

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
INDIAN ADOPTION PETITION NO. 2 OF 2024
WITH
JUDGE'S ORDER NO. 3 OF 2024

Maharashtra State Women's Council
Adoption Group at Maharashtra State
Women's Council ...Petitioner

And

Johan Jose Miguel Braganca & Anr. ...Co-Petitioners/
Proposed Adopters

Ms. Dipal Sanjanwala Mehta for the Petitioners.

Mr. O. Hareendran, Scrutiny Officer present.

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

CORAM : R.I. CHAGLA J

DATE : 4 January 2024

ORDER :

1. By this Indian Adoption Petition, the
Co-Petitioners/Proposed Adopters have sought adoption of the
female minor Ella ("the said female minor") was born on 22nd April

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2. The biological mother surrendered the said female child before the Child Welfare Committee (CWC), Mumbai City-II on 8th May 2023 and her custody was given to the Petitioner institution on the same day as per the order of the said CWC dated 8th May 2023 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“**the said Act**”). The CWC Admission order is on record at page No. 21 to the Petition.

3. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai City-II declared the said female minor as “Legally Free for Adoption” on 25th August 2023. The Free for Adoption order is on record at page Nos. 22-24 to the Petition.

4. The Prospective Adoptive Parents are Indian nationals presently residing at Porvorim, Goa aged about 34 and 35 years respectively, having been married for the past seven years (11th December 2016) with no biological children.

5. The Motivation Letter of the proposed Adopters is on

record at Page No. 27 to the Petition.

6. Affidavit by the Chief Functionary of the Specialized Adoption Agency (Petitioner) in support of the adoption of the said female minor child is on record at page Nos. 187-193 to the Petition.

7. The Minutes of Adoption Committee meeting held on 20th November 2023 is on record at page Nos. 18-20-c to the Petition and the committee has decided that the Prospective Adoptive Parents are suitable to adopt the said female minor child.

8. The Medical report of the Prospective Adoptive Parents dated 15th November 2023 states that “The health of the prospective Adoptive Parents do not disqualify them in parenting a child in anyway”. Their HIV and HBsAg test reports certify the case as Negative. The said Report is on record at page Nos. 32-35 to the Petition.

9. The Prospective Adoptive father is working as a Head Basketball Coach with Sonics Sports & Cultural Youth Club since 2017 and his income for the Assessment Year 2023-24 is Rs.

4,42,070/-. His Employment Certificate and Income Tax Returns are on record at page Nos.51-62 to the Petition.

10. The Prospective Adoptive Mother is self employed. She owns a Resort partnership with her brother since 2015 and also has a business of cloths in the name & style of “Taradise” at Calangute, North Goa since 2020 and her income for the Assessment Year 2023-24 is Rs. 4,34,000/-. The Chartered Accountants Report, Income Tax Returns and Registration Certificate are on record at page Nos. 63-70 and 73-75 to the Petition.

11. The proof of residence (passport copies), copies of PAN card and other supportive financial documents are on record at page Nos. 40-43, 50, 72 and 103-127 to the Petition.

12. Childcare arrangement plan undertaking of the Adoptive Mother and her mother-in-law is on record at Page Nos. 128-132 to the Petition.

13. The Home Study Report Part I Self Assessment by the Prospective Adoptive Parents is on record at page Nos. 134-145 to

the Petition.

14. The Home Study Report Part II: Assessment reports of the Social Worker of Specialized Adoption Agency “Caritas Goa” Panjim, Goa dated 21st September 2023 is on record and the report has found the Prospective Adoptive Parents suitable for adopting a child. The said Home study report is at page Nos. 146-153 to the Petition.

15. The child security undertaking dated 23/11/2023 given by the Prospective Adoptive Father’s brother and sister-in-law residing at Mapusa Bardez, Goa to look after the said female minor in case of any mishap to the Prospective Adoptive Parents is on record at page Nos. 183-186 to the Petition.

16. The Pre-adoption foster care undertaking dated 30th November 2023 is on record at page Nos. 46-49 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

female minor Ella. The Prospective Adoptive Parents have further agreed and undertaken to the Petitioner institution and to the Court that they will not give the said female minor child in further adoption to anyone residing in or outside India. The said declaration is on record at page Nos. 44-45 to the Petition.

18. The Medical Examination Report of the said female minor Ella dated 5th October 2023 states that “Overall Observation of the child: A case of Acyanotic Heart Disease- Atrial Septal Defect 3 mm with left to right shunt. The child requires reassessment after 3 months again (2D Echo) for reassessing status of special needs. Her physical and mental developments are normal for age”. The Proposed Adopters have countersigned the said report. The said Report is on record at page Nos. 169-180 to the Petition.

19. The HIV Report of the said female minor dated 25th August 2023 certifies the case as Non Reactive. This Report is on page No. 181 to the Petition.

20. The Post Card Size Photograph of the said female minor is on record at page No. 25 to the Petition.

21. As regards the change of name, the Proposed Adopters are desirous that the said female minor 'Ella' be renamed as "Ella Tarryn Braganca".

22. The undertaking dated 15th November 2023 given by the Specialized Adoption Agency "Caritas-Goa", Panjim, Goa for furnishing post adoption follow-up reports is on record at page No. 182 to the Petition.

23. The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 5th May 2025.

24. Mr. O. Hareendran, Scrutiny Officer has tendered Report/Representation of Indian Council of Social Welfare dated 26th December 2023, which is taken on record and marked "X" for identification.

25. Having considered the documents placed on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer marked X, I am of the view that it would be in the interest of the said

female minor, if she is adopted by the Prospective Adoptive Parents.

26. 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.

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

(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.”

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

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

“(a) This Hon'ble Court may be pleased to appoint the Co-Petitioners, Johan Jose Miguel Braganca and Tara Fernandes as the adoptive parents of the female minor, Ella @ Ella Tarryn Braganca, in the care of Maharashtra State Women's Council Adoption Group at Maharashtra State Women's Council Asha Sadan Balgruh, Asha Sadan Marg, Umderkhadi, Mumbai-400

009,

- (b) *That the Co-Petitioners be allowed to change the name of the minor from 'Ella' to 'Ella Tarryn Braganca',*
- (c) *That the Co-Petitioners may be granted leave to remove the aforesaid child from the jurisdiction of this Hon'ble Court and to take the minor alongwith them, i.e. to the Co-Petitioners' family wherever they may reside or their work may require them to,*
- (d) *That the concerned Municipality/the Birth Certificate Issuing Authority may be directed to issue Birth Certificate for the said minor within five working days from the date of application of the Petitioner, as per the provisions of regulation 36 of the Adoption Regulations."*

29. There is an undertaking in the Judge's Order that Adoptive Parents will create a fixed deposit for an amount of Rs. 1,00,000/- (Rupees One Lakh only) in the name of the Adopted Child. Further there is an undertaking that the Adoptive Parents will not withdraw the said amount until the Adopted child attains majority. They have agreed to handover investment receipts to the Adopted child on her becoming a major. This undertaking is accepted as an undertaking to this Court.

30. Judge's Order is accepted and signed separately.
31. The Indian Adoption Petition is accordingly, disposed of. There shall be no order as to costs.

[R.I. CHAGLA J.]