

K.S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO.6 OF 2023

Bal Anand, WWTI, Mumbai

...Petitioner

Versus

Mr. Jared Kristopher Cornutt and
Mrs. Kandace Alayne Cornutt

...Proposed Adopters

WITH
JUDGE'S ORDER NO.27 OF 2023
IN
FOREIGN ADOPTION PETITION NO.6 OF 2023

Mr. Sameer Sawant, Advocate for Petitioner.

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

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

CORAM : R.I. CHAGLA, J.

DATE : 13TH JULY, 2023.

ORDER :

KAVITA
SUSHIL
JADHAV

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1. This Foreign Adoption is filed by the Petitioner who is a Child Welfare Organization and a recognized agency for adoption having been so recognized by State Government as well as Central

Adoption Resource Authority (CARA), New Delhi alongwith the Prospective Adoptive Parents for adoption of the proposed male minor Raj Thakur (“the said male minor”) who was born on 28th January, 2021.

2. The said male minor was admitted to the Petitioner Institution on 1st July, 2021 as he was found abandoned. Thereafter, by order dated 5th July, 2021 passed by the Child Welfare Committee (CWC), Mumbai Suburban District recognized the admission under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as “the Act”). The Admission Order of CWC is placed on record at Page 18 to the Petition.

3. After making due enquiry under Section 38 of the Act, CWC, Mumbai Suburban District declared the said male minor as “Legally Free for Adoption” as on 28th February, 2022. The Free for Adoption Certification has been placed on record at Page 19-20 to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 8th September, 2022 to the adoption as per Adoption Regulations 2017 and Article 17(c)

of the Hague Convention on the Protection of Children and Co-operation in respect Inter-country Adoption 1993. The No Objection Certificate has been placed on record at Page 21 to the Petition.

5. There is an undertaking filed by the Petitioner-Institution which is on record at Pages 22-23 to the Petition.

6. The Prospective Adoptive Parents are American Nationals, residing at Texas, USA aged about 33 and 31 years respectively, have been married for the past 9 years (28th June, 2014). Of this marriage, they have one biological son aged about 4 years (DOB : 29th April, 2019). They have also one adopted son aged about 6½ years from India. The Adoption Order, Citizenship Certificate, Post-placement Progress Report, Consent Letter of adopted son and Medical Reports of adopted and biological child are on record at page Nos. 44-63 to the Petition. The Prospective Adopters Joint Family Photograph and Copies of Passport are also placed on record at Page Nos. 31-35 to the Petition.

7. The Medical Reports dated 14th July, 2021 of the Prospective Adoptive Parents state that they do not have any unfavorable physical, mental, or psychological factors that might

affect the upbringing of a child and their health is suitable for raising a child. Their HIV and HBsAg Test Reports certify the case as Negative. These reports are at Page Nos. 64-73 to the Petition. The Motivation Letter of the proposed Adopters is also on record at Page 76 to the Petition.

8. The Prospective Adoptive Father is working as a Senior Pastor with Plymouth Park Baptist Church at Texas since June 2019 and having annual salary of \$129,000. His Employment & Income Certificate is on record at Pages 77-79 to the Petition. Prospective Adoptive Mother is a Homemaker. The necessary Income Tax Summary, Bank Reference and proof of Residence of the Adoptive Parents have been placed on record at Page Nos. 82-93 to the Petition. The Childcare Plan declaration from the proposed Adopters is on record at Page Nos. 96-97 to the Petition.

9. The Home Study Report dated 9th August, 2021 by the authorities of “Lifeline Children’s Services” Texas, U.S.A has found that the Prospective Adoptive Parents are suitable for adopting a child either gender between the ages of 0 to 2 years. The Home Study Report is placed on record at Page Nos. 98-114 to the Petition.

10. The Psychological Evaluation Report dated 15th July, 2021 of the Prospective Adoptive Parents by the Licensed Clinical Psychologist has found the Prospective Adoptive Parents mentally and emotionally stable and capable of raising and parenting another adopted child from India. The said Report has been placed on record at Page Nos. 117-119 to the Petition.

11. The Professional Approval Notice dated 24th June, 2022 from Department of Homeland Security and “Article 5” Letter dated 22nd July, 2022 of Embassy of the United States of America have been placed on record at Page Nos. 120-123 to the Petition.

