

Kavita S. J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION

INDIAN ADOPTION PETITION NO. 45 of 2023
WITH
JUDGE'S ORDER NO. 79 OF 2023

Vatsalya Trust, Mumbai

...Petitioner

And

Mr. Nitin Eknath Deshmukh and
Mrs. Ashwinee Trymbakrao Deshmukh

...Prospective
Adoptive Parents

Mrs. Sangeeta Nagpal, Advocate for the Petitioners.

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

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

CORAM : R.I. CHAGLA, J.

DATE : 2ND NOVEMBER, 2023.

ORDER :

1. By this Indian Adoption Petition jointly filed by the
Petitioner and the Prospective Adoptive Parents, adoption of male
minor Smit (**"the said male minor"**) born on 30th October, 2022 is
sought.

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2. The biological mother of the said male minor surrendered her child before the Child Welfare Committee (CWC), Mumbai Suburban District on 01/11/2022 and the child's custody was given to the Petitioner institution on the same day. On 03/11/2022 through its order, the CWC, Mumbai Suburban District recognized that admission under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 ("the said Act"). The Admission Order of CWC is on record at Page No. 130 to the Petition.

3. After making due inquiry under Section 38 of said Act, the CWC, Mankhurd, Dist. Mumbai declared the said male minor Smit "Legally Free for Adoption" on 05/01/2023. The Free for adoption Certificate is on record at Page Nos. 127-128 to the Petition.

4. The Prospective Adoptive Parents are Indian nationals residing at Akole, Ahmednagar, Maharashtra aged about 46 years and 41 years respectively, having been married for the past 20 years (16/03/2003) with no biological children.

5. The Motivation Letter of the Proposed Adopters is on record at Page No. 110 to the Petition.

6. Affidavit by the Chief Functionary of the Specialized

Adoption Agency (Petitioner) in support of the adoption of the said male minor is on record at Page Nos. 138-143 to the Petition.

7. The Decision of the Adoption Committee at meeting held on 19/04/2023 is on record at Page No. 124 to the Petition and the committee has decided that the Prospective Adoptive Parents are suitable to adopt the said male minor.

8. The Medical Report of the Prospective Adoptive Parents dated 14/04/2023 states that they are not having signs/symptoms of any disease on clinical examination. They are physically as well as mentally fit. Their HIV (I & II) and HBsAg test reports certifies the case as Negative. The said Medical Report is on record at Page Nos. 33-38 to the Petition.

9. The Prospective Adoptive father is a Farmer and his income for the Assessment Year 2022-23 is Rs. 2,54,100/-. His Indian Income Tax Updated Return Acknowledgment is on record at Page Nos. 48-52 to the Petition.

10. The Prospective Adoptive mother is working as a Supervisor in Integrated Child Development Service Scheme, Akole, Ahmednagar since 2011 and her monthly (February-2023) gross

salary is Rs. 49,000/-. Her Salary Certificate and Income Tax Return Acknowledgment for the Assessment Year 2022-23 are on record at Page Nos. 46-47 & 53-62 to the Petition.

11. The copies of PAN card, proof of Residence and supportive financial documents are on record at page Nos. 25,28,39-45 & 64-67 to the Petition.

12. The childcare arrangement plan statement is on record at Page No. 110-A to the Petition.

13. The Home study report Part I Self Assessment by the Prospective Adoptive Parents is on record at Page Nos.68-77 & 89-98 to the Petition.

14. The Home Study Part II : Assessment Reports dated 05/12/2019 and 09/11/2022 of the Social Worker of “Snehankur Adoption Center”, Ahmednagar have found the Prospective Adoptive Parents are suitable for adopting a child. The said Home study reports are on record at Page Nos. 78-87 & 99-108 to the Petition.

15. The child security undertaking dated 30/06/2023 given by the Prospective Adoptive father’s cousin brother and sister-in-law

residing at Ahmednagar to look after the said male minor in case of any mishap to the Prospective Adoptive Parents is on record at Page Nos. 111-112 to the Petition.

16. The Pre-adoption foster care undertaking dated 30/06/2023 is on record at Page Nos. 131-132 to the Petition.

17. The Joint Declaration of consent & willingness to adopt by the Prospective Adoptive Parents states that they are willing to be appointed and declared as the adoptive parents of the said male minor. The said Declaration is on record at Page No. 133-134 to the Petition.

18. The Medical Examination Report of the said male minor dated 06/03/2023 states, "Health status of the child : Normal child. Overall Observation of the child : Up to now his overall development is normal." The proposed adopters have countersigned the said report which is on record at Page Nos. 116-122 to the Petition.

19. The HIV report of the said male minor dated 06/03/2022 certifies the case as Negative. This report is on record at Page No. 123 to the Petition. The Post Card Size Photograph of the said male minor is on record at Page No.135 to the Petition.

20. As regards the change of name, the Proposed Adopters desire that the said male minor 'Smit' be renamed as "Aashutosh Nitin Deshmukh".

21. The undertaking dated 21/04/2023 given by the authorities of "Snehankur Adoption Center", Ahmednagar for furnishing post adoption follow-up reports is on record at Page No. 137 to the Petition.

22. The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 05/07/2025.

23. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 26th October, 2023 which is taken on record and marked 'X' for identification.

24. Having considered the material on record as well as the Report of the Scrutiny Officer dated 26th October, 2023 marked 'X', in my view, it would be in the interest of the said male minor if he is adopted by the Proposed Adoptive Parents.

25. 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 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

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

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.”*

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

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

“(a) For adoption of the Proposed male minor baba Smit @ Aashutosh Nitin Deshmukh, born on 30th October, 2022 by Proposed Adoptive Parents.

(b) For declaring the Proposed Adopters as Adoptive Parents of the said minor and shall have all parents rights, privileges and responsibilities over the said minor baba Aashutosh Nitin Deshmukh.

(c) That the proposed adopters be granted permission to change the name of minor Smit to Aashutosh Nitin Deshmukh.

(d) That the concerned Municipal Authority/Birth Certificate issuing Authority may be directed to issue Birth Certificate in the name of the said minor Aashutosh Nitin Deshmukh born on 30th October, 2022 and stating thereon that the Prospective Adoptive Parents as the Parents of the said minor.

(e) 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."

28. The Judge's Order is also separately signed.

29. In the Judge's Order there is an undertaking of the Adoptive Parents to invest an amount of Rs.1,00,000/- (Rupees One Lakh only) in the name of Adoptive Child in any Nationalized Bank. They also undertake not to withdraw this investment till the Adopted Child attains majority. They have agreed to handover the investment receipt to the Adopted Children on his becoming a major. This undertaking is accepted as an undertaking to this Court.

30. The present Indian Adoption Petition is accordingly, disposed of.

31. There shall be no orders as to costs.

[R.I. CHAGLA, J.]