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

INDIAN ADOPTION PETITION NO.53 OF 2024

WITH

JUDGE'S ORDER NO. 79 OF 2024

IN

INDIAN ADOPTION PETITION NO.53 OF 2024

Bal Anand, Worldchildren Welfare Trust
Programme Assistant Kirti Bairagi

...Petitioner

And

Amit Mahendrabhai Shah and Bhakti
Amitbhai Shah

...Prospective
Adoptive Parents

Mr. Rakesh Kapoor i.by Mr. Rakesh K. Kapoor & Co, Advocate for the
Petitioner.

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

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

CORAM : R.I. CHAGLA, J.

DATE : 3 May 2024

ORDER :

1. By this Indian Adoption Petition the Petitioner and the

Prospective Adoptive Parents have sought adoption of the male minor Swaraj (“**the said male minor**”) born on 13/08/2022. The biological parents surrendered the said male minor before the Child Welfare Committee (CWC), Mumbai Suburban District on 22/08/2022 and the child’s safe custody was given to the Petitioner institution on the same day as per the order of the CWC Mumbai, Suburban District dated 22/08/2022 under the Provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“the said Act”). The Admission Order of the CWC is on record at page No.24 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai Suburban District declared the said male minor Swaraj “Legally Free for Adoption” on 01/12/2022. The Free for Adoption Certificate is on record at page Nos.22-23 to the Petition.

3. The Prospective Adoptive Parents are Indian nationals residing at Surat, Gujarat, aged about 44 and 39 years respectively. They having married for the past 17 years (30/01/2007) with no biological children.

4. The Motivation Letter from the Prospective Adoptive Parents is on record at page No.35 to the Petition.

5. The Minutes of Adoption Committee Meeting held on 31/05/2023 is on record at page No.20-21 to the Petition. It states that the Adoptive Parents are suitable to adopt the said male minor.
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.113-117 to the Petition.
7. The Medical Report of the Prospective Adoptive Parents dated 12/01/2024 states “Both are Healthy and Normal”. Their HIV I & II Hepatitis B Test Reports certifies their case as Negative. These report are on record at page Nos.31-34 to the Petition.
8. The Prospective Adoptive Father is self employed (business of Textile Trading at Surat) since 2003 and his gross income for the Assessment Year 2023-23 is of Rs.5,27,049/-. Chartered Accountant Certificate and Income Tax Returns are on record at page Nos.46-56 to the Petition.
9. The Proof of Residence, PAN Card copies and other supportive financial documents are on record at page Nos.36-38 & 57-66 to the Petition.
10. The Home Study Report Part I: Self Assessment by the

Prospective Adoptive Parents is on record at page Nos.67-75 to the Petition.

11. The Home Study Part II : Assessment Reports dated 02/07/2020 of the Specialized Adoption Agency, Popawala Children Home for Boys, Surat is on record and the report has found the Prospective Adoptive Parents suitable for adopting a child. These reports are on record at page Nos.76-85 to the Petition. The updated Home Study Report dated 19/12/2023 of this Specialized Adoption Agency, Popawala Children Home for Boys, Surat has recommended the couple for the adoption of a child.

12. Mr. Rakesh L. Kapoor, learned counsel appearing for the Petitioner has tendered the updated Home Study Report dated 19/12/2023 which is taken on record and marked "X" for identification.

13. The child security Undertaking dated 24/07/2023 given by the Prospective Adoptive father's sister and brother-in-law residing at Bhiwandi, Thane to look after the said male minor in case of any mishap to the Prospective Adoptive Parents is on record at page Nos.95-97 to the Petition.

14. The Medical Examination Report of the said male minor

dated 07/03/2022 states, "Health status: Normal. Overall Observation of the child: Swaraj is a happy child. His growth and development is appropriate for age". The Prospective Adoptive Parents have countersigned the said Medical Examination Report which is on record at page Nos.101-109 to the Petition.

15. As regards the change of name, the Prospective Adoptive Parents desire that the said male minor "Swaraj" be renamed as "Garvit Amitbhai Shah".

16. The HIV Test Report of the said male minor dated 19/01/2024 certifies the case as Non Reactive. This report is on record at page No.111 to the Petition. The Post Card Size Photograph of the said male minor is on record at page No.112 to the Petition.

17. The Declaration of consent, willingness and undertaking by the Prospective Adoptive Parents states that they are willing to be appointed and declared as Adoptive Parents of the said male minor. The said Declaration is on record at page Nos. 39-41 to the Petition.

18. The Pre-adoption foster care undertaking dated 10/11/2023 is on record at page Nos.42-45 to the Petition.

19. The undertaking dated 18/05/2023 given by the

Specialized Adoption Agency, Popawala Children Home for Boys, Surat for furnishing post adoption follow-up reports is on record at page No.118 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 05/05/2025.

21. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 02/05/2024 which is taken on record and marked 'Y' for identification.

22. Having considered the material on record as well as the Report of the Scrutiny Officer dated 02/05/2024 marked 'Y', in my view, it would be in the interest of the said male minor child that 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

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

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 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 (d) of the Petition, which read thus:-

“(a) That the Prospective Adoptive Parents be given the said minor Garvit Amitbhai Shah in adoption and be declared as parents having all parental legal rights, Privileges and responsibilities over the said minor.

(b) 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.

(c) That the concerned Municipal Authority / Birth Certificate issuing Authority may be directed to issue Birth Certificate in the name of the said minor Garvit Amitbhai Shah born on 13th August, 2022 and stating thereon that the Prospective Adoptive Parents are the Parents of the said minor.

(d) That the Prospective Adoptive Parents be allowed to change the name of the minor from ‘SWARAJ’ to “Garvit

Amitbhai Shah” born on 13/08/2022”.

26. 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 Adopted Child’s name. 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 Child on his becoming a major. These undertakings are accepted as undertakings to this Court.

27. The Judge’s Order is also accepted and separately signed.

28. The Indian Adoption Petition is accordingly disposed of.

29. There shall be no orders as to costs.

[R.I. CHAGLA, J.]

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