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

FOREIGN ADOPTION PETITION NO. 9 OF 2024

WITH

JUDGE'S ORDER NO. 61 OF 2024

IN

FOREIGN ADOPTION PETITION NO. 9 OF 2024

Children of the World India Trust

...Petitioner

And

Claudio Sisani, and Erika Toni, and Sakshi
Sisani (Minor) Female

...Prospective
Adoptive Parents

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

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

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

CORAM : R.I. CHAGLA, J.

DATE : 23 APRIL 2024

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the
Proposed Adopters have sought adoption of female minor Sakshi

(“**the said female minor**”) born on 01/07/2021.

2. The said female minor was admitted to the Petitioner institution on 07/07/2022 as per the order of the Child Welfare Committee (CWC), Thane dated 07/07/2022 under the Provisions of Juvenile Justice (Care and Protection of Children) Act 2015, (‘the said Act’). Thereafter, the biological mother surrendered the said female minor before the (CWC) Thane on 13/03/2023. The Admission Order of the CWC is on record at page Nos.18 and 19 to the Petition.

3. After making due inquiry under Section 38 of the said Act, the CWC Mumbai City I declared the said female minor Sakshi “Legally Free for Adoption” as on 15/05/2023. The Free for adoption Certificate is on record at page No.17 to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 05/03/2024 to this adoption as per Adoption Regulations 2022 and Article 17 (c) of the Hague Convention on the Protection of the Children and Cooperation in respect of Inter-country Adoption 1993. The said No-objection Certificate can be found at Page No.26 to the Petition.

5. The undertaking / affidavit by the Petitioner institution is on record at page Nos.20-25 to the Petition.

6. The Proposed Adoptive Parents are Italian Nationals, residing at Florence, Italy, aged about 46 and 44 years respectively. They have been married for the past 6 years (30/07/2017) with no biological children.

7. The Proposed Adopters Joint Family Photograph, Copies of Passport are on record at page Nos.27-43 to the Petition.

8. The Health Reports dated 23/08/2023 of the Prospective Adoptive Parents states that both are in good and strong health. The HIV and HbsAg test reports certify their case as Negative. These Reports are on record at Page Nos.57-80 to the Petition.

9. The Prospective Adoptive Father is working as an Administrative Clerk with the company Lipiscandia Spa, Italy since December 2006 and his income for the year 2022 is of Euro 24,909.72. His Income Employment certificate is on record at page Nos.81 & 87 and 99 to the Petition.

10. The Prospective Adoptive mother is working as a Head of the Style Department with the Company Nomination Srl. Italy since October, 2004 and her income for the year 2022 is of Euro 76,013.96. Her employment and Income Certificate is on record at page Nos.84

& 89 and 101 to the Petition.

11. The Income Tax Certificates, Declaration of personal conditions and Certificate of Residence are on record at page Nos.93-128 to the Petition.

12. The Childcare Arrangement Plan statement from the Proposed Adopters is on record at page Nos.129-135 to the Petition.

13. The Home study Report dated 14/03/2022 by the authorities of “International Action”, Italy is on record and the Report has found the Proposed Adopters Parents suitable for adopting a child. The said Home Study Report is at page Nos.136-143 to the Petition.

14. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 14/03/2022 by Dr. Margherita Cipone, Psychologist and Psychotherapist has recommended the couple for the adopting of a child. The said report is on record at page Nos.144-147 to the Petition.

15. The Permission of the Receiving Country as per Article 5/17 of the Hague Adoption Convention is on record at page Nos.148-158 to the Petition.

16. The Child Security Undertaking dated 16/12/2023 given by

the Prospective Adoptive Mother's brother and sister-in-law residing at Florence, Italy to look after the said female minor in the event case of any mishap to the Proposed Adopters is on record at page Nos.191-195 to the petition.

17. The Medical Examination report of the said female minor dated 19/09/2023 states that "Health Status: Special Need-Severe malnutrition. Over all observation of the child: Sakshi shows overall delay in motor, speech and social milestones. She is receiving physiotherapy, occupational and speech therapy. The Proposed Adopters have countersigned this Report, which is at page Nos.199-215 to the Petition.

18. The Report of Psychological Testing of the said female minor dated 10/05/2023 states that the disability percentage is 75% and she has moderate developmental delay. The Proposed Adopters have countersigned this report, which is at page Nos.216-220 to the Petition.

19. The H.I.V. Report of the said female minor dated 01/11/2023 certifies the case as Non Reactive. This Report is on record at page No.224 to the Petition. The Post Card Size Photograph

of the said female minor is on record at page No.225 to the Petition.

20. The letter of Acceptance and Undertaking of the Proposed Adopters states that they are willing to be appointed and declared as the Adoptive Parents of said female minor. They further undertake the they will allow personal visits by the Representative of the Authorized Foreign Adoption Agency (AFAA) during post adoption follow-up. The said undertaking is on record at page Nos.226-231 to the Petition.

21. The Undertaking dated 19/09/2023 of the Authorized Foreign Adoption Agency (AFAA) "International Action APS" Italy to provide follow-up reports of the and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos.232-235 to the Petition.

22. As regards the change of name, the Proposed Adopters desire that the said female minor 'Sakshi' be renamed as "Sakshi Sisani".

23. The Power of Attorney dated 19/09/2023 duly executed by the Proposed Adoptive Parents in favour of the Petitioner institution is on record at page Nos.236-239 to the Petition.

24. 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.

25. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 05/04/2024 which is taken on record and marked 'X' for identification.

26. Having considered the material on record as well as the Report of the Scrutiny Officer marked 'X', in my view, it would be in the interest of the said female minor if she is adopted by the Proposed Adoptive Parents.

27. 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 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."

28. Hence, it is clear that this Court can consider and dispose of

the present Petition.

29. 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 Sakshi Sisani born on 01/07/2021 by the proposed Adopters under section 59(7) of the Juvenile Justice Act, 2015.

(b) For declaring the Proposed Adopters as Adoptive Parents of the said minor Sakshi Sisani, having all parental rights, privileges and responsibilities over the said minor now in the care and custody of Children of the World India Trust, Vishwabalak Kendra, Plot No.9 & 10, Sector- 12 Nerul, Navi Mumbai – 400 706.

(c) That the proposed adopters be allowed to change the name of the said minor Sakshi to Sakshi Sisani.

(d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Sakshi Sisani born on 01/07/2021 and showing the proposed adopters as parents.s

(e) That the proposed Adopters may be granted leave to remove the said minor Sakshi Sisani from the jurisdiction of this Hon’ble Court and to take the said minor to ITALY or wherever they may reside in future”.

30. It is directed that the Petitioner institution will obtain further undertaking from the Adoptive Parents that they shall not give the Adopted 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.

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

32. The present Foreign Adoption Petition is accordingly, disposed of.

33 . There shall be no orders as to costs.

[R.I. CHAGLA, J.]

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