

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

FOREIGN ADOPTION PETITION NO. 20 OF 2022
WITH
JUDGE'S ORDER NO. 86 OF 2022
IN
FOREIGN ADOPTION PETITION NO. 20 OF 2022

1. Mr. Mohamed Sayeed Khan &
2. Mrs. Shehnaz Mohamed Khan ...Petitioners
/Prospective Adoptive Parents

And

1. Mr. Mohammed Javid Khan &
2. Mrs. Shewar Mohammed Javid Khan ...Natural / Biological
Parents

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Ms. Amrin Khan a/w. Kiran Yadav, for the Petitioners.

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

Ms. Shonali Dighe, Chamber Registrar.

CORAM : MANISH PITALE, J
DATE : 2nd FEBRUARY, 2023

P.C. :

. The petitioners as prospective adoptive parents alongwith the
biological parents of minor child Mohammed Ayaan Mohammed
Javid Khan, have approached this Court under the provisions of the

Juvenile Justice (Care and Protection of Children) Act, 2015, for a declaration that the prospective adoptive parents shall be the parents of the minor for all purposes in law and for other ancillary reliefs.

2. Heard Ms. Amrin Khan, learned counsel for the petitioners in the presence of Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare. Mr. Hareendran has tendered a report of the Council supporting the contents of the petition and the prayers made therein. The same is taken on record and marked 'X'.

3. The petitioners i.e. the prospective adoptive parents are the uncle and aunt of the said minor child and they are residents of Mississauga, Ontario, Canada. The child was born to the biological parents on 30/4/2009. They are inclined to place the minor child in adoption by the prospective adoptive parents, interalia, for the reason that they have five children and considering the low income of the biological father of the minor child, they intend to give the minor child in adoption. The petitioner also states that the prospective adoptive parents have been married for 22 years and despite fertility treatment, they have not been able to have a biological child of their own.

4. It is stated that the prospective adoptive parents had immigrated to Canada but they moved back to India and during this period, the minor child stayed with them like their own son. In

2017, when the prospective adoptive parents moved back to Canada, they left the minor child in the care of mother of the petitioner No.1, with the hope that they would adopt the child and take him to Canada. The process of adoption was initiated in the year 2018. The biological parents of the child have given consent for the proposed adoption and the same is annexed to the petition. The child has also expressed his desire to be taken in adoption by the prospective adoptive parents.

5. The petitioners are found to be eligible and suitable to adopt their relative's child as provided in Section 2(52) of the said Act. The family background report of the child was conducted by the District Child Protection Unit where the child is ordinarily residing and the Unit furnished its favourable report as per Regulation 54(2) and (3) of the Adoption Regulations. The receiving country in the case being Canada, a certificate of permission from the concerned authority of that country has been issued in favour of the petitioners, in accordance with Article 17 of the Hague Inter Country Adoption.

6. This Court has perused the documents on record, which include the details regarding income of the proposed adoptive parents. The documents show that the petitioner No.1 is a self employed person with substantial income and the petitioner No.2 is working with Tim Horton's as a team member. The child being related to the prospective adoptive parents and having lived with

them for substantial period of time, appears to be positively inclined towards adoption by the prospective adoptive parents.

7. A perusal of the report submitted by the Scrutiny Officer of Indian Council of Social Welfare shows that favourable recommendations have been made. It is stated that the health condition of the prospective adoptive parents is also satisfactory and that they have substantial income to take care of the child. Reference is also made to home study report by an approved adoption practitioner, stating that the petitioners i.e. prospective adoptive parents are suitable for adopting the child.

8. This Court is satisfied that all the necessary parameters for granting the prayers in the present petition are sufficiently fulfilled and necessary material is placed on record.

9. It is significant to note that a recent order passed by the Division Bench of this Court in the case of *Nisha Pradeep Pandya alias Nisha Amit Gor and Anr. Vs. Union of India and Ors. in Writ Petition No.32065/2022 on 10/1/2023*, has specifically granted a direction as an ad-interim order that pending the challenge to the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the petitions already filed and pending can be placed before the concerned Court and that adjudication of such matters can continue during the pendency of challenge raised against the

Amendment Act. The relevant portion of said order of the 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 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.”

10. In view of the above, this Court is satisfied that the prayers made in the present petition can be allowed. Accordingly, the petition stands allowed in terms of prayer clauses (a) to (e) which read as follows :

(a) The above named prospective adoptive parents may be declared as the parents of the said minor for all purposes allowed by the law.

(b) The Birth Certificate Issuing Authority -Mumbai Municipal Corporation (BMC) may please be directed to issue Birth Certificate for the said child within five working days from the date of application, as per the provisions of regulation 36 of Adoption Regulations.

(c) The Regional Passport Office (RPO) concerned may be directed to issue passport for the said child within ten days from the date of application, as per the provisions of sub regulation 4 of regulations 18 and regulations 38 of Adoption Regulations.

(d) That the prospective adoptive parents may be granted leave to remove the said minor from the jurisdiction of this Hon'ble Court and to take the said minor out of the jurisdiction of this Hon'ble Court whenever required;

(e) That the prospective adoptive parents be allowed to change the name of the minor from Mohammed Ayaan Mohammed Javid Khan to Mohamed Ayaan Mohamed Sayeed Khan born on 30/04/2009;

11. The Judge's order is separately signed.

(MANISH PITALE, J)