12. There is a Child Security Undertaking dated 14th July, 2022 given by the Prospective Adoptive Parents’ friends residing at Texas, U.S.A. to look after the said male minor in case of any mishap to the Prospective Adoptive Parents. The Undertaking is placed on record at Page 138 to the Petition.

13. The Medical Examination Report of the said male minor dated 09th March, 2022 states *“His Health Status : Special Need child- HIV Positive. Over all observation of the child : On investigation, the child was detected to be seropositive and started on*

ART 1st line in August 2021. He was malnourished and barely weighed 4 Kg at the age of 7-8 months. The Pediatric Neurologist opinion has taken in March 2022 and he opined that his neurological examination is normal for age". The Prospective Adoptive Parents have countersigned this Report along with additional investigation reports, placed on record at Page Nos. 146-156 to the Petition.

14. The Medical Letter of the Prospective Adoptive Parents and a Letter from UT Southwestern Medical Center, Texas regarding the child's medical needs are on record at Page Nos. 159-160 to the Petition.

15. The H.I.V. Report of the said male minor dated 2nd July, 2021 certifies the case as Positive. This Report is placed on record at Page 164 to the Petition. There is a Post Card size Photograph of the said male minor on record at Page 165 to the Petition.

16. As regards the change of name, the Prospective Adoptive Parents desire that the said male minor 'Raj Thakur' be renamed as "Benjamin Raj Thakur Cinnutt".

17. The child Approval Letter and Post Adoption Undertaking letter of the Prospective Adoptive Parents have been placed on record

at Page Nos. 168-171 to the Petition. The Child Approval Letter states that the Prospective Adoptive Parents are willing to accept the said male minor and approve him in the condition as mentioned in the Child Study Report and Medical Examination Report and adopt him in accordance with the Juvenile Justice Act. The Post Adoption Undertaking states that the Prospective Adoptive Parents will allow personal visits by a Social Worker into their home to carry out post-adoption follow-up.

18. The undertaking dated 2nd February, 2022 of the Authorized Foreign Adoption Agency, (AFFA) “Lifeline Children’s Services”, Birmingham, AL, USA to provide follow-up reports of the child and make alternative arrangements in case of disruption of the adoptive family is on record at Page 174 to the Petition.

19. The Special Power of Attorney dated 1st August, 2022 duly signed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at Page Nos. 28-30 to the Petition.

20. The Petitioner Institution’s recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 5th May, 2025.

21. Mr. O. Hareendran, Scrutiny Officer has tendered Report dated 7th July, 2023 which is taken on record and marked 'X' for identification.

22. Having considered the documents on record as well as Report of the Scrutiny Officer, I am of the view that it would be in the interest of the said male minor child, if he is adopted by the Prospective Adoptive Parents.

23. It is relevant 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 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;

¹ W.P. No.1085 of 2023

(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."*

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

25. In view of the above, the Petition is allowed in terms of prayer clauses (a) to (e) which read thus:-

*"(a) For the Adoption of the proposed minor **Benjamin Raj Thakur Cornutt, born on 28/01/2021** 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 **Benjamin Raj Thakur Cornutt** and*

having all parental rights, privileges and responsibilities over the said minors now in the care and custody of Bal Anand, Worldchildren Welfare Trust India, Sai Krupa, 93,Ghatla Village, Chembur, Mumbai – 400071.

*(c) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor **Benjamin Raj Thakur Cornutt** born on 28/01/2021 and showing the proposed adopters as Parents.*

*(d) That the Proposed Adopters may be granted leave to remove the said minor **Benjamin Raj Thakur Cornutt** from the jurisdiction of this Hon'ble Court and to take the said minor to U.S.A. or wherever they may reside in future.*

*(e) That the proposed adopters be allowed to change the name of the said minor "RAJ THAKUR to "**Benjamin Raj Thakur Cornutt**".*

26. It is directed that the Petitioner-Institution shall obtain a further undertaking from the Adoptive Parents that they shall not give the said male 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.

27. The Judges Order is accepted and signed separately.

28. The Foreign Adoption Petition is accordingly disposed of.
29. No order as to costs.
30. All concerned will act on production by fax or email of a digitally signed copy of this Order.

[R.I. CHAGLA, J.]