

Sharada

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

INDIAN ADOPTION PETITION NO. 36 OF 2024

WITH

JUDGE'S ORDER NO. 51 OF 2024

IN

INDIAN ADOPTION PETITION NO. 36 OF 2024

Mohammed Amin Lakha and Saba Amin
Lakha

...Petitioners

Mr. Rakesh Kapoor i.by Kapoor and co., Advocate for the Petitioner.

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

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

Mr. Mohammed Amin Lakha – Prospective Adoptive Father.

Ms. Saba Amin Lakha – Prospective Adoptive Mother along with
Umar Mohammed Amin Lakha – Minor present.

CORAM : R.I. CHAGLA, J.

DATE : 21ST MARCH 2024

ORDER :

1. By this Indian Adoption Petition, the Petitioners have

sought adoption of the male minor Mohammed Umar Amin Lakha ('the said male minor') born on 17/11/2016. The said male minor's biological father Aamir Hussain Hamidani is the younger brother of the 2nd Petitioner Mrs. Saba Amin Lakha. The biological parents of the said male minor are having one month.

2. The biological parents of said male minor are having three biological children; a daughter aged about 10 years and two sons aged about 8 years and 7 years respectively.

3. The Petitioners only daughter died in the Aftab building (Mahim) collapse in 2013 when she was 17 years old. The biological parents thought it appropriate to hand over the said male minor when he was one month old to the Petitioners. Thereafter the Petitioners had jointly filed a guardianship petition being Indian Guardianship Petition No. 2 of 2023 in this Court with the consent of the biological parents. The said Guardianship Petition was allowed by this Court vide order dated 15/06/2023 which is on record at page Nos.17-22 to the Petition.

4. This Indian adoption Petition is filed by the Petitioners as per the Judgment dated 27th October, 1999 of this Court reported in

2000 All MR pg.39 and the subsequent judgment of this Court dated 22/04/2018 in Indian Adoption Petition No.32 of 2018.

5. The Petitioners are Indian Nationals residing at Jogeshwari, Mumbai aged about 58 years and 51 years respectively. They have been married for the past 34 years (04/06/1989) with one biological son “Tabrez Lakha” now aged about 33 years. The Petitioners biological son and his wife are both dentists by profession and run their own clinic in Mumbai.

6. The Medical Certificates dated 02/11/2023 of the Petitioners is on record at page Nos.25-26 to the Petition and it states “Found them to be physically fit and in a sound mental state. They have no history of any major illness in the past”.

7. The Petitioner No.1 is self employed (business of Dress Designing) and his income for the Assessment Year 2023-24 is Rs.5,24,380/-. The Chartered Accountant Certificate and Income Tax Returns for the Assessment Years 2021-22, 2022-23 and 2023-24 are on record at page Nos.30-46 to the Petition.

8. The Petitioner No.2 is a Homemaker; however, she earns Rs.2,24,930 from House Property. The Chartered Accountant

Certificate and Income Tax Returns for the Assessment Years 2021-22, 2022-23 and 2023-24 are on record at page Nos.30, 47-62 to the Petition.

9. The Petitioner's proof of residence, Pan Card copies and Supportive financial documents are on record at page Nos.27-29 & 63-69 to the Petition.

10. The Petitioners have deposited a single Premium of Rs.1,03,145/- in the name of the said male minor in the LIC's Single Premium Endowment Plan as per this Courts direction vide order dated 15/06/2023. The LIC Certificates are on record at page Nos.70-88a to the Petition.

11. The Home study report dated 27/12/2023 of the Petitioners by the Social Worker Ms. Clipsy Banji, BA, MSW, PGPDm is on record and the Social Worker has found the Petitioners as suitable adoptive parents for the said male minor the said report is at page Nos.89-91 to the Petition.

12. The follow up Report of the said male minor dated 27/12/2023 states, "Mohammed Umar is an active and cheerful child. Everyone in the family is happy with the development of the

said minor and his relationship with the members in the family. The prospective adoptive mother spends additional time in his care and upbringing, especially his studies and his health requirements. He has enrolled in St. John Universal High School and he attends school from 12 noon to 6 pm. Mohammed Umar has exhibited very good comfort levels and relationship with every members in the household.” The said Report is on record at page Nos.92-93 to the Petition.

13. The Medical Certificate dated 02/11/2023 of the said male minor states “Found him to be physically fit”.

14. The latest Post Card Size Photograph, of the said male minor, his Medical Certificate, Consent Letter and New Name Declaration are on record at page Nos.94-97 to the Petition.

15. The Recommendation letters in support of adoption of the said male minor from the close relatives and family friends are on record at page Nos.81-86 to the Petition.

16. As regards the change of name, the Petitioners/ Prospective Adoptive Parents desire that the said male minor ‘Mohammed Umar Aamir Hamidani’ be renamed as “Umar Mohammed Amin Lakha”.

17. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 14/03/2024 which is taken on record and marked 'X' for identification.

18. Having considered the material on record as well as the Report of the Scrutiny Officer dated 14/03/2024 marked 'X', in my view, it would be in the interest of the said male minor child if he is adopted by the Proposed Adoptive Parents.

19. The said male minor together with the Petitioners are present at today's hearing. From the interaction with the said male minor, I find that he has a positive approach towards life. He is waiting to be conferred the legal status of being the Adopted Child of the Petitioners.

20. Considering that as per the earlier Order dated 15 June 2023, the Petitioners have invested in the name of the said male minor the sum of Rs.1,13,144/- by way of single premium in the LIC's Single Premium Endowment Plan and the LIC certificates are on record at page nos.70-88a to the Petition, there is no question of any further investment.

21. 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.”*

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

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

“(a) That this Hon’ble Court may be pleased to declare the Petitioner as Adoptive Parents of the said male minor Umar Mohammed Amin Lakha, under the guardianship of the Petitioners Mr. Mohammed Amin Lakha and Mrs. Saba Amin Lakha

(b) That the period of two years must elapse before the Court considers the Petition for adoption from the date the Court passes the order of Guardianship be waived off.

(c) That the Petitioner be allowed to change the name of the male minor from “Mohammad Umar Aamir Hamidani” to “Umar Mohammed Amin Lakha” .

(d) That the concerned Municipal Authority / Birth Certificate issuing Authority may be directed to issue Birth Certificate in the name of the said male minor Umar Mohammed Amin Lakha, born on 17/11/2016 and stating that thereon that the Petitioners Mr. Mohammed Amin Lakha and Mrs. Saba Amin Lakha as the Parents of the said male minor Umar Mohammed Amin Lakha.

24. The Judge's Order is also accepted and separately signed.
25. The Indian Adoption Petition is accordingly, disposed of.
26. There shall be no orders as to costs.

[R.I. CHAGLA, J.]