

Sharada

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

FOREIGN ADOPTION PETITION NO.22 OF 2024

WITH

JUDGE'S ORDER NO.118 OF 2024

IN

FOREIGN ADOPTION PETITION NO.22 OF 2024

Bal Anand, Mumbai

...Petitioner

And

Mr. Massimo Andrei and Mrs. Katia Petruzzi, Proposed Adopters
Indian National,

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

Ms. Vandana Chincholkar, Scrutiny Officer, ICSW present.

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

CORAM : R.I. CHAGLA, J.

DATE : 28TH AUGUST 2024

ORDER :

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

Sarswati (“**the said female minor**”) born on 20/05/2015.

2. The said female minor was found abandoned by Navghar Police Station, Mulund East on 2/05/2022 and produced before the child Welfare Committee (CWC), Mumbai Suburban District on 25/05/2022. The child’s safe custody was given to the Petitioner institution on the same day as per the Order of the CWC dated 25/05/2022 under the Provisions of Juvenile Justice (Care and Protection of Children) Act 2015, (‘the said Act’). The Admission Order of the CWC is on record at page No.19 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 Chakuli Sarswati “Legally Free for Adoption” as on 04/07/2023. The Free for adoption Certificate is on record at page Nos.17-18 to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 27/03/2024 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 is on record at Page No.27 to the Petition.

5. The undertaking / affidavit by the Petitioner institution is on record at

page Nos.21-26 to the Petition.

6. The Proposed Adoptive Parents are Italian Nationals, residing at Pistoia, Italy, aged about 52 and 49 years respectively. They have been married for the past 8 years (31/07/2016) with no biological children.

7. The Proposed Adoptive Parents Joint Family Photograph, Copies of Passport are on record at page Nos.28-46 to the Petition.

8. The Medical Reports dated 23/05/2023 of the Prospective Adoptive Parents states that both are in good and strong health and have no symptoms of current or previous psychiatric and infectious diseases. Their HIV and HBsAg Test Reports certify the case as Negative. These Reports are on record at Page Nos.63-81 to the Petition.

9. The Prospective Adoptive Father is self-employed and the Director of the Company “Toro Di Andrei Massimo”, Italy. His Income for the year 2022 was Euro 32,840.00/-. His Employment & Income certificate is on record at page Nos.88-89 & 111 to the Petition.

10. The Prospective Adoptive mother is working with her

husband's company "Toro Di Andrei Massimo", Italy since 01/05/2017 and her income for the year 2022 was Euro 22,853.00/-. Her Employment & Income certificate is on record at Page Nos.90-93 & 113-116 to the Petition.

11. The Bank References, Declaration of Personal conditions and Proof of Residence are on record at page Nos.117-138 to the Petition.

12. The Childcare Arrangement Plan statement from the Proposed Adoptive Parents is on record at page Nos.139-144 to the Petition.

13. The Home study Report dated 16/01/2022 by the authorities of "International Action", Italy has found the Proposed Adoptive Parents suitable for adopting a child. The said Home Study Report is on record at page Nos.145-151 to the Petition.

14. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 16/01/2022 by the Psychologist has found the Prospective Adoptive Parents suitable for adopting an Indian child. The said report is on record at page Nos.152-168 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.15-168 to the Petition.

16. The Child Security Undertaking dated 25/06/2024 given by the Prospective Adoptive Father's brother and sister-in-law residing at Cagliari, Italy to look after the said female minor in the event case of any mishap to the Prospective Adoptive Parents is on record at page Nos.194-200 to the petition.

17. The Medical Examination report of the said female minor dated 10/08/2023 states that "Health Status: Normal. Overall observation of the child: Saraswati is a happy child 9-10 years old, who is independent in activities of daily living. Medical history: She has had occasional episodes of respiratory tract infections and episodes of wheezing which respond well to intermittent treatment". The Prospective Adoptive Parents have countersigned this Report, which is on record at page Nos.205-213 to the Petition.

18. The Clinical Psychologist's Report dated 11/01/2023 of the said female minor is on record at Page No.214 to the petition. It states, "On the BKT, her DQ is found to be 106, indicative of Average Intellectual Capacity".

19. The H.I.V. Report of the said female minor dated 10/06/2024 certifies the case as Non Reactive. This Report is on record at page No.218 to the Petition. The Post Card Size Photograph of the said female minor is on record at page No.219 to the Petition.

20. As regards the change of name, the Prospective Adoptive Parents desire that the said female minor 'Chakuli Sarswati' be renamed as "Saraswati Andrei".

21. The letter of Acceptance and Undertaking of the Prospective Adoptive Parents states that they are willing to adopt the said female minor. They further undertake that 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.220-228 to the Petition.

22. The Undertaking dated 19/09/2023 of the Authorized Foreign Adoption Agency (AFAA) "International Action APS" Italy to provide follow-up reports of the child and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos.229-232 to the Petition.

23. The Special Power of Attorney dated 17/01/2024 duly executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at page Nos.233-236 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. Ms. Vandana Chincholkar, Scrutiny Officer who is present has tendered Report / Representation of Mr. O. Hareendran, Scrutiny Officer from the Indian Council of Social Welfare (ICSW) dated 16/08/2024 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

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

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 minor Saraswati Andrei born on 20/05/2015 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 Saraswati Andrei and having all parental rights, privileges and responsibilities over the said minors now in the care and custody of Bal Anand, Worldchildren Welfare Trust India, Sai Krupa, 93, Ghatla Village, Chembur, Mumbai – 400071.

(c) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Saraswati Andrei born on 20/05/2015 and showing the proposed adopters as parents.

(d) That the Proposed Adopters may be granted leave to remove the said minor Saraswati Andrei from the

jurisdiction of this Hon'ble Court and to take the said minor to ITALY or wherever they may reside in future.

(e) That the proposed adopters be allowed to change the name of the said minor 'Chakuli Sarswati' to "Saraswati Andrei".

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.]

Privacy warning : No part of this order shall be uploaded on any public domain or portal without this Court's express permission.