

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO. 7 OF 2023
WITH
JUDGE'S ORDER NO. 31 OF 2023

Jeevan Asha Trust's Asha Shishugruha ...Petitioner

Versus

Samuele Raspanti, Italian National & Anr. ...Proposed Adopters

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

Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare.

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

CORAM : R.I. CHAGLA J

DATE : 20 July 2023

ORDER :

1. The present Foreign Adoption Petition is filed seeking adoption of proposed male minor Ashish (**"the said male minor"**), born on 19th October 2021. The biological mother surrendered the said minor before the Child Welfare Committee (**"CWC"**), Parbhani on 12th November 2021 and the said male minor's safe custody was

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given to the Petitioner institution on the same day as per the order of said CWC, Parbhani dated 12th November 2021 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. The Admission order is on record at page Nos. 18-19 to the Petition. After making due inquiry under section 38 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) (“**the said Act**”), the Child Welfare Committee, Parbhani declared the said male minor Ashish “Legally Free for Adoption” as on 24th January 2022. The Free for Adoption Certificate is on record at page No. 17 to the Petition.

2. The Central Adoption Resource Authority (“**CARA**”), New Delhi has issued No Objection Certificate dated 26th September 2022 to this adoption as per Adoption Regulations 2017 and Article 17(c) of the Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption 1993. The said No Objection Certificate has been placed at Page No. 26 to the Petition.

3. The Affidavit by the Chief Functionary of the Specialized Adoption Petitioner Agency in support of adoption of child is on record at page Nos. 20-25 to the Petition.

4. The Proposed Adopters are Italian nationals, both residing at Florence, Italy aged about 45 and 40 years respectively, have been married for the past 15 years (31st May 2008) with one biological son aged about 11 years. His Birth Certificate, consent letter and Health Certificate are on record at page Nos. 47, 57, and 65 to the Petition.

5. The Proposed Adopters joint family photograph and copies of passport are on record at page Nos. 27-41 to the Petition.

6. The Medical Reports dated 13th January 2022 of the proposed adopters are on record and it states that both are in good and strong health. Their HIV and HBsAg Test Reports certify the case as Negative. These Reports are at page Nos. 72 to 91 to the Petition.

7. The Prospective Adoptive father is working as an Electrician with the Company Raster Massimo Electrical installments, Florence and his gross salary for the year 2021 is Euro 22,613.86. His Employment Certificate and Income Certification have been placed on record at page Nos. 96 and 116 to the Petition.

8. The Prospective Adoptive mother is working as a Secondary School Teacher at Baccioda Montelupo Public School and her gross salary for the year 2021 is Euro 25,151.17. Her Employment Certificate and Income Certification is on record at page Nos. 98 & 118 to the Petition.

9. The bank references, attestation and declaration of personal conditions and certificate of residence have been placed on record at page Nos. 122-138 to the Petition.

10. The Childcare Arrangements statement from the Prospective Adoptive mother has been placed on record at page No. 141 to the Petition.

11. The home study Report dated 16th January 2022 by the authorities of “International Action”, Italy has found the Proposed Adopters suitable for adopting a child. The said home study Report has been placed on record at page Nos. 145-151 to the Petition. It is necessary to note that the motivation of the Prospective Adoptive Parents forms part of the home study Report at page 148 to the Petition.

12. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 16th January 2022 by Dr. Carla Casini-Psychologist Psychotherapist has recommended the couple for adoption of the said male minor child. The motivation for adoption also forms part of the Report. The Report has been placed on record at page Nos. 152-154 to the Petition.

13. The Suitability Decree dated 8th March 2018 from the Juvenile Court of Florence and Adoption Guarantee Letter dated 23rd October 2018 issued by the Commission for Intercountry Adoption on behalf of the Government of Italy has been placed on record at page Nos. 155-163 to the Petition. The Permission dated 28th September 2022 from the Receiving Country (Presidency of the Council of Ministers, Commission for International Adoptions, Italy) under Article 17 of Hague Convention, 1993 is on record at Annexure-I.

14. The learned Counsel appearing for the Applicant and Proposed Adoptive Parents has tendered the adoption permission dated 28th September 2022 from the Presidency of the Council of Ministers, Commission for International Adoptions, Central Authority

for the Convention of the Hague of the 29th May 1993. This is taken on record and marked “X” for identification.

15. The Medical Examination Report of the said male minor dated 20th January 2022 states that the said male minor is a normal and active child. His mental development is good. The Report is placed on record at page Nos. 192-198 to the Petition. The Proposed Adoptive Parents have countersigned this Report.

16. The H.I.V. Report of the proposed minor dated 12th June 2023 certifies the case as Non Reactive. This Report is on record at page No. 200 to the Petition. The post card size Photograph of the said male minor is on record at page No. 201 to the Petition.

17. The Letter of Acceptance and Undertaking of the Proposed Adoptive Parents are placed on record at page Nos. 202-207 to the Petition. It states that they are willing to adopt the said male minor child born on 19th October 2021. They further undertake that they will allow personal visits by the representatives of the Authorized Foreign Adoption Agency for follow up of the progress of the said male minor child as is required under the Adoption

Regulations.

18. The undertaking dated 2nd August 2022 of the Authorized Foreign Adoption Agency (AFFA) “International Action APS” Campoformido (UD), Italy 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 Nos. 208-211 to the Petition.

19. The Special Power of Attorney dated 2nd August 2022 duly signed by the Proposed Adoptive Parents in favour of the Petitioner institution has been placed on record at page Nos. 212-215 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 July 2025.

21. Mr. O. Hareendran, Scrutiny Officer has tendered Report dated 18th July 2023, which is taken on record and marked “X-1” for identification.

22. Having considered the relevant material on record as well as the Report of the Scrutiny Officer marked X-1, it is in the interest of the said male minor child if he is adopted by the Proposed Adoptive Parents.

23. 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 :

“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

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

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. Hence, it is clear that this Court can consider and dispose of the present Petition.

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

(a) For the Adoption of the proposed male minor Ashish Raspanti, born on 19/10/2021 by the Proposed

Adopters under Section 59 (7) of the Juvenile Justice Act, 2015.

- (b) For declaring the Proposed Adopters as AdoptiveParents of the said minor Ashish Raspanti, having all parental rights, privileges and responsibilities over the said minor now in the care and custody of the Petitioner institution Jeevan Asha Trust's Asha Shishugriha, Parbhani, Maharashtra.
- (c) That the proposed adopters be allowed to change the name of the minor ASHISH to "Ashish Raspanti".
- (d) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor Ashish Raspanti, born on 19/10/2021 and stating thereon that the Proposed Adopters are Parents of the said minor.
- (e) That the Proposed Adopters may be granted leave to remove the said minor Ashish Raspanti from the jurisdiction of this Hon'ble Court and to take the said minor to ITALY or wherever they may reside in future.

26. The Judge's Order is also accepted and signed separately.

27. It is directed that the Petitioner shall obtain a further undertaking from the Adoptive Parents that they shall not give the said 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.

28. The present Foreign Adoption Petition is accordingly, disposed of. No order as to costs.

[R.I. CHAGLA J.]