

Bombay High Court

Adharashram vs Raymond Micallef,Maltese And Anr ... on 16 August, 2017

Bench: Rajesh G. Ketkar

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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.40 OF 2017
WITH
JUDGE'S ORDER NO.163 OF 2017
IN
FOREIGN ADOPTION PETITION NO.40 OF 2017

Adharashram ...Petitioner
And
1. Raymond Micallef, and
2. Georgina Micallef. ..Proposed adopters

....
Mr. Rakesh Kapoor, Advocate for the Petitioner.
Mr.O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare, is
present in person.

....
CORAM : R. G. KETKAR, J.

DATE : 16th AUGUST, 2017
(In Chambers)

P.C.

1. Heard Mr.Rakesh Kapoor, learned counsel for the

petitioner and Mr.O. Hareendran, Scrutiny Officer of Indian Council of Social Welfare (for short, ICSW), at length.

2. This is a Foreign Adoption Petition filed by the petitioner Adharashram, Nashik proposing the adoption of minor male Raj born on 12.12.2015. He was surrendered by his biological father with the consent of biological mother before the Child Welfare Committee, Nashik (for short, 'C.W.C.') on

903.FAP.40-17.doc 16.09.2016. the child's safe custody was given to the Petitioner institution Adharashram, Nashik as per the order of C.W.C. Dated 16.09.2016 under section 36 (1) of Juvenile Justice (Care and Protection of children) Act, 2015 (for short, 'Act'). The Admission order and background information of the minor is at pages 14-15 & 16.

3. C.W.C. has issued certificates of declaring the child Legally Free for Adoption dated 21.11.2016

stating that "In exercise of the powers vested in the C.W.C. under Section 41 (4) of the Act, male minor Raj born on 12.12.2015, placed in the care of the specialized adoption agency Adharashram, Nashik vide order No. 22/2016 dated 21.11.2016 of this Committee, is hereby declared legally free for adoption on the basis of Deed of Surrender executed by the biological parents or legal guardian of the children before this Committee on 16/09/2016. The biological parents/legal guardian have been counseled and duly informed of the effects of their consent and the adoption will result in the termination of the legal relationship between the child and his or her family of origin; and The biological parents/legal guardian have given their consent freely, in the required legal form, and the consents have not been induced by

903.FAP.40-17.doc payment or compensation of any kind and the consent has been given only after the birth of the child". The free for adoption order is on record at page 13. The undertaking/affidavit by the Petitioner is at pages 17-21.

4. The Central Adoption Resource Authority, New Delhi (for short, 'C.A.R.A.') has issued their no-objection certificate dated 14.06.2017 to this adoption as per Adoption Regulations 2017 and Article 17(c) of the Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption 1993. The said no-objection certificate is at page 22. The proposed adopters are Maltese Nationals, residing at Fgura, Malta aged about 48 and 49 years respectively, have been married for the last 5 years (16.06.2012) with no biological children. The second proposed adopter was previously married in the year 1995 and divorced on 16.02.2012 with no biological children. The divorce decree is at pages 32-33. The passport copies of the proposed adopters are at pages 24-25. Health reports dated 17/07/2014 of the proposed adopters states that "No medical problems that could affect his/her ability to be an adoptive parent", are at pages 34-35. The latest health reports and HIV test reports of the proposed adopters dated 31.7.2017

903.FAP.40-17.doc are tendered in the Court today and same are taken on record and marked 'X1 collectively', for identification.

5. The first proposed adopter is working as a Local and Overseas Truck Driver with Fahrenheit Freight Forwarders Co. Ltd., Malta since 15.06.2007 and his gross annual salary is Euros 8,024.52 excluding any statutory bonuses and is paid an additional annual traveling allowance of Euros 12,500 when working abroad (pages 36-37). His wife is a Homemaker. The Income Tax Certificates for A.Y. 2013, 2014 and 2015 are at pages 38-40. Employment history and financial statement is at pages 41-43. Child Care Management Plan by the proposed adopters is at page 44. Home study report of the prospective adoptive parents dated 04.05.2016 from the authorities of "Agenzija Appogg Adoption Services, Malta" is at pages 45-57, which states that "The couple have a stable relationship and they do their best to keep their relationship strong. They are family oriented and they both come from good families. The proposed adopters have ample skills to bring up a child in a safe and happy environment and also able to love and to make self sacrifices, if the need arises, when bringing up their adopted child. In view of the material gathered, the couple positive characteristics and in

903.FAP.40-17.doc view of the information collected, there seems to be no concerns on the couples capabilities, skills and parental capacity to adopt a child born in 2014 or before".

6. The Approvals from the Ministry for the Family and Social Solidarity, Malta is at pages 58-59. The guardianship letter dated 04.05.2017 by the brother and sister-in-law of the second proposed adopter to take care of the child in case of any unforeseen mishap to the proposed adopters is at pages 65-66. HIV report dated 20.06.2017 of the minor certifies the case as 'Negative' (Page 81). The post-card size photograph of the minor is at page 82. The medical examination report of the proposed minor Raj dated 02.02.2017 states that "Any Additional comments: TSH test report dated 15/12/2016: 8.21 seen (normal range 0.34-5.6) by Endocrinologist and started Eltroxin. Hemoglobin Analysis shows Beta Thalassema Trait. Raj has age appropriate development in all domains." The proposed adopters have countersigned this report which is at pages 68-80.

7. The child name statement and declaration and willingness by the proposed adopters are at pages 83-85. Undertaking dated 04.05.2017 by the Authorized Foreign

903.FAP.40-17.doc Adoption Agency "Agenzijatama", Malta is at page 86. General Power of Attorney dated 03.05.2017 duly signed by the proposed adopters in favour of the petitioner institution is at pages 87-89. The Indian Specialized Adoption Agency (Adharashram, Nashik) Certificate of Recognition to do in-country adoption from the Maharashtra State Government is valid for a period up to 05.11.2020. The ICSW report dated 29.7.2017 submitted by Mr.O. Hareendran, Scrutiny Officer, is taken on record and marked 'X' for identification.

8. In view thereof, the Petition is allowed in terms of prayer clauses (a), (b) and (c). A Judge's Order is signed separately. Order accordingly.

(R. G. KETKAR, J.) Deshmane (PS)