

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

INDIAN ADOPTION PETITION NO. 81 OF 2024

WITH

JUDGE'S ORDER NO. 125 OF 2024

IN

INDIAN ADOPTION PETITION NO. 81 OF 2024

Vatsalya Trust, Mumbai

...Petitioner

And.

1. Mr. Shambhu Rajesh Upadhyay

... Proposed Adoptive

2. Mrs. Asha Shambhu Upadhyay.

Parents.

Ms. Aarti Prasad Kulkarni, for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer present.

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

CORAM : R.I. CHAGLA J

DATE : 18 September 2024

ORDER :

1. By this Indian Adoption Petition, the Petitioner and the Proposed Adoptive Parents have sought adoption of the male minor Hardik (“**the said male minor**”) born on 3rd October 2022. The biological mother had surrendered the said male minor before the

Child Welfare Committee, (CWC), Mumbai Suburban District on 6th October 2022, and the said male minor was admitted to the Petitioner Institution on the same day. On 10th October 2022, through its order, the said CWC recognized that admission 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. 21 to the Petition.

2. After making due inquiry under section 38 of the said Act, the CWC, Mankhurd, Dist. Mumbai declared the said male minor “Legally Free for Adoption” on 22nd December, 2022. The Free for adoption Certificate is on record at page Nos. 23-24 to the Petition.

3. The Prospective Adoptive Parents are Indian nationals, residing at Jogeshwari, Mumbai aged about 47 and 44 years respectively. They have been married for the past 22 years (28th February 2002) with no biological children.

4. The Motivation Letter from the Prospective Adoptive Parents is on record at page No. 33 to the Petition.

5. 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. 111-116 to the Petition.

6. The Minutes of Adoption Committee Meeting held on 13th March 2024 is on record at page No. 20 to the Petition. It states that the Prospective Adoptive Parents are suitable to adopt the said male minor.

7. The Medical reports dated 11th March 2024 of the Proposed Adoptive Parents state that they are currently fit to adopt a child. Their HIV and HbsAg Test reports certify the case as Non Reactive. These reports are on record at page Nos. 25-32 to the Petition.

8. The Prospective Adoptive Father is Self-employed (Auto Driver) and his total income for the Assessment Year 2023-24 is Rs.4,94,780/-. The Income Tax Returns are on record at page Nos. 43-63 to the Petition. The Prospective Adoptive Mother is a Homemaker.

9. The copies of Pan Card, Proof of Residence and supportive

financial documents are on record at page Nos. 34-36 and 64-74 to the Petition.

10. The Home Study Report Part I: Self Assessment Report by the Prospective Adoptive Parents is on record at page Nos. 75-80 to the Petition.

11. The Home Study Report Part-II Assessment Report dated 13th January 2022 of the Specialized Adoption Agency “St. Catherine’s Home” Andheri West, Mumbai has found the Prospective Adoptive Parents suitable for adopting a child. The said report is on record at page Nos. 81-85 to the Petition.

12. The child security undertaking dated 27th March 2024 of the Prospective Adoptive Mother’s sister and brother-in-law residing at Kurla, Mumbai to look after the said male minor in case of any mishap to the Proposed Adoptive Parents is on record at page Nos. 93-97 to the Petition.

13. The Pre-Adoption foster care undertaking dated 11th March 2024 is on record at page Nos. 40-42 to the Petition.

14. The Medical Examination Report of the said male minor dated 21st February 2024 states “Health status of the child: Normal. Overall observation of the child: Up to now, his overall development is within normal limits. He has both eyes Nystagmus with Myopia (wears glasses)”. The Prospective Adoptive Parents have countersigned the said report, which is on record at page Nos. 101-107 to the Petition.

15. The HIV Report of the said male minor dated 31st January 2023 certifies the case as Negative. The said report is on record at page No. 109 to the petition. The Photograph of the said male minor is on record at page 110 to the Petition.

16. The Declaration of Consent and undertaking by the Prospective Adoptive Parents states that they are willing to be appointed and declared as the adoptive parents of the said male minor. The said Declaration is on record at page No. 37-39 to the Petition.

17. As regards the change of name, the Prospective Adoptive Parents desire that the said male minor **‘Hardik’** be renamed as

“Shivansh Shambhu Upadhyay”.

18. The Undertaking dated 16th March 2024 given by the Specialized Adoption Agency "St. Catherine's Home" Andheri West, Mumbai for furnishing post adoption follow-up reports is on record at page No. 119 to the Petition.

19. The Petitioner Institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 5th July 2025.

20. Mr. O. Hareendran, Scrutiny Officer has tendered Report/Representation of Indian Council of Social Welfare dated 29th July 2024, which is taken on record and marked “X” for identification.

21. Having considered the material on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer dated 29th July 2024, which is marked X, I am of the view that it would be in the interest of the said male minor child, that he is adopted by the Proposed

Adopters.

22. 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.

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(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."

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

24. 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 child in Adoption and be declared as parents and has 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 Shivansh Shambhu Upadhyay, born on 3rd October 2022 and stating that thereon that the Prospective Adoptive Parents as the Parents of the said minor.

(d) That the Prospective Adoptive Parents be allowed to change the name of the minor from Hardik to "Shivansh Shambhu Upadhyay" born on 3rd October 2022.

25. There is an undertaking of the Adoptive Parents in the Judge's order to invest a sum of Rs. 1,00,000/- in the name of Adopted Child. They also undertake not to withdraw this investment till the Adopted Child attains majority. They agree to hand over the investment receipts to the Adopted Child on his becoming a major. These undertakings are accepted as undertakings given to this Court.

26. The Judge's order is accepted and signed separately.

27. The Indian Adoption Petition is accordingly disposed of. No order as to costs.

[R.I. CHAGLA J.]

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