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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO.2 OF 2023**

Shree Manav Seva Sangh

...Petitioner

Versus

**Mr. Mario Barbara and
Mrs. Donatella Barbara**

**...Proposed
Adopters**

Mr. Rakesh Kapoor, for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer, ICSW is present.

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

CORAM : R.I. CHAGLA J

DATE : 30 JUNE 2023

ORDER :

1. This Foreign Adoption Petition is filed seeking adoption of Ajay @ Ismael Barbara (“the said male minor”) born on 7th November, 2021 who was admitted to the Petitioner institution on 15/11/2021 as per the order of Child Welfare Committee, Mumbai City-II dated 15/11/2021 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. Thereafter the biological

mother relinquished the child before the Child Welfare Committee, Mumbai City-II on 02/05/2022 for the child's permanent rehabilitation. The Admission order of the CWC is on record at page No. 18 to the Petition.

2. After making due inquiry under section 38 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) the Child Welfare Committee, Mumbai City-II has declared the said male minor "Legally Free for Adoption" on 04/07/2022. The Free for Adoption Order is on record at page No. 17 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 03/03/2023 to this adoption as per Adoption Regulations 2022 and Article 17 (c) of the Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption 1993, is on record at page No. 25 to the Petition.

4. There is an Affidavit filed by the Authorized Representative of the Specialized Adoption Agency (Petitioner) in support of adoption of child placed on record at Page Nos. 19 - 24 to

the Petition.

5. The Proposed Adopters who are Maltese nationals, both residing at San Gwann, Malta aged about 45 and 36 years respectively have been married for the past 7 years (18/06/2016) with no biological children. The Joint family photograph of the proposed adopters and Passport copies are on record at page Nos. 26-28 to the Petition.

6. The health report of the proposed adopters dated 20/07/2021 is on record and which states “Good state of mental, emotional and physical health. No contradiction for adoption” is on record at page Nos.33 - 36 to the Petition. Their HIV and HBsAg Test Reports are on record and it certifies the case as Negative.

7. The Prospective Adoptive father is working as a Cleaner / Helper with Multipackaging Ltd., Malta and his gross emoluments from 01/01/2021 to 24/11/2021 is of Euro 16,079.68. His salary slip and Tax certificate is on record at page Nos. 38-39 to the Petition.

8. The Prospective Adoptive mother is working as a Library Assistant with University of Malta and her gross emoluments from 01/01/2021 to 31/12/2021 is of Euro 24,490.85. Her Payee statement of earnings is on record at page No. 37 to the Petition.

9. The Proof of Residence is on record at page Nos. 40-41 to the Petition.

10. The childcare management plan by the prospective adoptive parents is on record at page No. 42 to the Petition. The child care management plan states that proposed adoptive parents are well aware of the special need of the said male minor and that they are able to handle him in the best interest of the child. They have confirmed that they will be giving to the child any other support as and when needed including educational support as necessary.

11. The home study report of the proposed adopters dated 2/11/2021 by the authorities of "Agenzija Tama", San Gwann, Malta is on record and the report has found the proposed adopters suitable for adopting a child. The said home study report is at page Nos. 43-53 to the Petition. The home study report provides for the

motivation for adoption.

12. The declaration by the Malta Central Authority i.e. receiving country granting permission is on record at page Nos. 54-55 to the Petition.

13. The Medical Examination Report of the minor Ajay dated 11/07/2022 states that he is a Special Need child. He is mentally and physically slow. The proposed adopters have countersigned this report. Said report is placed on record at page Nos.63-69 to the Petition.

14. As regards the change of name, the proposed adopters desire that the said male minor child '**AJAY**' be renamed as "**Ismael Barbara**".

15. The H.I.V. report of the said male minor dated 18/11/2021 certifies the case as Negative. This report has been placed at page No. 71 to the Petition. The Post Card size photograph of the said male minor is on record at page 72 to the Petition.

16. The consent, willingness and undertaking of proposed adopters is on record and it states that they are willing to adopt the said male minor Ajay born on 07/11/2021 and further undertakes that they will allow personal visits of the representative of Authorized Foreign Adoption Agency or Government department concerned during post-adoption follow up as per Adoption Regulations. The said consent and undertaking is at page Nos. 73-74 to the Petition.

17. The undertaking of the Authorized Foreign Adoption Agency (AFFA) "Agenzija Tama", San Gwann, Malta to provide follow-up reports of the said male minor child and make alternative arrangement in case of disruption of the adoptive family is placed on record at page No. 75 to the Petition.

18. The Power of Attorney dated 06/12/2022 in favour of the Petitioner Institution is on record at Page Nos.76 – 78 to the Petition.

19. The Petitioner Institutions' recognition from Women and Child Development, Maharashtra State to place children

for adoption is valid for a period up to 07/03/2024.

20. Mr. O. Hareendran, Scrutiny Officer has tendered the Scrutiny Report dated 27th June, 2023 which is taken on record and marked 'X' for identification.

21. Having considered the material on record and the report of the Scrutiny Officer marked 'X', it would be in the interest of the said male minor child, if he is adopted by the proposed adopters.

22. It is necessary to note that the Division Bench of this Court in *Nisha Pradeep Pandya @ 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, passed an interim order dated 10th January, 2023. The relevant portion of the said order of Division Bench reads as follows :

“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

¹ W.P(L) No.32065 of 2022

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."

23. Thus, there is no impediment in granting the relief sought for in the Petition.

24. In these circumstances, the Petition is allowed in terms of prayer clauses (a) to (e) which read thus:-

(a) For the Adoption of the proposed male minor Ismael Barbara born on 07/11/2021 by the Proposed Adopters under Section 59 (7) of the Juvenile Justice Act, 2015.

(b) For declaring the Proposed Adopters as Adoptive Parents of the said minor Ismael Barbara and having all parental rights, privileges and responsibilities over the said minor now in the care and custody of the Petitioner institution Shree Manav Seva Sangh, Sion (West), Mumbai – 400 022.

(c) That the proposed adopters be allowed to change the name of the said minors AJAY to “Ismael Barbara”.

(d) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor Ismael Barbara, born on the 7th day of November, 2021 and stating that thereon that the Proposed Adopters as Parents of the said minor.

(e) That the Proposed Adopters may be granted leave to remove the said minor Ismael Barbara from the jurisdiction of this Hon’ble Court and to take the said minor to MALTA or wherever they may reside in future.

25. It is directed that the Petitioner Institution shall obtain a further undertaking from the adoptive parents that they shall not give the minor child for further adoption without the prior leave of this Court. Once this undertaking is obtained, the same shall be filed on the record of this Court.

26. The Judges Order is accepted and signed separately.

27. The Foreign Adoption Petition is accordingly disposed of.
No order as to costs.

28. All concerned will act on production by fax or email of a digitally signed copy of this Order.

[R.I. CHAGLA J.]