities could retain the car with them till the final decision of the matter by them after obtaining a reply to the show-cause-notice from the person concerned.

Coming to the second contention, as rightly pointed out by the Collector of Customs in his return, there was no foundation for challenge on the basis of Article 14. There was no question of discrimination. The power to extend time was made to depend upon the existence of sufficient cause and decision in that behalf was to rest upon the merits of each case. Besides, the power to extend time had been vested by law in an officer of the position of a Collector of Customs, which in itself was an adequate safeguard. Article 14 was not attracted merely on the ground that the legislature had left to the subjective satisfaction of the authorities to decide whether time should be extended or not or on the ground that right of personal hearing had not been granted to the person who might be affected by such a decision. The argument of the learned counsel for the petitioner that the person concerned should also be called by the Collector of Customs when giving extension of time for making investigation to the customs officials under the proviso to sub-clause (2) of section 110, does not merit any consideration. The officials are naturally not going to divulge before the person concerned the enquiries that still remained to be made for which extension was sought. There is thus no substance in this contention as well.

The result is that this petition fails and is dismissed. There will, however, be no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before R. P. Khosla and Inder Dev Dua, JJ.

THE CHIEF COMMISSIONER DELHI AND OTHERS,—*Appellants.*

versus

M/S MADAN ENGINEERING TOOL PRODUCTS AND OTHERS,—*Respondents.*

L.PA. 2-D of 1966.

April 29, 1966.

Constitution of India (1950)—*Article* 226—*Trespasser on State land dispossessed by the State—Whether should be restored to possession by* mandamus *under Art.* 226—*Possession—Rights accruing therefrom stated—Doctrine of Rule of law explained.*