

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN IT GENERAL ND INHERENT JURISDICTION
INDIAN GUARDANSHIP PETITION NO. 1 of 2023
WITH
JUDGE'S ORDER NO. 17 OF 2023

Ashly Joseph Dcunha & Anr.

...Petitioners

Versus

Vishal Deepak Jagdhane & Anr.

...Respondents

Mr. R.K.L. Kapoor for the Petitioners.

Mr. O. Hareendran, Scrutiny Officer present.

Mr. D.S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA J

DATE : 15 June 2023

ORDER :

1. The Petitioners by this Gardianship Petition are seeking to be appointed as Legal Guardians of the male minor Ziva Vishal Jagdhane ("*the said minor*") born on 6th July 2022. Further relief has been sought for dispensation of notice under Section 11 of the Guardians and Wards Act, 1890. Relief is also sought for granting

leave to the Petitioners to remove the said minor outside the jurisdiction of this Court and to take the said minor wherever required.

2. Scrutiny Report of Mr. Hareendran, Scrutiny Officer which has been handed over to this Court is taken on record and marked “X” for identification.

3. The Petitioners are practicing Christians of sound mind governed by the provisions of the Guardians and Wards Act, 1890. They are Indian nationals residing at Vasai, District Palghar aged about 47 years and 39 years respectively and have been married for the past 15 years with no children.

4. The Petitioners have placed on record the proof of age, Marriage Certificate as well as medical certificates, divorce Decrees, motivation letter and residence proof which are annexed to the Petition at Exh.A.

5. The Petitioners have cared for and raised the said minor since her birth i.e. since the age of three months. The Petitioners

appear to be deeply attached to the said minor.

6. The 1st Petitioner is working as Team Leader with Birla Soft Pvt.Ltd. and his monthly gross salary is Rs. 1,21,909/-. His pay slips are on record at page Nos. 36–38 of the Petition. The 2nd Petitioner is working as an Assistant Teacher in St. Aloysius English High School, Vasai and her monthly (December 2022) gross salary is Rs. 30,923/-. Her pay slips are on record at page No. 39 of the Petition.

7. The Motivation letters of the Petitioner is on record at page Nos. 31-32 of the Petition.

8. The Health Certificate dated 27th August 2022 of the Petitioners is on record at page Nos. 18-23 of the Petition and states “They are physically and mentally fit.”. Their HIV and HBsAg Test Reports certifies the case as Non-Reactive.

9. The Home Study Report of the Social Worker of Family Service Centre, Colaba, Mumbai is on record at page Nos. 56-62 of the Petition relating to the Petitioners’ family and the social worker

recommends the Petitioners as suitable for legal guardianship. The Petitioners have also placed on record at page Nos. 63-72 of the Petition the letters of reference from close friends and relatives supporting the Petitioners as legal guardians. Annexed at Exh.C to the Petition are the Home Study Report, letter of references, photograph of the adoptive parents and undertaking to the guardians respectively.

10. There is a child security undertaking dated 7th January 2023 of the first Petitioner's sister and brother-in-law residing at Vasai, Dist. Palghar to look after the said minor in case of any mishap to the Petitioners. This is on record at page Nos. 73-78 of the Petition.

11. There is a health Report of the BLISS Children's Clinic and Dental Care which certifies the said minor to be in good health, growth and development on par and having attained all milestones that are expected in a six months old child. Further, that the said minor has been immunized till date as per government hospital guidelines. The Certificate dated 3rd January 2023 is on record at page 81 of the Petition.

12. The Petitioners have stated that the said minor is the 4th biological child of the Respondents-biological parents and the said minor has 3 older siblings. The Respondents have relinquished all rights and claim over the said minor in favour of the Petitioners for her better future and ultimate welfare. Further, the Petitioners and the Respondents are well known to each other, as mentioned in paragraph 7 of the Petition. The Petitioners have further stated that the Respondents have expressed their inability in looking after and raising four children due to their very meagre income.

13. The consent and undertaking by the Petitioner is on record at page 91 of the Petition.

14. It is relevant to note here that in the case of *Nisha Pradeep Pandya alias Nisha Amit Gor and Anr. Vs. Union of India and Ors.*¹ concerning challenge raised to the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the Division Bench of this Court on 10th January, 2023 passed an interim order. The relevant portion of said order of Division Bench reads as follows :

¹ Writ Petition No.1085/2023 (Writ Petition (L) No.32065/2022)

“8. In the meantime, there will be an ad-interim order only until the next date in terms of prayer clauses (d), (e) and (f) of the petition which reads as follows:

(d) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to stay the effect, implementation and purport of the letter dated 30th September, 2022 issued by Respondent No.2;

(e) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to direct the Respondents not to transfer pending adoption matters before the District Magistrates for adjudication.

(f) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to direct the Hon’ble Courts to continue with the adjudication of the adoption matters that are pending on their record and file.

9. Additionally, the safer and more prudent course of action would be to allow all matters to be placed before the learned Single Judge of this Court who is assigned those matters. Those orders may be continued to be passed until the challenge is finally decided.”

15. Having considered the material on record as well as undertakings given by the Petitioners and relatives of the Petitioners as well as averments in the Petition, I am satisfied that a case has been made out for grant of relief sought for in the Petition. The Petitioners undertake that there are no guardians of persons or property or both of the said minor appointed by this Court or any of the Court in respect of the person or property or both of the said minor is accepted.

16. Accordingly, the relief sought for in the Guardianship Petition in terms of prayer clauses (a) to (c) is granted.

17. In view thereof, Indian Guardianship Petition is allowed in terms of prayer clauses (a), (b) and (c) which read thus:-

*“A] That this Hon’ble Court may be pleased to appoint the Petitioners as legal Guardian of person of the said male minor **ZIVA VISHAL JAGDHANE** Born on **6th day of July, 2022***

B] That the notice under Section 11 of the Guardians and Wards Act, 1890 be dispensed with.

C] That the Petitioners may be granted leave to remove the said minor outside the jurisdiction of this Hon'ble Court and to take the said minor wherever required."

18. Judge's Order is accepted and signed separately.
19. The Guardianship Petition is accordingly, disposed of.

[R.I. CHAGLA J.]